

## 10.1 Confidential - Response to expression of interest process

*This report seeks Council's direction regarding the current Expression of Interest process for Allotment 14 Rowley Road, Aldinga Beach and determine whether we express a non binding interest in Allotment 33 McCrae Street, Aldinga Beach.*

*This is information seeking Council direction.*

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Attachments:	1. Map showing boundaries and ownership (1 page) 2. Concept Plan, Aldinga District Centre, December 2010 (1 page) 3. Aerial photograph identifying relationship of options and council land (1 page)

**There will be a presentation to accompany this report providing background to the planning process for Aldinga District Centre and the services and facilities needs analysis for Aldinga.**

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## 1 Executive summary

### 1.1 Topic

This report seeks Council's direction regarding the current Expression of Interest process for Allotment 14 Rowley Road, Aldinga Beach and determine whether we express a non binding interest in Allotment 33 McCrae Street, Aldinga Beach.

### 1.2 Context

Planning policy framework

In May 2010, the former Council through the Planning Policy Committee (PPC) approved the Activity Centres Review which was undertaken throughout 2009. This outlined a direction to introduce mixed use development into the Aldinga Beach District Centre, create a main street and improve connectivity and access, reduce and share car parking, and to improve the public realm.

A Statement of Intent for a Development Plan Amendment (DPA) to facilitate this type of development was approved by the former Council in June 2009 as consultation on the review revealed a range of impending developments being planned by various land owners in the centre.

As a part of the development of the DPA we have been undertaking a structure planning process for the centre with all landowners and service providers that will create an internal street network, an active 'heart' for the centre and replace discrete single use policy areas with mixed use areas. This is embodied in the *Draft*

*Aldinga Beach District Centre Development Concept, December 2010*, included as Attachment 2. The draft DPA is expected to be presented to the Planning Policy Committee towards the middle of 2011 for approval prior to undertaking formal public consultation.

There are currently two opportunities to secure rights over land that may assist in the facilitation of the delivery of the Activity Centres Review as it relates to the Aldinga District Centre. One of the parcels of land contains our stormwater pipes for which an easement is required.

### 1.3 Suggested outcome

It is suggested that Council consider this item in Confidence. Section (ii) 90(3)(b), 90(3)(d) of the Local Government Act 1999 is suggested as the most appropriate to use for this purpose.

This item is presented as a confidential item because disclosure of this information may increase the financial impacts on council in procuring the land.

The possible implication of not considering this item in Confidence are that it may provide a commercial advantage to competitors involved in the sale process.

## 2 Recommendation(s)

### 1. That:

- a. **under the provisions of Section 90(2) of the Local Government Act 1999 an order be made that the public be excluded from attendance at the meeting in order to consider in confidence this item.**
- b. **the Council is satisfied that it is necessary that the public be excluded to enable the Council to consider the report at the meeting on the following grounds:**

#### **Section 90(3)(b) information the disclosure of which -**

- (i) **could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council**
- (ii) **would, on balance, be contrary to the public interest**

#### **Section 90(3)(d) commercial information of a confidential nature (not being a trade secret) the disclosure of which -**

- (i) **could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party**
  - (ii) **would, on balance, be contrary to the public interest**
- c. **accordingly, on this basis the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information or discussion confidential.**

- 2. That Council approve the lodgement of an option agreement for Allotment 14 Rowley Road, Aldinga Beach as a response to the current Expression of Interest process, subject to the following conditions:**
  - (a) that the option nominates a value for the land that is benchmarked on the valuation received by Southwick Goodyear of \$990,000**
  - (b) that the option agreement be for a period until 30 June 2011**
- 3. That Council approve the formal notification of its interest in Allotment 33 in DP 25006, McCrae Street, Aldinga Beach be sent to the Salvation Army expressing a desire to have a 'first right' over the land open until 30 June 2011.**
- 4. That the processes identified in 2 and 3 above be subject to the presentation of further reports on the Aldinga Development Plan Amendment process and the Aldinga Community Facilities Study to Council for consideration prior to formalising any land acquisition negotiations by March 2011.**
- 5. That the Mayor and Chief Executive Officer be delegated authority for:**
  - (a) the lodgement of an option agreement bid on the land at Allotment 14 Rowley Road, Aldinga Beach subject to the conditions outlined above.**
  - (b) an acknowledgement letter to be sent to the Salvation Army to register Council's interest in obtaining a non binding 'first right' agreement over the land at Allotment 33 in DP 25006, McCrae Street, Aldinga Beach.**
- 6. That in the event that we are unsuccessful in the process to gain an option over the land at Allotment 14 Rowley Road, Aldinga Beach, that Council approve the acquisition of an easement over the land for the preservation of the drainage infrastructure and that the expenditure associated with this acquisition be incorporated in a future budget review.**
- 7. That the matter of the Response to expression of interest process - Aldinga District Centre having been considered in confidence under Section 90(3)(b), 90(3)(d) of the Local Government Act 1999 an order be made under the provisions of Section 91(7) and (9) of the Local Government Act 1999 that the Response to expression of interest process - Aldinga District Centre and the minutes and the report of the relating to discussion of the subject matter be kept confidential until 30 June 2012.**

## **Key Factors**

### **3 Engagement**

#### **3.1 Community**

The Development Strategy unit have been leading the structure planning exercise with the landowners and service providers of the Aldinga District Centre throughout 2010.

