
REPORT 3
(1215/52/IM)

DISPOSAL OF PART OF 11 VENNELL STREET

1. Purpose of Report

The purpose of this report is to obtain Council approval, pursuant to Section 40 of the Public Works Act 1981 (PWA), that part of the land at 11 Vennell Street (land) is no longer required for a public work purpose and to authorise Council officers to proceed with offer back investigations.

2. Recommendations

Officers recommend that the Committee:

1. *Receive the information.*
2. *Recommend that the Council, pursuant to Section 40 of the Public Works Act 1981:*
 - (a) *Agree that the following Council owned land is not required for a public work and is surplus to requirements:*
 - *Vacant land situated at 11 Vennell Street, Brooklyn, (Part Lot 2 DP 10260, Computerised Freehold Register WN434/142, approximately 1,046m²).*
 - (b) *Authorise Council officers to commission a Section 40 report from a suitably qualified consultant to identify whether the land must be offered back to the former owner or their successor in title, or whether an exemption from offer back applies.*
3. *Note that once the Section 40 report has been received, a further report will be provided to the Chief Executive Officer, under delegated authority, for approval to either offer the land back to the former owner/s or their successor/s in title, or to approve the exemption from offer back.*
4. *Authorise the Chief Executive Officer to carry out all further steps required to enable the disposal of the land either by way of offer back or sale on the open market, including negotiating and completing the terms of sale.*

5. *Agree that if the land is exempt from offer back or alternatively is subject to offer back but the former owner, or their successor in title does not accept the offer back, then the land shown as Part Lot 2 on Deposited Plan 10260 of approximately 1,046m² be rezoned from Open Space A to Residential (Outer).*
6. *Agree to include the rezoning in the next appropriate District Plan change.*

3. Background

On 7 August 2008, Council officers presented a report (refer to Appendix 1) to the Strategy and Policy Committee recommending that the Committee recommend to Council that pursuant to Section 40 of the PWA, part of the land at 11 Vennell Street (refer to area C in Appendix 1 - aerial photo) is no longer required for a public work purpose and to authorise Council officers to proceed with offer back investigations.

The Strategy and Policy Committee requested officers consult with the Vogelmorn Municipal Tennis Club and Vogelmorn Kingston Residents Association and report back to the Strategy and Policy Committee (refer to extract from Strategy and Policy Committee meeting Minutes Appendix 2).

4. Discussion

4.1 Consultation

A meeting was held on the 18 October 2008, with representatives from the Vogelmorn Kingston Residents Association, a past president and life member of the Vogelmorn Tennis Club, Vogelmorn Bowling Club and a nominee of Ridgway School, as these were the groups who may have an interest in the land.

Below are the key objections resulting from the meeting and letters from the consultation. A full file note of the meeting is attached in Appendix 3. This file note was distributed to everyone who attended the meeting, and is an agreed record of the meeting.

| Objections/Comments | Officers Comments |
|---|--|
| The land forms part of a precinct that has been used for recreational purposes for the community (as allowed for under its current zoning), the land should be retained for that use in the future. | Parks and Gardens have advised after analysis of the recreation facilities within the wider area, there is no requirement to retain this piece of land for recreational use. |
| The land provides an alternative emergency egress route for the club. | Officers confirm this is not a formal egress route for the club. |
| The land is used as a parking area when bowling and tennis tournaments are held which avoids congestion in Vennell and Mornington Streets. | The land is currently underutilised and officers do not believe retaining the land for tournament car parking is the best use of the land. |

| | |
|--|--|
| <p>Currently the land is a community asset specifically dedicated to recreation; and should be utilised for such. Ridgeway School has lost the use of its basketball/netball court. The area in question could be tar sealed and used by the School, Tennis Club, Hall and Bowling Club for parking when not in use.</p> | <p>Dave Martin (Executive Committee of Vogelmorn Kingston Residents Association and nominee of Ridgeway School) advised that the principal of Ridgeway School thought this would be beneficial to the community but acknowledged that it would have limited use to the school due to the distance from the school.</p> |
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Refer to Appendix 4 for full written objections from Vogelmorn Municipal Tennis Club and the Vogelmorn Bowling Club.

