

Management report to Council

Agenda item 6.3

Proposed discontinuance and sale of private roads at 226-232 Faraday Street, Carlton

Council

Presenter: Angela Meinke, Manager Planning and Building

24 February 2015

Purpose and background

1. A request for the discontinuance and sale of remnant pieces of private roads has been received from SCR Development Company on behalf of King and Godfree Pty Ltd. The request seeks to rationalise the access and ownership of private roads which are not under the *Transfer of Land Act 1958* which adjoins their property, and which are not required for public use.
2. The affected land is a remnant piece of a private road which is not owned or managed by Council. The way to remove the road status affecting the land is to discontinue the road under the *Local Government Act 1989* (the Act). The discontinuance of the road vests the land with Council, thereby enabling Council to then transfer the land.
3. The sale is for nominal value (but at the cost of the purchaser) as it is not an asset that has been maintained by Council and in fact these remnant roads raise potential liability issues for the Council.
4. As a separate statutory process a former corporation lane is being sold for its full value as it is a Council asset. Public notice of this has been given but no submissions were received in respect to that process so this has progressed under delegation.
5. Public consultation of the proposed discontinuance has been undertaken (Attachment 1). One submission (Attachment 3) was lodged by A. Agrotis & Associates who act for Chris and Marie Nastas, the registered proprietors of 232-234 Faraday Street, Carlton (adjoining owners to the west).

Key issues

6. The submitter has advised of no objection to the sale of part of the private roads provided an easement of way is provided in order to maintain access to their property. They have advised that they would like to purchase part of the private road themselves. Attachment 4 of this report considers their submission in more detail and proposes an alternative solution.

Recommendation from management

7. That Council:
 - 7.1. discontinues and sells the private roads at 226-232 Faraday Street, Carlton as shown hatched in the public notice dated 29 October 2014 subject to:
 - 7.1.1. deletion of the western portion of the land adjoining 232-234 Faraday Street, Carlton highlighted in yellow as identified in the alternative proposal in option 2 in the management report to the Submissions (Section 223) Committee
 - 7.1.2. to maintain access to 232-234 Faraday Street, Carlton, the area highlighted in green as identified in the alternative proposal in option 2 in the management report be encumbered by a carriageway easement limited in height to five metres above the current site level,for the following reasons:
 - 7.1.3. the modified proposal will substantially deal with a piece of remnant land by incorporating it into the adjoining land owned by King & Godfree Pty Ltd and enabling the redevelopment of the latter land
 - 7.1.4. the area to be discontinued has been occupied and used in association with the land owned by King & Godfree Pty Ltd for many years

- 7.1.5. modifying the proposal by removing the western portion and requiring the carriageway easement will ensure the preservation of the right of access to Tyne Street by the property at 232-234 Faraday Street, Carlton.
- 7.2. notifies the applicant and submitter in writing of the decision and reasons for the decision.

Attachments:

1. Supporting Attachment
2. Plan and Public Notice
3. Submission
4. Discussion on proposed alternative

Legal

1. Pursuant to sections 206(1) and clause 3 of Schedule 10 of the Act, Council has given public notice that it proposes to discontinue and sell the private roads.

Finance

2. The roads are private roads and are not managed or maintained by the Council. If the application is approved and the private roads are discontinued, the Act vests the subject land in the Council with the power to transfer the land. As the road is not controlled by Council it is proposed to be sold for a nominal \$1.
3. King and Godfree Pty Ltd is meeting all costs associated with the proposal.

Conflict of interest

4. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a direct or indirect interest in relation to the matter of the report.

Stakeholder consultation

5. The proposal was given public notice. Overall the consultation involved:
 - 5.1. advertising in the Age on 29 October 2014
 - 5.2. a letter was sent to the owners and occupiers of abutting properties
 - 5.3. all of the Service Authorities were notified by e-mail of the proposal.
6. A submission was received and reported at the Submissions (Section 223) Committee meeting held on 1 December 2014.

