



**By Email: kate.mckenzie@marion.sa.gov.au**  
Ref: FXDWM00298678F06771784

1 July 2021

Ms K McKenzie  
Manager, Governance  
The Corporation of the City of Marion  
PO Box 21  
OAKLANDS PARK SA 5046

Dear Kate

### **Westminster Reserve**

We refer to your email and our telephone discussion in relation to Westminster Reserve and, in particular, the potential sale of Westminster Reserve to Westminster School.

### **Background**

You have provided the following background to this matter:

- upon the realignment of the Sturt River channel, SA Water acquired a portion of a Council reserve which had the effect of severing that reserve. A portion of the now severed reserve became known as Westminster Reserve. Westminster Reserve is located on the northern side of the Sturt River in the rear corner of the Westminster School playing fields and is bounded by the Sturt River, the rail corridor and Westminster School;
- the remainder of the severed reserve is known as Kenton Avenue Reserve and is separated from Westminster Reserve by the Sturt River;
- Westminster Reserve and Kenton Avenue Reserve are classified as community land under the *Local Government Act 1999 (the LG Act)*;
- the Council proposes to formally divide the two reserves by land division. It is intended that upon completion of the land division, Kenton Avenue Reserve will be reinstated as an open space reserve and retain its status as community land and Westminster Reserve will have its community land classification revoked to enable its disposal to Westminster School;
- on 11 June 2019, the Council resolved to authorise administration to enter into discussions with Westminster School for the sale of Westminster Reserve and that such negotiations were to include seeking a sale price of \$20,000 and that Westminster School pay all costs associated with the community land revocation of Westminster Reserve;
- on 23 June 2020, the Council resolved to endorse the administration to progress negotiations with Westminster School for the transfer of Westminster Reserve for valuable consideration;
- on 22 September 2020, the Council resolved to accept Westminster School's proposal to

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purchase Westminster Reserve for \$5,000:

- *'subject to a public consultation process and the revocation of community land classification of the reserve, Westminster to pay for all associated costs with the revocation, sale and transfer of land.'*

The Council also resolved that:

*'A further report be presented to the Council following the consultation period to consider any submissions received and to decide whether to proceed with the sale.'*

- on 11 May 2021, the Council resolved to:

*'Authorise the lodgement of the proposal to dispose of Westminster Reserve to the Minister for Planning in accordance with Section 194 of the LG Act:*

- *with a report on all submissions made as part of the public consultation process;*
- *request to approve the revocation of the Community Land Classification on the basis that the Community Land Classification will automatically be reinstated over Kenton Avenue Reserve which is being retained by Council, upon the two reserves being separated by a land division.'*

### **Request for Advice**

You have sought advice on the following points:

1. was it consistent with the legal requirements for revocation of community land to negotiate a sale price prior to revocation?
2. was the offer in the letter dated 22 October 2020 from Council to Westminster School consistent with the GC resolution of 22/9/20?
3. do the letters of Council dated 22 October 2020 and the Westminster School letter dated 9 December 2020 constitute a binding contract?
4. did administration make adequate disclosure regarding Westminster School's apparent acceptance of the offer in the report considered by Council on 11th May 2021.

### **Local Government Act 1999 – Legislative Requirements and Sale Negotiation**

Whilst I do not propose to set out the legal requirements relating to the revocation of community land contained in the LG Act, I advise there are no provisions in the LG Act regarding negotiating a sale price for land prior to its community land classification being revoked.

It is however relevant to note the Guidance Paper issued by the Office of Local Government titled *'Section 194 - Revocation of Community Land Classification'* (**the Guidance Paper**) as the Council ultimately requires the Minister's approval to revoke the community land classification of land.

The Guidance Paper provides guidance to councils on the process to revoke the community land classification of land and provides, relevant to the present matter, that the role of the Minister in relation to the revocation of community land is to review the process followed by a council in

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submitting a proposal for a revocation of community land classification and assess the merits of the proposal. In addition, and particularly relevantly, the Guidance Paper states as follows:

*'... where the council proposes to dispose of land by private sale or public auction, it should not commence advertising this sale or enter into a contract for the sale or disposal (including a contract made on the condition of the Minister's approval being given), until such time as the Minister's approval is given.'*

In my opinion, the above section of the Guidance Paper ought to be interpreted quite strictly as applying in relation to binding contracts entered into by a council. I consider below whether the Council can be said to have entered into a binding contract regarding the sale of Westminster Reserve below.

### **Binding Contract**

It is my opinion that it is unlikely the exchange of letters between the Council and Westminster School constitutes a binding contract for the sale of Westminster Reserve.

The letter from the Council to Westminster School dated 22 October 2020 (**the Council's letter**), whilst setting out Westminster School's offer to purchase Westminster Reserve and the terms of that offer, does not expressly state that the Council accepts that offer. The Council's letter merely seeks confirmation from Westminster School as to the terms upon which it is prepared to purchase Westminster Reserve. The Council's letter states that it seeks such confirmation from Westminster School before proceeding with the revocation of the community land process.

Therefore, in my opinion, the letters between the Council and Westminster School are not certain or precise enough in their terms to constitute a binding contract for the sale of Westminster Reserve. In other words, in my opinion, the Council's letter does not contain a clear and unambiguous acceptance of Westminster School's offer to purchase Westminster Reserve and nor does it contain a clear and unambiguous offer to sell Westminster Reserve to Westminster School. At law, a binding contract must contain a clear offer and acceptance of that offer.

Accordingly, I do not consider it was inconsistent with either the LG Act or the Guidance Paper for the Council to negotiate with Westminster School for the purchase of Westminster Reserve.

### **Council Resolution of 22 September 2020**

The Council's resolution of 22 September 2020 (**the September Resolution**) states the Council:

1. *Declares that the Reserve described as Allotment 107 in File Plan 11413 in Certificate of Title Volume 3776/21 is surplus to requirements and approves administration to commence with the revocation of the Reserve in accordance with Section 194 of the Local Government Act.*
2. *Accepts Westminster School's proposal to purchase the Reserve for a value of \$5000 subject to a public consultation process and the revocation of community land classification of the Reserve, Westminster to pay for all associated costs with the revocation, sale and transfer of land.*
3. *A further report be presented to Council following the consultation period to consider any submissions received and to decide whether to proceed with the sale.*

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As discussed above, it is my opinion, the Council's letter does not clearly and unambiguously constitute either an acceptance of an offer by Westminster School nor an offer to Westminster School.

In my opinion, the Council's letter is consistent with the September Resolution notwithstanding the Council resolved to '*accept Westminster School's proposal*' and that, in my view, the Council's letter does not constitute an acceptance of Westminster's School's offer.

Whilst the Council resolved to accept Westminster School's proposal, it also resolved that a further report be presented to the Council for the Council to determine whether to proceed with the sale. Therefore, I do not consider that the Council had, at its meeting of 22 September 2020, decided to sell Westminster Reserve and accordingly I consider the Council's letter was consistent with the September Resolution.

### Council Report of 11 May 2021

At the Council meeting of 11 May 2021, the Council considered two reports relating to this matter. The Council report considered in public stated:

*Following Council's decision in June 2020, Administration met with the Principal of the school to progress further negotiations for the transfer of Westminster Reserve. At the meeting a number of options were discussed consistent with current and previous Council's decisions, these options were:*

- *Option 1 Purchase at a revised value*
- *Option 2 Lease Option 3 Scholarship Option 4 Council reclaim the land*

*The Principal indicated that the School Board still retained an interest in purchasing the reserve from Council, including the cost of transfer and conveyancing, and indicated that they have maintained the reserve at their own costs for a number of years.*

The Council report considered in confidence included as an attachment the previous resolutions of the Council relating to this matter including the September Resolution.

As discussed above it appears, based on the September Resolution, that the Council was generally in favour of the proposal made by Westminster School. The Council's letter appears to be merely seeking confirmation from Westminster School as to the terms of its proposal to the Council to which Westminster School responded by letter dated 9 December 2020 (**the School's Letter**) as follows:

*'... the decision to purchase the parcel of land has been approved by our School Council.'*

The Council reports for the 11 May 2021 Council meeting do not expressly refer to the School's Letter. However, based on the September Resolution it appears that Westminster School had already put a proposal to the Council regarding the purchase of Westminster Reserve which the Council was generally in favour of. Therefore, it appears the Council's letter and the School's letter may have merely been seeking to confirm the respective parties' positions. Based on the information I have been provided with, it does not appear that there was an offer made by the Council to Westminster School but rather a proposal was put by Westminster School to the Council which the Council indicated in its September Resolution it was generally in favour of.

Therefore, the question regarding whether administration make adequate disclosure regarding Westminster School's apparent acceptance of the offer in the report considered by Council on 11

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May 2021 appears based on an incorrect premise, being that the Council had made an offer to Westminster School. Conversely, it appears that in fact Westminster School had put a proposal to the Council which was generally acceptable to the Council as expressed in the September Resolution. Therefore, I do not consider there was any acceptance of an offer by Westminster School that ought to have been 'disclosed'. Rather, the Council expressed its general agreement with Westminster School's proposal subject to the necessary preconditions regarding public consultation and the revocation of Westminster Reserve's community land status. The Council's letter and the School's Letter appear to be merely confirmatory of the respective parties' positions. Please feel free to contact me if you wish discuss this matter further or my advice.

Yours faithfully  
Norman Waterhouse



**Felice D'Agostino**  
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