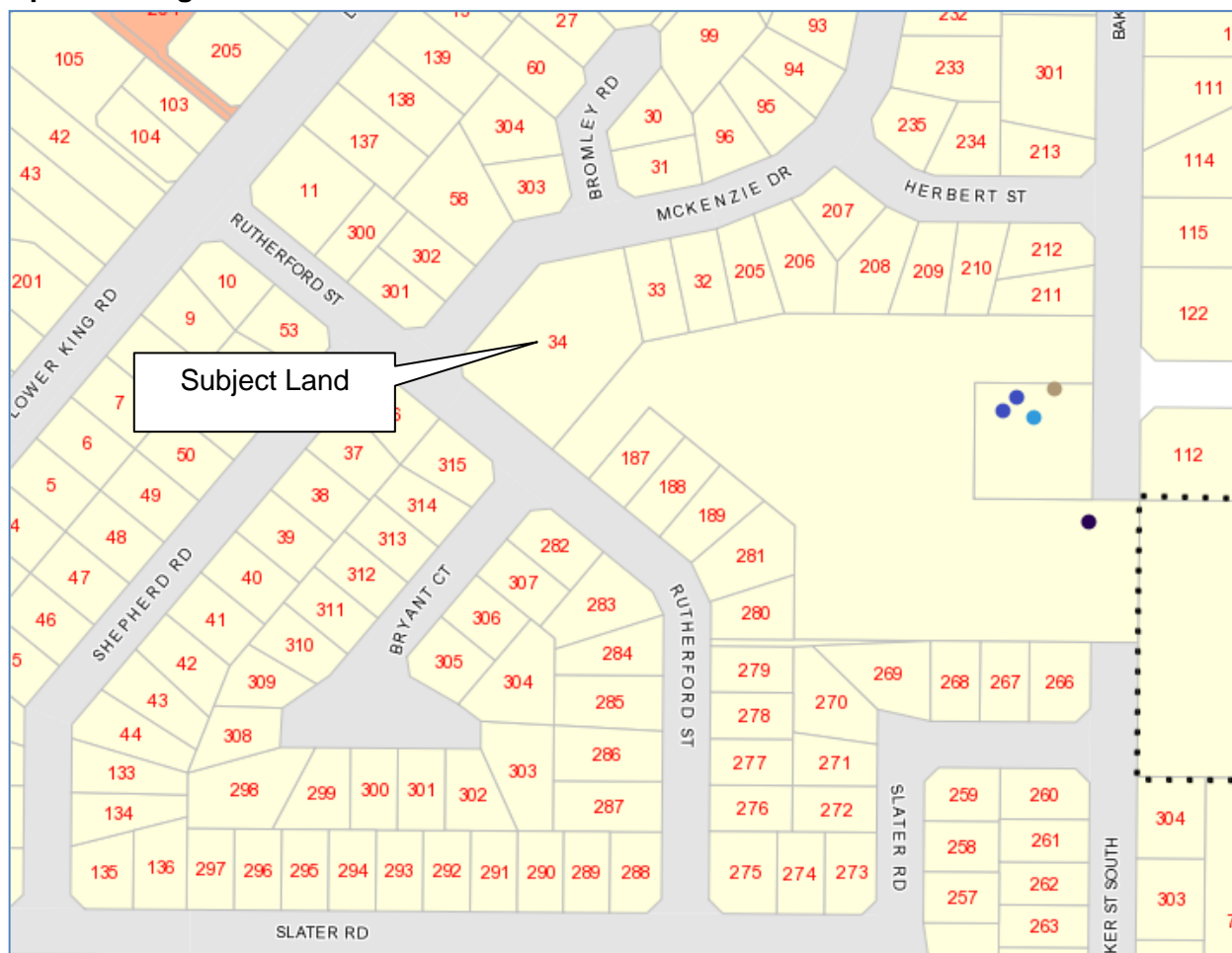


4.6: APPLICATION TO PURCHASE COUNCIL OWNED LAND – PORTION OF LOT 34 NO 9 RUTHERFORD STREET, LOWER KING

Land Description : Lot 34 No 9 Rutherford Street (corner McKenzie Drive), Lower King
Proponent : K Arnol
Owner : City of Albany (freehold title)
Attachments : Aerial Photograph
 Submission received from Lower King Community Kindergarten (dated 10 June 2012)
Responsible Officer(s) : Executive Director Corporate Services (G Adams)

Maps and Diagrams:



IN BRIEF

- Council is requested to consider an application to purchase portion of Lot 34 Rutherford Street, Lower King. This land is held in freehold title by the City of Albany and portion of the lot is leased to the Albany Kindergarten Association (site of the Lower King Kindergarten). The land subject to the offer to purchase is not part of the lease-hold and is currently undeveloped.

