

Proposed Adelaide Botanic High School Expansion

Tuesday, 12 July 2022
Council

Strategic Alignment - Enabling Priorities

Public

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EXECUTIVE SUMMARY

The State Government, through the Department for Education, is seeking to partner with the City of Adelaide on a proposed expansion of the Adelaide Botanic High School.

The proposed mechanism is a Memorandum of Understanding (MoU) between the parties that details the principles and intent of the parties to proceed to a legally binding agreement in relation to the transfer of a portion of Allotment 22 (1,800m²) in Certificate of Title 5696/850 in Deposited Plan 51367, owned by the City of Adelaide, to the State Government. The site is commonly known as Nellie Raminyemmerin / Frome Park.

The mechanism is a starting point for negotiation between the parties and provides an opportunity for each party to present its preferred outcome and non-negotiable elements of an agreement. This report sets out background to the proposal and provides an overview and timeframes for the MoU along with the current draft MOU, noting the final MOU will be circulated with the report on 12 July 2022.

RECOMMENDATION

THAT COUNCIL

1. Authorises the Chief Executive Officer to negotiate the final terms of a Memorandum of Understanding with the Department for Education in relation to the transfer of a portion of Allotment 22 in Certificate of Title 5696/850 in Deposited Plan 51367, owned by the City of Adelaide, to the State Government.
2. Approves the following principles to be used by the City of Adelaide in the negotiation to finalise the Memorandum of Understanding with the Department for Education and to follow into formal negotiations:
 - 2.1. The proposal does not remove any land from designation as Adelaide Park Lands (no net loss of Park Lands).
 - 2.2. A process for transfer of land will ensure any returning land is of equal or greater area than the parcel of land to be transferred.
 - 2.3. Any returning land is to be of a commensurate financial value and/or additional State Government investment is made in the Adelaide Park Lands to compensate land value.
 - 2.4. A process for transfer of land will be fair and transparent and ensure that Council obtains not less than fair and agreed market value from the disposal, unless there are reasons for Council accepting a lesser value.
 - 2.5. The fair market value of the land is to be determined by an independent valuation obtained from a suitably qualified Certified Practising Valuer based on the highest and best use of the site taking into consideration:
 - 2.5.1. The recent rezoning of the land and proposed use for multi-storey built-form development.
 - 2.5.2. The contamination status of the land is not a contributing factor to the fair market value and is excluded from the valuation process as it will be resolved through subsequent development.
 - 2.6. Detail on the returning land and process such as:

- 2.6.1. The terms for the transaction required to transfer of land on the returning land is agreed.
 - 2.6.2. The land parcels 'short-listed' by the State Government that are subject to negotiations.
 - 2.6.3. Formalising a process in the circumstance that the Council and the State Government cannot reach agreement on the returning land.
 - 2.6.4. Seeks to coincide land transfer of Allotment 22 and the returning land.
 - 2.6.5. Negotiates remediation standard of any returning land and makes clear that remediation obligations rest with the State and not the Council (even in the circumstance Council is the identified owner).
 - 2.7. The process will not comprise the application or otherwise, of any prudential requirements under Section 48 of the *Local Government Act 1999 (SA)*, with specific reference to part 2(j) in relation to land valuation.
 - 2.8. Any returning land provides for commensurate or enhanced social, environment and cultural value for the Adelaide Park Lands consistent with the statutory principles of the APL Act.
 - 2.9. The Adelaide Botanic High School should also consider and prioritise spending in the precinct surrounding the expansion site to ensure its fit within the location.
 - 2.10. The State Government assumes all responsibility for site contamination, including capping or remediation of adjoining land to remain within Allotment 22, and heritage protection associated with the site.
 - 2.11. The State Government bears the costs for any dealings on the land.
 - 2.12. An undertaking that the existing city-based public schools have reached capacity and that future school capacity will be achieved outside of the City of Adelaide or as a new school and location within the city.
 - 2.13. Notes the requirement in the next stage for Term Sheets or equivalent for the sale contracts for both that portion of Allotment 22 and the returning land to enable a legally enforcement contract to be.
 - 3. Approves the Chief Executive Officer to allocate resources to preliminary negotiations, investigation and analysis of the proposal(s), including legal opinion.
 - 4. Authorises the Lord Mayor and the Chief Executive Officer to sign and seal documentation to facilitate transfers and any other dealings associated with the transfer of land or assets that may be required, up to a nominated financial threshold.
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IMPLICATIONS AND FINANCIALS