### **3.2 Elected members**

The former Council considered the directions for the Aldinga Beach District Centre as part of workshops and reports on the Activity Centres Review during 2009 and 2010 and have been updated as to the structure planning process via monthly reports to PPC.

### **3.3 Staff**

A range of staff across the organisation have been involved with the liaison with the owners of the land in the district centre and the process of forming the structure plan for the area.

### **3.4 Others (including specialist advice)**

Jensen Planning and Design and Hames Sharley architects have provided consultancy advice which is incorporated in the *Development Concept* plan.

Matt Adcock (Realty Solutions) has assisted us with formative commercial advice on the Expression of Interest process. We will utilise the services of Mr Adcock in the process of lodgement of the option as an intermediary to ensure that the financial interests of council are protected, should recommendation 2 be adopted.

Norman Waterhouse lawyers have provided legal advice on commercial aspects of the proposal.

## **4 Direction**

### **4.1 Strategic/corporate direction**

The gaining of additional land in the Aldinga Beach District Centre will assist in achieving the directions of the Activity Centres Review 2009 and the expansion of community facilities in the centre.

### **4.2 Council's role(s)**

#### **4.2.1 Owner/custodian**

In our role as owner or custodian we will be better able to deliver the key aspects of the structure plan for the Aldinga District Centre as the direct controller of the land.

#### **4.2.2 Facilitator/initiator**

In order to deliver the outcomes of the structure planning process a range of negotiations are required surrounding land ownership and infrastructure delivery as development occurs.

## 5 Sustainability

The reconfiguration of the district centre to a more walkable, less car-reliant centre is consistent with our Community Plan 2028 objectives and with the 30 Year Plan for Greater Adelaide.

### 5.1 Economic

The further development of the district centre consistent with contemporary development principles offers the opportunity for further investment in the centre and increased economic activity.

## 6 Resource Implications

### 6.1 Financial

#### 6.1.1 Current

Lot 14 Rowley Road contains significant stormwater infrastructure which is not currently protected via a registered easement. By obtaining an option over the land, this provides us with the ability to negotiate an easement or if we are the successful purchaser then protect via our ownership.

The Expression of Interest process was unforeseen and as such no provision has been made in the approved budget for its purchase. If purchase of the land is approved by Council, expenditure associated with its purchase would be sourced from the Commercial Activity fund, which currently has a forecast balance of approximately \$1.2 million.

#### 6.1.2 Future

Future financial considerations relating to the whole of life costing analysis would need to be assessed at the time that a decision is made to exercise our option and purchase the land.

If we are unsuccessful in acquiring the land (as part of a future report to Council) and we negotiate a registered easement over the land from the landowner we are liable to pay compensation. Should this be a requirement, the expenditure associated with this will be the subject of a future budget review.

## 7 Risk Analysis

Key risks	How it is proposed to be managed
The whole of the land is not required in the long term	It is recommended that any land purchased be excluded from community land status in order to give us the flexibility to dispose of the residual land once key elements of our delivery have been achieved.
The actual extent of the land required is not known	The potential purchase of this land is to provide a broad range of options to facilitate the outcomes

<p>at this time</p>	<p>of both the current structure planning process and Aldinga Social Impact assessment reports.</p> <p>If purchased, the land will have residual capacity once the key elements of our role in the delivery have been achieved. This residual land may then be on sold to the market once the DPA and final plans for social infrastructure are in place.</p>
<p>Other centre owners and developers will put in expressions of interest for this land and may feel that they may be at a disadvantage due to council's knowledge of various development intentions due to its current coordination of development planning for the centre. This may impact on the ongoing goodwill currently demonstrated by the group in our engagement sessions.</p>	<p>We have been very open about our intentions and all discussions that we have had with various centre owners regarding their development intentions, which have been reported back to the stakeholder group as a whole.</p> <p>Probity matters are a consideration of all project management planning and will be assessed if we are successful with the option agreement.</p>
<p>Our role in relation to the construction of infrastructure</p>	<p>If we are the owners of the land, the requirement to develop road and civil infrastructure will fall to us as part of the development outcomes</p>
<p>Our role in relation to the implementation and provision of the structure plan has not been defined.</p> <p>The process to underpin the outcomes of the placemaking, infrastructure and delivery of the public realm have not been defined.</p>	<p>The role of council in relation to the infrastructure requirements as a result of the Development Plan Amendment process and any associated land ownership negotiations will be the subject of a future report to council as part of the considerations of these decisions.</p>
<p>Our role in relation to the implementation and provision of social infrastructure has not been defined</p>	<p>The Aldinga Social Impact Assessment was undertaken in 2009. The implementation of the outcomes of the SIA study are the basis of a current study. The outcome of the Aldinga Community Facilities Study is envisaged to be complete in February 2011.</p> <p>This study will determine models for council ownership of social infrastructure or alternatives such as private industry delivery models</p>

