

STRATEGY AND POLICY REVIEW COMMITTEE

6 APRIL 2009

POLICY AND PLANNING

A3 **ST KILDA FAMILY & CHILDREN'S CENTRE OUTDOOR SPACE LAND ACQUISITION**

LOCATION/ADDRESS: REAR 169 CHAPEL ST, ST KILDA

EXECUTIVE DIRECTOR: DAVID YEOUART EXECUTIVE DIRECTOR COMMUNITY ASSETS AND SERVICES

PREPARED BY: SHEENA FROST, SPECIAL PROJECTS COORDINATOR COMMUNITY SERVICES

FILE NO.: 36/02/39

ATTACHMENTS:

ATTACHMENT 1: AERIAL PHOTO OF SITE OF PROPOSED ST KILDA FAMILY AND CHILDREN'S CENTRE

ATTACHMENT 2: PROPOSED ACQUISITION

ATTACHMENT 3: MAXIMUM AMOUNT OF COMPENSATION PAYABLE BY COUNCIL (CONFIDENTIAL)

1. PURPOSE

- 1.1 To provide council with information to make a decision as to whether to proceed to acquire a parcel of land under the Land Acquisition and Compensation Act 1986 (LACA) and subsequently remove a Public Acquisition Overlay which affects land at 101 Carlisle Street, and 161 and 169 Chapel Street, East St Kilda.

2. RECOMMENDATION

That the Strategy and Policy Review Committee recommend that Council resolve to:

- 2.1 Commence the statutory process to compulsorily acquire the land at the rear of 169 Chapel Street, St Kilda (Land) from The Uniting Church in Australia Property Trust (Victoria) (Church) in accordance with the *Land Acquisition and Compensation Act (LACA)* 1986. (refer Attachment 2 – hatched area)
- 2.2 Following the service of a Notice of Intention to Acquire on the Church and all other persons with an interest in the Land, the Chief Executive Officer shall be authorised to enter into negotiations with the Church to acquire the Land by agreement from the Church for a sum not exceeding the amount specified in Attachment 3: Maximum Amount of Compensation Payable by Council (confidential) inclusive of all costs and claims.

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- 2.3 In the event that Council and the Church reach agreement in relation to the acquisition of the Land and the payment of compensation for the acquisition, the Chief Executive Officer shall be authorised to execute any contract of sale and Council directs that Council's seal be affixed to any transfers of land and to any other documents in relation to the acquisition of the Land.
- 2.4 In the event that Council and the Church do not reach agreement in relation to the acquisition of the Land and the payment of compensation for the acquisition, a further report be prepared and submitted to Council.
- 2.5 Immediately following the transfer of land, Council proceed with removal of the existing Public Acquisition Overlay (PAO4) affecting land at 101 Carlisle Street, and 161 and 169 Chapel Street, East St Kilda, from Clause 45.01 of the Port Phillip Planning Scheme through:
- Requesting the Minister for Planning to process the amendment to the Port Phillip Planning Scheme, pursuant to section 20(4) of the Planning and Environment Act 1987.
 - Authorising the Executive Director, Community Development and Planning to prepare amendment documentation for submission to the Minister in association with the amendment request.
- 2.6 Agree to provide access to shared parking facilities to the St Kilda Uniting Church as part of the St Kilda Family and Children's Centre development.
- 2.7 Declare "Attachment 3: Maximum Amount of Compensation Payable by Council (confidential)" as confidential in accordance with section 89 (2) (d) and of the Local Government Act 1989.

3. BACKGROUND AND CONTEXT

- 3.1 The Council supported the development of the St Kilda Family & Children's Centre, and its broader context as part of the St Kilda Town Hall Precinct in a decision of the May 2008 Ordinary meeting of Council. The relevant sections of the decision, as related to this report, were as follows:
- That Council supports the development of a new family and children's centre on the existing children's centre site at 171 Chapel Street, St Kilda. Council notes that this proposal has been subject to a feasibility design, costed at \$7million, but that the final design, including the configuration of services, will be determined by Council following advice from the St Kilda Family and Children's Centre Steering Committee established below.
 - That Council supports the future development of the St Kilda Parish Mission site, consistent with the objectives of the precinct plan including facilitating the co-location of community services, as defined by the Carlisle St Structure Plan.
 - That Council authorises the Chief Executive Officer to negotiate the purchase of land owned by the Uniting Church and currently used by the St Kilda Children's Centre.

