



**14.2 INTENTION TO SELL: 39-47 CAMDEN STREET, BALACLAVA
– CONSIDERATION OF SUBMISSIONS IN RESPONSE TO
PUBLIC NOTICE**

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1. PURPOSE

- 1.1 To consider submissions received in response to a notice published in accordance with section 189 of the *Local Government Act 1989* advising of City of Port Phillip's intention to sell land at 39-47 Camden Street, Balaclava and determine whether to proceed with the sale of the property.

2. EXECUTIVE SUMMARY

Intention to Sell by public auction or expression of interest

- 2.1 In accordance with Council's resolution of 20 November 2019, a notice was published advising the community of Council's intention to sell 39-47 Camden Street, Balaclava ("Notice").
- 2.2 At its meeting of 3 February 2021 Council noted the submission made in response to the Notice, and heard the submitter speak to its submission.
- 2.3 Having received and heard that submission, Council is now asked to consider and determine whether to proceed with the sale of the property.
- 2.4 Officers recommend proceeding with the sale of the property.
- 2.5 The rationale for that recommendation is outlined in section 4 of this report.
- 2.6 If the recommendation is adopted, Officers will offer the property to the market.

Intention to Sell by exercising "put" option

- 2.7 Council's resolution of 20 November 2019 additionally contemplated that Officers would negotiate with adjoining land stakeholders an option (not an obligation) for Council to sell/transfer the Properties to one or more of them.
- 2.8 Council could elect to exercise this contractual right should it not be satisfied with the best open market offer.
- 2.9 As those negotiations are sufficiently advanced, Council has published an additional public notice, advising of an intention to sell the property by exercising the put option.
- 2.10 Submissions received in response to that additional notice will be reported to a subsequent Ordinary Meeting of Council.



3. RECOMMENDATION

That Council:

- 3.1 Notes that it has received, heard and considered the submission in response to its Notice of Intention to Sell 39-47 Camden Street, Balaclava, being Parcel "A" in the Balaclava Retail Renewal Precinct, by expression of interest or auction.
- 3.2 Resolves to sell 39-47 Camden Street, Balaclava, by expression of interest or auction.
- 3.3 Authorises Officers to do all things necessary to enable the land to be sold.
- 3.4 Directs Officers to set the confidential reserve price prior to sale, based on an independent valuation.
- 3.5 In the sale of 39-47 Camden Street, Balaclava by public auction or expression of interest, authorises and delegates the Chief Executive Officer, the Manager Property Assets, the Head of Real Estate Portfolio, and Property Development Associate, to enter into and sign all relevant contractual agreements, and authorises the affixing of the Common Seal of the Port Phillip Council to the relevant documents, should that be required.
- 3.6 Advises the submitter of the decision to sell the land and the reason(s) for the decision.
- 3.7 Notes that Council may later determine to sell the land by private treaty, by exercising a put option, and has notified the public of its intention to do so under section 189 of the *Local Government Act 1989*, (the "Additional Notice").
- 3.8 Notes that submissions received in response to the Additional Notice will be reported to a subsequent Ordinary Meeting of Council.
- 3.9 Authorises the Chief Executive Officer (or their delegate) to enter into, but not exercise, a put option (or options), resulting from negotiations with adjoining land stakeholder(s), requiring the purchase of 39-47 Camden Street, Balaclava, for no less than market value, and with an obligation to provide no less than 55 car parking bays for use by the public, and additionally authorises the affixing of the Common Seal of the Port Phillip Council to the relevant documents, should that be required.

4. KEY POINTS/ISSUES

Public notice

- 4.1 On 7 December 2020 a Council notice of intended sale was published in *The Age* newspaper. It was also published on Council's website.
- 4.2 It noted the right of any person to make a submission and to speak to that submission before Council.

Response received

- 4.3 One submission was received, by consultancy Property Development Solutions (Aust) Pty Ltd, on behalf of a party seeking to purchase the subject site.
- 4.4 This was reported to the Ordinary Meeting of Council of 3 February 2021, at which the submitter spoke to the submission.
- 4.5 The submission noted the interest of their client in:
 - developing the land of and adjacent the Balaclava Coles supermarket;



- expanding this development plan to include Parcel A (the subject site); and
 - purchasing Parcel A through direct negotiations prior to a public market process.
- 4.6 The submission suggests Parcel A to be an important inclusion to their development plan and notes that its inclusion would allow for a more fully resolved masterplan for the Precinct.
- 4.7 In speaking to their submission, the submitter also suggested other benefits of their purchasing Parcel A, including that it would allow improved pedestrian flow in and around the Precinct, and the potential for fast-tracking the development.

Other interest

- 4.8 Multiple parties have expressed their interest in purchasing Parcel A, though the submitter is the only one to have publicly expressed this commercial interest as a formal submission through the statutory process.
- 4.9 There may also be other parties who may be interested in purchasing the site that we don't know of yet.

