

Confidential - Westminster Reserve - Adjourned Item

Originating Officer	Land Asset Officer/Registered Conveyancer - Heather Michell
Corporate Manager	Manager City Property - Megan Hayward
General Manager	General Manager City Development - Abby Dickson
Report Reference	GC190611F01

Confidential**Confidential Motion****That;**

Pursuant to Section 90(2) and (3)(b)(i)(ii) of the *Local Government Act 1999*, the Council orders that all persons present, with the exception of the following persons: Adrian Skull, Abby Dickson, Ray Barnwell, Kate McKenzie, Megan Hayward, Heather Michell, Clare Benn, Victoria Moritz and Craig Clarke be excluded from the meeting as the Council receives and considers information relating to Westminster Reserve, upon the basis that the Council is satisfied that the requirement for the meeting to be conducted in a place open to the public has been outweighed by the need to keep consideration of the matter confidential given the information relates to a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and be contrary to the public interest.

REPORT OBJECTIVE

The purpose of this report is to provide Council with further information regarding the potential sale of Westminster Reserve. This report is to be read in conjunction with the adjourned report (attachment 1) GC190514F01

EXECUTIVE SUMMARY

At the 14 May 2019 General Council meeting the following resolution was passed to move into confidence.

That:

Pursuant to Section 90(2) and (3)(b)(i)(ii) of the Local Government Act 1999, the Council orders that all persons present, with the exception of the following persons: Adrian Skull, Abby Dickson, Vincent Mifsud, Kate McKenzie, Megan Hayward, Heather Michell, Craig Clarke, Clare Benn, Victoria Moritz and Richard Watson be excluded from the meeting as the Council receives and considers information relating to Westminster Reserve, upon the basis that the Council is satisfied that the requirement for the meeting to be conducted in a place open to the public has been outweighed by the need to keep consideration of the matter confidential given the information relates to a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and be contrary to the public interest.

In accordance with the *Local Government (Procedures at Meetings) Regulations*, the debate on an adjourned item will resume and continue at the point it was adjourned. *The motion for this item is yet to be Moved or Seconded*

Provided below is the extra information Council requested at the 14 May 2019 General Council meeting.

Additional Information

Westminster Reserve (the Reserve) is a 'landlocked' parcel of land, comprising approximately 980 Square meters which is bounded by the Sturt River, the electrified rail corridor and the sports fields of Westminster School (the School).

The reserve does not have a street frontage and given it is landlocked Council has no legal right of access to the land - to either use it or maintain it. The School is currently using the land as part of their sports field and they have been maintaining the land in line with their sports playing field.

The following options are available to Council:

Option 1 - Retain

Council can retain the reserve and allow Westminster School to have continued uninterrupted use of the land. Council is currently not maintaining the Reserve and the impact of value of any holding costs is minimal.

Option 2 (Recommended)

Enter into discussions with Westminster School for the sale of Westminster Reserve for a monetary payment on the basis that Westminster School pays all costs including those associated with the Community Land revocation and to bring a report back to Council on conclusion of the discussions. Regardless of responsibility of payment of all costs.

Option 3

Enter into discussions with the School for the sale of the Reserve for no monetary payment on the basis that Westminster School pays all costs including those associated with the Community Land revocation and to bring a report back to Council on conclusion of the discussions.

At the 14 May 2019 General Council meeting Council adjourned report *GC190514F01 - Westminster Reserve* and sought the following further information:

- Information on what Westminster plan to use the land for?
- Are there any significant trees on the Reserve
- Confirm there is not community access and the area totally fenced off
- Is there a potential for land swap
- Further analysis on the purchase price Council should seek

This report provides additional information to assist Council's consideration of the matter.

RECOMMENDATION

As the adjourned item was yet to be Moved or Seconded, a proposed amended recommendation is below.

That Council:

- 1. Authorises Administration to enter into discussions with Westminster School for the sale of Westminster Reserve for a monetary payment on the basis that Westminster School pays all**

costs.

2. Requests Administration enter into negotiations seeking a sale of price in the order of \$XX plus payment for all costs associated with the community land revocation
3. Notes a further report will be brought back to Council on the outcomes of negotiations with Westminster School.
4. In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that this report, appendices and the minutes arising from this report having been considered in confidence under Section 90(2) and (3)(b)(i)(ii) of the Act shall, except when required to effect or comply with Council's resolution(s) regarding this matter, be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council Meeting in December 2019.