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- That, as part of negotiations with the Uniting Church, Council considers its capacity to make available a number of car parking spaces to support development of the Mission site.
- 3.2 Council officers have been involved in negotiations with representatives from the St Kilda Uniting Church since that time. Negotiations have involved the size of the parcel of land, access to parking for the development on the Church site, valuation of the land in question and access to the land's proposed use as a playground after hours by the Church.
- 3.3 The land subject to the acquisition is currently leased from the Uniting Church, to provide an outdoor play space at the St Kilda Children's Centre.
- 3.3 The playground is located in part of the land contained in certificates of title volume 9482 folios 144 and 145 (Subject Land). (see Attachment 1)
- 3.4 The area in question is approximately 300sqm. The majority of the land is located immediately behind the St Kilda Uniting Church, and includes a narrow strip that fronts onto Carlisle St. (see Attachment 2)
- 3.5 The Uniting Church in Australia Property Trust (Victoria) (Church) is the registered proprietor of the Subject Land.
- 3.6 Council has obtained a formal valuation for the subject land.
- 3.7 A Notice of Intention to Acquire is consistent with this decision, as it can be effect by agreement is this occurs within six months of the Notice of Intention to Acquire (s18 LACA).
- 3.8 Council wishes to maximise available ground level outdoor space for children at its new integrated family and children's centre. To achieve this, acquiring the land on which the current playground is located would provide certainty to council to achieve this.
- 3.9 Council has no need for the balance of land subject to a public acquisition overlay, if the transfer of the subject land is affected.
- 3.10 The subject land is currently affected by a Public Acquisition Overlay pursuant to Clause 45.01 of the Port Phillip Planning Scheme. Council is the designated 'acquisition authority' for the stated purpose of 'community service/facility'.

The intent of the Public Acquisition Overlay is to identify land which is proposed to be acquired by an authority and to ensure that any use or development does not prejudice the purpose for which the land is to be acquired.

Following the transfer to Council of the rear portion of 169 Chapel Street, the Public Acquisition Overlay will no longer be required. The overlay can be removed from the Port Phillip Planning Scheme via a section 20(4) amendment, which does not involve a formal public notification process. This form of amendment is undertaken by the Minister for Planning at Council's request, and is recommended as an appropriate process for the removal of redundant scheme provisions.

- 3.11 It is Council's intention to continue to allow the Church access to the playground for its use on weekends when the new centre is complete.

4. CONSULTATION AND STAKEHOLDERS

- 4.1 The following people have been consulted and/or advised on this proposal:

- The St Kilda Uniting Church
- St Kilda Family & Children's Centre Steering Committee
- Council Property Coordinator
- Council Strategic Planning Coordinator
- Maddocks lawyers

- 4.2 Council's Property and Strategic Planning Coordinators have provided advice and support the wording of the recommendation.

- 4.3 Maddocks provided legal advice on the wording of the recommendation.

- 4.4 The St Kilda Uniting Church are supportive of the proposed use of the land Council intends to acquire, however the Church has indicated an agreement on acquisition is subject to certainty around securing car parking for their development. Provision of car parking can be made in the proposed basement of the St Kilda Family & Children's Centre.

5. DISCUSSION

5.1 RECOMMENDED OPTION

- 5.1.1 The recommended option is to proceed with a Notice to Intention to Acquire the land on which the majority of the playground is located.

- 5.1.2 As the Subject Land cannot be separated from the balance of the Church's land without being subdivided, a plan of subdivision under section 35 of the *Subdivision Act 1998* will need to be prepared and certified by Council in order to effect the acquisition. It is recommended Council engage a surveyor to prepare a plan of subdivision as soon as possible, so that the plan can be lodged for registration immediately following the publication of a Notice of Acquisition.

- 5.1.3 Council must serve a Notice of Intention to Acquire and Statement to Accompany Notice of Intention to Acquire on the Church, and any other person with an interest in the Subject Land.

- 5.1.4 Immediately after serving the Notice of Intention to Acquire, Council must lodge a copy of the Notice of Intention to Acquire with the Land Registry. The Land Registry will record Council's intention to acquire the Subject Land on the certificates of title to the Subject Land.

