

**12.2 ACQUISITION RIGHT OF WAY LOT 66 AND CONSIDERATION PRIVATE USE OF BRISBANE ST PARKING BAYS BY BRISBANE HOTEL**

- Attachments:
1. Survey Plan - Lot 66 on Diagram 501 & Lot 33 on Diagram 50121
  2. Brisbane Hotel Draft Concept Plan

**RECOMMENDATION:****That Council:**

1. **REQUESTS** the Minister for Lands to acquire Lot 66 on Diagram 501, comprised in Certificate of Title Volume 2618 Folio 596 as shown in Attachment 1, as Crown land pursuant to section 52(1)(b) of the Land Administration Act 1997 (LAA) subject to the Chief Executive Officer:
  - 1.1 Providing public notice seeking submissions on the proposal to close by acquisition and amalgamate Lot 66 on Diagram 501 pursuant to section 52(1)(a) and section 87 of *Land Administration Act 1997* and Regulation 5 of *Land Administration Regulations 1998* into 292 Beaufort St, Perth (Lots 10-16 on Diagram 5740 & Lot 1 on Diagram 501); and
  - 1.2 Considering and responding to any submissions or objections received;
2. **APPROVES** the:
  - 2.1 excision and disposition of portion of Lot 33 on Diagram 50121 (Parking Bays Land) in accordance with the *Local Government Act 1995*; and
  - 2.2 sale process relating to the disposition of Parking Bays Land to commence simultaneous or after the amalgamation of ROW Lot 66 with Brisbane Hotel land;
3. **DELEGATES** to the Chief Executive Officer the authority to enter into a private treaty with Queenrise Corporation Pty Ltd (ARK Group) to:
  - 3.1 set the date for sale of the Land;
  - 3.2 provide local public notice;
  - 3.3 consider submissions;
  - 3.4 enter into private treaty negotiations;
  - 3.5 determining the sale price up to ten per cent (10%) variance on the market valuation; and
  - 3.6 conclude contract of sale with private treaty entity, and in this respect, determine and vary the settlement date and/or date of satisfaction of any conditions pursuant to the Contract of Sale between the City of Vincent and Queenrise Corporation Pty Ltd;
4. **AUTHORISES** that the proceeds from the sale of the Parking Bays Land be applied towards:

The Public Open Space Reserve for use on upgrade projects associated with the Highgate Area; and
5. **In respect of Recommendation 2 AUTHORISES:**
  - 5.1 the Mayor and Chief Executive Officer to affix the common seal and execute the Contract of Sale and Transfer of Land document; and
  - 5.2 all other documents necessary to give effect to Recommendation 2 be executed in accordance with the Execution of Documents Policy.

**PURPOSE OF REPORT:**

For Council to consider a request from the Brisbane Hotel owners to:

- a) close by acquisition and amalgamate the private right of way known as Lot 66 on Diagram 501; and
- b) excise and sell seven parking bays within the Brisbane Street car park for exclusive use by the Brisbane Hotel.

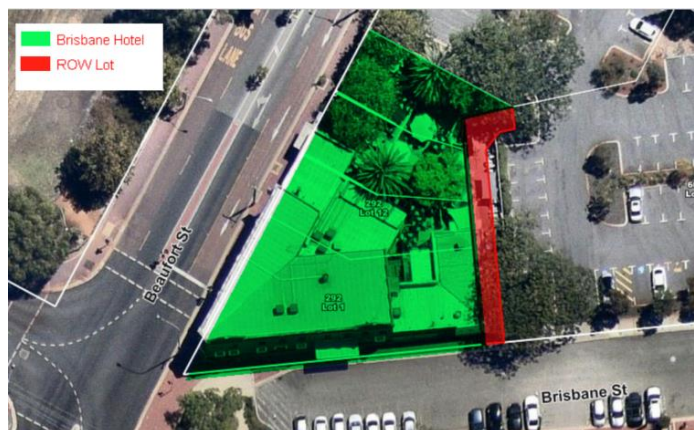
**DELEGATION:**

Section 52(1)(a) of the *Land Administration Act 1997* (LAA) sets out that a Local Government may request the Minister for Lands to acquire as Crown land any private road within the district of the local government. The *Local Government Act 1995* defines 'Local Government' as the Elected Members unless otherwise delegated. This function has not been delegated.

In accordance with Council's adopted Register of Delegations, Authorisations and Appointments *Section 2.2.17 Disposing of Property* requires a decision of Council to consider the sale of any land owned by the City.

**BACKGROUND:**

The Brisbane Hotel (Hotel) located at No. 292 Beaufort Street, Perth (Lots 10-16 on Diagram 5740 (multi lots)) has recently been sold to Queenrise Corporation Pty Ltd (ARK Group). During the sale process, the purchaser identified a privately owned right of way held under Lot 66 on Diagram 501 (ROW Lot 66) which traverses the eastern boundary of the Hotel (shown below) which for all intents and purposes appear to form part of the Hotel site.



