

**MINUTE EXTRACT FROM THE NON-PUBLIC MINUTES OF THE COUNCIL MEETING HELD ON TUESDAY  
28 MARCH 2017**

**C5 EMERSON STREET RESERVE - SALE OF SMALL PART OF UNUSED RESERVE**

A request had been received from the current occupiers of part of Emerson Street Recreation Reserve, KJ and DL van de Water, to purchase the land they occupied. KJ and DL van de Water had occupied the reserve either by an informal agreement, or under a licence to occupy since 1984. They owned (through their family trust) the adjoining land at 18 Emerson Street.

The area had been identified as adding little value to the reserve with a creek separating the main recreational area and the proposed land for sale.

Staff had worked with the current occupiers to draft a sale and purchase agreement that was conditional on Council approval.

The report sought approval of the agreement for Sale and Purchase, and approval to publicly notify the intention to revoke the reserve status and dispose of the land.

Emerson Street Recreation Reserve was a Council owned reserve. The authority to revoke the reserve status ultimately lay with the Minister of Conservation.

The Acting Group Manager Parks and Recreation and Recreation Planning and Facilities Manager responded to questions from Councillors.

Moved (Cr Andrew Whiley/Cr Chris Staynes):

That the Council:

- a) **Resolves** to publicly notify its intention to revoke the reserve status over part section 11, Blk XV, Dunedin and East Taieri Survey District, part CIR 447977 Otago, being approximately 550 m<sup>2</sup> (subject to survey).
- b) **Notes** the reason for the proposal to revoke the reserve status is that the area is surplus to reserve requirements.
- c) **Notes** that should any objections be received, the Hearings Committee has the delegated authority to hear objections and make recommendations to the Council on whether to uphold, decline, uphold in part, or decline in part those objections.
- d) **Approves** disposal of the land if the reserve status is lifted.
- e) **Resolves** that, under section 40(4) of the Public Works Act 1981, any disposal should be to the adjoining owner because of the size, shape and situation of the land.
- f) **Approves** the Sale and Purchase agreement and directs staff to complete the remaining statutory requirements to complete the sale.

**Motion carried (CNL/2017/081)**

## EMERSON STREET RESERVE - SALE OF SMALL PART OF UNUSED RESERVE

Department: Parks and Recreation

### REASONS FOR CONFIDENTIALITY

|                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Grounds:       | S48(1)(a) - The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.                                                                                                                                                                                                                                                                                             |
| Reason:        | <p>S7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of a deceased person.</p> <p>S7(2)(g) - The withholding of the information is necessary to maintain legal professional privilege.</p> <p>S7(2)(i) - The withholding of the information is necessary to enable the local authority to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).</p> |
| In particular: | To protect the privacy of the proposed purchaser and to enable Council to carry on, without prejudice or disadvantage, negotiations regarding the proposed sale.                                                                                                                                                                                                                                                                                                               |

### EXECUTIVE SUMMARY

- 1 This report discusses a request by the current occupiers of part of Emerson Street Recreation Reserve, KJ and DL van de Water, to purchase the land they occupy. KJ and DL van de Water have occupied the reserve either by an informal agreement, or under a licence to occupy since 1984. They own (through their family trust) the adjoining land at 18 Emerson Street.
- 2 The area has been identified as adding little value to the reserve with a creek separating the main recreational area and the proposed land for sale.
- 3 Staff have worked with the current occupiers to draft a sale and purchase agreement that is conditional on Council approval.
- 4 This report seeks approval of the agreement for Sale and Purchase, and approval to publicly notify the intention to revoke the reserve status and dispose of the land.
- 5 Emerson Street Recreation Reserve is a Council owned reserve. The authority to revoke the reserve status ultimately lies with the Minister of Conservation.

