

Minutes

Special Meeting of Council

Monday, 11th April 2016

**City of Kingston
Special Meeting of Council**

Minutes

11 April 2016

Table of Contents

1.	Apologies.....	3
2.	Foreshadowed Declaration by Councillors, Officers or Contractors of any Conflict of Interest	3
	<i>[Note that any Conflicts of Interest need to be formally declared at the start of the meeting and immediately prior to the item being considered – type and nature of interest is required to be disclosed – if disclosed in writing to the CEO prior to the meeting only the type of interest needs to be disclosed prior to the item being considered.]</i>	
3.	Confidential Items.....	4

**City of Kingston
Special Meeting of Council**

Minutes

11 April 2016

The meeting commenced at 7.03pm in the Council Chamber, 1230 Nepean Highway, Cheltenham.

Present: Cr Tamsin Bearsley (Mayor)
Cr Tamara Barth
Cr Ron Brownlees OAM
Cr David Eden
Cr Geoff Gledhill
Cr Paul Peulich
Cr John Ronke
Cr Steve Staikos
Cr Rosemary West OAM

In Attendance: John Nevins, Chief Executive Officer
Mauro Bolin, General Manager Community Sustainability
Paul Franklin, General Manager Corporate Services
Daniel Freer, General Manager City Assets and Environment
Jonathan Guttman, General Manager Planning and Development
Megan O'Halloran, Manager Communications & Community Relations
Phil De Losa, Manager Governance
Stephanie O'Gorman, Governance Officer

1. Apologies

There were no apologies submitted to the meeting.

2. Foreshadowed Declaration by Councillors, Officers or Contractors of any Conflict of Interest

There were no Conflicts of Interest submitted to the meeting.

**City of Kingston
Special Meeting of Council**

Minutes

11 April 2016

3. Confidential Items

Moved: Cr Brownlees

Seconded: Cr West

That in accordance with the provisions of section 89(2) of the *Local Government Act 1989*, the meeting be closed to members of the public for the consideration of the following confidential items:

3.1 Possible Land Acquisition

This agenda item is confidential in accordance with the Local Government Act s89(2) as it relates to any other matter which the Council or special committee considers would prejudice the Council or any person (s89 2h)

CARRIED

The meeting was closed to members of the public at 7.04pm

Note: In the closed part of the meeting, Council resolved that the following resolution for Item 3.1 be deemed not confidential.

3.1 Possible Land Acquisition

Moved: Cr West

Seconded: Cr Eden

1. That Council to consider purchasing land at 17-19 Tarella Road Chelsea, and
2. That officers prepare and circulate a brief report covering:
 - a) the nature and environmental significance of the remnant & other vegetation on the site (including the EVC) and whether it is as the residents who brought it to Councillors attention say, unique and the last piece of remnant tea tree scrub that once covered this area
 - b) the need for public open space in the immediate area,
 - c) how much money is in the South Ward open space fund,
 - d) how much more can be anticipated from existing or approved upcoming residential developments,
 - e) the state of the house and whether it could be used for council purposes,
 - f) how a subdivision was approved in January without Councillors being informed, despite prior enquiries from Councillors to the CEO and Planning GM, and
 - g) details of the subdivision (how many lots, what size, etc.).

LOST

A Division was Called:

DIVISION:

FOR: Crs Staikos, West, Eden and Barth (4)

AGAINST: Crs Ronke, Brownlees, Peulich, Bearsley and Gledhill (5)

LOST

**City of Kingston
Special Meeting of Council**

Minutes

11 April 2016

The meeting was opened to members of the public at 7.27pm.

The meeting closed at 7.27pm.

Confirmed.....

The Mayor 26 April 2016

Special Meeting of Council

11 April 2016

Agenda Item No: 3.1

POSSIBLE LAND ACQUISITION

Councillors West, Staikos and Eden have requested a Special Meeting of Council by notice dated 6 April 2016 in accordance with Section 84 of the Local Government Act 1989.