Relation to Council policy

7. The proposed discontinuance has been assessed under the Road Discontinuance and Sale Policy based on the following points:
 - 7.1. Private roads are not a Council asset nor owned by Council. Sometimes the adjoining owners are actually controlling the road (as in this case) in other cases they are back alleys that no one takes responsibility for.
 - 7.2. The Council denies all responsibility for the care and maintenance of private roads and expressly excludes them from the maintenance standards in its road management plan. Most were left over from land sales in the 1800s and are often in the name of the long dead developer (they are often called NUA land meaning they are not under the *Transfer of Land Act 1958* but are still held under the general law system that operated before the title system was introduced in Victoria in the 1860s).
 - 7.3. Despite these private roads not being under Council ownership or management, the Act allows a local government to propose to discontinue and sell a 'road' irrespective of whether the road is a Council owned/maintained road or a private road. When the notice of the discontinuance is published in the government gazette, the road vests in the Council's name enabling the Council to transfer it. If the road is NUA, discontinuance also brings the land under the *Transfer of Land Act* so a certificate of title for the land is created by Land Victoria.
 - 7.4. The 1999 sale and discontinuance policy adopted by the Council recognised that these roads differ to those that Council maintains and are public highways vested in the Council and provided private roads could be discontinued and sold for a nominal value (\$1) to an adjoining land owner. The purchaser still has to reimburse the Council its costs of the process.
 - 7.5. Engineering and Land Survey have records of every road and which are maintained by and under the Council's management and a Council asset and those it denies responsibility for.

Environmental sustainability

8. This proposal has no significant impact on environmental sustainability.

**PUBLIC NOTICE
 MELBOURNE CITY COUNCIL**

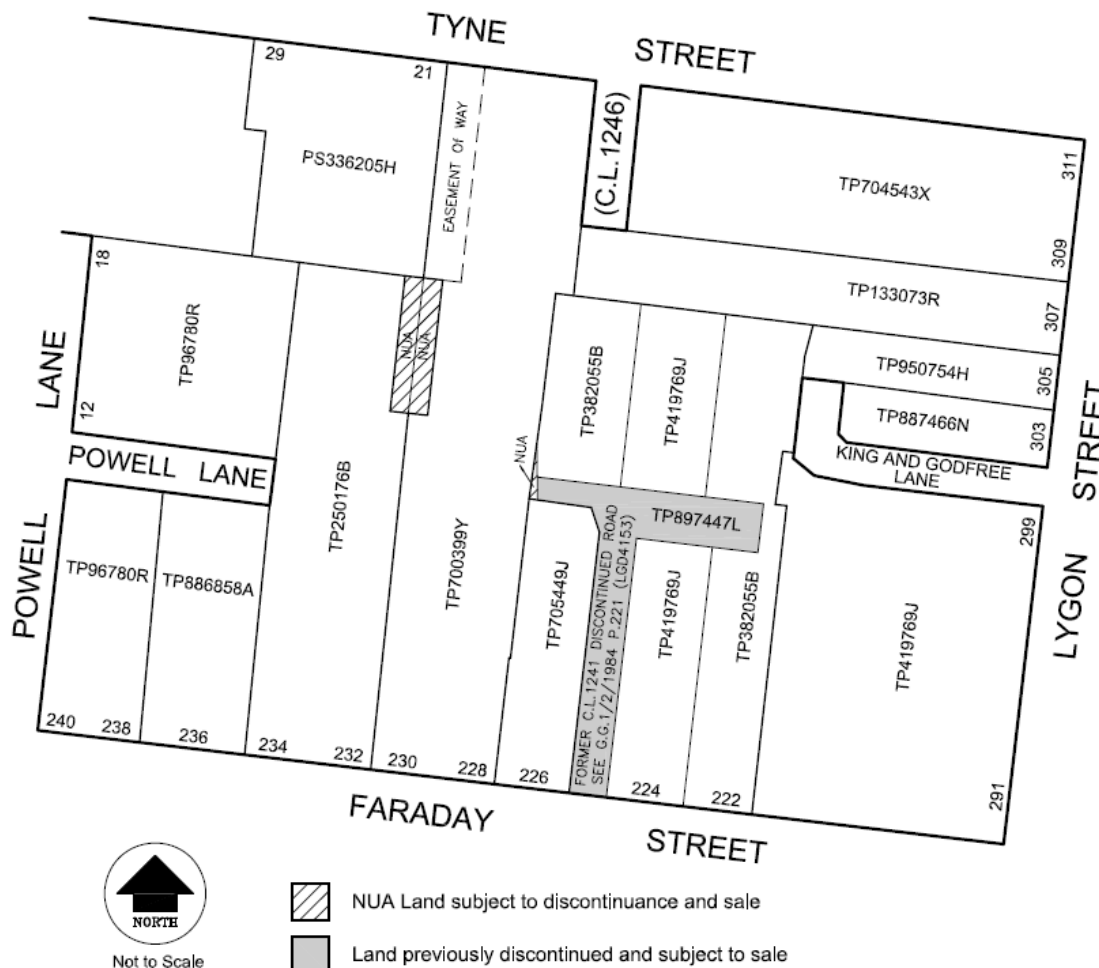
**Proposed Discontinuance and Sale of Private Roads
 at 226-232 Faraday Street, Carlton**