Following acquisition of the Hotel, Administration has received formal request from ARK Group acting on behalf of the Hotel to:

1. Register an acquisition order under Section 52 of the *Land Administration Act* to acquire ROW Lot 66 and amalgamate with the Hotel land; and
2. Acquire portion of the Brisbane Street car park comprising seven parking bays and the garden bed area on either side to the east of the Hotel.

**DETAILS:*****ROW Lot 66 - Closure by acquisition and amalgamation with Hotel land***S52 LAA & Reg 5 Land Administration Regulations 1998 (LAR) process

Administration is proposing to request that the Minister for Lands considers:

- a) closing by way of acquisition ROW Lot 66; and
- b) amalgamating the acquired ROW Lot 66 with the adjoining Hotel land located at No. 292 Beaufort Street, Perth comprising of Lots 10-16 on Diagram 5740 (multi lots) as per the plan at **Attachment 1**.

The process requesting the Minister for Land's consent to the acquisition is as follows:

- Applicant takes all reasonable steps to give notice or contact the owner of ROW Lot 66 or his estate; This has been provided.
- Council resolves that ROW Lot 66 be closed under Section 52 of LAA by way of an Acquisition Order made by the Minister.
- The City gives public notice for a period of 31 days of its decision to request the Minister close the ROW Lot 66 and considers any responses to any public submissions received.
- The City gives notice to suppliers of public utility services for a period of 31 days of its decision to request the Minister close the ROW Lot 66 and considers any responses to any public submissions received.
- The City makes a request in writing to the Minister for Lands for ROW Lot 66 to be closed under Section 52 of LAA and Regulation 5 of LAR which includes the following:
  - Council report of the recommendation to close and minutes of decision to close ROW Lot 66.
  - Survey plan showing the proposed future disposition of ROW Lot 66 after it has been acquired (**Attachment 1**).
  - Written confirmation that all reasonable steps to identify and notify the owner of ROW Lot 66, the adjoining landowners and the utility providers, as specified in section 52(3)(a) of LAA;
  - Copies of any submissions/objections received in response to the public notice, and the City's comments on these submissions / objections;
  - Written confirmation that the City has complied with section 52(3) of LAA.

Where a private road is closed by an Acquisition Order under s.52 of LAA, compensation is not payable to **any** person with an interest in the land (including the owner of the fee simple interest in the land) nor any person who may have the benefit of an easement over the private road created under s.167A of the *Transfer of Land Act*.

If the Minister grants the request for the closure of ROW Lot 66, the right of way will become unallocated Crown Land owned by the State of Western Australia under the care control and management of the Department of Planning Lands and Heritage (DPLH).

All costs associated with the notification of landowner, preparation of survey plan and lodgement with the DPLH are to be borne by the Hotel.

A review of Landgate Aerial imagery shows that between 1980 and 2003 ROW Lot 66 formed an accessway from Brisbane Street into a car park previously located on the northern side of the Hotel. In 2004 the Hotel was expanded with upgrades to the Brisbane street portion of the building and development of the beer garden and removal of on-site car park. A fence was subsequently installed on the eastern edge of ROW Lot 66 adjoining the Brisbane St car park. Administration is satisfied that the acquisition of this ROW would not impact on adjoining properties and would not result in the loss of vehicle access to any adjoining properties. Based on aerial imagery Administration is comfortable that since 1980, the Hotel has been the primary landowner who has enjoyed the benefit of ROW Lot 66.

Amalgamation – S87 LAA

The amalgamation of the right of way pursuant to s87 of LAA with the Hotel land holding will be the responsibility of the Hotel and DPLH. The amalgamation and sale of the acquired ROW Lot 66 with the Hotel land will be undertaken by the Hotel at their cost and expense. This land is currently not zoned under the City's Local Planning Scheme No.2 and would subject to separate planning process to address the anomaly and could be included in the City's current Scheme review process.

***Brisbane St carpark – consideration sale of seven parking bays***Proposal

As part of the considerations for ROW Lot 66, the Hotel has expressed interest in acquiring some additional area, namely the seven parking bays including garden beds (Parking Bays Land) located immediately east of ROW Lot 66 within the City's Brisbane Street car park at 60 Brisbane Street, Perth (Lot 33 on Diagram 50121) (Lot 33). Please refer to Survey Plan in **Attachment 1**.

As part of their plans to develop and expand the Hotel, ARK Group proposes to use of the right of way and the Parking Bays Land to facilitate a courtyard extension within the Hotel confines as an enclosed permanent structure as shown in the draft concept plan in **Attachment 2**. The new private enclosed courtyard would also create further back of house and storage with improved goods flow for the operations of the hotel.

Within the identified area are existing trees. ARK Group has proposed acquiring the portion of land where the trees are located as part of their expansion design. The concept plans indicate the retention of significant trees on site.

Zoning and Land Use

The Hotel is zoned Commercial under the City's LPS No.2 and Lot 33 is Zoned Mixed Use R80. The Hotel is an 'A' use (requires Application and Advertising prior to a decision). Should Council agree to progress the sale and development of the Parking Bays Land in association with the Hotel would be subject to separate Development Approval.