The business to be transacted as per the notice provided (refer to Appendix 3) is as follows:

Motion

- That Council to consider purchasing land at 17-19 Tarella Road Chelsea, and
- That officers prepare and circulate a brief report covering:
 - the nature and environmental significance of the remnant & other vegetation,
 - on the site (including the EVC) and whether it is as the residents who brought it to councillors attention say, unique and the last piece of remnant tea tree scrub that once covered this area,
 - the need for public open space in the immediate area,
 - how much money is in the South Ward open space fund,
 - how much more can be anticipated from existing or approved upcoming residential developments,
 - the state of the house and whether it could be used for council purposes,
 - how a subdivision was approved in January without Councillors being informed, despite prior enquiries from councillors to the CEO and Planning GM, and
 - details of the subdivision (how many lots, what size, etc.).

OFFICER COMMENT

Please see comment below.

1. Executive Summary

The subject land is presently being marketed through an expression of interest process and parties interested in purchasing the land are required to submit their interest by 14th April, 2016. A Special Council Meeting has been initiated by Councillors West, Staikos and Eden regarding this land.

Council's Open Space Strategy indicates that Planning Area 9A is amongst the best served in relation to the level of open space per 1,000 people of the 11 planning areas south of the Mordialloc Creek. Although this is the case, the Open Space Strategy broadly identifies some deficiencies in open space in the Area 8D (immediately to the north) and 9A areas in the broad vicinity of the subject land. A copy of the Open Space Strategy is provided as an appendix to this report.

Preliminary investigations of the subject land have indicated the land is uncharacteristically heavily vegetated for a well-established urban area. The vegetation found on the site comprises:

- Approximately **90%** - *Leptospermum laevigatum* - Coastal Tea Tree (native to eastern Australia).
- Approximately **5%** - *Agonis flexuosa* Willow Myrtle – (Native -South West of Western Australia), *Banksia integrifolia* Coastal Banksia, *Magnolia grandiflora* Southern magnolia (Exotic to the South Eastern United States)
- Approximately **5%** - *Coprosma repens* Mirror Bush, *Pittosporum undulatum* Sweet Pittosporum, *Agapanthus praecox* Lily of the Nile or Common Agapanthus (Invasive Species/ Weeds)

Due to the inability to access the land further investigations have not been undertaken to accurately determine the quality of the vegetation.

On the basis Council wishes to purchase the land it has two options. The first option that would guarantee purchase is to formally resolve to use its powers under the Land and Compensation Act and acquire the land. Under this option the Council would be required to pay the price determined after the relevant legal processes are conducted under the Land and Compensation Act. This process involves Council paying market value Ad valorem (10% of market value) plus all parties legal costs

The other option which unlike Option 1 does not guarantee purchase of the land is for Council to act essentially like any other interested purchaser and put in an Expression of Interest with a fixed price and on the basis Council's bid is highest, the vendor may then be agreeable to transact. This option would allow Council to provide direction to Officers on a 'price ceiling' and would remove the additional costs required under Option 1.

The final option for Council would be one where Council determines not to pursue the purchase of this land.

Discussions with the agent have indicated an assumed sale price of approximately \$4 million. In a compulsory acquisition scenario Council will also have to pay Ad valorem and all parties legal costs on the basis it pursued compulsory acquisition. Given this advice, the likely sale price exceeds the total funds available in the Open Space Reserve in Areas 8, 9 & 10 (eg land areas south of Mordialloc Creek) at the end of this financial year of \$2,536,000. Council has also made an existing commitment of \$1,300,000 for the Bonbeach Reserve Master Plan Implementation that is to be funded from the Reserve in 2016/17. Therefore the uncommitted balance is \$1.236M.

On the basis that Option 1 or Option 2 are progressed, Council would also need to provide direction on the manner in which the purchase could be funded. Options available to the Council are to defer other projects identified in the Capital Works Program and/or go into Public Open Space deficit in relevant Planning Areas (likely 8, 9 and 10) on the basis that the cost of the acquisition be paid back through revenue generated in coming years. Council though would, as a consequence, reduce its working cash reserves.

An analysis of open space revenue over the past five completed financial years reveals \$3,671,150 has been generated across Planning Areas 8, 9 and 10.