Notice is given pursuant to sections 206(1) and 223 and clause 3 of schedule 10 of the *Local Government Act 1989* ('Act') that the Melbourne City Council ('Council'), proposes to discontinue and sell the private roads at 226-232 Faraday Street, Carlton as shown hatched on the plan below ('the Roads') to the abutting landowner, King and Godfree Pty Ltd for \$1 plus GST ('Proposal'). The Roads have been occupied and used in association with the abutting land (owned by King and Godfree Pty Ltd) for many years.

Any person may make a submission on the Proposal to Council. All submissions received by the Council on or before 27 November 2014 will be considered in accordance with Section 223(1) of the Act, by the Council's Submission (Section 223) Committee ('Committee').

If a person wishes to be heard in support of their submission they must include the request to be heard in the written submission and this will entitle them to appear in person or by a person acting on their behalf, before a meeting of the Committee, scheduled to be held on 1 December 2014, commencing at 3.00pm, in the Melbourne Town Hall, Administration Building, Swanston Street, Melbourne.

Written submissions should be marked 'Proposed Discontinuance and Sale of private roads at 226-232 Faraday Street, Carlton' and addressed to the Manager Governance Services, Melbourne City Council, Town Hall, 90 Swanston Street, Melbourne 3000 or GPO Box 1603, Melbourne 3001. Written Submissions received will be made public and may be made available on the Council's Website.





A. Agrotis & Associates
Barristers & Solicitors

ABN 12 529 916 281
Liability limited by a scheme approved under
Professional Standards Legislation
ANDRIANA AGROTIS - SOLICITOR

Legal Executive: Paul Agrotis
(Fellow, Inst. Legal Executives, Vic.)

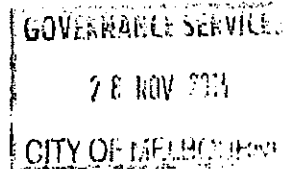
Our Ref: 14/479 AA:AD

Your Ref:

Date: 25 November, 2014

Correspondence to:
364 St. Georges Road
Fitzroy North VIC 3068
Fax: 9481 5167
Telephone: 9489 0522

Manager Governance Services
City of Melbourne
GPO Box 1603
Melbourne VIC 3001



BA BEN

Dear Sirs,

Re: Proposal to Transfer former CL1241 at 224 Faraday Street, Carlton

We act for Chris Nastas and Marie Nastas, the registered proprietors of 232-234 Faraday Street, Carlton.

Our clients have handed us your letter to them dated 28 October, 2014 in relation to the proposed discontinuance and sale of private roads at 226-232 Faraday Street, Carlton.

We are instructed as follows:-

- Our clients have no objection to the sale of part of the discontinued road to abutting land owners of 228-230 Faraday Street, Carlton on the condition that:-
 - a) The existing carriage way easement from Tyne Street which has allowed access to the rear of our clients' property is not extinguished when the sale of the NUA land is effected;
 - b) In order for our clients to access this property from Tyne Street they would need to purchase part of the NUA land on 228-230 Faraday Street, Carlton to allow adequate space for a vehicle to turn into their property (copy of sketch enclosed).