ITEM 4.6: RESOLUTION

VOTING REQUIREMENT: SIMPLE MAJORITY

MOVED: COUNCILLOR HOLDEN

SECONDED: COUNCILLOR SUTTON

That Council:

- i) **SUPPORT** the proposed sale of the vacant portion of land currently forming Lot 34 Rutherford Street, Lower King, ensuring that all future actions to enable this to occur comply with the requirements of the *Local Government Act 1995* and the Council's *Disposal of Council Land Policy*.
- ii) **ADVISE** the proponent, being the owner of Lot 33 McKenzie Drive, that their request to purchase this land is supported in principle, however the land must be sold via public tender and they are welcome to participate in this process.
- iii) **ADVISE** the Lower King Community Kindergarten that, while Council supports their community and environmental endeavours, the land to the rear of their existing leasehold will be sold. However, the Council is willing to further discuss with the Lower King Community Kindergarten the use of the adjoining Reserve 32523 for their community endeavours.
- iv) **AUTHORISE** the Chief Executive Officer to finalise all dealings on this matter, in the event that no public submissions are received objecting to the proposed disposal of the land.

CARRIED 8-1

Record of Vote

Against the Motion: Councillor Bostock

BACKGROUND

1. The owner of Lot 33 McKenzie Drive has asked whether they could purchase the vacant land adjoining their property.
2. This vacant land forms part of Lot 34 Rutherford Street. This land is held in freehold title by the City of Albany and has a total area of 4008m².
3. A 2750m² portion of Lot 34 Rutherford Street is leased to the Albany Kindergarten Association and is the site of the Lower King Community Kindergarten (LKCK). This lease expires in 2017 and there is an option for a further term of 20 years expiring in 2037.

DISCUSSION

Planning Requirements

4. Lot 34 Rutherford Street is zoned 'Residential R5/20' under the City of Albany Town Planning Scheme No 3 and will be similarly zoned under the draft Local Planning Scheme No 1.
5. The higher density code of R20 becomes available if the land is connected to reticulated sewer. Where a property is capable of being connected to sewerage services, a minimum lot size of 440m² would apply under the Residential Design Codes.
6. It is expected that conditions requiring that the new lot be connected to the reticulated water and sewer mains will be required as part of the future subdivision of the land.
7. The Water Corporation's gravity mains do pass to the rear of Lot 33 McKenzie Street, however preliminary advice from the Water Corporation has been obtained. This agency has advised that a sewer mains extension of between 25-35m is likely to be required. It is expected that these works will be approximately \$25,000.
8. The water mains run along McKenzie Street and a new lot could easily connect into this service. Water Corporation has advised that a new water meter will be approximately \$1200.

Future Use of Land

9. Works & Services have assessed the proposal. The subject land has constructed road frontage to McKenzie Drive and the vacant land slopes downward from the road. While it is not required for any drainage function in the short term, it is being used as a short cut through to the adjoining parkland and to a bus stop situated on Rutherford Street.
10. It is considered that while there is no impediment to the sale of the land in terms of drainage or infrastructure, the City may wish to retain a strip of land adjoining the rear fence of the kindergarten to be used as a public access-way and retain pedestrian links through to the park. This would also provide land available for future drainage works if required in the future.
11. In discussing the proposal with the LKCK (refer comments in Public Consultation), one of their concerns was the potential for complaints from any future residents because of the noise that might come from the kindergarten. The proposed access-way would provide some separation between the kindergarten and any future residential development. It is also considered that, should Council support the sale of the land, prospective purchasers can be advised of the location of the kindergarten and the possible noise that might arise from this use via a notification on title.

GOVERNMENT CONSULTATION

12. Initial advice from the Water Corporation on providing services to any created lot has been obtained.
13. Should Council support the proposed disposal of the subject land, the City must first subdivide Lot 34 Rutherford Street to create two separate titles. As part of the subdivision process, the Western Australian Planning Commission will refer the proposal to servicing agencies for comment prior to making a determination.