Excision and Sale

If Council is agreeable to the excision of the Parking Bays Land and sale by private treaty of the land to Queenrise Corporation Pty Ltd, Administration proposes that the Chief Executive Officer (CEO) be delegated the authority to exercise decision making functions as follows:

1. Excision of portion of Lot 33 and amalgamate with the Hotel land comprising of Lots 10-16 on Diagram 5740;
2. Sale of Parking Bays Land
  - (a) set the date for sale of the land;
  - (b) provide local public notice;
  - (c) consider submissions;
  - (d) enter into private treaty negotiations;
  - (e) determining the sale price up to ten per cent (10%) variance on the market valuation; and
  - (f) conclude contract of sale with Queenrise Corporation Pty Ltd. In this respect, determine and vary the settlement date and/or date of satisfaction of any conditions pursuant to the Contract of Sale between the City of Vincent and Queenrise Corporation Pty Ltd.

Property Investment & Disposal Policy

Administration has considered the key principles and disposal guidelines of this policy and inform the following:

- Brisbane St carpark is not identified as a strategic project within the Corporate Business Plan.
- Administration would be seeking market value for the sale of the Parking Bays Land.
- The proceeds from the sale of the land would be directed towards the Public Open Space Reserve fund. Council's Public Open Space Strategy identified a shortfall of local POS within Mount Lawley, Highgate and Perth. Proceeds from the sale would be directed towards improving existing POS within the Highgate area. The Public Open Space (POS) Strategy notes that the suburb of Highgate has a low provision of Local POS and no provision for classifications above this (Neighbourhood, District & Regional). There is little opportunity to address these issues through actions such as the acquisition of land to increase the provision generally. Alternate mechanisms such as improving amenities, accessibility and functionality within existing POS would be most feasible and beneficial to the community.

Under the Key Action Table in the Public Open Space Strategy, it outlines *Prepare and implement landscape plans, aligned with hierarchy / minimum levels of service* that includes Jack Marks Reserve and Brigatti Gardens, which are local classification POS within the Highgate Suburb. The tasks for these actions note the replacement/improvement of dated infrastructure provisions at both sites (such as play spaces, seating and shade). While specifically tasking the potential for dog exercise infrastructure/management and addressing turf and drainage issues at Jack Marks Reserve.

Also acknowledging that there are a number of significant POS provisions neighbouring the suburb and could be considered for future improvements through the utilisation of POS Reserve funding contributions in Highgate and bordering suburbs such as; Forrest Park, Hyde Park, Birdwood Square, Banks Reserve and Loton Park.

- There are no foreseeable matters affecting the Parking Bays Land or the Brisbane St car park which would be impacted by the sale.
- The City would be relinquishing 4 per cent (7 out of 156 parking bays) of the total parking bays in Brisbane St carpark which would not affect availability of parking given the occupancy rate of the car park is currently at 20 per cent.

#### Administration's comments

Administration supports the sale of the Parking Bays Land for the following reasons:

- The expansion of the alfresco dining of the Hotel into the constructed private enclosed courtyard (being the Parking Bays Land) would increase the patronage for the Hotel, which would in turn increase occupancy of the car park and generate more parking revenue for the City. There is also potential for the hotel to organise bespoke carpark activation and events.
- Excision and sale of this portion of land would not affect or impact:
  - potential sale or development of the remainder Brisbane Street car park site;
  - revenue to the car park;
  - future development options on the remainder of the car park;
  - access to the existing car park;
  - supply of public parking within the area. Current occupancy data shows on average 20 per cent usage of the car park.

To consider an alternative option would not be advantageous to the City for the reasons below:

- A tenure arrangement (lease or licence) of the Parking Bays Land would not be a feasible as the City would ultimately be losing control of the land to the hotel if this piece of land was approved to be developed as part of the permanent structure of the Hotel.
- As a permanent structure, there would be no foreseeable return of the land in a state and condition which the City will have future use for when the tenure term expires. Inevitably, the City would be repetitively renewing the lease to comply with the tenure requirements of the Property Management Framework.
- The developed Parking Bays Land would also affect any future considerations and options for the Brisbane St car park as it is still within the City land holding.
- The City would lose out on financial revenue from sale of the Parking Bays Land.

