

**11.3 LAND EXCHANGE AND RECLASSIFICATION OF LAND (AMENDMENT NO. 4 TO LOCAL PLANNING SCHEME NO. 2) - PORTION OF LOT 75 BRENTHAM STREET (BRENTHAM STREET RESERVE) FOR PORTION OF LOT 100 (NO. 20) AND LOT 37 (NO. 26) BRENTHAM STREET (ARANMORE CATHOLIC PRIMARY SCHOOL) - CONSIDERATION OF SUBMISSIONS AND CONDITIONAL CONTRACT OF SALE**

**TRIM Ref:** D19/54666

**Authors:** Jordan Koroveshi, Coordinator Policy & Place  
Meluka Bancroft, Manager Governance, Property and Contracts

**Authoriser:** David MacLennan, Chief Executive Officer

**Attachments:**

1. Community comments - Engagement HQ Survey
2. Submission from Rosewood Aged Care dated 1 April 2019 - Confidential
3. Submission from resident dated 6 March 2019
4. Submission from resident dated 15 March 2019
5. Plan of proposed land exchange
6. Subdivision application plan 415620 - prepared by Carlton Surveys
7. Feature survey showing the proposed land exchange (playground and trees)
8. Plan of connectivity between the Brentham Street Reserve and Britannia Reserve
9. Proposed Amendment No.4 Amendment Document Form 2A
10. Administration response to submissions
11. Plan of current use of land adjacent to the Aranmore Catholic Primary School

**RECOMMENDATION:**

**That Council:**

1. **NOTES** the submissions received in response to the public notice of the proposed land exchange provided for the period 12 February to 1 April 2019, at Attachments 1, 2, 3 and 4;
2. **APPROVES** the City and McAuley Property Limited entering into a contract to exchange a 1,671m<sup>2</sup> portion of Lot 100 (No. 20) Brentham Street, Leederville, and Lot 37 Brentham Street, Leederville (area of 539m<sup>2</sup>), for an equal portion (2,210m<sup>2</sup>) of Lot 75 Brentham Street, Leederville (Brentham Street Reserve), as shown in the plan at Attachment 5, which is conditional on:
  - (a) the reclassification of the portion of Lot 75 to be transferred to McAuley Property Limited from "*public open space – restricted*" to "*public purpose – primary school*" under the City's Local Planning Scheme No. 2; and
  - (b) the registration of a plan of subdivision depicting the subdivision and amalgamation of the lots to effect the proposed land exchange, and McAuley Property Limited paying all associated costs;
3. **NOTES** that entering into a conditional contract as set out in Recommendation 2. does not provide any indication nor guarantee that the reclassification of land will be approved by the Minister for Planning;
4. **NOTES** that all costs associated with the subdivision and transfer of land processes would be paid by McAuley Property Limited;
5. **NOTES** that Rosewood Aged Care Inc, Sisters of Mercy and Catholic Education Western Australia will enter into an agreement, to be prepared at the parties own cost, to establish cooperation and communication protocols for dealing with any issues that arise as a result of the direct interface between the school and aged care facility, including amenity, the consultation process for any proposed changes in the nature of the use (including development proposals or master plans for the sites), access to the park and complaint

management.

6. **AUTHORISES** the Mayor and Chief Executive Officer to affix the common seal and execute the conditional contract to exchange the land as set out in Recommendation 2;
7. **PREPARES** Amendment No. 4 to Local Planning Scheme No. 2, as at Attachment 9, pursuant to section 75 of the *Planning and Development Act 2005*, to reclassify a portion of Lot 100 (No. 20) Brentham Street, Leederville from “*public purpose – primary school*” to “*public open space*” and a portion Lot 75 Brentham Street Reserve, Brentham Street, Leederville from “*public open space – restricted*” to “*public purpose – primary school*”;
8. **CONSIDERS** Amendment No. 4 to Local Planning Scheme No. 2 a standard amendment under section 34 of the *Planning and Development (Local Planning Schemes) Regulations 2015* as;
  - 8.1 The amendment is consistent with the City’s Local Planning Strategy which recommends that primary and secondary school facilities have dedicated zoning provisions to ensure their long term use as education providers and public open space is provided and managed appropriately;
  - 8.2 The amendment will have minimal impact on the surrounding area as the reclassification of land does not alter the existing built form on the subject sites;
  - 8.3 The amendment does not alter the Urban zoning under the Metropolitan Region Scheme;
  - 8.4 The amendment would not result in any significant environmental, social, economic or governance impacts; and
  - 8.5 The amendment is not considered to be a basic or complex amendment, as defined within the regulations;
9. **NOTES:**
  - 9.1 The City will forward Amendment No. 4 to Local Planning Scheme No. 2 to the Environmental Protection Authority pursuant to section 81 of the *Planning and Development Act 2005*;
  - 9.2 If no objection is received, the City will advertise Amendment No. 4 to Local Planning Scheme No. 2 for a period of 42 days, pursuant to section 47 of the *Planning and Development (Local Planning Schemes) Regulations 2015*;
  - 9.3 Following consideration of submissions by Council, Amendment No. 4 would be forwarded to the Western Australian Planning Commission for consideration and approval by the Minister for Planning; and
10. **Subject to the contract in Recommendation 2. becoming unconditional, AUTHORISES** the Mayor and Chief Executive Officer to affix the common seal and execute the Transfer of Land.

