

ITEM 5

PROPOSED COMPULSORY ACQUISITION - PROPOSED LOT 11 DP 1242770 -
DEPARTMENT OF EDUCATION - REAR OF DAPTO HIGH SCHOOL

The West Dapto Access Strategy is a major project being managed by Council. Currently, Council is progressing Stages 2 and 3 of the Fowlers Road to Fairwater Drive link which forms an integral part of the Strategy. Council has resolved to acquire a number of properties in the vicinity of the road and bridge works in recent months to enable the construction of the road widening associated with the new Fowlers Road and Princes Highway intersection.

The acquisition of the area the subject of this report relates to the bridge works affecting the land to the rear of Dapto High School.

RECOMMENDATION

- 1 Council continue to negotiate with the Department of Education and, if agreement is reached to proceed with the land acquisition via Transfer, agree to be bound by the Valuer General's determination for compensation for the acquisition of proposed Lot 11 DP 1242770, being Part Lot 1 DP 81501.
- 2 In the event acquisition by Transfer is not approved by the Department of Education, Council acquire proposed Lot 11 DP 1242770, being part Lot 1 DP 81501, by compulsory process pursuant to the *Land Acquisition (Just Terms Compensation) Act 1991* by authority contained in the *Roads Act 1993* for the purpose of a road.
- 3 The minerals be excluded from this acquisition.
- 4 This acquisition is not for the purpose of resale.
- 5 The necessary applications relating to the compulsory acquisition including compensation determination be made to the Minister for Local Government and the Governor.
- 6 Council seek priority processing of the application through the Office of Local Government, due to the state significance of the infrastructure and to avoid undue delays.
- 7 Upon acquisition, Council dedicate proposed Lot 11 DP 1242770 as a road, pursuant to Section 10 of the *Roads Act 1993*.
- 8 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 Proposed Lot 11 DP 1242770 - Rear of Dapto High School

BACKGROUND

Council has been actively implementing the West Dapto Access Strategy for a number of years. Currently Council is constructing the Fowlers Road to Fairwater Drive link which forms part of this strategy. This stage of the project has been in the construction phase since August 2018 and affects the airspace above Mullet Creek known as proposed Lot 13 DP 1242770, the rear of Dapto High School, being proposed Lot 11 DP 1242770 as well as the airspace above the railway line. To be constructed within proposed Lot 11 is a four lane bridge span which, upon completion, will provide improved access to West Dapto.

The land at the rear of Dapto High School is owned by the Department of Education (DoE). In 2017 the Principal for Dapto High School, on behalf of the DoE, entered into an agreement which allowed Council

to enter land and undertake public works which has permitted the construction of the bridge to commence whilst the acquisition of the land is finalised.

Negotiations for the acquisition of the subject land have been ongoing since mid 2018. During this time, DoE had agreed to proceed by way of transfer, however, a number of months into the acquisition process, new advice was received confirming that due to internal processes, DoE was unable to transfer or sell the land to Council outside of the compulsory acquisition process. This is due to the land not being considered surplus to requirements. Despite this advice, a request has been made to DoE to seek Ministerial consent to agree to the disposal of the land by transfer with both parties to be bound by the value to be determined by the Valuer General to avoid the need to proceed by compulsory acquisition. DoE has agreed to seek Ministerial approval to the disposal of the land, however cannot guarantee that Ministerial consent will be provided. In the event Ministerial consent is not obtained by DoE to proceed via transfer, the acquisition will proceed by way of compulsory acquisition. This report seeks to obtain Council's approval to proceed with the acquisition by either land transfer or compulsory acquisition, dependent on DoE obtaining the required approvals.

Prior to DoE agreeing to seek Ministerial consent to proceed by way of transfer, DoE had originally suggested proceeding by compulsory acquisition pursuant to Section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991*. By proceeding in this way, this removes the statutory waiting period requirement, thereby reducing the acquisition timeframe by four months. However, to proceed pursuant to Section 30 compensation for the acquisition must be agreed upon between the parties prior to the application being made to the Office of Local Government.