	encompassing council as a tenant.
Land values may decline	The timing of the purchase of the land and the ultimate outcomes of the DPA and wider development of the Aldinga centre are not known.  An analysis of the expectation of realising a higher land value when and if the DPA process is complete have not been undertaken at this stage.
The option agreement may not be accepted by the owner	If the owner does not accept the option agreement we would need to determine whether to lodge a caveat over the land to protect our stormwater infrastructure until such time as an agreement may be reached to register an easement (with an agreed valuation for compensation to be paid by us).
The land may be sold to a third party	The sale of the land to a third party may increase the financial and legal risk to us when dealing with a new party. Their expectation for compensation for the easement land may be higher and if they are not agreeable may ask us to remove our infrastructure from the land.

## 8 Discussion

### 8.1 Current and planned social infrastructure

The Aldinga library and VOLT youth centre operate out of a leased area on the eastern flank of the current Aldinga shopping centre owned by Ashford Holdings. We have recently exercised our right of renewal of this lease for a three year term for the library which is due to expire in May 2013. The youth centre lease is due to expire in March 2013.

We are currently finalising plans to build the first stage of a recreation centre development on our land and as part of the structure planning process have been considering how we would accommodate a library and youth centre on this land. This appears unlikely due to space restrictions, including car parking requirements.

The Aldinga Social Impact Assessment (SIA) of 2009 identified the need to plan for future expansion of social services in the district centre. These services included an expanded library, community meeting space, youth activities and an indoor recreation centre.

Whilst our overarching planning for the district centre is not finalised, we have been informed by the Aldinga SIA that we do need to plan for the expansion of social services to meet growth indicators within this area.

In response to the outcomes of the SIA there is a need to provide for future growth and the inter-related social services provided by us in the Aldinga area. This has included discussions as to where the long term placement of the library, youth centre and the potential for community meeting spaces should be located.

The implementation planning exercise for the SIA study is currently being undertaken and is due for completion by February 2011.

The outcomes of this study will be the subject of a future report to be presented to Council by the end of March 2011.

## **8.2 Background**

In 2001, the former Council received a report which outlined the need for a youth centre to service the Aldinga area. Our landholding at Allotment 32 Pridham Boulevard was considered as an option in relation to the delivery of the service.

The land had been set aside for civic buildings by the former Willunga Council and it was originally envisaged that the land would support council chambers and a library.

Further planning was undertaken in 2001 together with a financial analysis on the delivery of the youth centre. It was determined by the former Council in 2001 that the leasing of facilities in the adjacent shopping centre owned by Ashford Holdings was economically sustainable and should be pursued.

In consideration of this, the need for the whole of the land was again reviewed and concept planning was undertaken to ensure that there was sufficient land for the placement of a library. Following this concept design, the 2001 report concluded that the balance of the land (not required for the proposed library) would be sold to the Minister for Health to enable a GP Plus clinic to be provided to service the community and provide the necessary funding to provide the youth centre.

## **8.3 Land augmentation opportunities**

Two opportunities have now arisen in relation to land in the district centre. These land parcels may have a direct linkage to providing the outcomes of the structure planning for the district centre and the implementation of the SIA. Due to the land's significance to these strategic plans this report considers whether we should register our interest in them. If supported there may be potential for land augmentation and co-location of services and infrastructure to be considered as part of the delivery of these strategies.

### **8.3.1 Option 1 – the land owned by Bend Hotel Pty Ltd (as outlined in red on attachment 3)**

A key parcel of land adjacent to our own land, which may provide opportunities to better accommodate some of our community services and facilities has been placed on the market through an Expression of Interest process.

Bend Hotel Pty Ltd has recently placed its land on the market through an Expression of Interest process closing on 15 December 2010 (unless sold prior).

This parcel (1.24ha) is owned by the Ricketts family who operate the Aldinga Hotel. It was purchased by the Ricketts in 2003 for \$240,000 and is currently valued by the Valuer General at \$690,000. A recent valuation undertaken by Southwick Goodyear has the land valued at \$990,000 (valued with no easement consideration which will lessen the value as outlined below).