#### **PURPOSE OF REPORT:**

To consider:

- (a) the submissions received in response to the public notice of the proposed land exchange;
- (b) entering into a conditional contract with McAuley Property Limited to exchange a 1,671m<sup>2</sup> portion of Lot 100 (No. 20) Brentham Street, Leederville, and the whole of Lot 37 Brentham Street, Leederville (area of 539m<sup>2</sup>), for an equal portion (2,210m<sup>2</sup>) of Lot 75 Brentham Street, Leederville (Brentham Street Reserve), to align land ownership with current land use; and
- (c) the proposed amendment to Local Planning Scheme No. 2 (LPS 2) to reclassify a portion of Lot 100 (No. 20) Brentham Street, Leederville from “*public purpose – primary school*” to “*public open space*”

and a portion Lot 75 Brentham Street Reserve, Brentham Street, Leederville from “*public open space – restricted*” to “*public purpose – primary school*”.

## BACKGROUND:

At the Ordinary Meeting of Council held on 11 December 2018 (Item 11.5), Council resolved to agree in principle to the exchange of a 1,761m<sup>2</sup> portion of Lot 100 (No. 20) Brentham Street, Leederville, and Lot 37 Brentham Street, Leederville (area of 539m<sup>2</sup>), for an equal portion (2,300m<sup>2</sup>) of Lot 75 Brentham Street, Leederville (Brentham Street Reserve), as shown in **Attachment 5**.

Council also resolved that the Aranmore Catholic Primary School Board and the Catholic Education Office agree a communication plan with the City to explain the reasons for and the benefits of the land exchange to the school community and the public.

## DETAILS:

The City, the Sisters of Mercy, the Aranmore Catholic Primary School Board and the Catholic Education Office agreed on a communication strategy in January 2019. Public notice of the proposed exchange was subsequently provided in accordance with section 3.58 of the *Local Government Act 1995*. In accordance with the communication strategy, the City undertook the following community consultation:

- A media release was posted on the City’s website on 12 February 2019 advising of the proposed exchange and inviting submissions until 18 March 2019 (this date was later extended to 1 April 2019);
- Public notice was provided in the Perth Voice on 16 February and 23 March and in the Guardian Express on 12 February and 26 March 2019;
- The school released an update to the school community on 8 March 2019;
- Leaflets were distributed to the properties abutting the land exchange area on 13 March 2019;
- Signs were installed on the school boundary fence on 19 March 2019; and
- Posts on the City’s social media platform were provided throughout the public notice period.

The deadline for submissions was extended from 18 March 2019 to 1 April 2019 to allow the adjoining landowners to be consulted and for signs to be installed on the school fence to notify the public that access between the two portions of the Brentham Street Reserve would not be possible if the proposed land exchange proceeded.

The City received four comments via its Engagement HQ platform, as detailed at **Attachment 1**. The City also received three written submissions, at **Attachments 2, 3 and 4**. Three submissions supported the proposed land exchange. The other four submissions raised concerns with the proposed exchange.

The concerns raised related to the loss in connectivity between the two portions of the Brentham Street Reserve, the safety and visibility of the park and the impacts associated with a direct interface between the school and Rosewood Aged Care. Administrations responses to the concerns raised in the submissions are at **Attachment 10**.

Rosewood Aged Care initially requested that a set back of between 1 to 2 meters is maintained between the school (proposed Lot 821) and Rosewood Aged Care, in order to prevent a direct interface between an aged care facility and a school and to allow access between the two portions of the Brentham Street Reserve.

Administration does not support a set back as it is not in accordance with the Western Australian Planning Commission’s *Designing Out Crime Planning Guidelines* (Guidelines). The Guidelines set out the principles of designing out crime and include a tool box of design criteria to address crime prevention in local areas. The proposed set back creates a pedestrian access way which contravenes a number of criteria in the Guidelines as detailed below:

- avoid movement networks and routes that become entrapment spots;
- ensure that pedestrians have a clear view ahead;
- provide a visible exit point; and
- provide unimpeded sightlines along pedestrian pathways and avoid sharp blind corners.