GENERAL ANALYSIS

Risk Management:	If the sale of Westminster Reserve proceeds, two independent valuations will be obtained for consideration by Council
Legal / Legislative / Policy:	The Reserve is classified as community land under the Local Government Act 1999. Before Council can enter into any agreement for the disposal of the Reserve, this classification must be revoked.
Additional Resource Impact	Although all costs are to be paid by Westminster School if they acquire the land from Council, Council will require it's own independent Conveyancer. Council's in-house Conveyancer can attend to all requirements.
Current Budget Allocation	Nil

DISCUSSION

How are Westminster currently using the land and do they have further plans for the land?

It was during discussions on another matter with Westminster School that it was identified by Administration that the School appeared to be occupying land owned by the City of Marion without agreement. Whilst the school acknowledged that given the landlocked nature of the land it did make sense to 'tidy up the Titles' and for the land to be amalgamated with their adjoining title, there was no suggestion for any consideration to be made for the transfer of ownership.

The Reserve is currently being used by the School as part of their sports playing field and appears to have cricket mats laid over the boundary.

Are there any significant trees on the Reserve?

There are several mature gum trees on the northern boundary - some of these trees may be regulated or significant, however this can not be quantified or qualified given this reserve is not currently maintained by Council and Council do not have access to the site to review.

Confirm there is not community access and if the area totally fenced off

To reiterate, Westminster Reserve (the Reserve) is a landlocked parcel of land bounded by the Sturt River,

the rail corridor and Westminster School (the School). The Reserve is triangular in shape and comprises approximately 980 square metres. Photos of the Reserve are attached (*Attachment 2*)

The Reserve does not have a street frontage and Council has no legal access to the Reserve.

Potential Land Swap

Administration have been asked to advise whether it is possible to 'swap' the landlocked Westminster Reserve with other potential land owned by Westminster School - Whilst administration can explore this option as part of the negotiations, Westminster School are unlikely to agree to this given it has previously approached Council to purchase other Council land .

There is a medium level of open space in marion (Suburb). Further assessment would need to be undertaken to determine Council's needs in the area if Westminster School would consider this option.

Sale Price

As provided in the adjourned report, Council has received a Valuation Report which indicates that the Reserve is estimated market value is \$85,000. This has been estimated using the "Before and After" method. That is, analysing the current estimated market value of the School's land before and after the acquisition of the Reserve with the associated 'marriage value' of the amalgamated title.

Discounts have been applied taking into consideration that the Reserve is landlocked and the current zoning.

The value of the land in Council's Balance Sheet is all held in one asset record for Kenton Avenue Reserve. Using a rate per square metre, this equates to \$49,000 for Kenton Avenue Reserve as at 30 June 2018.

Although it has been determined that the market value of the Reserve is estimated at \$85,000, given the Reserve is landlocked, with only one potential buyer, Council is not in a strong position to negotiate a sale at the market value as should Westminster School refuse to purchase the land for any monetary consideration, realistically COM will be unable to sell the portion of land to another purchaser given it is landlocked.

Council has received an informal offer from Westminster School to acquire the Reserve from Council for no monetary payment - As there is only one potential buyer, the sale must be by direct sale through a direct negotiation.

Feedback from Council is it wishes to seek a sale price in the order of \$20,000 for the land on top of the costs associated for community land revocation.

Whilst Administration will enter into negotiations with the Westminster School to achieve the highest possible price for the land, achieving the valuation sum of \$85,000 or even the proposed \$20,000 may be difficult due to Council's weak negotiating position.

Should Council wish to take a strong approach to try to 'force the hand' of the school to purchase the land for monetary consideration, one option may be to prohibit the school from using the land, however this would be difficult to enforce as Council are unable to fence the land (as Council has no access rights). It is also worth noting however that this comes with a risk as if Westminster acknowledged our request and did not use or continue to maintain the land, Council would also be unable to maintain the land (as we have no access rights) which could lead to negative publicity for Council.

Following negotiations, Administration will bring back to Council the final offer received from Westminster School for Council's consideration.

