

Ordinary Council Meeting

26 May 2025

Agenda Item No: 14.1

PROPERTY MATTER

Contact Officer: Sarah Capenerhurst, Principal Strategy Planner

Pursuant to Chapter 6, Rule 2 of the Governance Rules, I designate this matter as confidential information in accordance with the Local Government Act 2020.

The relevant grounds applying under section 3(1) of the Local Government Act 2020 for this confidential designation is that the item is information that was confidential information for the purposes of section 77 of the Local Government Act 1989 (section 3(1)(l)).

the explanation as to why the specified ground/s applies is that the matter relates to a potential land acquisition and will have price sensitivity to the market.



Peter Bean
Chief Executive Officer

Purpose of Report

The purpose of this report is for Council to authorise Officers to prepare a planning scheme amendment to introduce a Public Acquisition Overlay at 11 Remo Street, Mentone in response to the resolution of Council at its 24 February 2025 meeting.

Disclosure of Officer / Contractor Conflict of Interest

No Council officer/s and/or Contractor/s who have provided advice in relation to this report have declared a Conflict of Interest regarding the matter under consideration.

RECOMMENDATION

That Council:

1. Request Authorisation from the Minister for Planning to prepare a Planning Scheme Amendment to apply a Public Acquisition Overlay (PAO) on 11 Remo Street, Mentone.
2. Subject to Authorisation being granted, in its capacity as Planning Authority prepare and place the Amendment on public exhibition pursuant to Section 19 of the Planning and Environment Act 1987.
3. Determine, in accordance with section 77(2) of the Local Government Act 1989 that parts 1 and 2 of the resolution not be confidential when written confirmation is received from the Minister for Planning providing authorisation to prepare the Amendment.

1. Executive Summary

On 24 February 2025, Council confidentially resolved the following:

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1. *Authorise the Chief Executive Officer for the period up to the commencement of the Election Period in October 2028, to issue a Notice of Acquisition, under the Land Acquisition & Compensation Act 1986, to acquire the property addressed as 11 Remo Street Mentone 3194, should that property become publicly advertised for sale.*
2. ***Request a report to consider commencing the process to amend the Kingston Planning Scheme by placing a “Public Acquisition Overlay” over the property addressed as 11 Remo Street Mentone 3194.***

This report responds to item 2 in bold above. To compulsorily acquire the land, Council will need to seek authorisation to prepare a Planning Scheme Amendment (PSA) to apply a Public Acquisition Overlay (PAO) to the subject land. Officers are of the view that there is a sufficient strategic justification to warrant the application of the PAO over the subject site due to the following:

1. *Mentone Activity Centre Structure Plan - July 2011*
2. *Gazettal and application of the Activity Centre Zone Schedule 2- Mentone Activity Centre 2019.*

The property at No. 11 Remo Street, Mentone is the only allotment currently occupied by a residential dwelling within the street and the only allotment not owned by Council. The Mentone Reserve open sports ground has been in operation as that use since 1928.

The PSA process involves community consultation and invites submissions during the exhibition period. Should submissions be lodged, the matter would be referred to an independent panel with Ministerial approval ultimately required. Costs would be attributed to the PSA process and any panel required, with the timing expected to take up to 12 months.

Assuming successful application of the PAO, the Council could then proceed with the acquisition of the property. At such time a further report would be brought back to Council discussing options and seeking formal direction on the compulsory acquisition of the property under the Land Acquisition and Compensation Act. Following introduction of the PAO Council should consider acting to acquire the property rather than leave the site blighted.

There remains a risk that the site could be sold privately, or the owner seeks to redevelop it without the need for a planning permit under its current Activity Centre Zone (Schedule 2) without a PAO.

If the site becomes available for sale and Council does not act promptly and the owner experiences a loss on a sale to a third-party Council may be exposed to a claim for compensation. Council can elect to retain the existing occupier until such time that they vacate.

The PAO also enables Council to use compulsion in the acquisition of the leasehold interests (should they exist) in the property at any time it sees fit to do so. Provided Council honours the lease there is unlikely to be any grounds for claims of compensation originating from the leaseholder. The application of a PAO provides Council with certainty and control over the timing of the land acquisition of the site and thus the delivery of the envisaged community/open space precinct.

Engagement with the owner of the land will be undertaken prior to the formal exhibition of the Amendment to explain Councils intentions and the PSA process.