PUBLIC CONSULTATION / ENGAGEMENT

14. Prior to presenting this matter to Council, the City consulted with the LKCK, who hold a lease over portion of Lot 34 Rutherford Street. The submission received from this group is attached to this item and is summarised, as follows:
 - a. The LKCK have been working to grow their community involvement over the years. They have successfully used community support to fundraise to improve the kindergarten and have started a monthly produce swap;
 - b. The long term goal of the LKCK is to have a community garden, which could be located in the vacant land behind the kindergarten;
 - c. The LKCK are also interesting in pursuing the idea of a nature-play environment where children can learn about native plants, foods, weed disposal etc. The land to the rear of the kindergarten could be considered for this purpose and discussions have occurred with South Coast NRM on funding options for fencing, weed disposal and re-vegetation; and
 - d. LKCK requests that Council defers the sale of this land to provide the group time to explore these community orientated options, which will be of benefit to the whole public.
15. While the endeavours of the LKCK have value and may result in both community and environmental benefits, it is noted that the kindergarten does not currently utilise the whole of its leasehold. There is approximately 420m² of land to the south-east of the existing fence that could be utilised for such purposes. In addition, the adjoining property is a City managed Reserve (32523). It is possible that such endeavours, particularly the nature-play area, could be accommodated in this Reserve 32523.

STATUTORY IMPLICATIONS

16. Section 3.58 of the *Local Government Act 1995* defines the requirements for the disposal of property. The Act requires the following:
 - a. A local government must dispose of property to the highest bidder at public auction or to the most acceptable tender made through public tender;
 - b. A local government can only dispose of property other than at public auction or tender if it first gives notice of the proposed disposal and Council considers any submissions made.

****REFER DISCLAIMER****

17. Section 3.59 of the *Local Government Act 1995* defines the requirements for commercial enterprises undertaken by local governments, specifically relating to Major Land Transactions. The *Local Government (Functions and General) Regulations 1996* state that a Major Land Transaction in a major regional centre is a transaction valued at greater than \$10,000,000 or 10% of the operating expenditure.

Comment: It is not anticipated that the sale of this property would constitute a Major Land Transaction and as such, this part of the Act does not apply.

18. Section 135 of the *Planning and Development Act 2005* allows the Western Australian Planning Commission to approve the subdivision of land, provided that the subdivision complies with the provisions of the relevant local planning scheme.
19. The subject land is zoned 'Residential R5/20' under the City of Albany *Town Planning Scheme No 3*. The *State Planning Policy 3.1 - Residential Design Codes* specify a minimum lot size of 440m² and an average lot size of 500m² be achieved within the R20 density coding.
20. The Draft Country Sewer Policy requires that any development at a density of greater than a R5 density coding (i.e. having a lot size less than 2000m²) should be connected to reticulated sewer services.

STRATEGIC IMPLICATIONS

21. This item relates directly to the following elements of the City of Albany Strategic Plan (2011-2021)

Key Focus Area

Organisational Performance

Community Priority

Policy and Procedures

Proposed Strategies

Develop clear processes and policies and ensure consistent, transparent application across the organisation.

POLICY IMPLICATIONS

22. The Council's Policy *Disposal of Council Land* applies to this proposal. This policy has a number of requirements that are relevant to this item, which are summarised as follows:
- a. Council may decide to sell individual properties where there is a one-off approach from a prospective buyer if Council determines that:
- The land is surplus to Council's strategic requirements;
 - The land cannot be developed by Council to add value, due to the nature of the property or lack of resources;
 - The future value of the land is not predicted to significantly rise above normal property increases; and

****REFER DISCLAIMER****

- A requirement for funding of projects is identified in the current business plan.

Comment: This land has not been identified by Council as necessary to future strategic requirements. Council's recent review of Land Assets considered that this land should be retained for use by the kindergarten, though no specific comment was made regarding the vacant land to the rear of the kindergarten. It is not expected that property prices in this area will significantly increase in the near future.

- b. Before individual blocks may be sold, must comply with the following criteria:
- The land must be appropriately zoned for the anticipated use of the property;
 - All matters relating to the development and servicing of the land shall be identified and made known to the selling agent;
 - All legal requirements such as easements and caveats must be identified and in place;
 - The boundary of the property shall be surveyed;
 - Land will not be sold for an amount less than a value provided by a licenced professional valuer;
 - Individual properties valued in excess of a Major Land Transaction will not be offered for sale until the requirements of the *Local Government Act 1995* are achieved.