## RECOMMENDATIONS

That the Council:

- a) **Resolves** to publicly notify its intention to revoke the reserve status over part section 11, Blk XV, Dunedin and East Taieri Survey District, part CIR 447977 Otago, being approximately 550 m<sup>2</sup> (subject to survey).
- b) **Notes** the reason for the proposal to revoke the reserve status is that the area is surplus to reserve requirements.
- c) **Notes** that should any objections be received, the Hearings Committee has the delegated authority to hear objections and make recommendations to the Council on whether to uphold, decline, uphold in part, or decline in part those objections.
- d) **Approves** disposal of the land if the reserve status is lifted.
- e) **Resolves** that, under section 40(4) of the Public Works Act 1981, any disposal should be to the adjoining owner because of the size, shape and situation of the land.
- f) **Approves** the Sale and Purchase agreement and directs staff to complete the remaining statutory requirements to complete the sale.

## BACKGROUND

- 6 The van de Waters have occupied approximately 550 m<sup>2</sup> of Emerson Street Recreation Reserve since 1984 under a licence to occupy ("Licensed Land"). The Licenced Land is shown approximately on Attachment A.
- 7 The licence expired in 2011. During discussions in 2012 on renewing the licence, Mr van de Water advised they would prefer to purchase the Licensed Land.
- 8 The Licenced Land is across a stream and adjoins the lower part of the van de Waters section. Mr van de Water has filled the Land to the current level. It was a previously low-lying and boggy area. It had been assessed as having little recreational value to the reserve and a new licence was proposed with an annual fee of \$132.25 plus GST. As Mr van de Water had applied to purchase the Licensed Land it was agreed that the licence would not be renewed but would be considered to be running on, with Mr van de Water paying an occupation fee pending consideration of his request.
- 9 The van de Waters had previously applied to purchase the Licensed Land in 1996. The application was approved by the then Parks Manager but for unknown reasons the purchase did not proceed.

## Reserve description and status

- 10 Emerson Street Recreation Reserve (see Attachment B):
  - is a 2.4867 ha site which contains a sports field, playground, bush, open space and the area occupied by the van de Waters.
  - is subject to the Reserves Act 1977, vested in the Dunedin City Council, held in CIR 447977 and formally named the Emerson Street Recreation Reserve. It is more particularly described as Sections 11 and 13, Block XV, Dunedin and East Taieri Survey District.
  - is classified for recreation. The primary purpose of this classification is for providing areas for the recreation and sporting activities and the physical welfare and enjoyment of the public, and for the protection of the natural environment and

beauty of the countryside, with emphasis on the retention of open spaces and outdoor recreation activities including recreational tracks in the countryside.

### **The proposal**

- 11 The occupiers have applied to purchase the reserve in preference to continued licencing.

### **The Reserves Act 1977**

- 12 The Reserves Act 1977 (the Act) specifies the process for:
- a) revoking the reserve status; and
  - b) disposing of the former reserve.
- 13 The Act requires public notification of the intention to revoke the reserve status followed by consideration of any objections received. The public notice must specify the reason for the proposal.
- 14 The authority to revoke the reserve status lies with the Minister of Conservation. The Minister of Conservation also has the authority to specify the manner of disposal. Given that the Licensed Land has not been derived from the Crown the Minister usually approves the Council's proposed manner of sale.