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

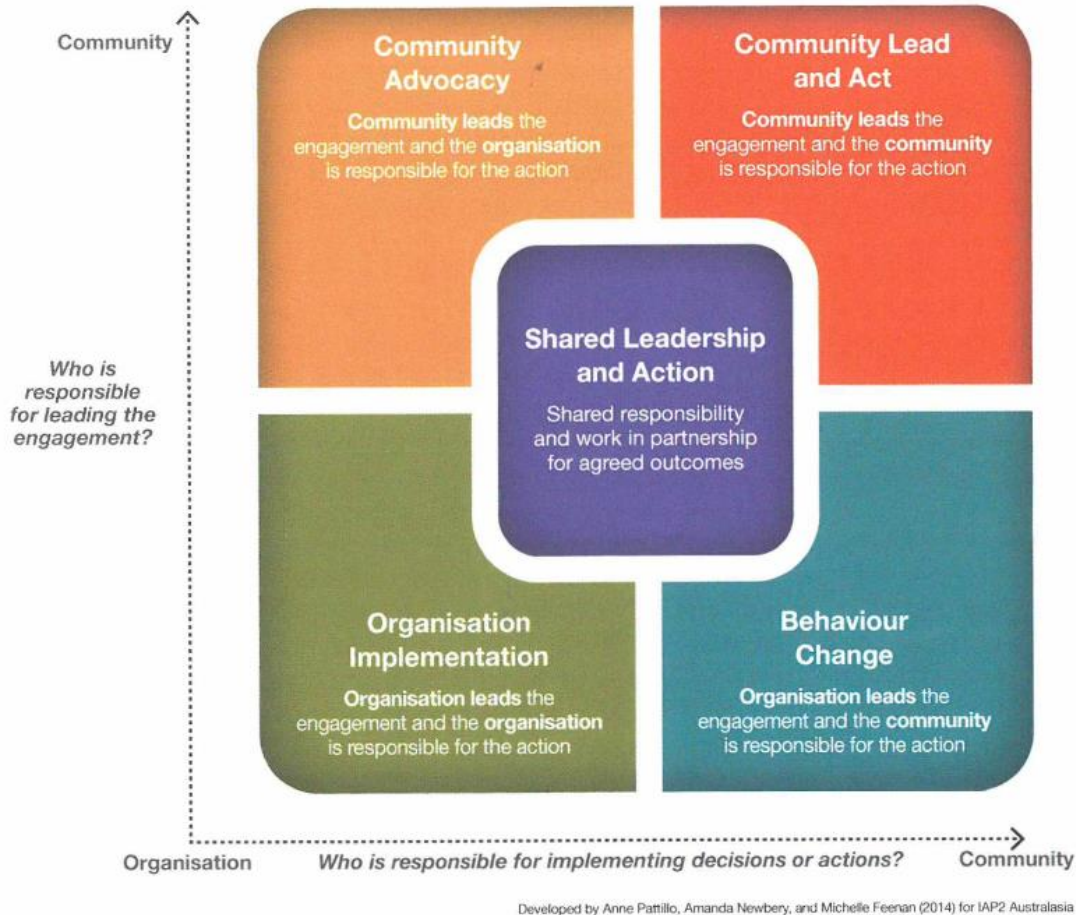
##### Closure and acquisition

Public notice to be given on closure and notice public utility services suppliers pursuant to [S52\(3\) Land Administration Act 1997](#).

##### Sale of parking bays

Public notice of the sale of the Parking Bays Land will be required in accordance with [Section 3.58 \(3\) Local Government Act 1995](#). Public notice will be provided for a minimum of two weeks in the following ways:

- on the City's website;
- in the local paper; and
- on the City's notice boards at the Administration and Civic Centre and Library.



### **Organisation Implementation**

Organisations lead engagement and seek input, shape the policies, projects and services for which they are responsible. This is a familiar and traditional approach to policy development, project management and service delivery.

**Tension:** People feel forced leading to an unresponsive process.

**Mitigation:** Increasing the level of influence, and implementing a transparent, robust process.

### **LEGAL/POLICY:**

*Land Administration Act 1997*

[Section 52 of Land Administration Act 1997](#)

[Section 87 Land Administration Act 1997](#)

[Regulation 5 Land Administration Regulations 1998](#)

*Local Government Act 1995*

In accordance with [Section 3.58 \(3\) Local Government Act 1995](#), a local government can dispose of land directly to a third party conditional on a public notice period and consideration of any submissions received. Public notice must include the purchase price, name of the purchaser and valuation details.

[Section 5.4 Local Government Act 1995](#) provides that a local government may delegate powers and duties to the Chief Executive Officer.

**RISK MANAGEMENT IMPLICATIONS**

RISK CATEGORY	RISK APPETITE / TOLERANCE STATEMENT	DESCRIPTOR /CLARIFICATION
Activities against ratepayer values & ethics	The city has a very low risk appetite for investments and activities that do not align with the city’s values.	The city has set its vision, purpose and guiding values based on the interpretation of those of the community it serves. When entering into new projects, investments and proposals, these values must be considered as one of the key consideration sets.

Council’s adopted Risk Appetite & Tolerance Statements page 5.

Low: It is low risk for Council to close ROW Lot 66 by way of acquisition order and sell the Parking Bays Land to Brisbane Hotel. The sale of the land aligns with the pillars of Council’s adopted SCP.

As the ROW is currently not publicly accessible and seemingly forms part of the Hotel site. Inclusion of this site within the Hotel would not have a noticeable impact on the surrounding area and would not impact on the City’s adjoining landholdings which would continue to have uninterrupted street frontage and vehicle access. This space would be activated and support the Thriving Places and Sensitive Design pillars.