The proposed land exchange would remove the current narrow pedestrian access way between the school and Rosewood Aged Care, which achieves the following objectives as set out in the Guidelines:

- vulnerable public spaces should become more liveable or be removed from public ownership;

- consider appropriate closure techniques and alternative uses to remove unsafe parts of an existing networks; and
- all open space should be well defined and purposeful.

The land exchange is also consistent with the objectives in the City's Community Safety & Crime Prevention Plan 2015-18, particularly action 3.1.1 – "*identify vulnerable public places and community spaces for improved safety, accessibility and crime prevention through Crime Prevention through Environmental Design principles.*" These principles include minimising areas that are uncontrolled or lack surveillance, minimising concealment areas and avoiding the creation of 'left over' spaces.

Removing the current access way will create a direct interface between a school and an aged care facility, which also provides an opportunity for positive interactions between these two uses. There are numerous examples, as detailed in **Attachment 10**, of these uses operating on adjoining lots and resulting in positive outcomes for the occupants and community.

Administration met with representatives of Sisters of Mercy, Catholic Education Western Australia, Aranmore Catholic Primary School and Rosewood Aged Care Inc on 27 May 2019 to discuss Rosewood Aged Care's concerns with the proposed land exchange, as detailed in **Attachment 2**. At the meeting it was agreed that Rosewood Aged Care would support the proposed land exchange, subject to Rosewood Aged Care, Catholic Education Western Australia and Sisters of Mercy entering into an agreement to establish cooperation and communication protocols for dealing with any issues that arise as a result of the direct interface between the school and aged care facility, including amenity, the consultation process for any proposed changes in the nature of the use (including development proposals or master plans for the sites), access to the park and complaint management.

In respect to the connectivity issue, the plan at **Attachment 8** shows that there is pedestrian friendly connections between the two portions of the Brentham Street Reserve, including a connection from Wavertree Place to Britannia Reserve via Brentham Street Reserve, and from the "pocket park" to Brentham Street via Lot 37 (which would be landscaped and form part of the park).

The plan at **Attachment 11** details the current use of a portion of the school land as public open space and a portion of the Brentham Street Reserve as a staff car park for the school and the kindergarten lease area.

No changes are proposed to the land exchange as a result of the submissions received from the community. Administration recommends that the City proceed with the proposed exchange as it will result in:

- consolidation of the school on one lot, which allows the school to be fully fenced;
- alignment of land ownership with the current fence boundary between the school and the "oval" section of the Brentham Street Reserve;
- the school and the City being responsible for their respective land holdings, including maintenance, upgrades and liability for loss or damage;
- security of the public access to the remaining portion of Brentham Street Reserve;
- creation of two areas of public open space which are easily accessible to the public and meet different community needs (playground area and passive recreation area);
- continued access to the "oval" area of the Brentham Street Reserve by the school, through a formal shared use arrangement with the City;
- improved visibility and access to the playground via Brentham Street through the landscaping of Lot 37, which aligns with the Guidelines and the City's Community Safety & Crime Prevention Plan 2015-18; and
- removal of the one metre access way between the two portions of the Brentham Street Reserve which is currently unkempt and unsafe, as discussed above.

The subdivision application plan at **Attachment 6** has been prepared to depict the proposed subdivision and amalgamation of lots 37, 38, 39, 75 and 100. Following the survey, the size of the portions of lots 100 and 75 to be exchanged has varied slightly to the estimated size previously presented to Council. These lots would become lots 820 (consolidating the school on one lot) and 821 (comprising the full extent of the Brentham Street Reserve). The proposed land exchange now comprises:

Land details	Current ownership	Proposed ownership
1,671m <sup>2</sup> portion of Lot 100 (No. 20) Brentham Street, Leederville	McAuley Property Limited	City of Vincent
Lot 37 (No. 26) Brentham Street, Leederville	McAuley Property Limited	City of Vincent

(539m<sup>2</sup>)

2,210m<sup>2</sup> portion of Lot 75 Brentham Street,  
Leederville (Brentham Street Reserve)

City of Vincent

McAuley Property Limited

The feature survey at **Attachment 7** shows that the proposed land exchange would result in:

- a direct interface between the school and the Rosewood Aged Care facility located at 5 – 9 (Lot 40) Britannia Road, Leederville;
- five mature trees becoming part of the school land; and
- the older playground abutting the boundary between the proposed lots 820 and 821 (the metal slide will encroach by 20mm).

The Sisters of Mercy confirmed that the current fence on the boundary between the Brentham Street Reserve and Rosewood Aged Care would suffice as the boundary fence between the school and Rosewood Aged Care. A permeable fence consistent with the current school fence would be installed along the extent of the remaining boundary of the school lot (Lot 821). Gates would be installed to facilitate access between the school and the Brentham Street Reserve. The school, in consultation with the City and community, would also investigate the removal of the portion of the older playground on the boundary between the lots to ensure a safe set back of the fence from the playground. The newer playground would be wholly comprised within the Brentham Street Reserve (Lot 820) and would remain, with the City to maintain and upgrade it as required.