Please note however, that given the Reserve is classified as Community Land under the Local Government Act 1999, **The Community Land classification must be revoked** pursuant to Section 194 of the Local Government Act 1999 **prior to Council entering into any agreement for the disposal of the Reserve.**

Attachment

#	Attachment	Type
1	Attachment 1 - Westminster Reserve	PDF File
2	Attachment 2 - Photos of the Reserve	PDF File

Westminster Reserve

Originating Officer	Land Asset Officer/Registered Conveyancer - Heather Michell
Corporate Manager	Manager City Property - Megan Hayward
General Manager	General Manager City Development - Abby Dickson
Report Reference	GC190514F01

Confidential



Confidential Motion

That pursuant to Section 90(2) and (3)(b)(i)(ii) of the *Local Government Act 1999*, the Council orders that all persons present, with the exception of the following persons: Adrian Skull, Abby Dickson, Vincent Mifsud, Kate McKenzie, Megan Hayward, Heather Michell, Clare Benn, Jaimie Thwaites and Richard Watson be excluded from the meeting as the Council receives and considers information relating to Westminster Reserve, upon the basis that the Council is satisfied that the requirement for the meeting to be conducted in a place open to the public has been outweighed by the need to keep consideration of the matter confidential given the information relates to a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and be contrary to the public interest.

REPORT OBJECTIVE

The purpose of this report is to seek direction from Council, whether Council wishes to retain Westminster Reserve or sell the Reserve to the adjacent Westminster School either for no monetary payment or for a minimal monetary payment, subject to the outcome of discussions with the School.

EXECUTIVE SUMMARY

Westminster Reserve (the Reserve) is a landlocked parcel of land bounded by the Sturt River, the rail corridor and Westminster School (the School) of approximately 980 square metres. The reserve does not have a street frontage and Council has no legal access to the Reserve which is currently being used by the School.

Council has received an informal offer from Westminster School to acquire the Reserve from Council for no monetary payment. As there is only one potential buyer, the sale must be by direct sale through a direct negotiation process.

The following options are available to Council:

Option 1 - Retain

Council can retain the reserve and allow Westminster School to have continued uninterrupted use of the land. Council is not maintaining the Reserve and the impact of value of any holding costs is minimal. If Option 1 is adopted, no further action is required by Council.

Option 2 (Recommended)

Enter into discussions with Westminster School for the sale of Westminster Reserve for a monetary payment on the basis that Westminster School pays all costs including those associated with the Community Land

revocation and to bring a report back to Council on conclusion of the discussions. Regardless of responsibility of payment of all costs.

Option 3

Enter into discussions with the School for the sale of the Reserve for no monetary payment on the basis that Westminster School pays all costs including those associated with the Community Land revocation and to bring a report back to Council on conclusion of the discussions.

This report seeks direction from Council on how it wishes to approach the offer from the School to acquire the land.

RECOMMENDATION

That Council:

- 1. Authorises Administration to enter into discussions with Westminster School for the sale of Westminster Reserve for a monetary payment on the basis that Westminster School pays all costs.**
- 2. Notes a further report will be brought back to Council on the outcomes of negotiations with Westminster School.**
- 3. In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that this report, appendices and the minutes arising from this report having been considered in confidence under Section 90(2) and (3)(b)(i)(ii) of the Act shall, except when required to effect or comply with Council's resolution(s) regarding this matter, be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council Meeting in December 2019.**

OR

- 1. Endorses to retain Westminster Reserve, Oaklands Park.**
- 2. In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that this report and appendices arising from this report having been considered in confidence under Section 90(2) and (3)(b)(i)(ii) of the Act shall, except when required to effect or comply with Council's resolution(s) regarding this matter, be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council Meeting in December 2019.**

GENERAL ANALYSIS

Risk Management:	If the sale of Westminster Reserve proceeds, two independent valuations will be obtained for consideration by Council
Legal / Legislative / Policy:	The Reserve is classified as community land under the Local Government Act 1999. Before Council can enter into any agreement for the disposal of the Reserve, this classification must be revoked.
Additional Resource Impact	Although all costs are to be paid by Westminster School if they acquire the land from Council, Council will require it's own independent Conveyancer. Council's in-house Conveyancer can attend to all requirements.
Current Budget Allocation	Nil

DISCUSSION

Westminster Reserve (the Reserve) is a landlocked parcel of land bounded by the Sturt River, the rail corridor and Westminster School (the School). The Reserve is triangular in shape and is approximately 980 square metres.