5. Conclusion

It is recommended that the Strategy and Policy Committee recommend to Council that, under Section 40 of the PWA, the Council owned vacant land at 11 Vennell Street is not required for a public work and is surplus to the Council's requirements. Council officers will then investigate whether any offer back obligations exist and proceed with the proposed subdivision.

A further report will then be presented to the Chief Executive Officer with a recommendation to either proceed with an offer back, or to agree that an exemption applies. If the exemption applies, officers will then proceed with the rezoning from Open Space to Outer Residential and dispose of the property on the open market.

Contact Officer: *Vanessa Whitwell, Property Advisor, Property Services*

Supporting Information

1) Strategic Fit / Strategic Outcome

In line with the Council's financial principals, assets that are declared surplus to strategic or operational requirements are sold.

2) LTCCP/Annual Plan reference and long term financial impact

Provision for undertaking this work is contained within the overall organisational budget.

3) Treaty of Waitangi considerations

Local Iwi have been approached about any possible Treaty of Waitangi implications and have confirmed they have no objection to the proposed disposal of the land.

4) Decision-Making

The report reflects the views and preferences of those with an interest in this matter who have been consulted with.

5) Consultation

a) General Consultation

All affected parties have been identified. Adjoining land occupiers on the balance of the land title have been consulted and objections and comments have been outlined in this report. Consultation with all of the Council's Business Units have been completed there have been no requirements to retain this area of land.

b) Consultation with Maori

Local Iwi have been approached and provided with this proposal for their comments and have no objection to the proposed sale.

6) Legal Implications

Any Sale and Purchase Agreements will be prepared by Council's Solicitors. A Solicitor's Certificate will be obtained before any documentation is signed.

7) Consistency with existing policy

This report recommends measures which are consistent with existing Wellington City Council policy, for the disposal of surplus property.

REPORT 6
(1215/52/IM)

DISPOSAL OF PART OF 11 VENNELL STREET

1. Purpose of Report

The purpose of this report is to seek Committee agreement to recommend to Council that pursuant to Section 40 of the Public Works Act 1981 (PWA), that part of the land at 11 Vennell Street (land) is no longer required for a public work purpose and to authorise Council officers to proceed with offer back investigations.

2. Executive Summary

The section of land known as 11 Vennell Street was acquired as part of a land exchange between the Education Board of the District of Wellington (Education Board) and Council in 1923. The exchange allowed the Board to construct a school on The Ridgeway site at Morningson.

The land was utilised as a Works Depot by the Council's CitiOps Business Unit until 2005. Council officers believe that the vacant part of land at 11 Vennell Street shown as area C in Appendix 1 is now surplus to the Council's operational requirements.

This report seeks Council approval to authorise Council officers to commission a Section 40 PWA report on the land.

The Chief Executive Officer has delegated authority to approve either, offer back of the property to the former owner or their successors in title, or to approve an exemption from offer back and investigate options for disposing of the land on the open market.

3. Recommendations

Officers recommend that the Committee:

1. *Receives the information.*
2. *Recommends that the Council, pursuant to Section 40 of the Public Works Act 1981:*
 - (b) *Agrees that the following Council owned land is not required for a public work and is surplus to requirements:*

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- *Vacant land situated at 11 Vennell Street, Brooklyn, (Part Lot 2 DP 10260, Computerised Freehold Register WN434/142, approximately 1,046m²)*
- (b) *Authorises Council officers to commission a Section 40 report from a suitably qualified consultant to identify whether the land must be offered back to the former owner or their successor in title, or whether an exemption from offer back applies.*
3. *Notes that once the Section 40 report has been received, a further report will be provided to the Chief Executive Officer, under delegated authority, for approval to either offer the land back to the former owners or their successors in title, or to approve the exemption from offer back.*
 4. *Recommends to Council to authorise the Chief Executive Officer to carry out all further steps required to enable the disposal of the land either by way of offer back or sale on the open market, including negotiating and completing the terms of sale.*
 5. *Agrees that if the land is exempt from offer back or alternatively is subject to offer back but the former owner, or their successor in title, does not accept the offer back, then the land shown as Part Lot 2 on Deposited Plan 10260 of approximately 1,046m² be rezoned from Open Space A to Residential (Outer).*
 7. *Requests that the Urban Development and Transport Directorate include the rezoning in the next convenient District Plan change for minor amendments and updating of the District Plan.*

4. Background

Council officers are proposing to declare the vacant land at 11 Vennell Street surplus to Council requirements. The Council's obligations under Section 40 of the PWA are outlined in Appendix 2.