The sale of the seven parking bays would be of minimal impact to the City’s overall landholding. The seven parking bays do not require separate access and would not obstruct access to the remainder of the City’s car park. The excision of this portion would not preclude the City from proceeding with any future sale or development of the remainder of the land. The proceeds of the sale would provide funds towards the POS Reserve and would be used to enhance the City’s existing reserves. This would support the Enhanced Environment and Connected & Health Community pillars of the SCP. All of the proposed land transactions would be advertised by Public Notice and submissions considered in line with the Innovative and Accountable pillar.

**STRATEGIC IMPLICATIONS:**

This is in keeping with the City’s *Strategic Community Plan 2022-2032*:

Thriving Places

*Efficiently managed and maintained City assets in the public realm.*

Innovative and Accountable

*We engage with our community so they are involved in what we are doing and how we are meeting our goals.*

**SUSTAINABILITY IMPLICATIONS:**

This does not contribute to any environmental sustainability outcomes. This action/activity is environmentally neutral.

**PUBLIC HEALTH IMPLICATIONS:**

This does not contribute to any public health outcomes in the *City’s Public Health Plan 2020-2025*.

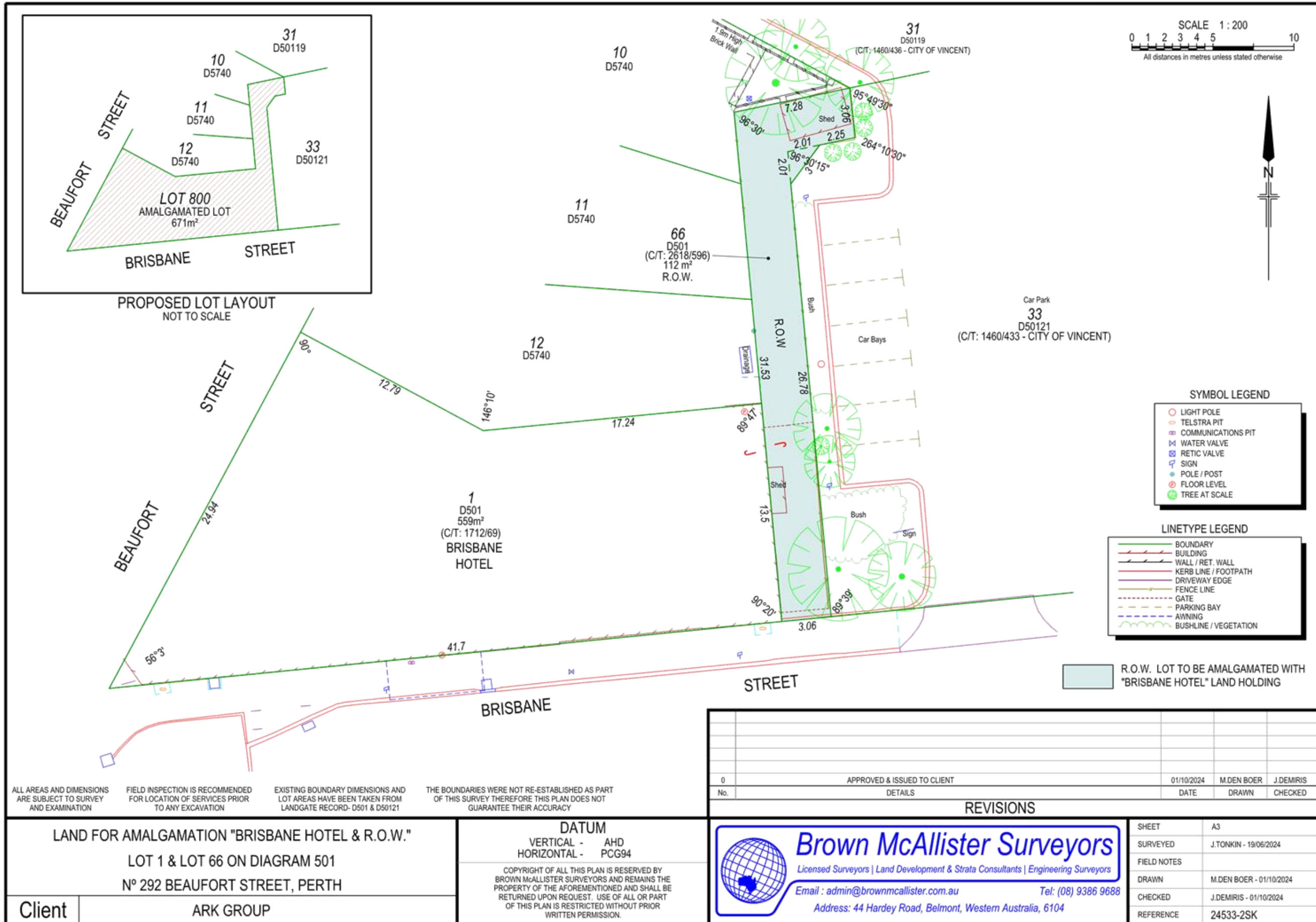
**FINANCIAL/BUDGET IMPLICATIONS:**

The proceeds from the sale of the Parking Bays Land would be applied towards Public Open Space Reserve towards improving existing POS within the Highgate area.

**COMMENTS:**

Administration supports the proposal to sell the seven parking bays including the garden bed areas to Brisbane Hotel as these parking bays make up a small fraction of the car parking compared to the 156 parking bays in this car park. The sale of these bays would also generate revenue to the City which could be utilised towards other projects occurring in the City.







# Existing Site Boundary

## City of Vincent Planning Scheme No.2

### Land Tenure Considerations

The Brisbane Hotel is currently under unconditional acquisition by ARK Group with settlement anticipated in mid-June for the land and buildings.

A R.O.W on Lot 66 between Brisbane Hotel and the surrounding carpark is currently occupied by the Brisbane Hotel for B.O.H storage and servicing.

### Zoning

The Brisbane Hotel, and a portion of the surrounding carpark (Lot 30 and 31) is within the 'Commercial Zone' under the City of Vincent Local Planning Scheme No.2 (LPS 2). The remainder of the carparking area is within the 'Mixed Use Zone' with a Residential Density Coding of R80.

Lot 66 is currently unzoned under LPS 2.

### Land Use Permissibility

Under LPS 2, a 'Tavern Use' is an Advertised 'A' Use within both the Commercial, and Mixed Use Zone. Meaning, a future expansion of the Brisbane Hotel into the carparking area is capable of approval under the existing local planning framework, following a period of public advertising.

*(Source: Planning & Property Snapshot by URBIS, provided by ARK Group)*

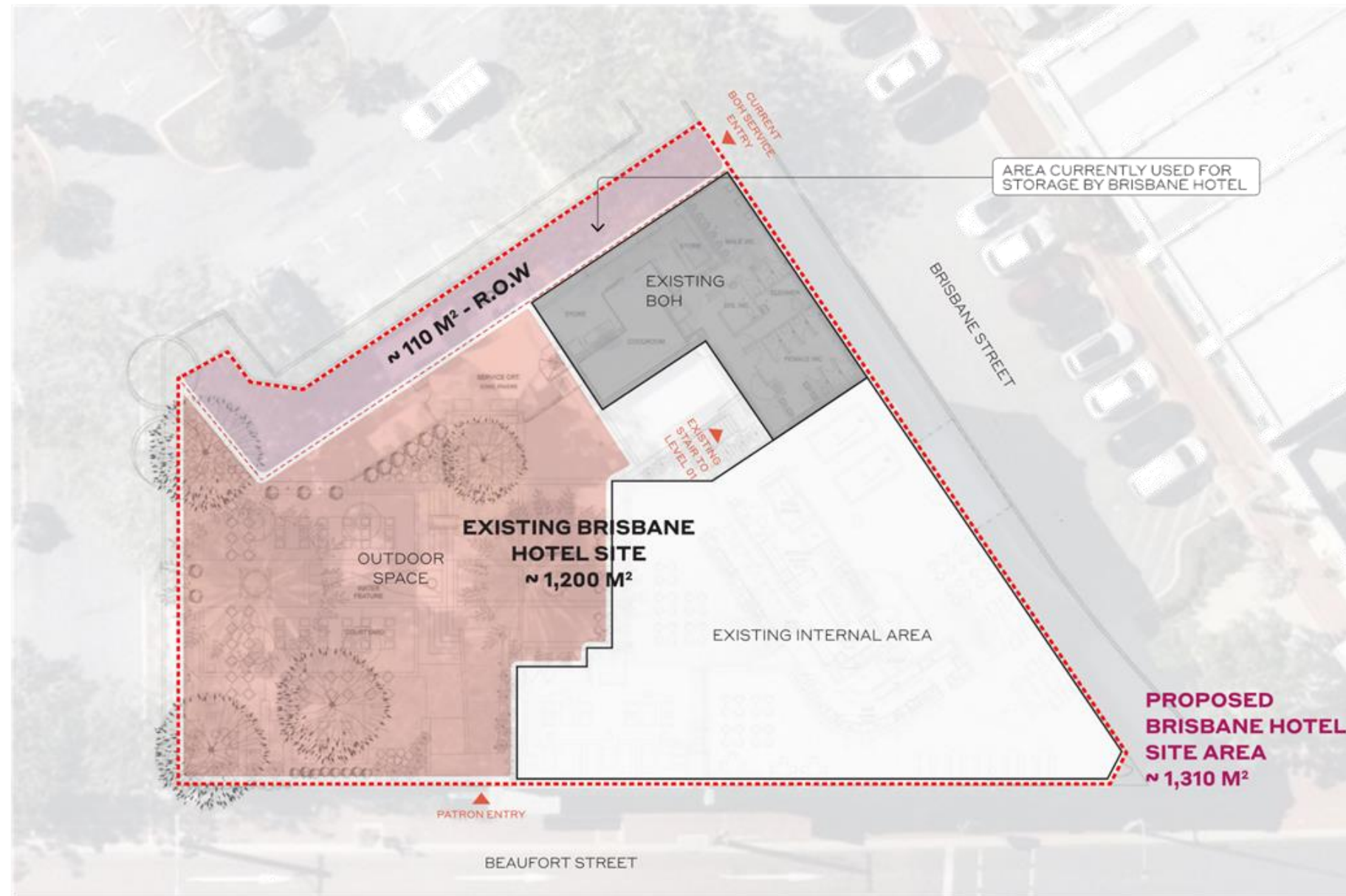


-  Brisbane Hotel
-  Currently occupied by the Brisbane Hotel
-  Owned by the "Town of Vincent"



