

8.2 CONSIDERATION OF THE PROPOSED SALE OF LAND - POWLETT STREET KILMORE

Author: Teresa Hendy - Property Officer

File No: CP/05/040

- Attachments:**
1. Powlett Street Title Details
 2. Council's Land on Powlett Street
 3. Overviews of Powlett Street Land
 4. Submission to Proposal
-

SUMMARY

Council owns a small parcel of land located on the western side of Powlett Street Kilmore. The land has been in the ownership of Council (Shire of Kilmore, Mitchell Shire Council) since 1990. The land has been occupied by Kilmore Central Ford since the opening of their car dealership business and forms part of the display yard.

The report to the Council Meeting of 18 February 2019 discussed the consideration of the sale of the land to Kilmore Central Ford and the matters associated with the sale of the land. At the meeting, Council subsequently resolved the following:

THAT Council:

1. Consider the sale proposed, being the sale of land at 119-125 Powlett Street Kilmore (part) contained in Volume 10011 Folio 804 (as per the Title in Attachment 1) and signify support to continue the necessary steps under the *Local Government Act 1989* section 189 to give public notice for the proposed sale.
2. Authorise the giving of Public Notice under section 189 of the *Local Government Act 1989* of the proposed sale of land at 119-125 Powlett Street Kilmore (part) contained in Volume 10011 Folio 804 (as per the title in Attachment 1). The Public Notice would be published in a local newspaper and on Council's website.
3. In accordance with section 223 of the *Local Government Act 1989*, receive written submissions and hear from submitters at a meeting of the Community Questions and Hearings Committee.
4. At a later date, consider a Council report containing recommendations pertaining to the proposed sale of the land.

Public Notice has been completed and this report discusses that process and recommends the next steps towards the proposed completion of the sale and transfer of the land.

CONSIDERATION OF THE PROPOSED SALE OF LAND - POWLETT STREET KILMORE (CONT.)

RECOMMENDATION**THAT** Council:

1. Note that the legislative processes as required under section 189, section 82A and section 223 of the *Local Government Act 1989* have been completed in relation to the consideration of the sale of the land in Powlett Street, Kilmore, contained in Volume 10011 Folio 804.
2. Note that submission/s have been received and heard in relation to the consideration of the proposed sale of the land in Powlett Street Kilmore, contained in Volume 10011 Folio 804.
3. Grant that the land owned by Council in Powlett Street and contained in Volume 10011 Folio 804 is deemed to be surplus to requirements due to the land not serving, and most unlikely at a future time to serve, any operational, strategic or community purpose.
4. Authorise the signing of all required forms and legal documentation, including a Section 173 Agreement, to complete the sale and transfer of the Council owned land in Powlett Street, Kilmore contained in Volume 10011 Folio 804 to the adjacent land owner by private treaty at the sale price determined by a qualified and independent valuer appointed by Council.
5. The land will not be sold at less than market value, as valued by a professional qualified valuer.

BACKGROUND

As previously reported Council owns a small lineal parcel of land (the land) with an area of 572m² which runs parallel to Powlett Street and is located on the corner of Powlett and Broadhurst Streets. This is Lot 1 on title Plan 198737Y – Volume 10011 Folio 804 – which came into the ownership of the Shire of Kilmore in 1990. The land is zoned Commercial 2 Zone as is the land to the north and south along Powlett Street. The land dimensions are 81.72m (east boundary), 81.70 (west boundary) x 7m wide. The title details are in Attachment 1.

Central Ford incorporated the land into the area managed by the dealership prior to 2004 and have continued to use the land as part of their display area. They have also added infrastructure to the land including light towers, bollards and hard sealed the area.

A search of records relating to the land and Broadhurst Street has shown that in 2003, just prior to Council amalgamations, the dealership approached Council to acquire the land however there is no subsequent recorded response from Council. The request to acquire the land was for a ‘nominal consideration’ in exchange for works, however this did not eventuate.

Council’s earliest aerial mapping in 2004 shows the land incorporated into the car display area, with the area having works carried out over time along with the land in the dealer ownership. The Council land has three lighting towers erected on it and bollards along the frontage to Powlett Street and Broadhurst Street. There is no record of consent from Council for these works. Attachment 2 shows an overview of the Powlett Street land and Attachment 3 shows the changes on the land since 2004.