Council as part of its process in determining on this matter, if it decides to proceed, should:

- Consider whether a financial limit be placed on the amount the Council wishes to spend on the land's purchase.
- Determine how the acquisition is to be funded. For example what capital proposed works it may delay or not proceed with in combination with utilisation of available and anticipated public open space reserve revenues.
- Be clear as to the reason why eg it is for provision of useable recreational open space or it is for retaining existing vegetation or both.

2. Background

Part 17 and 19 Tarella Road, Chelsea

The subject land is presently being marketed by Knight Frank Real Estate. The information made available indicates the site is the subject of an Expression of Interest Process that closes on 14th April, 2016 at 4PM (information available is provided as an attachment). Officers have confirmed that the process is an Expression of Interest Process and not an Auction.

Officers have sought to obtain information on the value of the land from the agents who have verbally indicated an approximate sale price of \$4 million. This excludes any assumed costs to Council should it wish to acquire the site using its powers under the Land and Compensation Act.

Council's Open Space Strategy

The subject land is located in Planning Area 9A of Council's Open Space Strategy. In summarising the strategy it indicates:

- In the Broader Planning Areas 8, 9 and 10, Local Area 9A is the fourth best provided with open space of the 11 Local Areas in relation to the amount of hectares of open space per 1,000 people.
- *'Whilst this area [Area 9A] has a seemingly adequate amount of open space to service its population, there are areas in the northern sections which are more than 500m from any open space'.*

**City of Kingston
Special Meeting of Council**

Agenda

11 April 2016

- In the adjacent area 8D to the north the strategy states *‘Two areas are not well served in terms of open space provision: immediately east of the Nepean Highway and the southern section of this locality’.*

Land Zoning

The subject land is in a General Residential Zone Schedule 3 with no current overlays.

Subdivision of land- 17 Tarella Road, Chelsea

Planning Permit KP887/2015 was issued on the 28th January, 2016 to subdivide No. 17 Tarella Road, Chelsea into two lots. Lot 1 No. 17 Tarella Road is 778m² whilst Lot 2 is 1,317m² and has access from Kangaroo Road. No applications to develop or use either of the approved lots or No. 19 Tarella Road have been submitted for consideration.

A review of the application has indicated that pursuant to Clause 32.09-8 of the Kingston Planning Scheme, an application to subdivide the land into lots each containing an existing dwelling or car parking space is exempt from the notice requirements of section 52(1) (a), (b) and (d), the decision requirements of section 64(1), (2) and (3) and the review rights of section 82(1) of the Act.

The Councillors were informed of this application through the distribution of the Councillor Weekly Update on 10th December, 2015.

3. Discussion

3.1 Council Plan Alignment

Goal
Outcome

This report gives consideration to the establishment of a new open space area to provide for the needs of the community.

3.2 Consultation/Internal Review

As a consequence of the restricted access and limited time available to properly evaluate this site advice of a preliminary nature has been received from the following Council Departments:

- City Development – Existing planning conditions
- Parks – Observed conditions of the land
- Property – Advice on the marketing of the subject land

3.3 Operation and Strategic Issues

3.3.1 Nature and environmental significance of the remnant and other vegetation

Preliminary advice has been received from the Parks Department who observations on the site have been limited to visual observations from its perimeter.

Preliminary investigations of the subject land have indicated the land is uncharacteristically heavily vegetated for a well-established urban area. The vegetation found on the site comprises:

- Approximately **90%** - *Leptospermum laevigatum* - Coastal Tea tree (Native to eastern Australia).
- Approximately **5%** - *Agonis flexuosa* Willow myrtle – (Native -South West of Western Australia), *Banksia integrifolia* Coastal Banksia, *Magnolia grandiflora* Southern magnolia (Exotic to the South eastern United States)

**City of Kingston
Special Meeting of Council**

Agenda

11 April 2016

- Approximately 5% - *Coprosma repens* Mirror Bush, *Pittosporum undulatum* Sweet Pittosporum, *Agapanthus praecox* Lily of the Nile or Common Agapanthus (Invasive Species/ Weeds)

Advice received indicates that due to the level of mowing which has occurred and the canopy cover which contains a mix of weed species on the land and vegetation is highly modified and the biodiversity value is low. To undertake a more detailed analysis including determining the EVC would cost approximately \$2,000 and access to the site from the owner(s) would be required.