### **DISCUSSION**

- 15 The Licensed Land has been viewed by staff historically and more recently in August 2016. The same conclusion was reached, that the cost associated with administering ongoing occupation and the recreational value of the reserve would not be affected by the sale of the Licensed Land.
- 16 The area lies approximately 2.0 m below and to the southwest of the sports field, separated by a batter slope, a small stream and a narrow strip of reserve between the stream and the fence. The Licensed Land is not visible from the majority of the reserve. The Licensed Land has no connectivity with the majority of the Reserve and lacks functionality for reincorporation back into the Reserve
- 17 The Licensed Land is considered to add little value to the reserve either now, or if it was to be reincorporated back into the Reserve.
- 18 In 2013 an independent valuation was completed on the Licensed Land. It was valued at \$5,000. This price was agreed to by Council officers and the van de Waters. At this time, the proposed sale did not proceed.
- 19 In 2016, following a number of staff changes, staff re-engaged with Mr van de Water and a new independent valuation was obtained.
- 20 The new valuation valued the land at \$8,000. Given the relatively small difference in value, staff recommend honouring the original valuation that was verbally agreed.
- 21 The Council's In-House Legal Counsel has given advice that the 2013 proposed sale is unlikely to be enforceable by the van de Waters. However, Council officers are conscious that the delay in relation to this matter has been caused largely by Council and that the van de Waters have acted in good faith throughout this matter.
- 22 An agreement for Sale and Purchase between the Council land KJ and DL van de Water and Cook Allan Gibson Trustee Company Limited has been signed at a purchase price of \$5,000 (inclusive of GST), subject to Council approval.

- 23 The agreement for Sale and Purchase records that the purchaser (KJ and DL van de water and Cook Allan Gibson Trustee Company Limited) will pay all costs incurred by the Council in relation to the Gazettal and/or subdivision process and the issue of a new title for the Licensed Land.
- 24 The agreement for Sale and Purchase records that title for the Licensed Land is to be amalgamated with the title for the purchasers' adjoining land at 18 Emerson Street.
- 25 The adjoining land is owned by KJ and DL van de Water and Cook Allan Gibson Trustee Company Limited. The purchase of the occupied land would also be in the name of the trustees van de Water Family Trust.

## **OPTIONS**

### **Option One – Recommended Option - Revoke the Reserve Status and Sell the Land**

- 26 This option is a two-step process. The reserve status would be lifted from the reserve. Once lifted, the land would be sold to the adjoining landowner (namely KJ and DL van de Water and Cook Allan Gibson Trustee Company Limited).

#### *Advantages*

- Removes an area of reserve that has no or little value in terms of its classification.
- The value of the land is realised and the proceeds will be available to fund other reserve acquisitions or activities.
- Eliminates the staff costs of negotiating a new licence to occupy and the on-going collection of the licence fees.
- Honours the 2013 discussions between the Council and the van de Waters.

#### *Disadvantages*

- Part of the original Reserve will be sold.
- No further income from the licence fees.

### **Option Two – Retain and Incorporate the Land back into the Reserve**

- 27 This will require the licensees to remove their improvements from the Reserve. The Parks and Recreation Department will then resume management of the reserve.

#### *Advantages*

- The Reserve retains its current shape.
- The Reserve could be developed through plantings which will add to the landscape character and values of the surrounding residential properties and to a lesser extent the landscape values of the Reserve.

#### *Disadvantages*

- Retention of an area that has little value in terms of its reserve classification
- There are no plans to develop the area and development has not been budgeted.
- The Council will incur the on-going costs to maintain the Reserve.

- The Reserve is not readily accessible or usable for the public.
- The Reserve lies to the northeast of the adjacent properties and any plantings will need to take account of future shading effects.
- This option creates a small risk of challenge by the van de Waters in regard to their previous understanding that the Council would sell the Licensed Land to them in 2013.

### **Option Three – Retain the Reserve and offer another Licence to Occupy**

#### *Advantages*

- The Reserve retains its current form and size.
- At some future point, the Reserve could be reclaimed and reincorporated back into the Reserve.
- Licence fees of approximately \$132 pa will be received.

#### *Disadvantages*

- Retention of an area that has little value as a reserve or recreation asset.
- The Council will incur the costs of issuing a new licence to occupy and the on-going cost for collecting licence fees.
- The Council will need to monitor the licence to ensure compliance with the terms of the licence.
- The \$132 annual licence fee is unlikely to meet the Council's actual annual costs of administering the licence.
- This option creates a small risk of challenge by the van de Waters in regard to their previous understanding that the Council would sell the Licensed Land to them in 2013.