Comment: The land is currently zoned Residential R5/20 and may be appropriately developed for such residential purposes, though it must be connected to reticulated sewer. This is not a Major Land Transaction as defined by the *Local Government Act 1995* (in excess of \$10,000,000). All requirements of this part can be achieved as part of the future sale of the land.

- c. Land which is capable of being independently developed will be sold by public auction or tender and the City will give local notice of its intention to sell. Properties which fail to see at auction or tender may be sold by negotiation. The City may impose conditions on the sale of the property but will not accept any conditional purchase offers.

Comment: These requirements are noted and will be observed, should Council resolve to sell the land. Public tender would be the preferred option for the sale, to allow the proponent the best chance at securing the land and to avoid the appointment of a selling agent that would then require the payment of a commission.

- d. A levy from every land disposal shall be paid into the Reserve for Future Land Acquisition. The levy shall be 10% of the net profit arising from the sale.

RISK IDENTIFICATION & MITIGATION

23. The risk identification and categorisation relies on the City's Risk Management Framework:

Risk	Likelihood	Consequence	Risk Rating	Mitigation
<i>By offering the land to the adjoining owner only, Council may be seen as showing undue bias.</i>	<i>Unlikely</i>	<i>Moderate</i>	<i>Medium</i>	<i>Council observe the requirements of its Disposal of Council Land Policy and offer the land for sale by public tender or auction.</i>
<i>Possible public perception that Council has not served the community appropriately by seeking financial gain from Council land over the land being used for community purposes (by the LKCK)</i>	<i>Possible</i>	<i>Moderate</i>	<i>Medium</i>	<i>Manage public backlash through further negotiations with the LKCK to use part of the adjoining Council managed reserve.</i>

FINANCIAL IMPLICATIONS

24. Vacant land in the Lower King area is currently priced between \$110,000 and \$165,000 for single house lots. Should Council resolve to proceed with the sale of the land, an independent valuation would be obtained.

25. Any profit that is made from the sale of this land must consider the expenses incurred in preparing the land for sale, which would include:

- a. Obtaining a valuation (\$330);
- b. The costs of surveying and subdivision, including Landgate and WAPC lodgement fees (approximately \$8000);
- c. Connecting property to reticulated sewer (approximately \$25,000);
- d. Connecting property to reticulated water (approximately \$1200);
- e. Settlement fees (approximately \$1600); and
- f. Legal preparation of contract for sale (approximately \$1800).

Assuming an average sale price of \$130,000 and given the above deductions, the City may gain in the order of \$90,000.

LEGAL IMPLICATIONS

26. There is no legal requirement for the Council to consider the sale of this land, however should Council wish to sell the subject land, it must ensure that the legislative requirements of the *Local Government Act 1995* and Council's *Disposal of Council Land Policy* are appropriately addressed.

ALTERNATE OPTIONS

27. Council may:

- a. Refuse the request to purchase the vacant portion of Lot 34 Rutherford Street and the land will remain vacant, though there is potential for the land to be used for community purposes in conjunction with the adjoining Lower King Community Kindergarten; or
- b. Support the sale of the subject land, allowing the adjoining owner to participate in any public auction or tender to buy this land. In this circumstance, the Council may permit the Lower King Community Kindergarten to use portion of the adjoining Reserve 32523 for their potential future community endeavours.

SUMMARY CONCLUSION

28. The subject land is currently under-utilised and is not required for any future strategic use by the Council.
29. While the LKCK have expressed an interest in utilising this land for community purposes, there is available space within their existing leasehold and in the adjoining Reserve 32523 that could accommodate such community uses.
30. The sale of this land could net the City approximately \$90,000 which could then be channelled into other strategic projects.
31. All requirements of the Local Government Act 1995 and Council's Disposal of Council Land Policy can be complied with provided that the land is offered for sale via public auction or tender. Public tender is the preferred option for the sale.

Consulted References	:	<i>Local Government Act 1995</i> <i>Local Government (Functions and General) Regulations 1996</i> <i>Planning and Development Act 2005</i> <i>City of Albany Policy – Disposal of Council Land</i>
File Number (Name of Ward)	:	A5879
Previous Reference	:	No previous references