As previously indicated at the 11 December 2018 Ordinary Council Meeting, the contract between the City and McAuley Property Limited would be conditional on the following:

1. The reclassification of the portion of Lot 75 (being transferred to McAuley Property Limited) from Public Open Space – Restricted to Public Purpose – Primary School; and
2. The completion of the subdivision/amalgamation process to create the new lot 821.

To commence the process of reclassification, this report seeks to prepare Amendment No. 4 to LPS 2. Amendment No. 4 would reclassify the subject lots as described below and as shown in **Attachment 9**.

<b>Land to be exchanged</b>	<b>Current LPS 2 reservation</b>	<b>Required reservation</b>
Portion of Lot 100 (to City)	Public Purpose – Primary School	Public Open Space
Portion of Lot 75 (to MPL)	Public Open Space – restricted	Public Purpose – Primary School

The intent of Amendment No. 4 is to reclassify the zoning of the subject lots to best suit their future intended purpose and to match the future land owner intentions. The proposed Amendment No. 4 is considered to be in accordance with the City's Local Planning Strategy as it proposes dedicated zoning provisions for primary and secondary school facilities to ensure their long term use as education providers. The reclassification of Lot 75 to Public Purpose – Primary School would allow the existing primary school to operate over the full extent of its grounds, subject to future development applications. The reclassification of the portion of Lot 100 to be transferred to the City to Public Open Space would align with the City's intention to provide public recreation areas over the full extent of the property. This process would likely take up to 18 months.

The City will commence the subdivision process to create lots 820 and 821 concurrently with Amendment No. 4. The Sisters of Mercy have agreed to pay all associated costs for the entirety of the process. This process would likely take 3-6 months.

#### **CONSULTATION/ADVERTISING:**

No further advertising is required for the proposed land swap itself. However, in accordance with Regulation 47 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, the proposed Amendment No. 4 must be advertised for public consultation. Amendment No. 4 also must be referred to the Environmental Protection Authority to assess the environmental impacts of the proposal and to determine whether any formal environmental assessment is necessary.

Amendment No. 4 is considered to be a 'standard amendment' and must be advertised for public comment for a period of 42 days. Advertising is to occur in the following manner, consistent with the requirements of the City's policy No. 4.1.5 – Community Consultation and the *Planning and Development (Local Planning Schemes) Regulations 2015*.

- advertisement in a local newspaper;
- display notice of the proposal at the Administration Centre;
- referral in writing to affected persons/agencies; and
- display on the City's website.

Following the 42 day advertising period, a summary of submissions and the City's responses to those submissions will be included in a report to Council for consideration of whether to support Amendment No. 4 with or without modifications.

#### **LEGAL/POLICY:**

- *Planning and Development (Local Planning Schemes) Regulations 2015.*
- *Local Government Act 1995. Section 3.58 – Disposing of Property.*

McAuley Property Limited is a religious and educational body that is registered as a charity and its members would not receive any pecuniary profit from the proposed land exchange. As the proposed disposition is to a registered charity which falls within the scope of regulation 30(b) of the *Local Government (Functions and General) Regulations 1996* the City would not be required to comply with section 3.58.

#### **RISK MANAGEMENT IMPLICATIONS:**

**Low:** The proposed exchange would resolve the liability and maintenance risks for the City which currently exist due to the undefined boundary between Lot 75 and Lot 100.

#### **STRATEGIC IMPLICATIONS:**

This is in keeping with the City's *Strategic Community Plan 2018-2028*:

##### Enhanced Environment

*Our parks and reserves are maintained, enhanced and well utilised.  
We have minimised our impact on the environment.  
Our urban forest/canopy is maintained and increased.*

##### Connected Community

*Our community facilities and spaces are well known and well used.  
We are an inclusive, accessible and equitable City for all.*

##### Thriving Places

*Our physical assets are efficiently and effectively managed and maintained.*

##### Innovative and Accountable

*Our resources and assets are planned and managed in an efficient and sustainable manner.*

#### **SUSTAINABILITY IMPLICATIONS:**

Nil.

#### **FINANCIAL/BUDGET IMPLICATIONS:**

As equal portions of land are proposed to be exchanged it is recommended that there be no exchange of funds. There are no costs to the City in connection with the amalgamation and subdivision process or preparation and registration of the transfer of land, as McAuley Property Limited has committed to covering these costs. If the City requires that the contract of sale be independently reviewed that will result in a cost to the City of approximately \$1,000 - \$1,500.

The proposed scheme amendment is not included in the operational budget. The scheme amendment process would likely take at least 12-18 months from commencement to final approval.