

ITEM 7

**PROPOSED CLASSIFICATION OF RECENTLY ACQUIRED WOLLONGONG CEMETERY LAND - LOT 4 SECTION 38 DP 759104 KENNY STREET, WOLLONGONG**

Council at its meeting of 24 February 2020 resolved to acquire Lot 4 Section 38 DP 759104 from the Anglican Church Property Trust Diocese of Sydney ("Anglican Church Trust") for the nominal consideration of \$10.00. This report is submitted to Council to seek approval to classify Lot 4 Section 38 DP 759104 as Operational Land.

**RECOMMENDATION**

- 1 Following acquisition pursuant to Council resolution dated 24 February 2020, Lot 4 Section 38 DP 759104 be classified as Operational Land in accordance with Section 31 of the Local Government Act 1993.
- 2 Council grant authority for the use of the Common Seal of Council on all documents relevant to this matter, should it be required to give effect to this resolution.

**REPORT AUTHORISATIONS**

Report of: Lucielle Power, Manager Property + Recreation  
 Authorised by: Kerry Hunt, Director Community Services - Creative and Innovative City

**ATTACHMENTS**

- 1 Extract of Council Business Paper 24 February 2020 - Item 4
- 2 Extract of Council Minutes 24 February 2020 - Item 4

**BACKGROUND**

Wollongong Cemetery incorporates the following lots:

- Lots 1-5, 7-20 Section 38 DP 759104
- Part Lot 5, Part Lot 9 Section 38 Crown Plan 961-330
- Lot 54, 55-56 DP 751299
- Lot 7025 Crown DP 1026284.

Wollongong Cemetery was placed under the trust management of Council in October 1957 and Council has been maintaining the whole of the cemetery since that date. All of the land that comprises the Wollongong Cemetery is Crown Land devolved to Council except for the middle portion being Lot 4 Section 38 DP 759104 which was vested in the Anglican Church Trust.

Council at its meeting of 24 February 2020 resolved to acquire Lot 4 Section 38 DP 759104 from the Anglican Church Trust for the nominal consideration of \$10.00. The 24 February 2020 resolution did not make any reference to how the land would be classified following acquisition.

The acquisition of Lot 4 Section 38 DP 759104 settled on 4 June 2020. Section 31 of the Local Government Act 1993 provides that a Council may resolve to classify land as either Operational or Community within three months after it acquires the land otherwise the land defaults to be classified as Community land.

The other cemeteries in the Wollongong Local Government Area are classified as follows:

Description	Classification
Wollongong Lawn Cemetery – Wyllie Road, Kembla Grange	Operational Land
Bulli Cemetery – Carrington Street, Bulli	Crown land devolved to Council

Description	Classification
Scarborough Cemetery – Lawrence Hargrave Drive, Wombarra	Crown land devolved to Council
Helensburgh Cemetery – Cemetery Road, Helensburgh	Crown land devolved to Council
Wollongong Memorial Gardens - 176 Berkeley Road, Unanderra	Operational land

The acquisition of Lot 4 Section 38 DP 759104 has not and will not result in any changes to the operation and management of the Wollongong Cemetery.

The classification of Lot 4 Section 38 DP 759104 as Operational land will allow operational flexibility and will ensure its classification is consistent with the other cemeteries in the Wollongong Local Government Area.

## PROPOSAL

It is proposed that Council classify Lot 4 Section 38 DP 759104 as Operational Land.

## CONSULTATION AND COMMUNICATION

Property and Recreation Division.

## PLANNING AND POLICY IMPACT

This report contributes to the delivery of Wollongong 2028 goal 1 “We value and protect our environment”.

It specifically delivers on core business activities as detailed in the Property Services Service Plan 2020-21.

## CONCLUSION

The classification of Lot 4 Section 38 DP 759104 as Operational land will allow operational flexibility and will ensure its classification is consistent with the other cemeteries in the Wollongong Local Government Area.

ITEM 4

PROPOSED ACQUISITION OF LOT 4 SECTION 38 DP 759104, KENNY STREET, WOLLONGONG

This report seeks Council's authority to proceed with the acquisition of land adjoining the Wollongong Cemetery for nominal consideration.