We, therefore, request that you provide written confirmation within 7 days of the date hereof that the said carriage way easement will not be extinguished and part of the NUA land as shown in the said plan is sold to our clients.

Finally, please note our clients request to be heard and wish to appear in person at the meeting scheduled for 1 December, 2014.

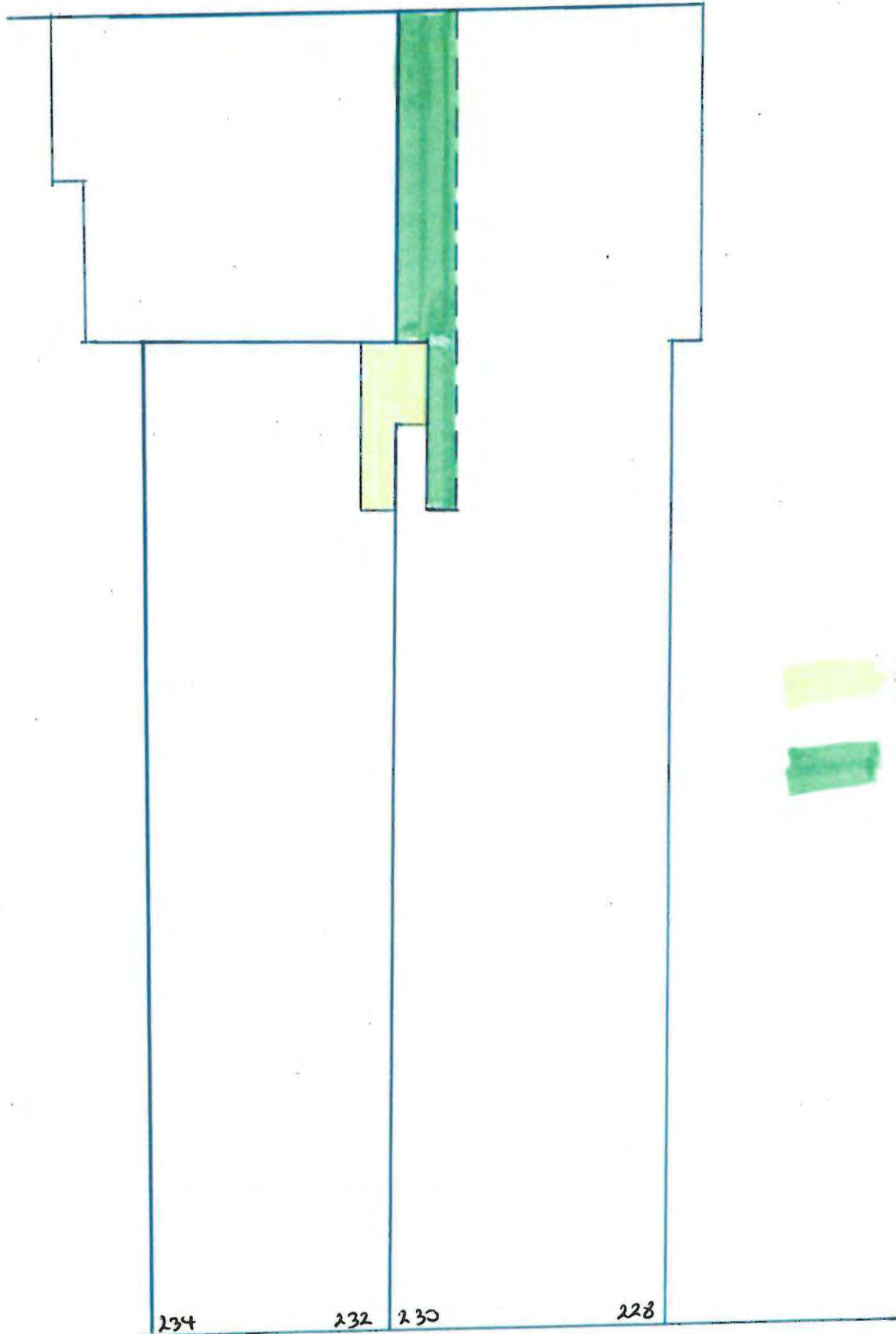
Yours faithfully,
A. Agrotis & Associates

Per:

Enc.