City of Adelaide 2020-2024 Strategic Plan	Strategic Alignment – Enabling Priorities The Strategic Plan states that: ‘ <i>Council will continue to work innovatively and collaboratively with partners and the community to achieve ‘Bold leadership and strategic partnerships to meet challenges and take up new opportunities.’ The proposal aligns with action item 5.3 ‘Build on effective advocacy and partnerships locally, nationally and globally.’</i>
Policy	The Acquisition and Disposal of Land and Assets Policy (January 2022) has been reviewed in preparing this report.
Consultation	<p>The Administration has been in contact with representatives of the Department for Education regarding the proposal. Negotiation of a Memorandum of Understanding between the parties is not yet commenced.</p> <p>Representatives of the Department for Education presented to the meeting of the Kadaltilla / Park Lands Authority (Kadaltilla) at its meeting on 28 April 2022 and to the strategic discussion forum of the Committee on 17 May 2022. Kadaltilla considered a report item on the matter in June.</p>
Resource	Negotiation of the agreement will likely require legal drafting and opinion.
Risk / Legal / Legislative	<p>The City of Adelaide and State Government are obliged to act in accordance with the <i>Adelaide Park Lands Act 2005 (SA)</i> (APL Act).</p> <p>The State Government has mechanisms to compulsorily acquire the land from the City of Adelaide. If the State Government acquired the land it would need to fulfill the requirements of Section 23 of the APL Act before proceeding with a change of land use.</p> <p>Future development of the site would then be a matter for the State Planning Commission as a development application to the State Commission Assessment Panel against the policy and provisions contained in the Planning and Design Code.</p>
Opportunities	Negotiation of a Memorandum of Understanding with the Department for Education provides the City of Adelaide with an opportunity to seek certain principles and outcomes be met as part of the land transfer and subsequent investment in the Park Lands and precinct.
22/23 Budget Allocation	Negotiation of a Memorandum of Understanding with the Department for Education will incur legal costs in the order of \$10,000 which can be accommodated within the existing enterprise budget allocation for legal advice.
Proposed 23/24 Budget Allocation	There is no specific provision in the draft 2022/2023 Annual Business Plan and Budget associated with the proposed agreement and any subsequent land transfer. If additional budget allocation is deemed necessary, this will be put to the Council for decision as a first quarter 2022/2023 budget review.
Life of Project, Service, Initiative or (Expectancy of) Asset	Not as a result of this report
22/23 Budget Reconsideration (if applicable)	It is proposed that the Memorandum of Understanding is negotiated in the 2021/2022 financial year. Formal legal agreement and land transfer costs are yet to be determined.
Ongoing Costs (eg maintenance cost)	Not as a result of this report
Other Funding Sources	Not as a result of this report

DISCUSSION

Background

1. The State Government, through the Department for Education, is seeking to partner with the City of Adelaide on a proposed expansion of the Adelaide Botanic High School. The Department for Education is seeking to deliver the project by 2024.
2. The proposed mechanism is a Memorandum of Understanding (MoU) between the parties that details the principles and intent of the parties to proceed to a legally binding agreement in relation to the transfer of a portion of Allotment 22 in Certificate of Title 5696 Folio 850 in Deposited Plan 51367 (Allotment 22), owned by the City of Adelaide, to the State Government. The site is commonly known as Nellie Raminyemmerin / Frome Park.

Subject Site, Allotment 22

3. The site 1.818 hectares in size and is located on the eastern side of Frome Road, Adelaide. It is generally bound by the Botanic Gardens of South Australia (Botanic Gardens) to the north and east, the area generally known as Lot 14 to the south, and the University of Adelaide to the west of Frome Road, Adelaide.
4. The land is owned by the City of Adelaide in fee simple and is held in Trust for Park Land purposes. The site is designated as Adelaide Park Lands in accordance with Section 14 of the APL Act and the deposited Adelaide Park Lands Plan. The site is under the care and control of the City of Adelaide and is otherwise surrounded by land under the care and control of the State Government.
5. The site is subject to a Right of Way along its southern boundary associated with access to the area generally known as Lot 14. The Right of Way is unaffected by the proposed expansion of the Adelaide Botanic High School.
6. The site was reclaimed as public green space from an old car park in the late 1990s and is recognised under Section 193 of the *Local Government Act 1999 (SA)* as community land. It is used by Council as an event space, including for WOMADelaide. Allotment 22 contains a culturally significant site(s) however, it is understood the site(s) is outside of the proposed expansion area and that the Department for Education is engaging with Kaurna community.