All the land that comprises the Wollongong Cemetery on Kenny Street, Wollongong is Crown Land devolved to Council aside from the middle portion being Lot 4 Section 38 DP 759104 which is vested in the Anglican Church Property Trust Diocese of Sydney ("Anglican Church Trust"). The Anglican Church Trust has proposed a transfer of Lot 4 Section 38 DP 759104 to Council for nominal consideration.

RECOMMENDATION

- 1 Council authorise the acquisition of Lot 4 Section 38 in DP 759104, as shown attached and subject to the following conditions:
  - a Purchase price of \$10.00 (plus GST)
  - b Each party be responsible for their own legal costs.
- 2 Council grant authority for the use of the Common Seal of Council on all documents relevant to this matter, should it be required to give effect to this resolution.

REPORT AUTHORISATIONS

Report of: Lucielle Power, Manager Property + Recreation (Acting)

Authorised by: Kerry Hunt, Director Community Services - Creative and Innovative City

ATTACHMENTS

- 1 Business paper map acquisition of Lot 4 Sec 38 DP 759104
- 2 Business paper satellite map acquisition of Lot 4 Sec 38 DP 759104
- 3 Business paper map devolved Crown land surrounding Lot 4 Sec 38 DP 759104

BACKGROUND

Wollongong Cemetery incorporates the following lots:

- Lots 1-5, 7-20 Sec 38 DP 759104
- Part Lot 5, Part Lot 9 Sec 38 Crown Plan 961-330
- Lot 54, 55-56 DP 751299
- Lot 7025 Crown DP 1026284.

Wollongong Cemetery was placed under the trust management of Council in October 1957 and Council has been maintaining the whole of the cemetery since that date.

All the land that comprises the Wollongong Cemetery is Crown Land devolved to Council except for the middle portion being Lot 4 Section 38 DP 759104 which is vested in the Anglican Church Trust.

On 9 June 2017 Council received correspondence from the Parish Council of St Michael's Anglican Church Wollongong ("Anglican Church Wollongong") noting that it has not had any interest in or control of the land since Council commenced management of the cemetery and requesting that Council accept a transfer of the land.

On 14 June 2017 Council wrote to Crown Lands seeking approval to the transfer and seeking advice as to the correct procedure for the transfer. On 2 August 2017 Crown Lands responded that an investigation would be required to determine the correct transfer procedure.

On 6 July 2018 Council received correspondence from Cemeteries & Crematoria NSW advising that even though the land is dedicated under the *Crown Lands Management Act 2016* it cannot be dealt with under that Act, as land granted to a church on trust is not held on behalf of the Crown but rather it is held by the trustees for the purposes of the grant. Cemeteries & Crematoria NSW further advised that the applicable law for the purpose of the transfer is the *Anglican Church of Australia Trust Property Act 1917*.

Legal advice is that Council is under no obligation to accept the transfer but may choose to do so as a strategic decision. It is noted that the subject land forms the central spine of the overall Wollongong Cemetery for which Council holds all records and has been maintaining for many years. It is further noted that the acquisition of the subject land would not result in any changes operationally.

On 6 August 2018 the Anglican Church Wollongong was advised that Council would accept a transfer of the land subject to Council resolution and provided the transfer was effected at no cost to Council.

On 30 October 2019 the Anglican Church Trust confirmed that its board had resolved to transfer the land to Council for nominal consideration.

### PROPOSAL

It is proposed that Council acquire Lot 4 Section 38 DP 759104 in line with the conditions outlined in this report.

### CONSULTATION AND COMMUNICATION

- Anglican Church Property Trust Diocese of Sydney
- Parish Council of St Michaels Anglican Church Wollongong
- Property & Recreation Division
- Legal Services
- Crown Lands.

### PLANNING AND POLICY IMPACT

This acquisition is in accordance with Council's policy "Land and Easement Acquisition and Disposal".

This report contributes to the delivery of the Community Objective objectives 5.1 "There is an increase in the health and wellbeing of our community" and objective 5.5 "The public domain is maintained to a high standard under our Wollongong 2028 goal 5 "We have a healthy community in a liveable city".

It specifically delivers on core business activities as detailed in the Property Services Service Plan 2019-20.