The subject land contains significant council infrastructure (stormwater pipes) which are not currently protected via a registered easement. A potential acquisition of the land is one method that will enable us to legally protect this infrastructure in recognition of its essential drainage linkage within the area to the Pridham Boulevard detention basin. An acquisition will also provide opportunities to deliver other key outcomes such as a town square development which may act as a catalyst for the whole of the development.

The timing of the Expression of Interest has occurred prior to us completing our structure plan associated with the district centre. However, given that the SIA report is indicating that the demographic trend and associated requirement for social infrastructure in the future, the EOI may provide a broadening of opportunities for land to be integrated into our planning.

Subject to Council support, we would be entering the EOI as a competitor in the market. For this reason, and given that we are yet to finalise our planning study the suggestion would be to lodge a response in the form of a request for an option over the land. If accepted, the option would set out the price that we would notionally consider the land to be worth and have a contractual right within the timeframe specified to negotiate for the purchase of the land (should it be required).

#### 8.3.2 Option 2- land owned by the Salvation Army (as outlined in yellow on attachment 3)

On 8 December 2010, following the final stakeholder meeting as part of the structure planning process, we were approached by the Salvation Army to determine whether we have an interest in acquiring a portion of their land (Option 2 on attached plan).

Salvation Army representatives have indicated that they would be amenable to a non binding option or 'first right' over their land which could be further discussed and negotiated at such time as our facilities study is complete. They have verbally accepted that an such an agreement could be placed over the land for the benefit of council until 30 June 2010.

Subject to Council wishing to enter into a 'first right' agreement over the land, the approval to exercise this right would be the subject of a future report once the planning for community facilities is complete.

#### 8.4 Procurement and lodgement of interest strategies

In a contractual sense an Expression of Interest (EOI) is an approach to the market to seek offers to purchase. Generally these offers, if accepted, form a legally binding arrangement between the parties.

This Expression of Interest has come at a time when we are yet to finalise our scoping reports relating to our role and provision of services in the Aldinga centre.

In the circumstances, it is considered that an alternative approach may be required whereby we lodge a non conforming bid via an option request to ensure that we flag our potential interest in the land.

These agreements identify a request by us to contractually have the first right to purchase the land. It is a contractual right that we have a choice in exercising, thereby not binding us to an end outcome until such time as we have finalised our current studies.

The Option agreement would be for a defined period of time (say 30 June 2011) and should set out the key principles of the arrangement such as price and any conditions that would trigger the option (ie. the finalisation and council approval of the Aldinga community facilities study).

Given that the owner of the subject land is currently seeking Expressions of Interest (if not sold earlier) this method of response may not be accepted by the owner.

It is highly likely that the land will attract significant interest externally and specifically by the existing adjacent owners associated with the centre.

Both the option and 'first right' agreements form a contractual right on council's behalf, and do not bind us to purchase the land. Any consideration to take these agreements onto negotiations to purchase will be the subject of a further report seeking Council's binding commitment.

## **8.5 Drainage infrastructure**

We have has two substantial stormwater pipes, each 1200 mm in diameter and constructed side by side in a east/west direction traversing from Pridham Boulevard through to Rowley Road.

The pipes have recently been surveyed and we can confirm that they are encumbering a portion of the land currently owned by the Bend Hotel Pty Ltd. The private land encumbered by the two (2) pipes is approximately 125 metres in length and 6 metres in width. We have reviewed the need for this drainage infrastructure and determined that it is vital to our stormwater drainage network. Subsequent analysis of realigning the pipe network elsewhere has determined that this option is not financially viable.

Unfortunately the stormwater pipes are not protected by an easement in favour of council. This means that we have no legal right to access the private land to repair replace or maintain the pipes should it be required. The area of land required for the proposed easement, should we seek to obtain one is approximately 761 square metres. If we wish to acquire an easement over the land we are obliged to offer compensation for the loss of amenity on the land value.

We have recently written to the owners of the land to ensure that they are on notice regarding the location of our infrastructure and of our intention to retain the use of the land via the negotiation for an easement.

The estimated value of the easement is assessed as approximately 15% to 30% of the value of the freehold value of the land which equates to a range in the order of \$10 000 up to \$25 000. However, the acquisition of the easement would be subject to negotiations with the landowner and therefore the final cost may be much higher. The Council also has the power to compulsorily acquire the land required for essential infrastructure. The use of this power (if required) will be the subject of a further report to Council dependent on the outcomes of the party to party negotiations.

Additional costs of approximately \$5000 would be required to fund the preparation of the relevant plan and associated documentation required to register the easement on the land title would also be expected.

#### **8.6 Progress and Reporting**

If we are successful in having our option agreement accepted by Bend Hotel Pty Ltd or the Salvation Army, a further report will be tabled for council's consideration regarding the actual exercising of the option at a future date.

A report will also be submitted if we are not successful.