Proposed Expansion of Adelaide Botanic High School

7. The site of the existing Adelaide Botanic High School is described as Allotment 1 in Crown Record 6245 Folio 913 in Deposited Plan 28393 (Allotment 1) which has frontage to Frome Road, Adelaide but is otherwise contained in Allotment 22.
8. The proposal is for the integrated extension of the existing Adelaide Botanic High School vertical building to the south of Allotment 1. The proposed building footprint expansion is approximately 1,800 square metres and requires a site area, portion of Allotment 22, of approximately 1,800 square metres.
9. The proposed building footprint expansion aligns with the southern building extent of the University of Adelaide Mawson Building and maintains the sight line from the University of Adelaide Barr Smith Library to the Botanic Gardens. The existing tree lined pedestrian pathway to and from the Botanic Gardens does not form part of the proposed land transfer and can be maintained.
10. The current Adelaide Botanic High School capacity is 1,250 secondary school students. The proposed expansion seeks to accommodate an additional 700 students. The proposed expansion will take the school capacity to 1,950 students (similar in capacity to the Glenunga High International High School, Glen Osmond and the Roma Mitchell Secondary College, Gepps Cross).
11. The capacity of the city's other public secondary school, Adelaide High School, is 1,800 secondary school students.
12. The Department for Education has advised that there are 1,000 additional students required in the CBD and Inner Northern [School] Zone of the education network and of those 1,000 students, 700 are needed at Adelaide Botanic High School. The Department forecast that approximately 123 students will be from the City of Adelaide local government area.
13. The Department for Education has verbally advised that should the Adelaide Botanic High School expansion be delivered, future capacity in the school zone will be found outside of the Adelaide Central Business District such that future school expansion is not required of either the Adelaide Botanic High School or the Adelaide High School. An undertaking to this effect could be sought via the MoU process.

Proposed MoU

14. The draft Memorandum of Understanding (MoU) (Link 1 view [here](#)) from the State Government seeks to achieve three outcomes:
 - 14.1. Transfer of a portion of Allotment 22, owned by the City of Adelaide, to the State Government.
 - 14.2. A mechanism for determining the 'fair market value' for the land to be transferred to the State Government.
 - 14.3. A mechanism for the State to transfer certain, undefined Park Lands, to the Council (referred to as the Returning Land) to compensate for the area of Park Lands to be removed from care and control of the Council.
15. Administration has progressed conversations with the Department for Education in line with direction from Council through feedback provided at the presentations made to Kadaltilla/Park Lands Authority, to Council and through Strategic Committee. The Department for Education has committed to progressing these changes and returning a revised MOU for the meeting of Council on 12 July 2022.

Transfer of Land (Sale or Lease)

16. The State Government has an ability to acquire a portion of Allotment 22 under *the Land Acquisition Act 1969 (SA)*, for the purposes of expanding the existing Adelaide Botanic High School.
17. Rather than exercising its powers, the State Government, through the Department for Education, has indicated its intention to negotiate the purchase of a 1,800m² portion of Allotment 22 from the City of Adelaide.
18. The existing Botanic High School and Adelaide High School are in the Adelaide Park Lands Plan. Should Council agree to the sale of land, the land could remain as Adelaide Park Lands and be used for public purposes albeit not broad community access and use.
19. There is a mechanism within the APL Act that would afford the Minister for Planning an opportunity to seek to remove the land from the Adelaide Park Lands Plan, however this has not been raised through the process to date (and would require future consultation with the City of Adelaide and others).
20. Options that may be available to Council, other than sale of a 1,800m² portion of Allotment 22 to the State Government, may include:
 - 20.1. A lease or licence over the land. Section 21 of the APL Act sets the maximum term for which the Council may grant or renew a lease of licence over land in the Adelaide Park Lands is 42 years (taking into account any right of extension and despite the provisions of the *Local Government Act 1999*). A lease or licence over land for 10 year or more must be submitted to the Presiding members of both Houses of Parliament. Given the integration and long-term use of the land by the State Government as a public high school, a lease or licence arrangement is considered less desirable than a land transfer.
 - 20.2. Transfer of a larger portion of Allotment 22 to the State Government. The Planning and Design Code seeks to safeguard the open space link and cultural values of the land (*Concept Plan 85 City Riverbank Innovation* of the Planning and Design Code). In this circumstance, the Council could seek to negotiate a larger land parcel in return for the transfer.
21. Any future allotment creation or grant to occupy Allotment 22 (by lease and/or license), arising from the proposal would need to follow the provisions set out in the APL Act.

Fair Market Value

22. The proposed MoU contemplates the fair market value of the land will be determined by the State Government.
23. Allotment 22 is in the Innovation Subzone of the City Riverbank Zone of the Planning and Design Code following the Riverbank Code Amendment which came into legal effect on 20 January 2022. The rezoning process has created price uplift in relation to the fair market value of the land.
24. Council should seek to ensure the scope of the valuation and the valuer ensures the highest and best use is assessed for the purposes of determining the fair market value, taking into consideration:
 - 24.1. The recent rezoning and proposed use for multi-storey built-form development.
 - 24.2. The contamination status of the land is not a contributing factor to the land fair market value and is excluded from the valuation process as it will be resolved through subsequent development.
25. The MoU presents an opportunity for a valuation assessment that is broader than may be achieved through a circumstance of compulsory acquisition of the land.