2. Background

In June 2011, Council adopted the Mentone Activity Centre Structure Plan, which sought to create a major recreation open space area or ‘community activity precinct’ from the western boundary of Remo Street, through to Mentone Parade, encompassing Mentone Reserve, the playground and Council building. Number 11 Remo Street, which sits in the middle of Remo

Street was nominated as future open space. In 2019, the site was included within Precinct 7 of the gazetted Activity Centre Zone Schedule 2 - Mentone Activity Centre and includes within the precinct guidelines:

- *Support the redevelopment of Remo Street for non-vehicular, community and recreational uses.*

The Council is the owner of the Mentone Reserve precinct, all except number 11 Remo Street. The precinct covers the reserve itself and supporting pavilion, municipal offices, community health & use buildings and, on west side of Remo Street, the former nursing home fronting Brindisi Street, vacant land, and carparking supporting the pavilion.

Council's future options for service and facility provision for the precinct would be exponentially enhanced if Council were to acquire the subject property and close the 'gap'.



Strategic investments have included the new LED lights at Mentone Reserve in 2023 and a new pavilion approved at the Council meeting 26 November 2018 and completed in October 2020, which recognises Council commitment to the Structure Plan vision and overall investment and commitment to the ongoing needs for community open space and facilities.

On 14 Jan 2016, the structure plan was implemented into the Planning Scheme with the gazettal of Amendment C175. This implemented the Activity Centre Zone Schedule 2 which provided future direction for the Mentone Activity Centre.

The precinct map at 5.7 of the ACZ2 highlights the proposed community space with objectives seeking to

- *To ensure development is responsive to its sensitive residential interfaces.*
- *To encourage connections that link this precinct with the northern end of the Activity Centre.*
- ***To encourage community and recreational based uses which provide improved utilisation of community buildings and provides a hub for community and recreational events.***

- To create a major recreation open space area comprising outdoor recreation space for the co-location of sporting clubs.

5.7

Precinct 7 – Community Activity Precinct

22/03/2024

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Precinct Map



Whilst the subject site was highlighted in both the Structure Plan 2011 and the Activity Centre Zone Schedule, no specific controls (eg. Public Acquisition Overlay or Public Park and Recreation Zone) were ever applied to the site as it was in private ownership.

On 24 February 2025, Council confidentially resolved the following:

1. Authorise the Chief Executive Officer for the period up to the commencement of the Election Period in October 2028, to issue a Notice of Acquisition, under the Land Acquisition & Compensation Act 1986, to acquire the property addressed as 11 Remo Street Mentone 3194, should that property become publicly advertised for sale.
2. Request a report to consider commencing the process to amend the Kingston Planning Scheme by placing a "Public Acquisition Overlay" over the property addressed as 11 Remo Street Mentone 3194.

Between this reports recommendation and the report resolved in February, Council would be more secure in its ability to acquire the subject property either early in the sale process or via the PAO and ensure the overall community/open space precinct for future users.

Open Space Strategy 2023

The Strategy, as it relates to Mentone, identifies that Mentone is projected to grow to 15, 247 people by the year 2031, an increase of 14.6% and notes:

- (a) Investigate opportunities for location of additional playgrounds either through land acquisition, repurposing Council land or access to private/restricted spaces, i.e. schools.

- (b) Additional open space is required in the activity centre.*
- (c) Population forecast identifies the need to increase supply of playgrounds by 4.*

Mentone Reserve Master Plan

The master plan process began in 2015 but was paused for urgent pavilion funding. There is a growth in the sporting clubs at the reserve in particular the growth in women's AFL and cricket teams. The football club is now a football netball club, and requests have been received by Active Kingston for the development of netball courts at the site along with increased carparking and expansion of the existing oval. The Clubs have also expressed aspirations of a second oval on the Reserve. Mentone Bowls Club located on Balcombe Road, has shown interest in relocating to the Mentone Reserve. They are currently selling part of their land to developers in exchange for a new pavilion.

Play Your Way Strategy 2023

The 2023 Play Your Way strategy identified a lack of play and active recreation facilities in Mentone, especially for teens. The Mentone Recreation Reserve is proposed as a new active recreation space for young people, given its proximity to schools and public transport.

Additional strategies to be developed in 2025

- Open Space Strategy (amended)
- Community Infrastructure Framework

The anticipated adoption of these strategies, in the context of denser residential development around railway stations, will have implications for Council's Mentone precinct.

3. Discussion

3.1 Public Acquisition Overlay Application

The Minister for Planning and Responsible Authorities are given a special power to compulsorily acquire land.

'Compulsory' acquisition means that the land can be acquired even though the landowner may not consent to the acquisition. This power extends to:

- Any land which is required for the purposes of a planning scheme (*Planning and Environment Act 1987* s.172).
- Any land which is vacant, unoccupied or used for any purpose not conforming with the planning scheme (if the minister or the responsible authority believe it is desirable that the non-conforming use should be discontinued, or that the land should be put to appropriate use to achieve proper development in the area).