- 5.1.5 Not earlier than 2 months, but not later than 6 months after serving the Notice of Intention to Acquire, Council may proceed to publish a

Notice of Acquisition in the government gazette and a local newspaper circulating in the general area in which the Subject Land is located. Upon publication of the Notice of Acquisition, ownership of the Subject Land will vest in Council.

5.1.6 Within 14 days of publication of the Notice of Acquisition in the government gazette, Council must make an offer of compensation to each person with an interest in the Subject Land. A certificate of valuation of the Subject Land is required to accompany an offer of compensation. The certificate of valuation must not be more than 6 months old.

5.1.7 Upon completion of the acquiring process, Council recommend the removal of the public acquisition overlay from the title remaining in the hands of the Uniting Church.

5.2 OPTION TWO

5.2.2 Council can decide to not proceed with the acquisition.

5.2.3 Not proceeding with the acquisition will mean the amount of ground level outdoor space for children at the new Family & Children's Centre may not be maximized to allow for the maximum number of registered children's services places on site.

5.3 POLICY IMPLICATIONS

5.3.1 The acquisition is consistent with Council's property strategy to hold land for service provision, and meet the current and future needs of the community.

5.3.2 The acquisition will allow Council to maximize the number of long day care places on the site, as well as provide maximum access to ground level outdoor play space for children attending the St Kilda Children's Centre.

5.3.3 Removal of the public acquisition overlay from areas of land council has no interest in for public purpose will increase the value of this land to the owner.

5.4 FINANCE / RESOURCE IMPLICATIONS

5.4.1 The budget for this purchase has been accounted for in the 2008/09 budget.

5.4.2 Council has received a sworn valuation by Council's valuers, Westlink Consulting.

5.4.2 Under the LACA Council would be required to provide a 10% solatium in addition to the market value of the land and reasonable costs, including subdivision costs

5.5 LEGAL & RISK IMPLICATIONS

- 5.5.1 Council is an acquiring authority under s187 of the Local Government Act
- 5.5.2 Council must follow the processes set out in the *Land Acquisition and Compensation Act 1986*.
- 5.5.3 Solicitors have been engaged to ensure the processes are carried out correctly
- 5.5.4 Council is required to assess compensation in accordance with factors identified at S41 of the LACA
- 5.5.5 The claimant can reject Council's compensation offer, but the LACA allows for the compensation to be forwarded to the claimant prior to an agreement on value being reached.
- 5.5.6 The main risk relates to the Uniting Church's willingness to negotiate and agree.
- 5.5.7 Maddocks Lawyers provided legal advice on the wording of the recommendation.

5.6 SUSTAINABILITY ASSESSMENT

SOCIAL EQUITY

- 5.6.1 The provision of ground level outdoor play space for children will enhance the St Kilda Family & Children's Centre, and provide better access to the development along Carlisle St.

ECONOMIC VIABILITY

- 5.6.2 In accordance with the LACA compensation is assessed as market value plus additional costs and payment as assessed by the LACA
- 5.6.3 Council has made provision for this purchase in the 2008/09 budget

ENVIRONMENTAL RESPONSIBILITY

- 5.6.4 The land will be retained as outdoor space for families and children.
- 5.6.5 The St Kilda Family & Children's Centre development is seeking high environmental design outcomes and greenstar accreditation.

CULTURAL VITALITY

- 5.6.6 The land will maximize the available outdoor space at the centre for use by families and children, including after hours and community use.

6. IMPLEMENTATION STRATEGY

6.1 TIMELINE

- 6.1.1 Upon Council endorsement, processes to commence subdivision and Notice of Intention to acquire will commence.
- 6.1.2 These processes can take up to six months, and not less than two months.
- 6.1.3 The process to remove the public acquisition overlay will follow.

6.2 COMMUNICATION

- 6.2.1 Council will communicate this decision directly to the Uniting Church in Australia and provide updates to stakeholders in the St Kilda Family & Children's Centre project.
- 6.2.2 Council's intention will be advertised in the local papers in accordance with the LACA, no earlier than two months after the Notice of Intention to Acquire is served.
- 6.2.3 Council is acquiring this land to secure maximum ground level outdoor play space for children attending the St Kilda Family & Children's Centre.