

18.2 Westminster Reserve and Keaton Avenue Reserve - Revocation of Community Land Classification

Report Reference	GC210914F18.2
Originating Officer	Heather Carthew – Land Asset Officer
Corporate Manager	Manager City Property - Thuyen Vi-Alternetti
General Manager	General Manager City Development - Ilia Houridis

CONFIDENTIAL MOTION

That pursuant to Section 90(2) and (3) (h) and (g) of the *Local Government Act 1999*, the Council orders that all persons present, with the exception of the following persons: Chief Executive Officer, General Manager City Development, General Manager Corporate Services, General Manager City Services, Manager Office of the Chief Executive, Manager City Property, Unit Manager Land & Property, Land Asset Officer, Unit Manager Communications, Unit Manager Governance and Council Support and Governance Officer, be excluded from the meeting as the Council receives and considers information relating to Westminster Reserve and Keaton Avenue Reserve - Revocation of Community Land Classification, 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 legal advice and current confidential orders which are place over previous reports, attachments and minutes to which this report relates.

REPORT OBJECTIVE

To provide Council with the outcome of the determination from the Minister for Planning and Local Government in relation to the revocation of the community land classification of Westminster Reserve and Keaton Avenue Reserve, Oaklands Park and to provide options for the future ownership and management of Westminster Reserve.

REPORT HISTORY

Report Reference	Report Title
GC190611F01	Confidential – Westminster Reserve (adjourned item from GC190514F01)
GC200623F02	Westminster Reserve
GC200922F03	Westminster Reserve
GC210511R03	Westminster Reserve and Kenton Avenue Reserve Revocation of Community Land Classification

EXECUTIVE SUMMARY

Council has previously considered the future of Westminster Reserve (the Reserve), the process for revocation and options for the future of the Reserve, given that the Reserve does not have a street frontage and access to the Reserve by Council can only be gained through neighbouring properties which Council currently does not have any formal easements to allow this to occur.

Following negotiations supported through previous resolutions of Council, an in principle offer was

presented to Council by Westminster School to purchase the Reserve from Council, which was accepted by Council, subject to the community land revocation process.

In September 2020, Council commenced the process for the revocation of community land classification. As part of the offer, the school will pay for all costs associated with the sale and transfer of the land, should it go ahead.

The Minister's approval to revoke the community land classification over the Reserve and Kenton Avenue Reserve was received by Council on 5 August 2021 (Attachment 2). The approval is on the condition that Council passes a resolution to reinstate the community land status of the Kenton Avenue Reserve following the revocation of the community land classification. Council can now make a determination whether or not to proceed with the revocation.

Should Council decide not to proceed with the revocation of community land classification and disposal of the Reserve and retain it as community land, the future use and maintenance of the Reserve needs to be considered.

Options for the future ownership, management and maintenance of the Reserve are discussed in this report, which include:

- proceeding with the revocation and sale to Westminster School;
- leasing the land to Westminster School;
- requiring Westminster School to vacate the land;
- or allowing Westminster School to continue occupying the site under an informal arrangement.

RECOMMENDATION

That Council:

1. That council revoke the confidentiality orders pertaining to the reports, minutes, and appendices relating to Westminster Reserve that have been considered in confidence by Council (Report Reference: GC190514F01, GC190611F01, GC200623F02, GC200922F03 and GC210511F04).
2. In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that Attachment 18.2.3 to this report *Westminster Reserve and Keaton Avenue Reserve Revocation* having been considered in confidence under Section 90(2) and (3)(h) of the Act, 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 2021.

Option 1 – Proceed with the revocation and disposal

3. Acknowledges the Ministerial approval to revoke the community land classification dated 4 August 2021 for Westminster Reserve and Kenton Avenue Reserve, Lot 107 FP11413 being the whole of the land in Certificate of Title Volume 3776 Folio 21 on the condition that Council passes a resolution to reinstate the Community Land Classification for Kenton Avenue Reserve at the earliest opportunity.
4. Revokes the community land classification in respect of Westminster Reserve and Kenton Avenue Reserve to enable Westminster Reserve to be sold to Westminster School, and that a Notice of the revocation of community land revocation is placed in the Government Gazette.
5. Resolves that Kenton Avenue Reserve will be reinstated as community land immediately upon the two reserves being separated by a land division.