Generally, a formal statutory acquisition involves a planning scheme amendment to apply a PAO to the land. This first reserves the land under the planning scheme through its inclusion in a PAO before the acquisition process can commence. The purpose of the PAO is to reserve land for a public purpose and to ensure that changes to the use or development of the land do not prejudice the purpose for which the land is to be acquired. The proposed PSA will introduce the PAO to the subject parcel of land at 11 Remo Street, Mentone. The PAO will facilitate acquisition of the land to deliver a fully completed community/open space precinct as set out in the Mentone Activity Centre Structure Plan. Specifically, the Amendment will amend the Schedule to Clause 45.01 Public Acquisition Overlay to make the City of Kingston the acquiring authority for the PAO.

The application of a PAO triggers opportunities for a landowner to claim compensation from Council, which may occur prior to Council being ready to acquire the land. If Council does not apply a PAO on the land and refuses a planning permit application for the development of land, as the land is required for a public purpose, then the landowner may claim compensation from Council. On balance, it is considered to provide certainty (to Council and the landowner) to apply the PAO.

The PSA process involves consulting with community and inviting submissions to the proposal during a minimum four-week public exhibition period. Any submissions would need to be considered, and if unresolved would be referred to an independent Planning Panel that will hear submissions and provide advice on the proposal. As with any PSA, Ministerial approval is ultimately required for the change.

Compulsory Acquisition

Officers engaged with the owner over a decade ago following the implementation of the Structure Plan and corresponding Activity Centre Zone. At the time those discussions were intended to explore the possibility of Council purchasing the property by agreement. No significant further discussions have been held with the land owner.

4. Consultation

4.1 Internal Consultation:

Council's Property Services, Active Kingston and Open Space Departments have been consulted and all Departments support the Report's recommendation.

4.2 Community Consultation:

Community consultation is not required at this time but would however be conducted should Council seek to prepare a PAO with the required consultation occurring. Consultation with the landowner would also occur prior to the formal exhibition of the Amendment to explain Council's intentions and the process.

5. Compliance Checklist

5.1 Council Plan Alignment

Strategic Direction: Liveable - Our city will be a vibrant, enjoyable, and easy place to live.

Strategy: Provide accessible, quality public open spaces for passive and active recreation

If the recommendation is adopted, then Officers can proceed with the PSA to implement the PAO, to secure the property.

5.2 Governance Principles Alignment

Principle (a) - Council actions are to be made and actions taken in accordance with the relevant law.

Principle (b) - priority is to be given to achieving the best outcomes for the municipal community, including future generations.

If the recommendation is adopted, then Officers can proceed with the PSA to implement the PAO, to secure the property.

5.3 Risk considerations

If a PAO is introduced Council should act promptly to acquire the freehold interest particularly in the circumstance the landowner decides to vacate. There are 2 options, to seek authorisation to apply for a PAO or not.

Option 1 - To seek authorisation for the application of a PAO at 11 Remo Street, Mentone **(recommended)**. There is clear strategic direction for the acquisition of the land for use as open space as demonstrated in this report. Applying the PAO gives council the authority to acquire the land and provides council certainty and control in the timing of the final delivery of the overall community/open space precinct.

Option 2, to not proceed with the PAO **(not recommended)**. This presents a high level of uncertainty around the ability to acquire the land and the timing of any potential purchase. Any further discussion with the owner on a sale would need to be significantly above "Market Value" and additionally compensate them for the CGT the transaction would trigger. These discussions are unlikely to result in a favourable outcome for Council. Under this option the owner could also pursue additional development of the properties which would further increase the value of the land to be acquired at a point in the future. This option presents a reputational risk in relation to the final delivery of the intentions for the area for the community.

5.4 Financial Considerations

The cost of pursuing a compulsory acquisition of the required land is significant. The freehold interests have been assessed at \$1.5 million. The costs of acquiring the leasehold interests are very difficult to quantify in the absence of access to business records. For budget purposes this amount may approach \$1.5-1.7 Million. Staff resources from City Strategy and Property Services will be required to progress the planning scheme amendment and acquisition of the property should Council resolve to seek the application of the PAO.

Statutory fees are payable to the State Government for the Planning Scheme Amendment, which are in the order of \$5,000. Further costs would be incurred if a Planning Panel is necessary relating to legal representation and expert evidence. These costs could range from \$40,000 to \$60,000 depending on the nature of any submissions received and required expert evidence.

The City Strategy Department has capacity and existing budget to manage the PSA. The PSA process would be expected to take up to 12 months, depending on whether a Planning Panel needs to be created to advise on the proposed amendment. If the Amendment is approved by the Minister and gazetted, the Amendment process then concludes and the Property team can proceed with acquiring the property when deemed appropriate.

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