CONSIDERATION OF THE PROPOSED SALE OF LAND - POWLETT STREET KILMORE (CONT.)

As can be seen from the aerial mapping, a footpath exists within the western Powlett Street road reserve along the front of the land from Broadhurst Street to the front of the Kilmore Mitre 10 hardware store.

ISSUES AND DISCUSSION

Initial contact was made with the Ford dealership, Preston Motors Pty Ltd., regarding the occupation of Council's land which has resulted in the dealership expressing an interest in acquiring the land.

The land aligns along the eastern boundary with the private freehold land to the north and south along Powlett Street and therefore the land has no bearing on the alignment of the road or its management. It is noted that Powlett and Broadhurst Streets, along with the other older roads in this part of Kilmore, are Government Roads under the management of Council.

The land is exempt from adverse possession claims regardless of the time of occupation and Council may choose to sell the land. Council currently bears full liability for any accident or injury to person or property that occurs on this parcel of land.

CONSULTATION

Consultation with relevant staff has indicated no objection to the proposal subject to meeting certain requirements as described below.

To plan for future road management and safety it is requested that a condition of the sale of the land be the protection of the sight lines for vehicles turning out of Broadhurst Street (west) into Powlett Street. This is proposed by the registration of a s173 Agreement on the land title which would prohibit the erection of signage, wall, fence or other construction which would block the sight line for drivers turning from Broadhurst Street into Powlett Street or across Powlett Street.

The section 173 Agreement would be relatively straight forward and can be prepared by a local lawyer.

The use of the land as a park would not be supported by the Mitchell Open Space Strategy's design guidelines.

In consulting with VicRoads they previously indicated that:

Please note it is predicted that the southern section of Powlett Street will hit capacity sometime between 2031 and 2041, even with the bypass in place. Note that volumes do not include 'circulating volumes' (generated by retail and commercial traffic) which may further increase two way volumes.

It is worth considering retention of this strip of land for future capacity, entrance or place making along this section.

The comment provided by VicRoads suggests that the land proposed to be sold may form part of the actual road reserve however this is not the case.

In regard to capacity, should Powlett Street need to be widened sometime in the future, there would need to be a compulsory acquisition of land along the length of Powlett Street and this would include both commercial and residential land in addition to the

CONSIDERATION OF THE PROPOSED SALE OF LAND - POWLETT STREET KILMORE (CONT.)

Kilmore Police Station (western side of Powlett Street) and/or Ambulance Victoria on the eastern side of Powlett Street.

VicRoads did not make a submission against the proposed sale following the issuing of a community consultation notice required under s223 of the *Local Government Act 1989*.

It is highly unlikely that the land is suitable for a specific entrance or place making project given its limited size and the location directly adjacent to the car dealership. There is sufficient room along the existing road reserve for tree planting or other enhancement of the road entrance way leading into the core of the Kilmore township.

Staff have noted the following three points below in relation to strategic direction.

- There have been no timeframes indicated around the duplication of Northern Highway in Kilmore. It appears that the Kilmore Bypass is ahead in terms of priority as there is a funding commitment to reserving the land but not yet construction funding.
- The Kilmore Structure Plan identifies Powlett Street as a key character street. The design intent is for “formalised cross-section elements containing large exotic street tree plantings to signal arrival into historical Sydney Street town core” (p. 30).
- The selling of the land is not likely to impact on the ability of achieving the design intent within the Kilmore Structure Plan.

Public notice of the consideration to sell the land was given under the *Local Government Act 1989* by the publication of a notice in the North Central Review of 26 February 2019 and placing the notice on Council’s website, with submissions invited under section 223 of the Act until Friday 29 March 2019.

Council has established the Community Questions and Hearings Committee to hear and report to Council on submissions received by Council under section 223 of the *Local Government Act 1989*.

In response to the Public Notice, one submission was received dated 22 March 2019, with the submitter requesting to be heard in person in support of their submission. The submitter was invited to make their submission to the Community Questions and Hearings Committee of 13 May 2019. The submission is at Attachment 4.