A handwritten signature in blue ink, consisting of several overlapping strokes, positioned to the right of the 'Per:' and 'Enc.' labels.

TYNE STREET



PROPOSED
NASTAS' LAND

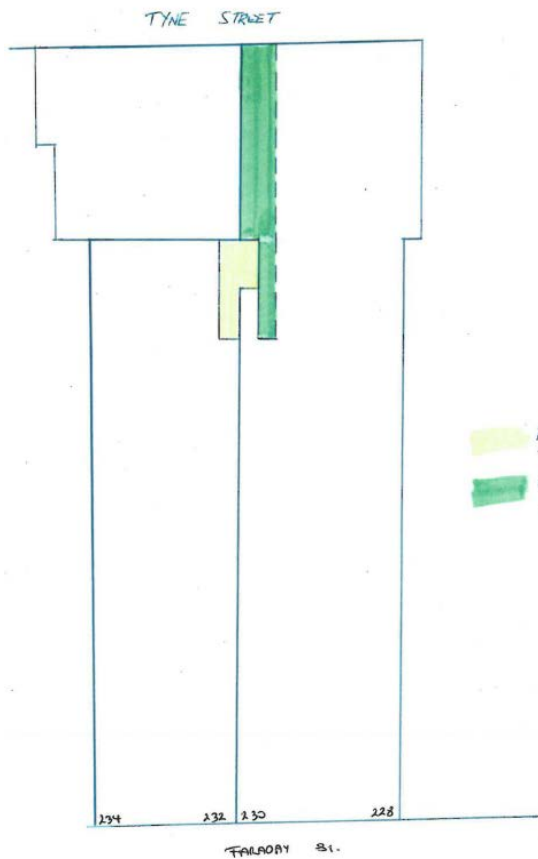
CARRIAGEWAY
EASEMENT

BK ZEN

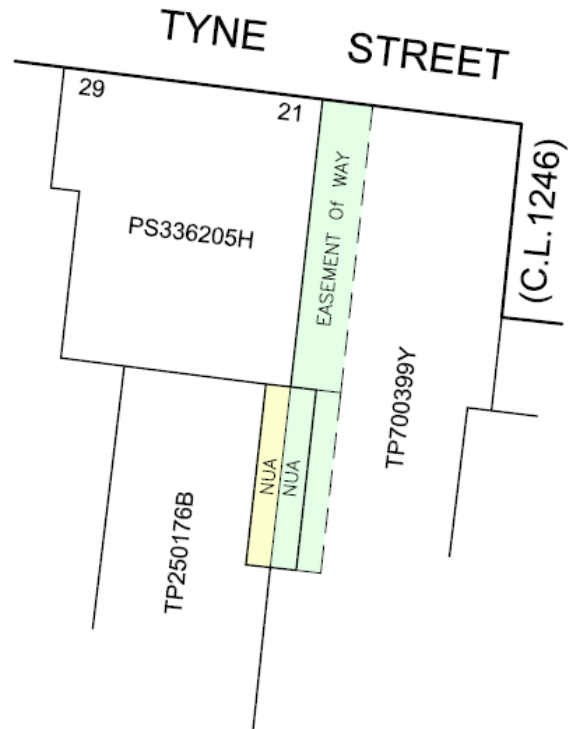
FARADAY St.

Report on submission

1. A modification is recommended to the proposal provided by the submitter. The submitter's proposal shown below has requested the purchase of the area shaded yellow which is not currently all fenced in with their property, it is more appropriate to cut this back as shown in the alternative proposal below and encumber the additional area with a carriageway easement, limited in height to 5 metres above the current site level.