Several mature gum trees are on the northern boundary. Some of these trees may be regulated or significant. This Reserve is not currently maintained by Council.

The land vested in Council in 1960 and is not subject to any trusts, dedications or restrictions other than the Community Land Classification.

The Reserve does not have a street frontage and Council has no legal access to the Reserve.

Prior to the re-alignment of the Sturt River, Council owned a reserve as shown in red on the attached map (Appendix 1). After the Sturt River channel was re-aligned, SA Water acquired the portion of the Council reserve, severing a small portion now known as Westminster Reserve from the balance of the reserve now known as Kenton Avenue Reserve. Westminster Reserve is shown on the attached map (Appendix 2).

The Reserve is currently being used by the School and appears to have cricket mats laid over the boundary

Council has received an informal offer to acquire the Reserve from Council for no monetary payment.

Valuation

Council has received a Valuation Report which indicates that the Reserve is estimated market value is \$85,000. This has been estimated using the "Before and After" method. That is, analysing the current estimated market value of the School's land before and after the acquisition of the Reserve.

Discounts have been applied taking into consideration that the Reserve is landlocked and the current zoning.

The value of the land in Council's Balance Sheet is all held in one asset record for Kenton Avenue Reserve. Using a rate per square metre, this equates to \$49,000 for Kenton Avenue Reserve as at 30 June 2018.

Although it has been determined that the market value of the Reserve is estimated at \$85,000, as the Reserve is landlocked and there is only one potential buyer, Council is not in a strong position to negotiate a sale at the market value.

Community Land

The Reserve is classified as community land under the Local Government Act 1999.

Before Council can enter into any agreement for the disposal of the Reserve, this classification must be revoked.

Possessory Rights

The School has enjoyed approximately 37 years of uninterrupted use and possession of the land. There is no record of Council having approved exclusive use of the Reserve by the School. It is unlikely that a claim for adverse possession by the school would be successful, however, legal advice should be sought if the school makes any such claim.

Options

Option 1 - Retain

Council can retain the reserve and allow Westminster School to have continued uninterrupted use of the land. Council is not maintaining the Reserve and the impact of value of any holding costs is minimal. If Option 1 is adopted, no further action is required by Council.

Option 2 (Recommended)

Enter into discussions with Westminster School for the sale of Westminster Reserve for a monetary payment on the basis that Westminster School pays all costs including those associated with the Community Land revocation and to bring a report back to Council on conclusion of the discussions. Regardless of responsibility of payment of all costs.

Option 3

Enter into discussions with the School for the sale of the Reserve for no monetary payment on the basis that Westminster School pays all costs including those associated with the Community Land revocation and to bring a report back to Council on conclusion of the discussions.

Next Steps

If Options 2 or 3 are adopted the following actions will be required upon conclusion of successful discussions with the School:

1. A report will be brought back to Council outlining the outcome of the negotiations with the School
2. The Community Land Classification must be revoked which requires further Council Reports, community consultation and Ministerial approval. An outline of the process is below:

Council Report 1 - Authorisation to undertake consultation under Section 194(s)(b) of the Local Government Act 1999

Council Report 2 - Consideration of the submissions made in response to the public consultation and authorisation for Ministerial consideration of revocation

Council Report 3 - Revocation of Community Land classification on receipt of Ministerial approval (Final Report)

3. As there is only one potential buyer, the sale must be by direct sale through a direct negotiation process. That is, the Reserve cannot be sold on the open market. Council's Disposal of Land and Assets Policy requires that where land is to be disposed of via a select tender or direct sale, a minimum of two independent valuations must be obtained not more than six months prior to the proposed disposal and the disposal should be at or above the current market valuation. A resolution will need to be passed by council stating that the Disposal of Land and Assets Policy is not to apply to the disposal of Westminster Reserve.
4. Westminster Reserve is only portion of an allotment and cannot be sold without being severed from the balance of the land, being Kenton Avenue Reserve, by way of a Land Division.

Attachment

#	Attachment	Type
1	Attachment 1 Prior to Realignment of Sturt River	PDF File
2	Attachment 2 Reserve to be sold to Westminster School	PDF File

