In summary, the attached submission states that the land under consideration to be sold was to have formed part of a service road along Powlett Street and requests that the service road be reinstated. If the sale were to go ahead, the submission requests that the land being sold is ‘exchanged’ for similar sized land to be used for a pocket park in the area to the south of Lancefield Road and west of Powlett Street due to the lack of parkland in this area. There is no suitable land available at this time for development however future growth within the area would consider requirements for open space. As the proceeds would be placed within the property reserve Council could in the future direct these funds to a park.

CONSIDERATION OF THE PROPOSED SALE OF LAND - POWLETT STREET KILMORE (CONT.)

FINANCIAL, RESOURCE AND ASSET MANAGEMENT IMPLICATIONS

As the land is a lot rather than a reserve vested for open space, drainage or other purpose, there would be no changes required to the land status to enable the sale.

The land is a very small parcel which by itself could serve no obvious purpose for Council operations or services and it does not form part of any strategic function or plan. For these reasons, the land is considered to be surplus to requirements.

In their expression of interest to purchase the land, Preston Motors have indicated that they would meet all costs associated with the purchase which would be for Council's giving of public notice, preparation of the section 173 Agreement and representation for the sale and transfer.

Officer time would need to be committed to Council reports and liaising with Council's representatives and Preston Motors during the process, should the proposal receive support to proceed.

The land would be sold at market retail value as valued by a professional valuer engaged by Council. A preliminary estimation of the value of the land based on the site value for rating purposes of the whole of the Central Ford site (10,128m²) at a m² rate results in a value of approximately \$72,000 for Council's land. A valuer has provided comment that the estimate made on this determination basis may be slightly under market value given that it is a smaller individual land parcel. There is also the factor of the improvements which have been made on the land by Central Ford and which value add to the continued use of the land by the Ford dealership.

Using the same method of m² rate of the land total at 119-125 Powlett Street and the neighbouring property to the north at 117 Powlett Street which is approximately 4,050m² the site value per m² of Council's land would be roughly \$92,500.

POLICY AND LEGISLATIVE IMPLICATIONS

The sale of the land in Powlett Street is consistent with Council's new and reviewed policies, including Council's Property Holding, Acquisition and Disposal Policy 2019 (Draft), Asset Disposal Policy 2014, Infrastructure Asset Management Policy 2010 – Revision 2015 and Asset Management Strategy 2010 – Revision 2015.

The sale of the land in Powlett Street is consistent with requirements of the *Local Government Act 1989* clauses for Council to:

RISK IMPLICATIONS

Risk Ranking is determined using [ROHS201-G1- Corporate Risk Matrix](#). Risk is identified as Low, Medium, High or Very High.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
Should there be an incident on the land, Council would be wholly	Medium - High	Dispose of the land.	Will need to consult with the community and, should Council

CONSIDERATION OF THE PROPOSED SALE OF LAND - POWLETT STREET KILMORE (CONT.)

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
liable for any resulting claim. The risk associated with the land, particularly given the degree of public access, is medium to high with an insurance claim excess of \$20,000.			support the sale, employ external parties. All expenses would be met by the purchaser.
Asset Management – the current use of the land is not a suitable use for Council owned property and offers no benefit to the community, the land is not maintainable by Council, the condition of the land cannot be guaranteed, and it offers no serviceable value into the future.	Medium	Dispose of the land.	Will need to consult with the community and, should Council support the sale, employ external parties. All expenses would be met by the purchaser.
An insurance claim would expose the occupation of Council's land by another party without any consents for occupation or benefit to the community.	Medium	Dispose of the land.	Will need to consult with the community and, should Council support the sale, employ external parties. All expenses would be met by the purchaser.
If disposal of the land was not pursued and the land was instead leased to the dealership, Council would still retain a medium to high risk due to the various factors outlined above and being a joint party to any claim regardless of any indemnification.	High	Dispose of the land.	Will need to consult with the community and, should Council support the sale, employ external parties. All expenses would be met by the purchaser.

CONSIDERATION OF THE PROPOSED SALE OF LAND - POWLETT STREET KILMORE (CONT.)