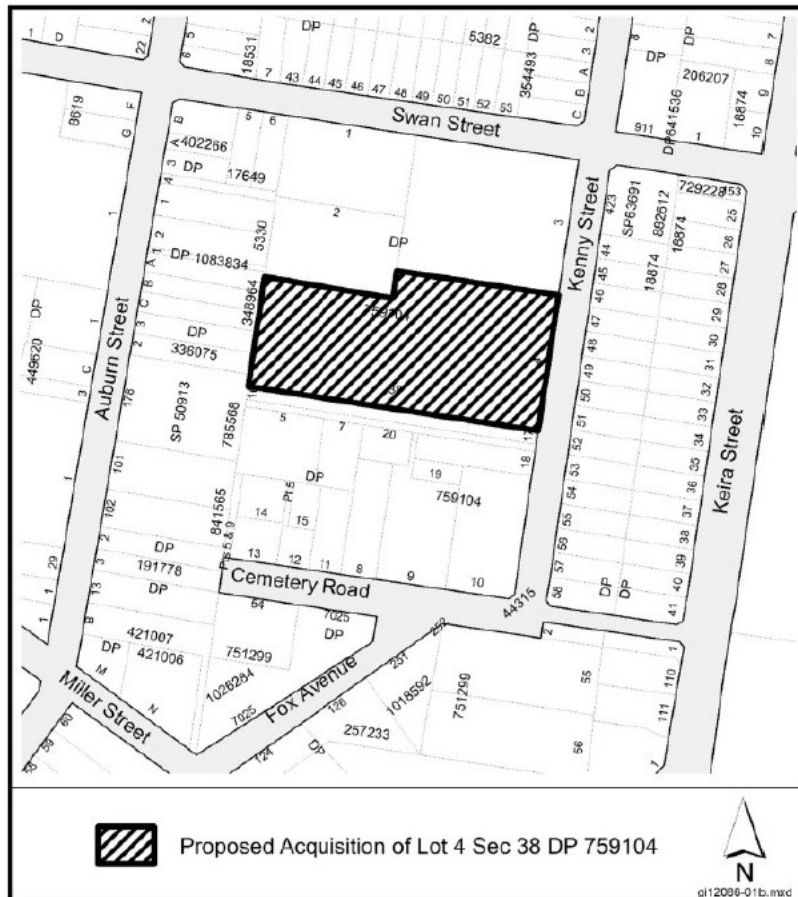
### FINANCIAL IMPLICATIONS

Lot 4 Section 38 DP 759104 will be transferred to Council for the nominal sum of \$10.00 (plus GST).

Given that Council already manages and maintains Lot 4 Section 38 in DP 759104 as part of the cemetery as a whole, there are no other financial implications associated with the acquisition.