Returning Land

26. As a form of compensation for the land transfer, the State Government has indicated an intention to return an undefined portion(s) of land not less than 1,800m² within the Adelaide Park Lands Plan, under the control of the State Government, to the Council (at no purchase price to Council). The date for agreeing the returning land is 15 December 2022.
27. The State Government, through the MoU, is seeking a construction licence over Allotment 22 to commence 1 July 2022. This is to enable the expanded Adelaide Botanic High School to be operational in the 2024 calendar year. In effect, Council will have committed to enable the new school prior to any certainty around the returning land.
28. The MoU sets out a process for agreeing the returning land but does not deal with the situation that agreement cannot be reached.
29. There are numerous variables to be determined in relation to the returning land and legislative processes to be followed, and a likely outcome is that the returning land is not received for a period of years following the transfer of land from Council to the State Government.
30. To provide Council greater certainty about the returning land, it is in Council's interest to ensure that through the MoU and negotiation processes:
 - 30.1. The terms for the transaction required to transfer of land on the returning land is agreed.
 - 30.2. The land parcels 'short-listed' by the State Government that are subject to negotiations.
 - 30.3. Formalising a process in the circumstance that the Council and the State Government cannot reach agreement on the returning land.
 - 30.4. Seeks to coincide land transfer of Allotment 22 and the returning land.
 - 30.5. Negotiates remediation standard of any returning land and makes clear that remediation obligations rest with the State and not the Council (even in the circumstance Council is the identified owner).
31. The MoU presents an opportunity for returning land that may not be contemplated through a circumstance of compulsory acquisition of the land.

Summary

32. This report recommends the City of Adelaide enter negotiations with the State Government for a land transfer and sets out the proposed CoA terms for the MoU.
33. The following principles for negotiating a MoU are proposed:
 - 33.1. A process for transfer of land will be fair and transparent and ensure that Council obtains not less than fair market value from the disposal, unless there are reasons for Council accepting a lesser value.
 - 33.2. The fair market value of the land is to be determined by an independent valuation obtained from a suitably qualified Certified Practising Valuer based on the highest and best use of the site taking into consideration:
 - 33.2.1. The recent rezoning and proposed use for multi-storey built-form development.
 - 33.2.2. The contamination status of the land is not a contributing factor to the fair market value and is excluded from the valuation process as it will be resolved through subsequent development.
 - 33.3. Detail on the returning land and process is included in the Memorandum of Understanding:
 - 33.3.1. The terms for the sale contract on the returning land is agreed.
 - 33.3.2. Land parcels (three titles or plans) that have been 'short-listed' by the State Government and are subject to negotiations.
 - 33.3.3. A 'circuit breaker' is provided for in the circumstance that the Council and the State Government cannot reach agreement on the returning land, such as a binding independent determination or nominated payment in lieu of the returning land.
 - 33.3.4. Term Sheets for the sale contracts for both that portion of Allotment 22 and the returning land are provided for to enable a legally enforcement contract to be drafted as a next stage.
 - 33.3.5. Assigns Council the responsibility for determining the remediation standard of any returning land and makes clear that remediation obligations rest with the State and not the Council (even in the circumstance Council is the identified owner).

- 33.4. The process will not comprise the application or otherwise, of any prudential requirements under Section 48 of the *Local Government Act 1999 (SA)*, with specific reference to part 2(j) in relation to land valuation.
- 33.5. The proposal does not remove any land from designation as Adelaide Park Lands (no net loss of Park Lands).
- 33.6. Any returning land provides for commensurate or enhanced social, environment and cultural value for the Adelaide Park Lands consistent with the statutory principles of the APL Act.
- 33.7. The Adelaide Botanic High School should also consider and prioritise spending in the precinct surrounding the expansion site to ensure its fit within the location.
- 33.8. The State Government assumes all responsibility for site contamination, including capping or remediation of adjoining land to remain within Allotment 22, and heritage protection associated with the site.
- 33.9. The State Government bears the costs for any dealings on the land.
- 33.10. An undertaking that the existing city-based public schools have reached capacity and that future school capacity will be achieved outside of the City of Adelaide or as a new school and location within the city.
- 33.11. The State Government assumes all responsibility for site contamination, including capping or remediation of adjoining land to remain within Allotment 22, and heritage protection associated with the site.
- 33.12. The State Government bears the costs for any dealings on the land.
- 33.13. An undertaking that the existing city-based public schools have reached capacity and that future school capacity will be achieved outside of the City of Adelaide or as a new school and location within the city.
- 34. Should Council decide not to proceed with negotiations, the State Government has available to it other mechanisms to compulsorily acquire the land.

DATA AND SUPPORTING INFORMATION

Link 1 - Draft Memorandum of Understanding (MoU)

ATTACHMENTS

Nil

- END OF REPORT -