SUSTAINABILITY IMPLICATIONS (SOCIAL AND ENVIRONMENTAL)

There are no known or anticipated social or environmental impacts due to the sale of the land. It is unlikely that there would be any changes to the land use or management as a result of the sale.

CHARTER OF HUMAN RIGHTS IMPLICATIONS

The rights protected in the *Charter of Human Rights and Responsibilities Act 2006* were considered in preparing this report and it's determined that the subject matter does not raise any human rights issues.

CHILDREN AND YOUNG PEOPLE IMPLICATIONS

There would be no known or anticipated impacts on children or young people as a result of the sale of the land.

OFFICER DECLARATION OF CONFLICT OF INTEREST

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

CONCLUSION

The land proposed to be sold in Powlett Street, Kilmore has been occupied by another party for a significant length of time and has had infrastructure established on the land.

Given the size and location of the land, it is extremely unlikely that the land could be used for a Council operational or community purpose and it does not form part of any strategic plan for the Kilmore township. There has been no objection to the proposed sale by internal departments or the external authority requested for comment.

Given the high risk that Council would continue to carry by retaining ownership of the land, it is pragmatic to reduce Council's risk and additionally raise revenue by the sale of the land.

Therefore, in consideration of the above, the land is considered surplus to requirements and this report contains recommendations to proceed with the sale and transfer of the land contained in Volume 10011 Folio 804 in Powlett Street, Kilmore.

CONSIDERATION OF THE PROPOSED SALE OF LAND - POWLETT STREET KILMORE (CONT.)

MITCHELL SHIRE COUNCIL

Council Meeting Attachment

GOVERNANCE AND CORPORATE PERFORMANCE

20 MAY 2019

8.2

CONSIDERATION OF THE PROPOSED SALE OF LAND - POWLETT STREET KILMORE

**Attachment No: 1
Powlett Street Title Details**

11/29/2018

Land Registry Document



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REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958
VOLUME 10011 FOLIO 804 Security no : 124075143938K
Produced 29/11/2018 01:28 PM

LAND DESCRIPTION

Lot 1 on Title Plan 198737Y.
PARENT TITLE Volume 09975 Folio 570
Created by instrument R015226T 24/09/1990

REGISTERED PROPRIETOR

REGISTERED PROPRIETOR
Estate Fee Simple
Sole Proprietor
MITCHELL SHIRE COUNCIL of 113 HIGH STREET BROADFORD VIC 3658
INTERNSHOP 16/05/2015

ENCLOSURES, GREETINGS, AND WITNESSES

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DTACGRAM LOCATION below.

DIAGRAM LOCATION

SEE TR198737V FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NTI

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 119-125 POWLETT STREET KILMORE VIC 3764

ADMINISTRATIVE NOTICES

NIL

eCT Control 09886B MITCHELL SHIRE COUNCIL
Effective from 16/05/2016

DOCUMENT END

Home	Account: 324825		Authority Fee(GST exclusive): \$0.00 Service Fee(GST exclusive): \$0.00 GST Payable: \$0.00 Total: \$0.00	29/11/2018 01:28PM
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TITLE PLAN	EDITION 1		TP 198737Y
Location of Land		Notations	
Parish: BYLANDS Township: KILMORE Section: Crown Allotment: Crown Portion:			
Last Plan Reference: CP173711A Derived From: VOL 10011 FOL 804 Depth Limitation: NIL	ANY REFERENCE TO MAP IN THE TEXT MEANS THE DIAGRAM SHOWN ON THIS TITLE PLAN		
Description of Land / Easement Information		THIS PLAN HAS BEEN PREPARED FOR THE LAND REGISTRY, LAND VICTORIA, FOR TITLE DIAGRAM PURPOSES AS PART OF THE LAND TITLES AUTOMATION PROJECT COMPILED: 25/10/1999 VERIFIED: SOC	
TABLE OF PARCEL IDENTIFIERS WARNING: Where multiple parcels are referred to or shown on this Title Plan this does not imply separately disposable parcels under Section 8A of the Sale of Land Act 1962 PARCEL 1 = LAND IN CP173711A (PT)			
LENGTHS ARE IN METRES	Metres = 0.3048 x Feet Metres = 0.201168 x Links		Sheet 1 of 1 sheets