To address a query raised by Councillors in requesting a Special Council Meeting, some evidence of remnant tea tree scrub is also still located in public reserves (such as the foreshore) and along the rail reserve and occasionally in very small pockets on private land. The extent of tea tree scrub on the subject land is though more substantial in scale than that generally found on private land parcels in heavily urbanised areas such as that which surrounds the subject land.

It is also likely that significant tree/weed removal work would be required prior to the site becoming a usable open space / park for local area use. Council's Open Space Strategy also identifies 'setting classifications' of open space with some examples that may be useful in considering the potential role of the subject land being:

- Bushland/Woodland/Forest eg The Grange
- Rough Natural Area eg Bradshaw Park
- Open Grassy Area eg Nancy Street Reserve, Cheltenham

This classification assessment may well benefit from community consultation.

3.3.2 Balance of the South Ward Open Space Fund / Anticipated Open Space Revenue

Advice provided to Councillors on 9th February, 2016 indicates that the following level of available funds in Open Space Reserve for Planning Areas (Areas 8, 9 and 10) based on net balances at 30 June 2016.

Area 8 - \$360,000 overdrawn

Area 9 - \$2,062,000 (net of 'paying back' the overdrawn amount in area 8).

Area 10 - \$474,000

The above represents a total of \$2,536,000 at year end 15/16.

However there is a pre-existing commitment to the Bonbeach Reserve Master Plan implementation for 2016/17 of \$1,300,000.

Determining the amount of money that can be anticipated from existing or approved upcoming residential development is a qualified approximate exercise only given the timelines provided to complete this report.

**City of Kingston
Special Meeting of Council**

Agenda

11 April 2016

To provide some guidance, based on past performance, set out below is an overview of income received across Planning Areas 8, 9 and 10 over the last five financial years.

Financial Year	Planning Area 8	Planning Area 9	Planning Area 10
10/11	\$242,000	\$343,500	\$132,900
11/12	\$245,200	\$556,500	\$26,000
12/13	\$153,600	\$370,150	\$85,500
13/14	\$178,500	\$131,150	\$18,600
14/15	\$394,850	\$775,600	\$17,100
Total	\$1,214,150	\$2,176,900	\$280,100

In total Council has received \$3,671,150 in Open Space Reserve income in these areas.

The Open Space Strategy is include as an appendix to this report which provides information on established projects that are yet to be completed in Planning Areas 8, 9 and 10. Officers are mindful that the Open Space Strategy is not a complete list of all projects and it does not necessarily identify all other projects south of Mordialloc Creek that Councillors have identified through recent budget and capital works discussions.

3.3.3 Council Cash Holding

While Council is projecting cash holdings at 30 June 2016 of \$65.0M, this is largely subject to restrictions imposed by legislation, regulation or Council policy. The estimated \$65.0M of cash holdings at 30 June 2016 includes:

• Carry Forward to 2016/17 Capital Works	\$9.3M
• Staff Annual Leave/LSL Entitlements	\$16.6M
• Open Space Reserve	\$11.0M
• Green Wedge Reserve	\$7.0M
• Foreshore Reserve	\$1.3M
• Est Mills Road Purchase/Construction (from 101 Collins proceeds)	\$8.0M
• Monies held in Trust	\$1.5M
• Defined Benefits Call Reserve	\$1.0M
• Other Reserves	<u>\$3.3M</u>
Estimated Restricted Cash at 30 June 2016	<u>\$59.0M</u>

Estimated Unrestricted Cash at 30 June 2016	<u>\$6.0M</u>	\$65.0M
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Consistent with Kingston's historic position Council continues to operate on a very thin margin of working capital. Funding this acquisition from unrestricted cash would further reduce Council's capacity to respond to likely future unknown financial challenges or opportunities.