6. Notes that the Registrar General is to be notified of the revocation of the classification of community land in accordance with Section 195 of the Local Government Act 1999.
7. Authorises the disposal of Westminster Reserve in accordance with the Council resolution made on 22 September 2020 (GC200922F03) on the basis that all costs associated with the revocation of the community land classification, sale and transfer of land are paid by the Purchaser.
8. Authorises the net revenue from the sale be transferred to the Open Space Reserve Fund for the development of open space facilities as approved by Council.
9. Pursuant to Section 37(b) of the Local Government Act 1999, authorises the Chief Executive Officer to negotiate, enter into and sign all contracts and documentation necessary to effect the land division, sale and settlement of the Land.

Or

Option 2 – Lease to Westminster School

3. Resolves to not proceed with the revocation of community land classification.
4. Authorises the Chief Executive Officer to negotiate and enter into a lease of Westminster Reserve to Westminster School for a period of five years noting that community consultation is not required under the Local Government Act 1999.

GENERAL ANALYSIS

Legal / Legislative / Policy

The community land classification must be revoked under the Local Government Act 1999 to enable Westminster Reserve to be sold.

Background

Westminster Reserve is a reserve of approximately 957 square metres of land at Oaklands Park which is bounded by the rail corridor, Sturt River and Westminster School (the School). The reserve has no street frontage. Access by Council is through neighbouring properties, and it should be noted that there is no easement in place to facilitate this.

Both Westminster Reserve and Kenton Avenue Reserve (which are divided by the Sturt River) are in one single allotment. To dispose of Westminster Reserve (the Reserve), a land division is required. A map of the reserves is attached (Attachment 1).

Following a period of public consultation in accordance with the requirements of the *Local Government Act 1999* at its General Meeting held on 11 May 2021 (GC210511R05) Council resolved:

1. *Notes the outcome of the community consultation process undertaken for the revocation of the community land classification for Westminster Reserve and Kenton Avenue Reserve, Oaklands Park at Lot 107 FP11413, Certificate of Title Volume 3776 Folio 21 and for the potential disposal of approximately 957 square metres of land known as Westminster Reserve.*
2. *Declares that the retention of the land does not contribute to Council's strategic objectives and is surplus to Council's requirements.*
3. *Authorises the lodgement of the proposal to dispose of Westminster Reserve to the Minister for Planning in accordance with Section 194 of the Local Government Act 1999:*
 - a. *with a report on all submissions made as part of the public consultation process;*
 - b. *a request to approve the revocation of the Community Land Classification on the basis that the Community Land Classification will automatically be reinstated over Kenton Avenue*

Reserve which is being retained by Council, upon the two reserves being separated by a land division.

4. *Notes a further report will be presented to Council upon receipt of the determination from the Minister for Planning in relation to the revocation.*

DISCUSSION

Following Council's resolution a submission was submitted to the Minister for Planning and Local Government seeking their approval to the revocation of community land classification. Ministerial approval to the revocation was received by Council on 5 August 2021 (Attachment 2).

Legal advice (Attachment 3) was obtained around the negotiations and exchange of letters between Council and Westminster School. The advice confirmed that the negotiations and exchange of letters did not constitute a contract, the letters exchanged were merely seeking to confirm the respective parties' positions.