Council obtained a market valuation report from an independent registered valuer, who assessed compensation at \$20,000 plus disturbance. DoE obtained a valuation report, which assessed compensation at \$200,000 plus disturbance. Due to the significant difference between the valuations and as per normal practice, each valuer agreed to attempt to come to an agreed value. Unfortunately, the attempt to agree on a compensation assessment was unsuccessful. Upon review, Council's valuer amended its position with a compensation assessment of \$44,000 plus disturbance, utilising a different agreed valuation approach. DoE's appointed valuer sought to utilise the Valuer General's land value assessment for the acquisition area, which reduced the compensation assessment from \$200,000 to \$91,885 plus disturbance. Council's valuer could not recommend this approach, stating that the Valuer General's land values are assessed on a mass valuation basis which may not take into account potential issues with the subject land. Council's valuer held reservations due to the land's bushfire and high-risk flood zoning, which would have prevented habitable development. Habitable development formed the basis of DoE's valuer's compensation assessment. It is expected that the Valuer General's determination will fall within the range identified by both valuers.

Due to the impasse in negotiations, both Council and DoE agreed to seek a compensation determination from the Valuer General and be bound by the determination. This would allow an application to be made to the Office of Local Government to obtain Ministerial and Governor Approval to the compulsory acquisition, with agreement. Unfortunately, DoE has not provided the Valuer General with requested confirmation that they will agree to be bound by the determination made. This, at the time of writing, has not yet been provided by DoE.

Given the lengthy delay in negotiations, a further urgent request was put before DoE, at which time DoE agreed to seek the Ministerial consent, as mentioned previously. This process remains underway.

PROPOSAL

Council acquire for road purposes proposed Lot 11 DP 1242270, being Part Lot 1 DP 81501 either by transfer or compulsory process, with the Valuer General being appointed to determine the compensation payable to DoE. Following acquisition, proposed Lot 11 DP 1242270 be dedicated as public road pursuant to s. 10 of the *Roads Act 1993*.

CONSULTATION AND COMMUNICATION

Extensive community consultation has taken place in conjunction with the major project of which this acquisition forms part, including: a West Dapto Access Strategy billboard, newsletters, artist

impressions, 3D fly through video, variable messaging signs, displays and information packs. In addition to the communication methods listed above, numerous feedback opportunities were afforded to the community. This comprised of a range of engagement activities to target stakeholders including presentations, phone calls, door knocks, individual meetings, an on-site kiosk, a community information session and a pop up information stall. A comprehensive engagement report has been prepared and published by Council outlining in extensive detail the consultation and communication undertaken on the West Dapto Access Strategy project.

Council has a dedicated website which provides up-to-date information on the progress of the project as well as Frequently Asked Questions, plans and videos specifically relating to the Fowlers Road to Fairwater Drive link project, which forms part of the overall West Dapto Access Strategy.

A Land Status Report has been received from Info Track, confirming that native title has been extinguished over the subject land, pursuant to a Previous Exclusive Possession Act, being the grant of freehold land. This allows the DoE to proceed by transfer, provided Ministerial consent is obtained.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong 2028 goal “We have affordable and accessible transport”.

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

FINANCIAL IMPLICATIONS

The compensation payable to DoE is to be determined by the Valuer General. Due to the significant difference in the valuation reports already sought, it is difficult to estimate the possible determination amount; however it is expected to fall within the range identified by both valuers. In any event, Council will be bound to pay the DoE just compensation as determined by the *Land Acquisition (Just Terms Compensation) Act 1991*. Such compensation will include the market value of the ‘land’, plus all reasonable legal and valuation costs again as determined by the Valuer General. It is estimated the cost of the Valuer General’s report will be in the order of \$6,000.

The funding for all costs associated with the acquisition will be via the 2019-2020 Capital Budget (B281319).

CONCLUSION

As the acquisition of the subject land forms an integral part of the Fowlers Road to Fairwater Drive extension project, it is recommended Council resolve as recommended.