### Site Area Option 01

Proposed Site Boundary Amendment to incorporate existing R.O.W





# Site Area Option 01

## Proposed Site Zoning

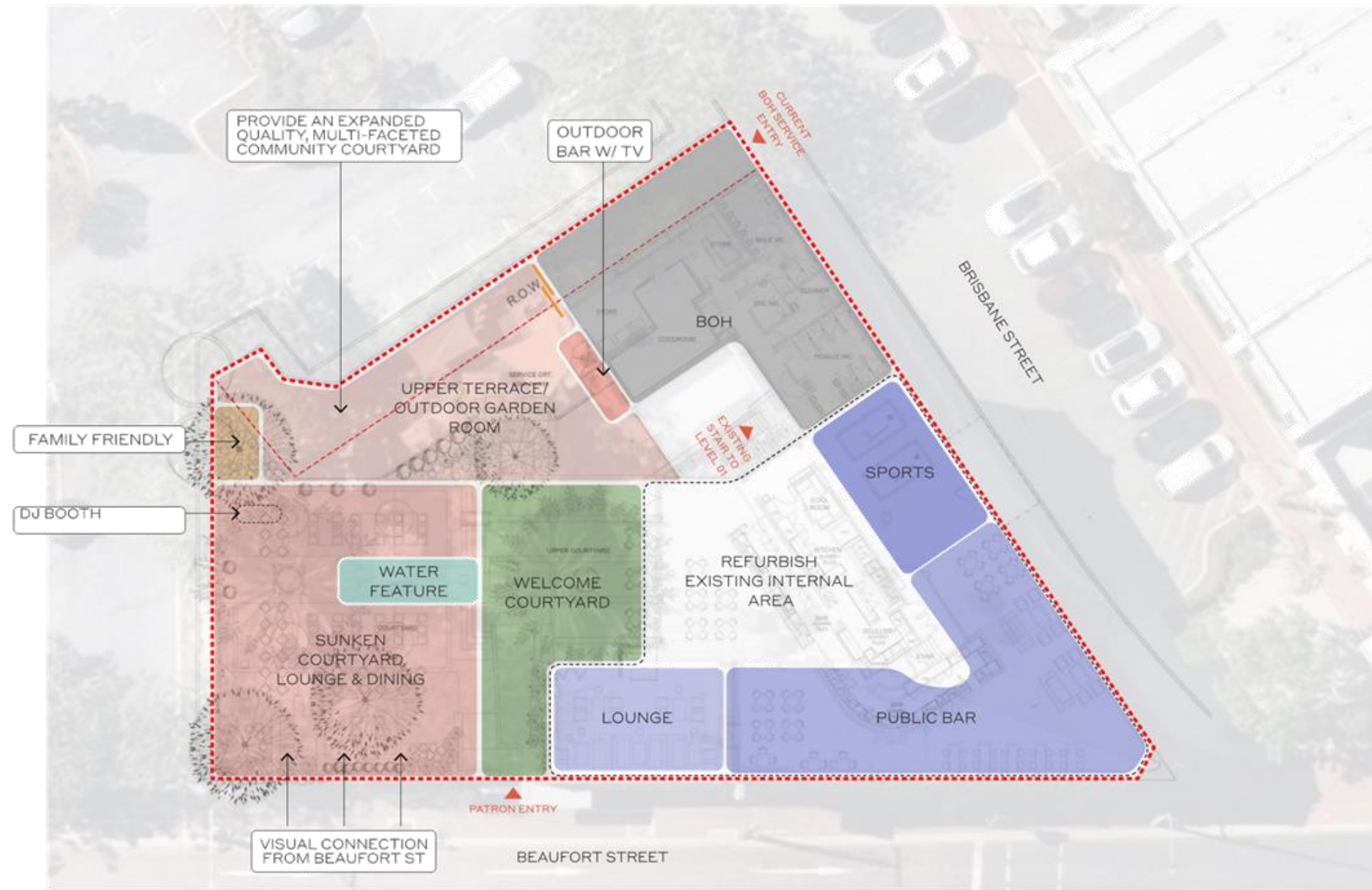
### The Brisbane Hotel Experience

#### New Outdoor Courtyard

- Welcoming & inclusive to appeal to a wider demographic
- Variety of trees and planting.
- Mix of weather protected areas and open to air areas.
- Selection of seating typology.
- Integrated landscape.
- Connect to interior spaces.
- Children's play area and space for activities.