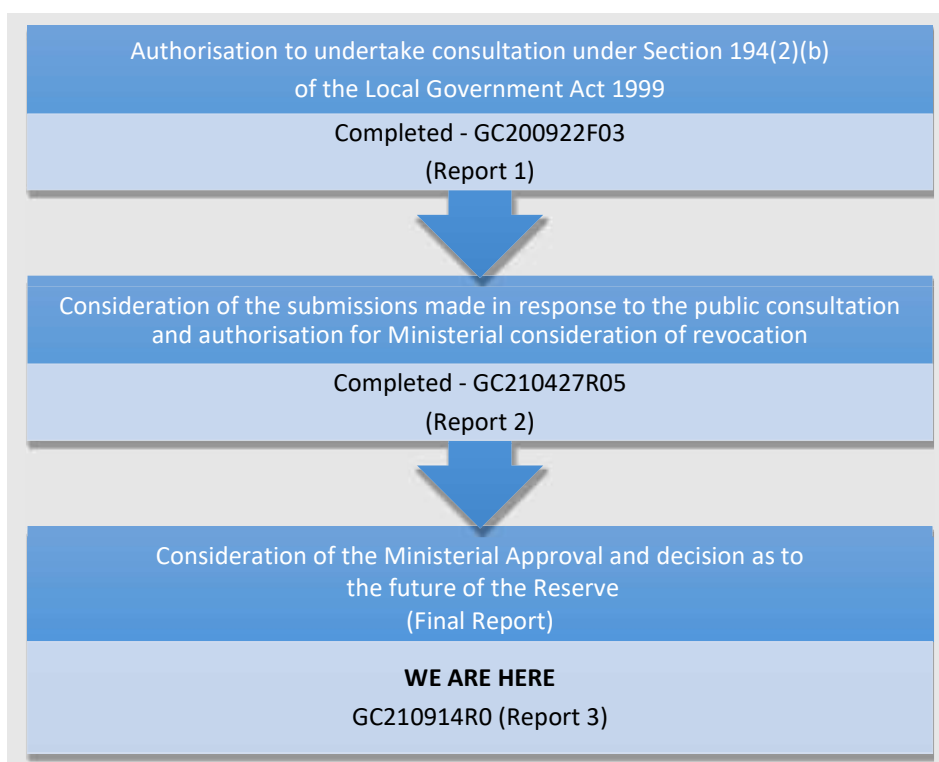
Council is now able to make a decision whether to finalise the revocation in line with the previous resolution, or not to proceed and retain the land as community land. Whilst the Minister has given approval for the revocation, the decision whether to finalise the revocation now sits with Council.

Should Council resolve to finalise the revocation, a resolution will need to be passed to revoke the community land classification for the Reserves and to reinstate the community land status of Kenton Avenue Reserve upon the Reserves being severed by a land division.

Council will retain Kenton Avenue Reserve as community land.

Upon the severance of the Reserves, Council will be free to dispose of Westminster Reserve in accordance with the confidential resolution passed on 22 September 2020 (GC200922F03).

The following diagram illustrates Council's approval process to revoke the community land classification:



Council may decide not to proceed with the community land revocation, in which case it will need to consider the options for the future management and maintenance of the reserve.

Four potential options which Council may wish to consider for the future of the Reserve are discussed below.

Option 1 – Proceed with the current resolution made on 22 September 2020 (GC200922F03)

To enable the reserve to be sold in accordance with the current Council Resolution, Council's resolution to revoke the Community Land Classification will finalise the process to revoke the community land classification of the Reserve and Kenton Avenue Reserve.

Following the revocation, Council will be able to sever the Reserve by land division and dispose of the Reserve of approximately 957 square metres in accordance with the resolution passed by Council on 22 September 2020 (GC200922F03).

Immediately upon the Reserves being severed by land division, Kenton Avenue Reserve will automatically be reinstated as a reserve and as community land. All land division and sale costs will be paid by the Purchaser.

The proceeds from the sale of the Reserve will be paid into the Open Space Reserve Fund for the development of open space as approved by Council.

It should be noted that the school has maintained the Reserve at their own cost for a number of years.

Option 2 – Lease Westminster Reserve to the School

Should Council decide not to proceed with the revocation of community land classification, it may want to consider leasing Westminster Reserve to the school to address risk associated with the current use of the site.