MITCHELL SHIRE COUNCIL

Council Meeting Attachment

GOVERNANCE AND CORPORATE PERFORMANCE

20 MAY 2019

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**CONSIDERATION OF THE PROPOSED SALE OF
LAND - POWLETT STREET KILMORE**

**Attachment No: 2
Council's Land on Powlett Street**

Council land 119-125 Powlett Street Kilmore

2004



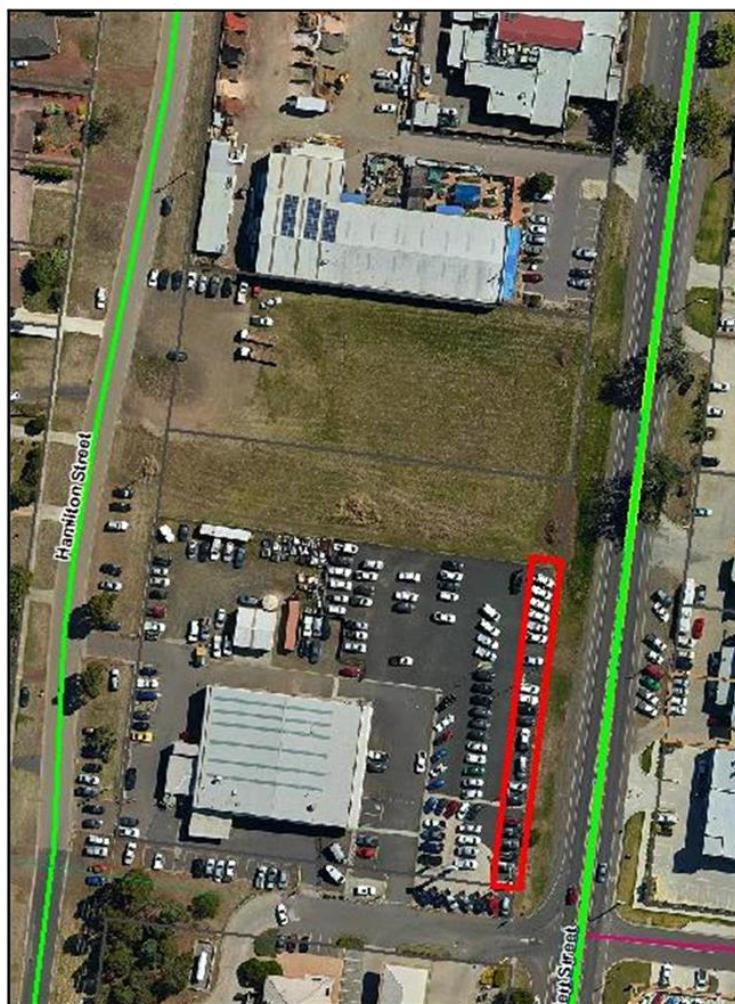
2010/2012 (Nearmaps)