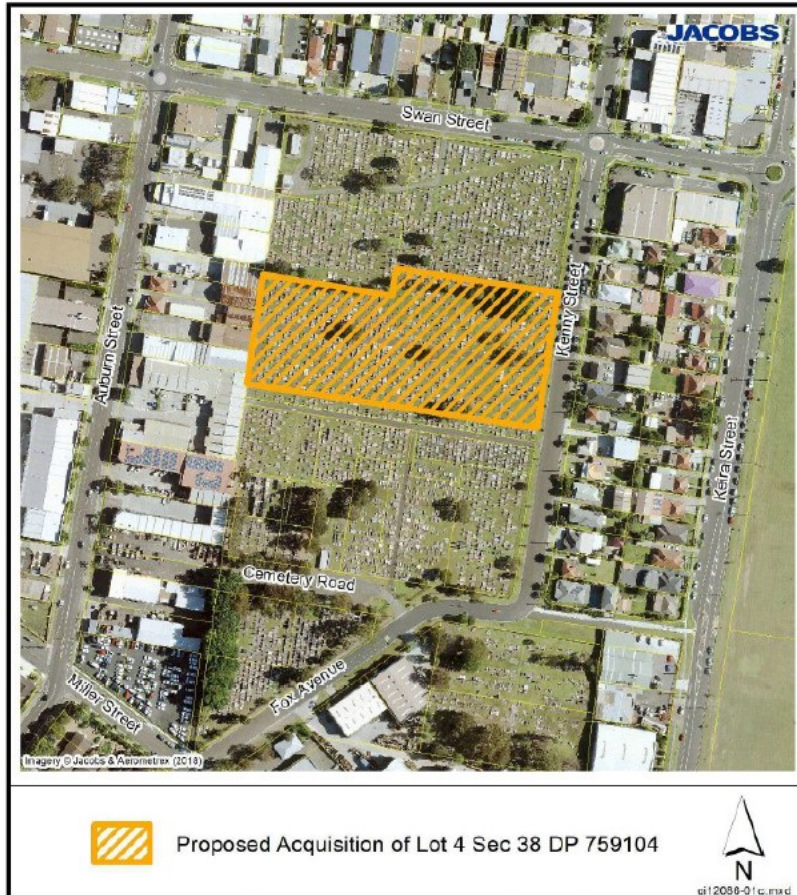
### CONCLUSION

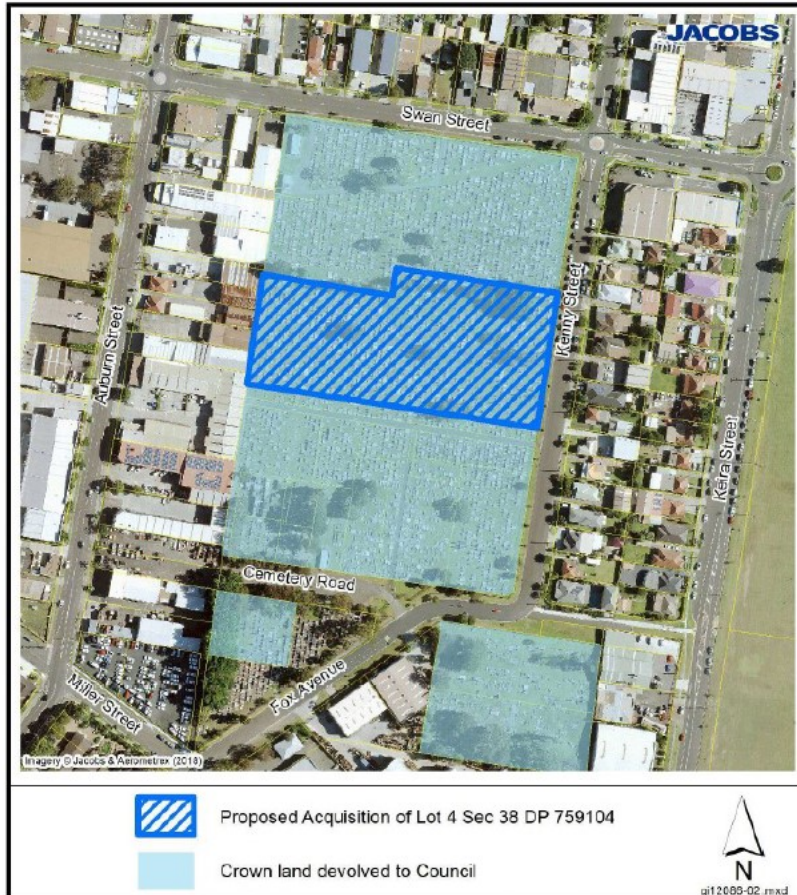
Council has been maintaining the entirety of the Wollongong Cemetery since 1957. Acquiring Lot 4 Section 38 DP 759104 will allow Council to formalise its ownership of all the land which comprises the Wollongong Cemetery without resulting in any additional maintenance or operational burden.



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**ITEM 4 - PROPOSED ACQUISITION OF LOT 4 SECTION 38 DP 759104, KENNY STREET, WOLLONGONG**

The following staff recommendation was adopted as part of the Block Adoption of Items (refer Minute Number 346).

**COUNCIL'S RESOLUTION** - RESOLVED UNANIMOUSLY on the motion of Councillor D Brown seconded Councillor Figliomeni that -

- 1 Council authorise the acquisition of Lot 4 Section 38 in DP 759104, as shown attached and subject to the following conditions:
  - a Purchase price of \$10.00 (plus GST)
  - b Each party be responsible for their own legal costs.
- 2 Council grant authority for the use of the Common Seal of Council on all documents relevant to this matter, should it be required to give effect to this resolution.