If Council resolved to proceed, a funding option would be to pay for the land from existing cash and borrow the funds in early 2016/17 (subject to the adoption of the 2016/17 Budget) to repay working capital. A loan of \$3.0M is estimated to require \$670K of savings in either the operating and/or Capital Budget over the next 5 years to provide funding for the interest and principal. A loan of \$3.5M would require \$770K per annum of similar savings to be found to balance the Budget over a five year term. This approach would however reduce the financial capacity of the 2016-2020 Council to implement new initiatives they may have.

3.3.4 State of the existing house and whether it could be used for Council purposes

A structure which would appear to be a house is visible through aerial photography on Lot 2, No 17 Tarella Road which is part of the subject land. The suitability of the house for other Council purposes would need to be determined through a site visit. The aerial photography indicates that the structure is quite old and as with structures of similar age would likely require significant expense to repurpose and potentially use for a Council purpose.

3.4 Options

3.4.1 Option 1 – Purchase the subject land through Compulsory Acquisition

Under this option the Council would exercise its powers under the Land and Compensation Act and publish a notice of compulsory acquisition in the Victorian Government Gazette. This option would guarantee Council is able to secure the land.

Although this option guarantees the purchase of the land it comes at the most significant cost and a cost which at this time is unable to be accurately quantified. Based on the agents indicated price of \$4M, plus Ad valorem of 10%, plus all parties legal costs it could be in the order of \$4.5M.

3.4.2 Option 2 – Put in an Expression of Interest nominated a fixed price

Under this option Council would put in an Expression of Interest at a fixed amount and if its bid was the highest the vendor may consider transacting with Council. The benefit of this option is that Council nominates essentially the maximum amount it is willing to pay and is not exposed to the additional costs outlined under Option 1 associated with compulsory acquisition.

The risk under this option is Council's offer may not be the highest and hence unlikely to secure the land.

3.4.3 Not pursue to purchase the land

This option involves Council not proceeding further.

4. Conclusion

4.1 Environmental Implications

The site contains significant amounts of native vegetation and is certainly as a minimum of significant landscape value within the local area. For this reason the sale of the land to a party interested in redevelopment would likely bring about a reduction in the extent of vegetation contained on the land.

**City of Kingston
Special Meeting of Council**

Agenda

11 April 2016

4.2 Social Implications

The report has summarised what Council's Open Space Strategy indicates in relation to the level of open space available to the local community. Additional open space clearly presents benefits to local communities but requires appropriate weighting against the competing demands for such space throughout the municipality and alternate uses of available Public Open Space Reserves.

4.3 Resource Implications

The report outlines that Council would be unable to fund the purchase of the subject land through its Open Space Reserves across the three aggregated planning areas (8, 9 and 10) based on existing funds available and planned commitments. Although it is possible to utilise Council's available cash reserves this comes at some risk in terms of future financial management.

Mindful the agent has nominated a price of approximately \$4,000,000 (without considering the costs associated with compulsory acquisition) this exceeds the amount generated in Planning Areas 8, 9 and 10 over the past 5 financial years. Council could therefore assume if development trends continue that approximately 5 years of future revenue in the Open Space Reserve across all the Planning Areas south of the Mordialloc Creek would be required to come close to funding the anticipated sale price of the land.

4.4 Legal / Risk Implications

Although Council is able to use its powers under the Land Acquisition and Compensation Act to purchase this land, the decision to purchase land is best made with a full understanding of the associated costs. Some risk exists in this instance of the costs significantly exceeding the nominated value of the land by the agent on the basis that Council proceeds to acquire the land through compulsory acquisition.

Officers are also mindful that no discussions have been held across Planning Areas 8, 9 or 10 recently to determine the relative priority the purchase of this land has when weighted against other open space objectives south of the Mordialloc Creek.

Appendices

Appendix 1 - 17 & 19 Tarella Road, Chelsea (Trim No 16/43817)

Appendix 2 - Kingston Open Space Strategy (Circulated Separately) (Trim No 15/81832)
- Excluded

Appendix 3 - Notice of Special Meeting of Council 11 April 2016 (Trim No 16/43927)

Author/s: Phil De Losa, Program Leader Governance

Reviewed and Approved By: