

9.2 Proposal to revoke and dispose of community land off Bayliss Road, McLaren Vale to enable sale to the adjoining land owners

This is a new proposal, concept or issue.

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Attachments:	1. Aerial photograph of the subject land (1 page) 2. Additional Information Summary (3 pages) 3. Community Engagement Plan (9 pages)

1. Purpose

This report requests Council approval to commence the process to revoke the community land classification of a parcel of council land at McLaren Vale that is the subject of longstanding private occupation, in order to dispose of the land to the adjoining landowners in occupation.

2. Recommendations

That for the council owned land described as Closed Road A in Road Plan 1550A comprised in Certificate of Title Volume 5639 Folio 937 and bordered in red on attachment 1 to the agenda report, Council:

- 1. Declares 'in principle' that the subject Council owned community land is surplus to requirements and potentially suitable for disposal to the adjoining owners of the land bordered in yellow in attachment 1 to the agenda report.**
- 2. Approves the commencement of the revocation process to revoke the community land classification, including undertaking public consultation in accordance with the provisions of subsection 194(2) of the *Local Government Act 1999* and in accordance with the Community Engagement Plan included as attachment 3 to the agenda report.**
- 3. Approves waiver of Council's application fee (\$292.00) and processing fee (\$2,330.00) for the revocation of community land in order to undertake a process that will be of benefit to both Council and the adjoining landowners, noting that all other costs of the transaction and the market value for the land will be paid by the adjoining landowners in accordance with Council's approved Disposal of Council Land and Other Assets Policy.**
- 4. Approves the net proceeds from the sale of the subject land (if ultimately approved by Council) to be assigned to the Community Investment Fund (CIF) to be used strictly in accord with Council's approved use of that Fund.**
- 5. Requests a further report be presented to Council detailing the outcomes of the public consultation phase of the revocation process to enable Council to determine if the revocation and disposal should proceed.**

3. Background

The subject land (bordered in red on Attachment 1 to this agenda report), located off Bayliss Road, McLaren Vale was a former public road that was closed and vested in fee simple in Council in 1870. As a result of the vesting, the land is defined as community land and must be dealt with as such in accordance with the *Local Government Act 1999*.

The subject land has been planted with vines (now at a mature age) as part of the adjoining landowner's vineyard. Council's oldest aerial imagery from 1949 shows the subject community land cropped and fenced in with the surrounding paddock at that time, demonstrating longstanding private occupation by the adjoining land owners for at least 70 years. The adjoining land owners were unaware of Council's community land corridor.

Property Transactions staff identified the adjoining landowner's occupation of Council's community land whilst checking Council's titles. Following further investigations to confirm the land tenure and meetings with the adjoining landowners they have agreed to purchase the subject community land to resolve, once and for all, their longstanding occupation.

The subject land is planted with rows of vines which follow the vine rows of the vineyard on the adjoining land being Pieces 25 and 26 Tatachilla Road, McLaren vale. Council's aerial imagery shows that the vineyard pre-dates 2001.

The subject parcel of community land has been comprehensively investigated through an internal circularisation process and identified as surplus to council needs. In particular, Council's Infrastructure Asset Management Team has advised that the subject land is not required from a road network planning perspective, nor is it required for any other Council purpose.

Disposal of the subject land and consolidation with the adjoining landowner's property will formalise the longstanding occupation from this adjoining property and is the most appropriate way to legally finalise this occupation in the long term when the land is not necessary for Council's strategic or operational requirements.

Whilst the revocation will be subject to formal consultation if approved to proceed by Council, the Property Transactions Team are not aware of any likely objections or requests for easements that may arise, as the land does not appear to be presently used by any other persons, groups or utility providers.

This report seeks approval to commence a revocation process to enable the views of the community to be gauged and communicated back to Council in accord with the legislative process.

The Site

The subject parcel of community land (bordered in red on Attachment 1) is a 20m wide strip of land, measures approximately 5,918 m² and has frontage to Bayliss Road, McLaren Vale. The subject land has a slightly undulating topography sloping from west to east and terminates at the southern boundary of the adjoining land at 598 Bayliss Road, McLaren Vale.

There are no existing registered easements over the parcel of land and no future requirements for easements have been identified.

The subject parcel is fenced in with the adjoining landowner's vineyard, with boundary fencing at the western end where it adjoins Bayliss Road and also where it adjoins the privately-owned land to the north.

There is no native vegetation on the subject land as it is completely planted to vines.

Internal investigations regarding the use of the subject lands

Internal circularisation of the proposal across the organisation has not identified any strategic or operational need to retain ownership of the land and unanimously supports disposal.

The subject land does not form part of Council's Trails and Cycling Strategic Management Plan.

No negative impact on council owned infrastructure was identified if the subject area of land was disposed.

Zoning

The subject land and the applicant's adjoining land are held wholly within the Mineral Extraction Zone under the current version of the Onkaparinga Council Development Plan (consolidated 20 December 2018). The land is also within the McLaren Vale Character Preservation District. A condition of the community land revocation and disposal will be that the community land be consolidated with the adjoining landowner's title to form a single allotment. The consolidation of the subject land (if approved by Council) will not provide the adjoining landowners with any added subdivision potential.

Open Space

Our Open Space Strategic Management Plan has no commentary on this specific parcel of Council land and no internal concerns were raised with the proposed disposal from an open space perspective.

Council Land Assessment Group (CLAG) and Director's Group

This proposal has been referred to Council's high-level land assessment group (CLAG) and also to the Director's Group. Both groups have endorsed the recommendations to commence the revocation process and ultimate disposal of the subject land.

4. Financial Implications

In this particular situation it is considered mutually beneficial to both Council and the adjoining landowners for Council to divest of this community land for which it has no historical or anticipated operational purpose and to provide the adjoining landowners with legal title over land that they have cultivated and planted with vines. Due to the extenuating circumstances and ultimate benefit to Council, it is considered reasonable that Council waives its application fee (\$292.00) and processing fee (\$2,330.00) to undertake the revocation of community land process, to recognise the benefit to both Council and the adjoining landowners.

All additional costs associated with completing the revocation and disposal, including the costs associated with public consultation, valuation, surveying and conveyancing will be borne by the adjoining landowners, in accordance with Council's approved 'Disposal of Council Land and Other Assets Policy'.

The adjoining landowners will also be required to pay the market value for the community land to be consolidated with their title as determined by an independent licenced valuer, also in accordance with Council's approved 'Disposal of Council Land and Other Assets Policy'.

The adjoining landowners have agreed with this financial arrangement on the basis that it is subject to Council's approval and a revocation process.

Net proceeds from the sale of the subject land (if ultimately approved by Council) will be assigned to the Community Investment Fund to be used strictly in accord with Council's approved use of that Fund.

5. Risk and Opportunity Management

Risk	
Identify	Discussion
Revocation of the subject land is not commenced and the land not progressed for disposal.	<p>Council manages its land ownership portfolio in an efficient and sustainable manner by continually reviewing its assets and considering disposal options where little or no community benefit is derived from retention of the land.</p> <p>Failing to deal with this parcel of land in the recommended manner will necessitate a licence arrangement for the existing use, which is considered an administrative burden when the land is not considered necessary for retention.</p> <p>There is no strategic or operational requirement for the land to remain in Council's ownership therefore revocation and disposal is considered preferable to retention.</p>
Opportunity	
Identify	Maximising the opportunity
The land is declared surplus and suitable for disposal	<p>Consistent with all proposed revocations and disposals, the subject land is first assessed against a range of strategic and operational criteria prior to being classified as surplus to Council's needs and 'in principle' suitable for disposal.</p> <p>In this particular case our strategic land use assessment indicates that the subject land is not required as a community land and disposal is considered preferable to retention.</p> <p>Revocation and disposal of the land will enable net proceeds to be assigned to the Community Investment Fund (CIF) to be used strictly in accord with Council's approved use of that Fund.</p>
Removes Council's risk management liabilities	<p>As the owner of the community land, Council is currently exposed to public liability risks associated with the occupation of the subject land by the adjoining landowners. The revocation and disposal of the subject community land would end Council's risk management liabilities in relation to the subject land.</p>

On balance, based on the above, it is recommended that Council commence the revocation and disposal process.

6. Additional information

Additional Information Summary

The necessary additional information to commence the revocation of community land process in accord with the *Local Government Act 1999* is provided as Attachment 2 to this agenda report.

Consultation Plan

A Community Engagement Plan outlining all adjacent land owners and relevant community groups that will be consulted, as well as the mandatory public consultation required for the revocation of community land under the *Local Government Act 1999*, is included as Attachment 3 to the agenda report.

Further Report

A further report following the completion of the public consultation phase of the community land revocation process (if approved by Council) will be provided to Council detailing the outcomes of the public consultation to enable Council to determine if the revocation and disposal process should proceed.

Attachment 1



Attachment 2

Proposal to revoke and dispose of community land off Bayliss Road, McLaren Vale to enable sale to the adjoining land owners

Additional Information Summary

Open Space Strategic Management Plan

As the subject land is classified as community land, it automatically forms part of the open space considerations contained in the Open Space Strategic Management Plan (OSSMP). The OSSMP was approved by Council at its meeting on 12 December 2017.

Although our OSSMP has no commentary on the specific parcel of Council land, no internal concerns were raised with the proposed disposal from an open space perspective.

It is also considered that the subject portion of land has little community value from an open space, recreation and leisure perspective, due to its location, topography, impractical shape, accessibility and historical use as part of the adjoining vineyard.

Report pursuant to the *Local Government Act 1999*

The *Local Government Act 1999* prescribes that Council must prepare a report before it proposes to revoke the classification of land as community land. The report must address the following:

Summary of reasons:

The proposed revocation and disposal are as a consequence of Council identifying the portion of community land as being subject to longstanding unauthorised occupation by the adjoining landowners. Upon meeting with the adjoining owners to discuss options to properly authorise or resolve this occupation, it was jointly agreed that purchase of the land would be the most appropriate way to resolve the matter once and for all and to enable their continued use of the land as part of their adjoining vineyard.

Council manages its land ownership portfolio in an efficient and sustainable manner by continually reviewing its assets and considering disposal options where little or no community benefit is derived from retention of the land.

Failing to deal with this parcel of land in the recommended manner will necessitate a licence arrangement for the existing use, which is considered an administrative burden when the land is not considered necessary for retention.

It is also felt that the land has little value from a recreational and leisure perspective due to its location, topography, impractical shape, historical uses and accessibility.

A statement of any dedication, reservation or trust to which the land is subject:

The land is not subject to any dedication, reservation or trust.

Proposal to sell

The intent of this report proposes the revocation of the subject land from its community land classification and the sale and transfer (subject to Council approval) of the land to the adjoining landowners in occupation at no less than the current market value.

Proceeds from the sale of the subject land (if approved by Council) will be assigned to the Strategic Acquisitions Reserve Fund to assist with the funding of future strategic land acquisitions and other community projects.

Summary of effect on the community

Disposal of the subject land currently presents no impact on current recreational opportunities for the community due to its location, topography, impractical shape, use and accessibility.

There is no strategic or operational requirement for the land to remain in Council's ownership and disposal will reduce Council's responsibility and risk management liabilities.

A sale of the land will assist with the purchase of future strategic land acquisitions and other community projects, as the net proceeds will be assigned to the Strategic Acquisitions Reserve Fund (if the revocation and disposal is ultimately approved by Council).

Revocation process

The *Local Government Act 1999* states that all Council land (excluding roads) is classified as community land and that Council may only sell or otherwise dispose of an interest in community land after revocation of this classification.

To commence that process, Council must first declare the land surplus to requirements and potentially suitable for disposal, followed by public consultation.

As part of the public consultation process, Council follows the requirements of the *Local Government Act 1999* and seeks public comment for a minimum period of 21 days by placing a notice in the local Messenger Newspaper in addition to giving written notice to the applicant and adjacent land owners, uploading the proposal on Council's website and providing information folders at our five Customer Service Centres. If appropriate, Council may also erect a sign on the land during the consultation period inviting comments on the proposal to revoke and the intention to ultimately dispose of the land.

A second update report is presented to Council discussing the outcomes of the public consultation phase to enable Council to decide if it should proceed with the revocation process by applying for the consent of the Minister for Planning.

A third report is provided to Council to formally approve the revocation once the consent of the Minister is received.

Council policy on the disposal of Council land

Council adopted a 'Disposal of Council Land and Other Assets' policy on 7 September 2010. Broadly, the policy provides several disposal options, a range of matters that may influence the disposal process and method, and possible conditions that should be applied to any real property disposal.

The proposal outlined in this report for the disposal of the land (should a revocation be successful) is in accordance with Council's disposal policy. Of relevance to this disposal are the following:

1. It is intended to deal direct with the adjoining landowners.
2. The land will be disposed at no less than the current market value.
3. All costs associated with the disposal together with the purchase price of the land will be borne by the purchaser (except for Council's application and processing fees which are proposed to be waived).
4. The subject land will be consolidated with the purchaser's existing title.

Valuation procedure

It is expected that the revocation process to be undertaken by Council will consider revoking the classification of community land on an objective basis and determine, on balance, what is in the best interests of the community without the financial outcome of the process in mind.

A valuation will be sought at the end of the revocation process once Council has decided on the merits of removing the land from the classification of community land and a final decision on its disposal is known.

Attachment 3



Community Engagement Plan

Background information

This Community Engagement Plan is prepared in relation to the proposal to revoke the community land classification of a parcel of community land off Bayliss Road to enable disposal to the adjoining landowners of Pieces 25 and 26 Tatachilla Road, McLaren Vale. The proposed revocation of community land process is to be undertaken in accordance with the provisions of the *Local Government Act 1999* (SA), which prescribes the required consultation with adjacent land owners and the general public by public advertisement. This Community Engagement Plan also outlines the stakeholders to be consulted in accordance with and beyond the legislated requirements of the *Local Government Act 1999*.

Purpose of engagement

The purpose of the engagement is to provide genuine opportunities for relevant stakeholders to have their say about the proposed revocation of community land and intended sale to the adjoining landowners in occupation.

Engagement objectives

- Ensure legislative requirements are met.
- Ensure all adjacent land owners are given an opportunity to provide feedback.
- Provide opportunities for the community to provide feedback.
- Ensure multiple engagement techniques are used.
- To go above legislative requirements as appropriate to ensure transparency.
- To ensure a consistent approach to all revocations of community land classification.
- Ensure that stakeholders are kept informed.

Engagement scope of influence

- Through consultation the stakeholders can influence Council's decision about whether to proceed with the proposed revocation of community land to enable disposal to the adjoining land owner.

Related and/or Neighbouring Projects

- None applicable.



Risk and Community Expectations Assessment

The following table will assist you to assess the level of complexity, sensitivity and potential impact, and help to determine the best engagement approach.

Area	low	medium	high	explanation
degree of complexity of project	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The subject land is a parcel of community land that has been planted with vines and used as part of the adjoining vineyard for a considerable period of time. The revocation of community land process is to be undertaken in accordance with the <i>Local Government Act 1999</i> .
degree of potential community impact of project	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Aerial imagery shows that the subject portion of land has been used as part of the adjoining property for agricultural purposes from at least 1949. The community do not have any history of use of this parcel of community land.
degree of political sensitivity of project	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	We are not aware of community, utility or political groups who have had any use or involvement with the subject parcel of land.
Total				Consult

Stakeholders

Council (Mayor and elected members/ward councillors)

- Mayor
- Elected Members
- Ward Councillors

Staff

- Property Transactions Team.
- Infrastructure Asset Management Team.
- Community Assets.
- Engagement Unit.



- Customer Relations.
- Council Land Assessment Group.
- Directors Group.

Customer service centres where the proposal will be available for viewing:

- Ramsay Place, Noarlunga Centre front counter.
- The Hub, Aberfoyle Park.
- St Peters Terrace, Willunga.
- Woodcroft Community Centre.
- Aldinga Library.

Local Community

- The owners of the adjacent land parcels will be notified in writing. The extent of those adjacent land parcels are outlined under the 'Engagement Parameters' on page 4.
- In addition, the following community groups and resident's associations will be notified in writing (beyond the requirements under the *Local Government Act 1999*):
 - Willunga Basin Trails Incorporated.
 - Walking SA.
 - Horse SA.
 - Maslin Beach Community Association.

Cultural groups/Specific interest groups/NGOs/individuals

- None applicable.

General Public

- The general public are to be informed by notice in the local Southern Times Messenger Newspaper, as required under the *Local Government Act 1999*. The minimum time period for public comment is 21 days from the date of publication.
- In addition to the requirements of the *Local Government Act 1999*, public notice of the proposed road closing will be published on Council's 'Your Say' website for public comment.
- Notice will be published in the local Messenger newspaper, inviting the public to submit their comments via 'Your Say'. The time period for public comment is 21 days from the date of publication.

Government agencies/MPs

- Minister for Transport, Infrastructure and Local Government.



Engagement parameters

Geographic boundaries

- The map below numbers the adjacent properties to be contacted in writing. Corresponding addresses are listed below.



1. [REDACTED] Allotment 25 and Pieces 25 and 26 Tatachilla Road, McLaren Vale (applicant).
2. [REDACTED] 598 Bayliss Road, McLaren Vale
3. [REDACTED] 599 Bayliss Road, McLaren Vale
4. [REDACTED] 115 Pedler Road, McLaren Vale
5. [REDACTED] – Section 140 Tatachilla Road, McLaren Vale

Timelines

- Should Council resolve to proceed with the revocation of community land process, consultation will commence following the applicant entering into an agreement to pay the market value and associated costs to undertake the revocation process.
- This engagement plan will be updated when the timeline is known.

Engagement Action Plan

If Council approves the process to continue, the following engagement action plan will be undertaken:

Phase	Method	Stakeholders	Techniques	Who's Responsible	Desired outcome	Timeline
	Inform	Mayor/Elected Members	Council Report Weekly news and/or E-mail as considered necessary		Elected members are aware that engagement is about to commence	TBC
	Inform	Property Transactions Team. <ul style="list-style-type: none"> - Property Transactions Team. - Infrastructure Asset Management Team. - Community Assets. - Engagement Unit. - Customer Relations. - Council Land Assessment Group. - Directors Group. 			<p>Internal stakeholders are aware that engagement is about to commence.</p> <p>Engagement unit have prepared a Your Say page in preparation.</p> <p>Customer service centres have information for viewing.</p> <p>Call Centre know where to direct enquiries.</p>	TBC

		Customer service centres where the proposal will be available for viewing: <ul style="list-style-type: none"> - Ramsay Place, Noarlunga Centre front counter. - The Hub, Aberfoyle Park. - St Peters Terrace, Willunga. - Woodcroft Community Centre. - Aldinga Library. 				
	Consult	Adjoining land owners: <ol style="list-style-type: none"> 1. [REDACTED] Allotment 25 and Pieces 25 and 26 Tatachilla Road, McLaren Vale (applicant). 2. [REDACTED] – 598 Bayliss Road, McLaren Vale 3. [REDACTED] [REDACTED] – 599 Bayliss Road, McLaren Vale 4. [REDACTED] – 115 Pedler Road, McLaren Vale 5. [REDACTED] – Section 140 Tatachilla Road, McLaren Vale 	Letter Your Say page live	Property Team	Property Team sends letters to adjacent land owners as per mandatory requirements to gather feedback. Adjacent landowners have an opportunity to provide feedback	TBC

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					received via other methods (emails, letters etc.). A community engagement feedback report is written from the data analysis.	
	Reporting	Mayor Elected Members	Council Meeting	Property Team	A report is presented to Council with the community engagement feedback report.	TBC
	Inform	All stakeholders listed in this engagement plan	Letter to adjacent land owners Email to resident/interest groups Your Say Newsletter to all online participants	Property Team Engagement Unit	All stakeholders have been made aware of the outcomes from the council meeting and next steps. Your Say page is updated with outcomes	TBC

Sign-off


Officer who prepared the document

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