### **NEXT STEPS**

- 28 If the recommended option is approved, the next step is to publicly notify the proposal to revoke the reserve status.
- 29 Any objections received will be heard by the Hearings Committee.
- 30 A final report and recommendation will be prepared for Council.

### **Signatories**

|             |                                                             |
|-------------|-------------------------------------------------------------|
| Author:     | Jendi Paterson - Recreation Planning and Facilities Manager |
| Authoriser: | Ruth Stokes - General Manager Infrastructure and Networks   |

### **Attachments**

|   | <b>Title</b>                                                                                  | <b>Page</b> |
|---|-----------------------------------------------------------------------------------------------|-------------|
| A | Area of Emerson Street Recreation Reserve occupied by KJ and DL van de Water                  |             |
| B | Locality map of Emerson Street Recreation Reserve and area occupied by KJ and DL van de Water |             |

## SUMMARY OF CONSIDERATIONS

### ***Fit with purpose of Local Government***

This proposal relates to providing a regulatory function and it is considered good-quality and cost-effective, by authorising the public notification phase of the disposal of a reserve as required by the Reserves Act 1977.

### ***Fit with strategic framework***

|                                         | Contributes                         | Detracts                 | Not applicable                      |
|-----------------------------------------|-------------------------------------|--------------------------|-------------------------------------|
| Social Wellbeing Strategy               | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Economic Development Strategy           | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Environment Strategy                    | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Arts and Culture Strategy               | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3 Waters Strategy                       | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Spatial Plan                            | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Integrated Transport Strategy           | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Parks and Recreation Strategy           | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            |
| Other strategic projects/policies/plans | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            |

Progressing with the disposal of surplus areas of reserve complies with the Draft Reserves Acquisition and Disposal Guiding Document and complies with the Reserves Act 1977.

### ***Māori Impact Statement***

Te Runanga Otakou Incorporated were invited to discuss the proposal in April 2013. They had no comments to make at that time. The Runanga were consulted directly, rather than through Kai Tahu Ki Otago Limited, as Department of Conservation guidelines recommend Councils consult with iwi or hapu. The Runanga will be consulted again as part of the public notification process.

### ***Sustainability***

No implications identified.

### ***LTP/Annual Plan / Financial Strategy / Infrastructure Strategy***

No implications identified.

### ***Financial considerations***

No external costs are expected from the implementation of this report.

### ***Significance***

The recommended option is assessed as low significance.

### ***Engagement – external***

The Department of Conservation were consulted in April 2013 and did not oppose the proposal. The authority to revoke the reserve status lies with the Minister of Conservation. Before the Minister can be approached to revoke the status, the public consultation phase needs to be completed. At this early stage of a revocation proposal, the Minister is unable to provide support to the proposal as it would pre-empt a statutory decision.

### ***Engagement - internal***

The Parks and Recreation Department has consulted with the Council's In-House Legal Counsel.

### ***Risks: Legal / Health and Safety etc.***

There are no risks identified with this decision. The recommended option gives effect to section 24(2) of the Reserves Act 1977.

|                                                                               |
|-------------------------------------------------------------------------------|
| <b>SUMMARY OF CONSIDERATIONS</b>                                              |
| <b><i>Conflict of Interest</i></b><br>The author has no conflict of interest. |
| <b><i>Community Boards</i></b><br>There is no Community Board for this area.  |



An aerial photograph of a residential area. A white polygon is drawn on the image, enclosing a house with a green roof and a driveway. A yellow dashed line runs diagonally across the image, passing through the polygon. A yellow circle with the number '18' is located on the left side of the image. A white arrow points from the text 'Area occupied by KI and DL van de Water' to the white polygon.

Area occupied by  
KI and DL van de Water

18



STEVENS ROAD

MULFORD STREET

EMERSON STREET

BELL CRESCENT

Emerson Street Recreation Reserve

Licenced area

ROY CRESCENT