The site at 11 Vennell Street (Part Lot 2 DP 10260, Computerised Freehold Register WN434/142) comprises of 2,897m² which there are three areas:

- Area "A" of 482m² which has the Vogelmorn Hall situated on it;
- Area "B" of 1,369m² which has a bowling green currently leased to the Vogelmorn Bowling Club; and
- Area "C" of 1,046m² which is vacant land.

The vacant land was previously held for a Works Depot by the Council's CitiOps Business Unit. It is a rectangular shaped section, approximately 1,046m² in area. The area is largely vacant apart from a small shed at street frontage. The front half of the land is level and rises towards the rear of the property. The rear half of the land is covered in scrub and also has a footpath providing an alternative pedestrian access to the Bowling Club. Parks and Gardens have confirmed that the site has no ecological value.

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The site is currently zoned Open Space A under the Operative Wellington City Council District Plan which provides for passive and active recreational activities only on the site.

It is proposed to subdivide off the Bowling Green, Hall and vacant area into separate lots to allow better management of the land and to allow the vacant land to be disposed of if declared surplus.

4.1 Acquisition History

The land comprised in Computer Freehold Register WN22/185 was owned originally by John Bacon until it transferred to the Education Board in 1891.

In 1921 the Education Board wrote to the Town Clerk requesting usage of the Council land on The Ridgeway in Mornington for the purpose of erecting temporary school buildings, as their current site was not going to be available to build on for some time. The Council granted permission to the Education Board's request.

There was further consideration for an exchange of land between the Education Board and the Council and in 1923, the Vennell Street land was exchanged for land at The Ridgeway.

5. Discussion

5.1 Consultation

The preliminary step in any potential disposal process is to undertake consultation with the Council's Business Units. This is to confirm that the property is no longer required for a public work or any other Council purpose to ensure that there are no special interests that need to be considered in the event of any sale. The Council's Business Units have been given the opportunity to demonstrate that this parcel of land will be needed for a public work within a reasonable timeframe. All Business Units have responded that the land in question is not required for any PWA purpose.

Capacity has indicated that the property situated at the rear of the vacant area being 9 Vennell Street is discharging its storm water onto the site. The layout of a private storm water drain will be required if the site is developed.

The Vogelmorn Bowling Club and the Vogelmorn Hall have been consulted in regards to the future subdivision and disposal of the vacant land and have no objections to the proposal. There is no statutory requirement for public consultation to be carried out in this matter.

5.2 Required Works

The next step is to seek a resolution by Council, under Section 40 of the PWA that the land is no longer required for a public work before investigating whether there is a need to offer back the property to any former owner or their successors in title.

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If the land is exempt from offer back or alternatively, is subject to offer back but the former owner or their successors in title do not wish to accept the offer back, the land will be sold on the open market.

In order for the land to be offered back to the previous owner or their successors in title, the land will need to be subdivided off from the main title. If the land is sold on the open market, it will also need to be rezoned from Open Space to Outer Residential which will allow the Council to maximise the value of the lot.

5.3 Disposal Process

1. Investigate and implement any Section 40 obligations the Council has.
2. Undertake subdivision of this lot and the creation of any necessary easements over the land.
(Note: steps 1 and 2 above will happen simultaneously).
3. Offer back the land to the former owner and/or heirs at current market value (if applicable).
4. Undertake rezoning to Outer Residential (if no offer back is required).
5. Decide on the best marketing methodology.
6. Engage Real Estate Agents.
7. Market Property.
8. Disposal to new owner.

6. Conclusion

It is recommended that the Strategy and Policy Committee recommend to Council that, under Section 40 of the PWA, the Council owned vacant land at 11 Vennell Street is not required for a public work and is surplus to the Council's requirements. Council officers will then investigate whether any offer back obligations exist and proceed with the proposed subdivision.