#### Internal Bar

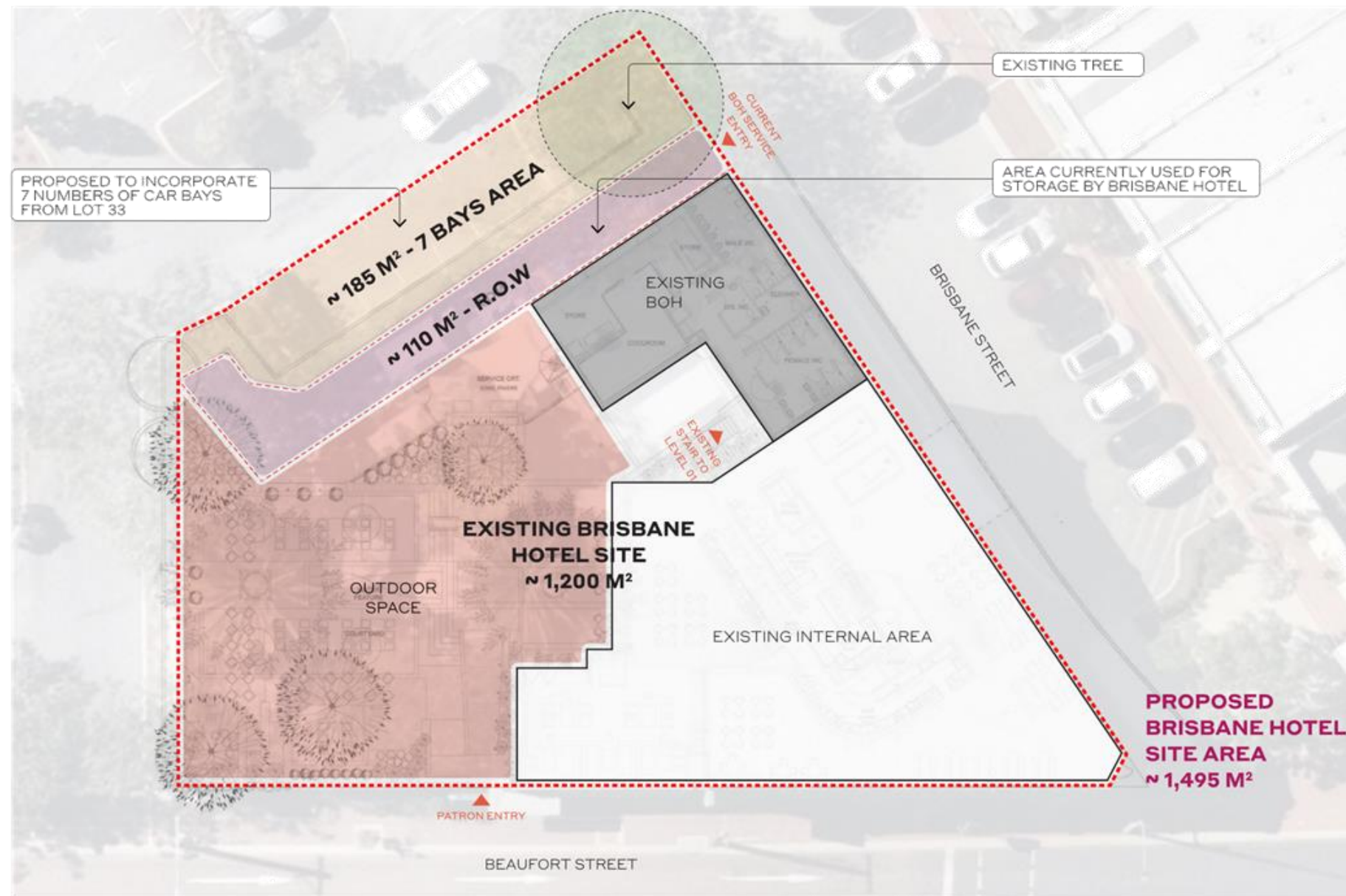
The interior hospitality experience will pay homage to the historical corner public house with a timeless, character filled renovation. The hotel will feature traditional Public Bar, Lounge and Sports experiences.





### Site Area Option 02

Proposed Site Boundary Amendment to incorporate existing R.O.W & 7no. of carbays and planters within Lot 33





## Site Area Option 02

### Proposed Site Zoning

#### The Brisbane Hotel Experience

##### New Outdoor Courtyard

- Welcoming & inclusive to appeal to a wider demographic
- Expanded trading zone with opportunity for carpark activation in the future
- Variety of trees and planting.
- Mix of weather protected areas and open to air areas.
- Selection of seating typology.
- Integrated landscape.
- Connect to interior spaces.
- Children's play area and space for activities.

##### Internal Bar

The interior hospitality experience will pay homage to the historical corner public house with a timeless, character filled renovation. The hotel will feature traditional Public Bar, Lounge and Sports experiences.