The *Local Government Act 1999* provides that community consultation is not required for a lease of community land for up to five years.

Consideration must be given as to whether a monetary payment would be required from the School and for the terms and conditions of use, including an indemnity and release clause.

Option 3 – Council requires the School to vacate Westminster Reserve (Not recommended)

Council could decide to serve notice on the School to vacate the reserve.

The School does not have any buildings or structures on this land. It is a vegetated area that bounds the western edge of the oval.

The portion of Reserve in question does not have a street frontage and therefore, access to fence and maintenance is subject to access being granted by one of the three adjacent property owners.

Access over the electrified rail corridor and the Sturt River channel is unsafe, therefore the only safe access would be through the Westminster School. This is not a recommended option.

Option 4 – Take no action (Not recommended)

The School has been occupying and maintaining the Reserve as part of its sports fields, possibly dating back to 1966 when the Reserve was separated from Kenton Avenue Reserve

by the re-alignment of the Sturt River channel.

The School could continue to occupy and maintain the Reserve under an informal agreement at no cost to Council.

This option is not recommended as the risk and liability for the Reserve and incidents arising out of the use of the Reserve remains with Council if there is no formal agreement in place.

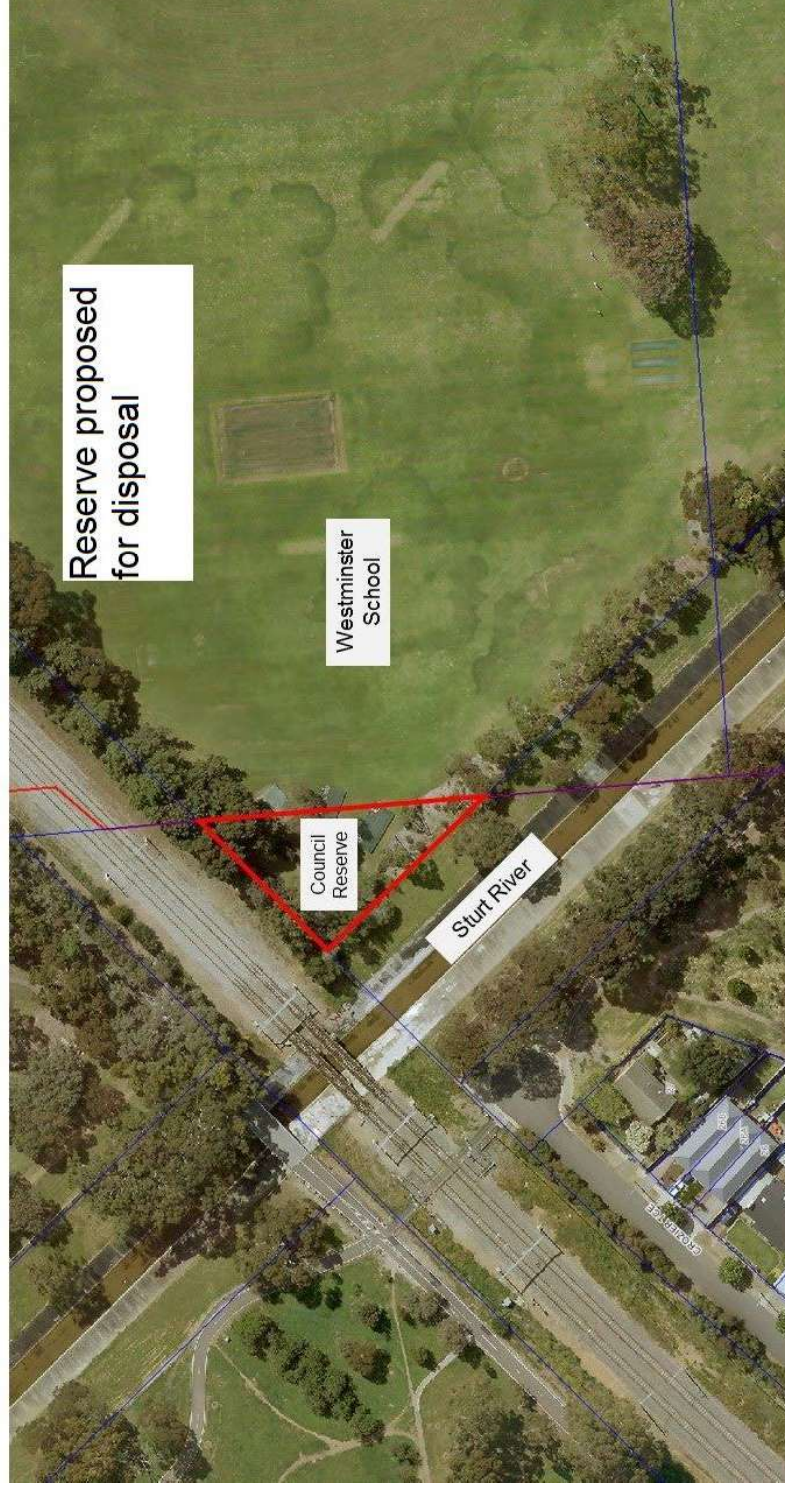
Conclusion

Council may wish to consider whether to proceed with the revocation and sale based on its previous resolution, or it may decide to pass a new resolution for the future use, management and maintenance of Westminster Reserve.

ATTACHMENTS

1. Attachment 1 Location Map and Photos combined [**18.2.1** - 10 pages]
2. Ministerial Correspondence [**18.2.2** - 2 pages]
3. Legal Advice Westminster Reserve [**18.2.3** - 5 pages]







Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community















The Hon Vickie Chapman MP

21MLG0529

4 August 2021

Mr Tony Harrison
Chief Executive Officer
City of Marion

By email: tony.harrison@marion.sa.gov.au



**Government
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Dear Mr Harrison