2015



2017



2018



MITCHELL SHIRE COUNCIL

Council Meeting Attachment

GOVERNANCE AND CORPORATE PERFORMANCE

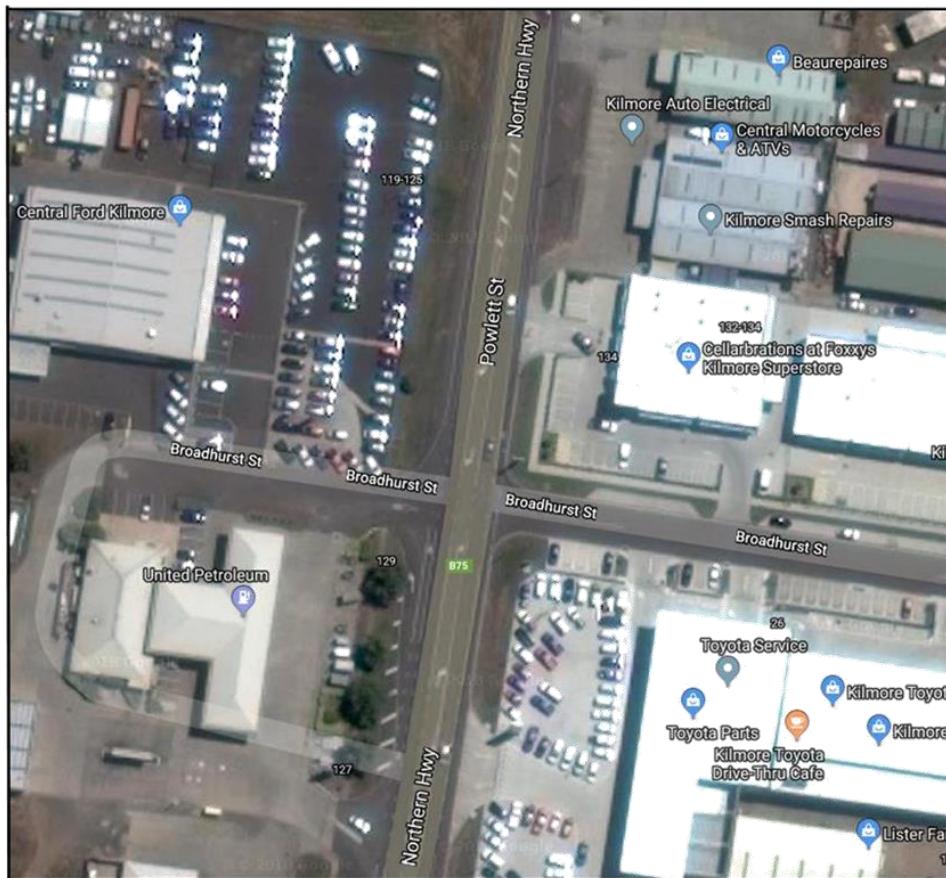
20 MAY 2019

8.2

CONSIDERATION OF THE PROPOSED SALE OF LAND - POWLETT STREET KILMORE

**Attachment No: 3
Overviews of Powlett Street Land**

Overview of Kilmore Central Ford (from Google maps)



Council land outlined in blue – Lot 1 on TP198737

Part of 119-125 Powlett Street Kilmore



Council land outlined in blue



MITCHELL SHIRE COUNCIL

Council Meeting Attachment

GOVERNANCE AND CORPORATE PERFORMANCE

20 MAY 2019

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**CONSIDERATION OF THE PROPOSED SALE OF
LAND - POWLETT STREET KILMORE**

**Attachment No: 4
Submission to Proposal**



**Kilmore and District Residents & Ratepayers Association Inc.
(KADRRRA) PO Box 527 Kilmore VIC 3764**

Friday, 22 March 2019

Planning Department
Mitchell Shire Council
113 High St.
Broadford
VIC 3658

Re: 119-125 Powlett St (Part) Kilmore, Lot 1 on Title Plan 198737Y

KADRRRA represents Kilmore and district residents in seeking the best outcome for the use of this land. KADRRRA wishes to make a submission about the intention to sell the above land to the owners of the balance of the land at 119-125 Powlett St.

This linear strip of land was originally to be used as part of a service road to the West and parallel to Powlett St. Our first preference would be for this service road to be re-instated. If it could start on the East side of the Ford property and continue to the North end of 119-125 Powlett St it could still be of great benefit for residents. Access to Powlett St would be more regulated and safer. A service road would be safer for pedestrians and cyclists. In this section, Powlett St is narrow. As the community grows with more traffic the current width will be inadequate.

If Council decides not to agree to this suggestion we would recommend that the linear strip on this property be exchanged for a regular block of 572 square metres size to be used for a pocket park in Kilmore so that small children can play. Currently in Kilmore there is no parkland South of Lancefield Rd on the West side of Powlett St. Many of the housing blocks further to the South are large but some are already being subdivided into smaller blocks. For the many families in the area with small children this is totally unsatisfactory.

I request to be heard at the Council Hearing. Should I be unavailable for that date I would wish to nominate another member of our association prior to the hearing date.

Yours faithfully

A handwritten signature in black ink that reads "Anne Radden Rose". The signature is fluid and cursive, with "Anne" and "Rose" being more clearly legible than "Radden".

Anne Radden Rose

Chair KADRRRA Planning Committee