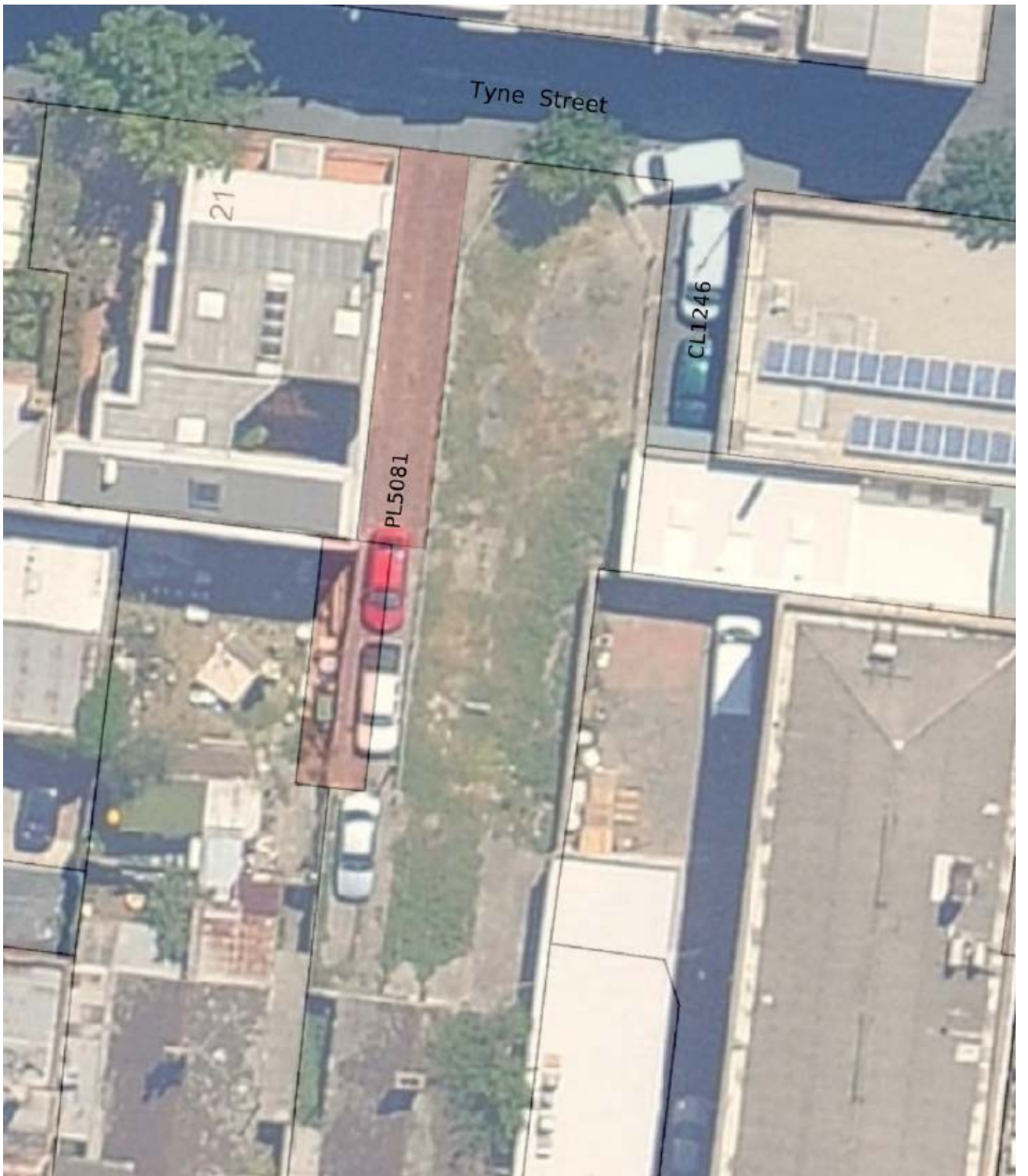


Submitter's proposal



Alternative proposal by Officers

2. The area highlighted green on the alternative proposal appears to look like an old driveway, refer to the aerial photo on the next page. The aerial also shows the current fencing which matches the alternative.
3. To enable the submitter to purchase the area highlighted yellow on the alternative at a nominal value a new public notice is required advertising who the land will be sold to. A precondition to the commencement of the public notice process is the provision of an unconditional bank guarantee to ensure reimbursement to Council of all advertising, valuation, and legal expenses incurred by the sale process (payable irrespective of the outcome of the public notice process) and that the land will be consolidated with the abutting land owned by the purchaser.



Aerial Photo