Recommendation rationale

- 4.10 Through a public sale process the submitter would have an opportunity to purchase the property.
- 4.11 So too would any other party with an interest in doing so.
- 4.12 Under the *Local Government Best Practice Guidelines for the Sale, Exchange & Transfer of Land* (2009) it is a general principle that sale of Council land should ordinarily be through a public process.
- 4.13 This helps ensure transparency and best value.
- 4.14 There is insufficiently compelling net community benefit in Council undertaking a private treaty transaction of Parcel A with the submitter's client.
- 4.15 Council cannot dismiss the potential that the purchase and development of Parcel A by others could not similarly deliver on Council's intended Objectives (as noted at the Ordinary Meetings of Council of 20 November 2019).

Transaction documentation

- 4.16 Transaction documents for a market sale would include a Vendor's Statement, Contract of Sale, Planning Agreement (under Section 173 of the *Planning and Environment Act 1987*), and Occupation Licence.
- 4.17 Together these would:-
- Require the purchaser to develop the site at their cost, with retail, commercial or a public toilet at street level.
 - Require the purchaser to add to their development no less than sixty parking bays for use by the public, (for 90 minutes of free parking), or no less than fifty five bays if a public toilet is provided.
 - Include a "Precinct Renewal Incentive", whereby City of Port Phillip receives a fee each year, until development of the site substantially commences/completes.



- Allow City of Port Phillip to use the property as a public carpark until such time as the development commences.

- 4.18 The obligations on the purchaser under the Section 173 Agreement would be registered on title, to bind future owners.
- 4.19 These key terms would support and advance the project objectives noted most recently at the Ordinary Meeting of Council of 20 November 2019.

Hybrid sale process

- 4.20 The Council resolution of 20 November assumed that hybrid transaction approach, involving: (a) direct negotiations with the neighbouring land stakeholders; then/simultaneously (b) a competitive public process.
- 4.21 The direct negotiations are limited to negotiating with adjoining land stakeholders a put option (not an obligation) for Council to sell the land to one or more of them.
- 4.22 Those negotiations are so sufficiently advanced that Council has under section 189 of the *Local Government Act 1989* publicly notified of its intention to sell the land by exercising a potential put option.
- 4.23 Any submissions received in response to that additional notice will be reported to a subsequent Ordinary Meeting of Council.
- 4.24 If Council ultimately resolves to proceed to sale by private treaty, a put option would only be exercised, if at all, once bids from a competitive public process had been considered.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 This public report follows those to the Ordinary Meeting of Council of:
- 20 November 2019 (seeking approval to commence the statutory process and notify the public of an intention to sell); and
 - 3 February 2021 (to report submissions).
- 5.2 The process under section 223 of the *Local Government Act 1989* provides any person who has made a written response to the Notice an opportunity to be heard.
- 5.3 In addition to publishing formal notice, supplementary communication was carried out, including a courtesy letterbox drop to 138 owners, residents and traders of neighbouring properties was completed on 7 December 2020.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 The section 223 process of the *Local Government Act 1989* arises because a submission was received in response to the public notice Council issued under section 189 of that legislation.

7. FINANCIAL IMPACT

- 7.1 Proceeds from the potential sale would be reinvested to improve Council's property portfolio, through its Strategic Property Fund.
- 7.2 The current carpark operation generates revenue from parking infringements, totalling \$22,000 for the prior financial year.



8. ENVIRONMENTAL IMPACT

8.1 No material environmental impacts are considered to arise from the adoption of the recommendations.

9. COMMUNITY IMPACT

9.1 It is anticipated that a sale will facilitate productive redevelopment of the precinct in line with the project objectives.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

10.1 This report supports transparent governance and an actively engaged community. The transaction of Council land to facilitate redevelopment aligns with direction 6: "Our commitment to you".

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

Intention to sell by exercising put option

11.1.1 Officers intend to report any submissions received in response to the Notice to an upcoming Ordinary Meeting of Council.

11.1.2 Once submissions (if any) have been heard and considered, Officers will recommend whether to proceed with a sale by exercise of an option.

Competitive transaction process

11.1.3 Should Council adopt the current recommendation, Officers will invite Expressions of Interest for the sale of the property, or appoint a real estate agent to sell the property by public auction.

Potential exercise of put option

11.1.4 Should a put option be entered into to sell the property to adjoining land stakeholders, and Council has determined to proceed with such a sale, (in addition to having adopted the current resolution), then once the market offers have been received through the competitive transaction process, a decision will be made whether to accept the best market offer, or exercise the put option.

Where the property is passed in at auction

11.1.5 If Council adopts the current resolution, but does not subsequently resolve to sell the property by exercising a put option, and it is put to auction, passed in and remains unsold following subsequent negotiations with the highest bidder, then, in accordance with the *Best Practice Guidelines* it would be left on the market for private sale for an appropriate period of time.

11.2 COMMUNICATION

11.2.1 Officers shall notify the submitter of the decision and the reason(s) for the decision.

11.2.2 Should Council adopt the recommendation, a campaign for a sale of the property will be carried out in a way that adequately exposes the property to the market.



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12. OFFICER DIRECT OR INDIRECT INTEREST

12.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

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ATTACHMENTS Nil