I write in response to correspondence of 11 June 2021 from Ms Thuyen Vi-Alternetti, Manager City Property, City of Marion (the Council), seeking approval for Council's proposal to revoke the community land classification of Kenton Avenue Reserve and Westminster Reserve, Oaklands Park, being Allotment 107 in Filed Plan 1143 comprised in Certificate of Title Volume 3776 Folio 21 (the Subject Land).

After carefully considering the effect of the revocation on the area and the local community, I am of the opinion that, on balance, the revocation will be more positive than not in its effect. I therefore approve Council's proposal to revoke the classification as community land of the Subject Land.

If Council wishes to proceed with the revocation, it will need to pass a motion to revoke the community land classification pursuant to section 194(3)(b) of the *Local Government Act 1999*.

In making my decision, I have taken into account that Council intends to revoke the community land classification of the entire Subject Land, but following the creation of an allotment from a portion of the Subject Land known as Westminster Reserve, the balance of the Subject Land, known as Kenton Avenue Reserve, will be 'automatically' reinstated as community land by Council.

I am advised that Council would be required to pass a resolution to reinstate the community land status of the Kenton Avenue Reserve following the revocation of the community land status of the Subject Land. Accordingly, I expect that Council will take steps to reclassify the portion of land known as Kenton Avenue Reserve as community land at the earliest opportunity. I also request that Council notify me once the status of Kenton Ave Reserve has been reclassified as community land.

I would also draw your attention to the fact that in future, Council may seek my approval to revoke the community land status of a portion of an allotment of land, rather than the whole of an allotment, in situations such as these. This may be a better mechanism for progressing revocations of this nature. It can provide all parties with greater certainty on Council's intention regarding the future use and classification of the different parts of the land, and may also prevent further administrative processes.

I trust the information provided is of assistance to you and the Council.

Yours sincerely



VICKIE CHAPMAN MP
DEPUTY PREMIER
MINISTER FOR PLANNING AND LOCAL GOVERNMENT