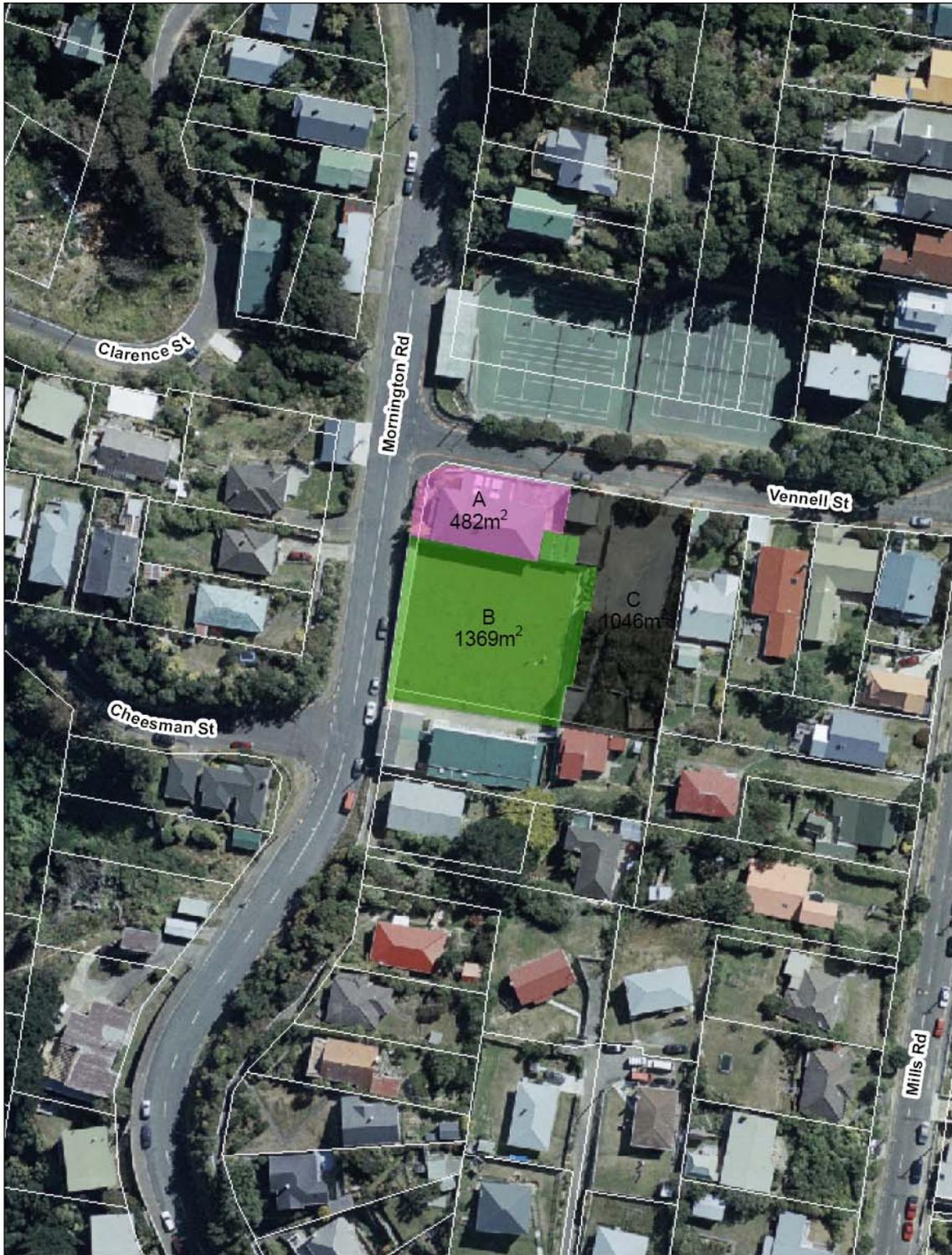
A further report will then be presented to the Chief Executive Officer with a recommendation to either proceed with an offer back, or to agree that an exemption applies. If the exemption applies, officers will then proceed with the rezoning from Open Space to Outer Residential and dispose of the property on the open market.

Contact Officer: *Hanita Shantilal, Property Advisor, Property Services*

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| Supporting Information |
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| <p>1) Strategic Fit / Strategic Outcome</p> <p><i>In line with the Council's financial principals, assets that are declared surplus to strategic or operational requirements are sold.</i></p> |
| <p>2) LTCCP/Annual Plan reference and long term financial impact</p> <p><i>Provision for undertaking this work is contained within the overall organisational budget.</i></p> |
| <p>3) Treaty of Waitangi considerations</p> <p><i>Local Iwi have been approached about any possible Treaty of Waitangi implications and have confirmed they have no objection to the proposed disposal of the land.</i></p> |
| <p>4) Decision-Making</p> <p><i>The report reflects the views and preferences of those with an interest in this matter who have been consulted with.</i></p> |
| <p>5) Consultation</p> <p>a) General Consultation</p> <p><i>All affected parties have been identified. Adjoining land occupiers on the balance of the land title have been consulted and have not raised any objections to the proposal. Consultation with all of the Council's Business Units have been completed there have been no requirements to retain this area of land.</i></p> <p>b) Consultation with Maori</p> <p><i>Local Iwi have been approached and provided with this proposal for their comments and have no objection to the proposed sale.</i></p> |
| <p>6) Legal Implications</p> <p><i>Any Sale and Purchase Agreements will be prepared by Council's Solicitors. A Solicitor's Certificate will be obtained before any documentation is signed.</i></p> |
| <p>7) Consistency with existing policy</p> <p><i>This report recommends measures which are consistent with existing Wellington City Council policy, for the disposal of surplus property.</i></p> |

APPENDIX 1



DATA STATEMENT
 Property boundaries Land Information NZ
 Licence WMS02/24/22 Crown Copyright reserved
 Accuracy in urban areas: +5.0m
 Accuracy in rural areas: +10.0m
 Topographic data Wellington City Council
 WCC copyright reserved Accuracy: +3.00m
 Colour Orthophotography 1:500 from March 06
 owned by WCC

- Area A - Vogelmom Hall
- Area B - Bowling green currently leased to Vogelmom Bowling Club
- Area C - Vacant land for possible disposal

11 Vennell St

1:1,000



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SECTION 40 OBLIGATIONS UNDER THE PUBLIC WORKS ACT 1981

S40 Obligations under The Public Works Act 1981

The Public Works Act 1981, and its predecessors, has played a large part in the development of New Zealand's infrastructure. It has enabled land to be acquired, either by agreement or by compulsion, for the construction of local or public works. The main intention of the Public Works Act 1981 regarding surplus land is that it must be offered for repurchase to the person from whom it was acquired, or the successor of that person, if it is not exempt under the grounds set out in the Act.

Section 40 of the Public Works Act 1981 deals with the disposal of land that is no longer required for the public work for which it is held, or any other public work.

Under section 40 Council is required to:

- (a) identify what land is subject to section 40;
- (b) determine when the offer-back obligations under section 40 are triggered;
- (c) investigate the circumstances surrounding the acquisition, use and characteristics of the land in order to determine whether any exceptions to the offer-back requirement apply as per section 40 (2); and
- (d) determine the appropriate course of action in relation to any affected land.

What Land is Subject to Section 40?

All land held by Council for any public work will be subject to section 40. The land need not have been acquired specifically for a public work nor does it need to be designated formally as such.

Local and public works are:

"Local work" means a work constructed or intended to be constructed by or under the control of a local authority, or for the time being under the control of a local authority:

"Public work" means every Government work or local work that the Crown or any local authority is authorised to construct, undertake, establish, manage, operate, or maintain. It also includes every use of land and anything else required directly or indirectly for any such Government work or local work or use, including those required by any Education Authority within the meaning of the Education Act 1964 and any university within the meaning of the Universities Act 1961 (abridged definition).

The purpose for which Council holds any particular land needs to be considered objectively.

When is an Offer-Back Triggered Under Section 40?

Council must proceed under section 40 when the pre-conditions in Section 40(1) are satisfied, namely when the land in question:

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- (a) is no longer required for the public work for which it is held; and
- (b) is not required for any other public work; and
- (c) is not required for any exchange under Section 105 of the Public Works Act 1981.

The Courts have not yet defined the phrase “required for any other public work”. However Council’s legal advisors have recommended that the Land Information New Zealand guideline be followed to interpret this requirement. Their interpretation is as follows:

- The land has been designated for another public work; or
- Written notification has been given of another public work requirement; and
- Council has demonstrated that there is an actual need for the land, or
- Council has demonstrated that the land will be used for the purpose, within a reasonable timeframe.

Council is legally obliged to follow the sales process with due expedition once it has established that the three pre-conditions in Section 40(1) have been satisfied. Having satisfied the above pre-conditions, Council is under a duty (subject to the discretion of Section 40(2) and 40(4)) to endeavour to sell the land back to the former owner or their successors, in a timely manner.

Exemptions to Offer-Back Requirements – Section 40(2) and (4)

Once the affected land has been declared surplus, a decision must be made as to whether or not the land must be offered back to its former owner(s) in accordance with section 40. This is a decision for Council and must be made after suitably qualified agents have made full investigations.

Land can be exempted from an offer-back where:

- it would be impracticable, unreasonable or unfair to do so; or
- there has been a significant change in the character of the land for the purposes of, or in connection with, the public work for which it was acquired or held; or
- it is believed on reasonable grounds that, because of the size, shape or situation of the land that it could not be expected to be sold to any person who did not own land adjacent to the land being sold. Hence the land may be sold to an adjoining owner.

Sale of Land

If a property is not exempt under section 40(2) or (4), the property must be offered back to the previous owner(s) or their successors as per section 40(2). This may require further investigation to locate the appropriate person(s) for the offer-back to occur. Once the offer-back is made, the offeree has a certain amount of time to accept the offer.

Where an offer under Section 40(2) is not accepted within the timeframe or is declined outright, or where an exemption to offer-back applies, the land may be sold to the owner of adjacent land, or by public auction, public tender or by private treaty.

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Wellington City Council
Te Kaunihera O Poneke

EXTRACT OF MINUTES STRATEGY AND POLICY COMMITTEE

MEETING OF THURSDAY 7 AUGUST 2008

210/08P **DISPOSAL OF PART OF 11 VENNELL STREET**
Report of Hanita Shantilal – Property Adviser, Property and Parking
Services.
(1215/52/IM) (REPORT 6)

Moved Councillor Morrison, seconded Councillor Gill the substantive motion.

(Councillor Ritchie left the meeting at 1.09pm.)

Moved Councillor Wade-Brown, seconded Councillor Pepperell the following amendment:

Replace recommendations 2 to 6 as follows:

“THAT the Strategy and Policy Committee:

2. Request officers to consult the Vogelmorn Tennis Club and Kingston Vogelmorn Residents Association and report back to the Strategy and Policy Committee.”

The amendment was put and declared CARRIED.

RESOLVED:

THAT the Strategy and Policy Committee:

1. *Receives the information.*
2. ***Request officers to consult the Vogelmorn Tennis Club and Kingston Vogelmorn Residents Association and report back to the Strategy and Policy Committee.***

NOTED:

The resolutions differ from the recommendations in the officer’s report as follows:

The Committee added the text in **bold**.

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File Note – Meeting regarding the possible disposal of vacant land at 11 Vennell Street, Brooklyn

Date – 18 October 2008

Attendees –

Bernie Harris, Secretary of Vogelmorn Kingston Residents Association (BH)

Colin Frampton, past president & life member of Vogelmorn Tennis Club (CF)

John Blakely, President of Vogelmorn Bowling Club (JB)

Paul Burgess, Secretary of Vogelmorn Bowling Club (PB)

Dave Martin, Executive Committee of Vogelmorn Kingston Residents Association & nominee of Ridgway School (DM)

Mike Scott, Manager, Property Services (MS)

Hanita Shantilal, Property Advisor, Property Projects (HS)

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- BH advised that the Community were quite shocked to hear that the Council were considering disposing of this land when members of the Community had been waiting for something to be done with the land. BH wanted to know why they could not continue using it as they had been for years and considering they are leasing a lot of the adjoining land from the Council.
 - DM advised that he had spoken to the Principal of Ridgway School about this land and that she was in favour of the land being used as a recreational / sporting area. DM advised that the Principal thought this would be beneficial to the community but acknowledged that it would have limited use to the school due the distance and use. The principal is also prepared to put her views in writing. MS acknowledged that she should do so.
 - JB advised that 20 years ago when there were many Vogelmorn Bowling Club members, the land was used as a car park and entrance for those who parked there. MS asked how many members the club now have. JB advised that they now only have 14 registered members but they hold quite a few functions at the club that many people attend and that is when there is a clutter of cars everywhere.
 - It was mentioned that there was a proposal, by the Bowling Club, put to the Council many years ago to acquire the land but the Council turned it down.
 - JB mentioned that in the event of a fire, they have two forms of egress and these two forms of egress would be compromised when the most likely place for a fire to start would be in the kitchen area. Therefore, they would rely on the exit out to the vacant land at 11 Vennell Street but would not be able to do so if it was in private ownership. HS pointed out that JB had implied that this third fire egress onto the vacant land at 11 Vennell Street was a formal fire egress and asked if this was the case and if so, whether he had any papers to prove this. JB said he would see if he could find anything. MS said it wouldn't be a formal fire egress.

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- CF commented that it was a clear piece of land and that in the past, members of the Tennis Club used it as a shortcut from the Tennis Club to the Bowling Club to make use of the bar facilities as the Tennis Club did not have one. CF commented on the fact that the public had been using this land for years now and acknowledged that there was a period of time where Citiops were using the land. CF said that the land had predominantly been used as a car park for the Tennis Club.
- MS advised that HS would be taking another paper up to Council regarding their perspectives on the disposal of this land.
- MS went through the process that Council officers go through before taking a report to Committee to declare any Council owned land surplus. For example, consult with internal Business Units to see if anyone else within the Council needs the land for a public work purpose.
- CF mentioned that there are four schools' within the area (Ridgway, Brooklyn, Montessori and St Bernard's) and that if this land was made into a netball court, they would use it and mentioned that if the land was put to good use, and it would be used.
- MS advised that at this point, officers had made a call and that was that they believed the land should be sold and that it was now up to Council to make the final call. MS acknowledged that BH has asked for us to obtain comments from the Community on this possible sale and that we will put these comments up to Council. MS mentioned that the land was not suitable for a park as is and asked whether the Community had a vision for the land.
- BH talked about how the community had historically done a lot of fundraising and also did the work themselves on community projects.
- BH suggested that the land was perfect to have a volley wall for tennis and then said the land would need to be sealed and could be used for parking as well.
- BH advised that a working bee would do the work if the land was available to the Community to use. This work would be paid for by the Community not the Council but the Council would retain ownership of the land.
- BH made comments in regards to the fact that not much work had been done in the Vogelmorn area by the Council for a long time (40 years). He mentioned that there was one reserve owned by the Council in the area which is used for sports and has had no attention in the last 30 years. BH later advised by email that this reserve is used for winter sports by the Council but belongs to the Education Department.
- DM mentioned that it would be good for the land to be used for a few different activities/sports and some provision for parking.
- BH mentioned that there were 120 children at the tennis club and sometimes more when they had an interclub (both senior and junior clubs) meet.

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- MS said that officers would take the communities comments back to Councillors.
- BH said that now that the Community know that the land is surplus to the Council's requirement, they can look at the land in another light.
- There was discussion around the community providing a proposal for the land to Councillors. MS said that they were best to speak with the Councillors in regards to this.
- PB asked what the value of the land was. MS advised that no valuation had been obtained yet but thought the land maybe worth up to \$350,000.
- PB asked that if the land was put up for sale, could they have the first option to purchase. MS explained that the Council have a process that precludes the ability to negotiate with an individual but rather the Council has to put a property such as this on the open market.
- Meeting concluded with BH acknowledging that they would be in direct contact with Councillors to ask if they would like a proposal to be put forward by residents as to possible uses of the land.

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