

ITEM 4

PROPOSED ACQUISITION OF EASEMENTS FOR BATTER AND ACCESS OVER LOT 1 DP 628538, NO 351 FARMBOROUGH ROAD, FARMBOROUGH HEIGHTS TO FACILITATE PROJECT AT WHYTES GULLY

Through the construction of future landfill cells, a low point will be created in the north-eastern section of the Wollongong Waste and Resource Recovery Park (Whytes Gully). To address this issue of inadequate stormwater drainage, Council is undertaking the Eastern Gully Stormwater Diversion project (the Project) which involves construction of a channel and batter to divert stormwater away from the low point.

Council also needs to acquire an easement for access over a portion of 351 Farmborough Road to facilitate maintenance and general operations at Whytes Gully.

Subject to Council resolution, agreement has been reached with the owners of 351 Farmborough Road to acquire the easements over their property. This report seeks approval to the acquisitions.

### RECOMMENDATION

- 1 Council acquire an easement for batter and an easement for access over the portion of Lot 1 DP 628538, No 351 Farmborough Road, Farmborough Heights as shown on the attachments to this report.
- 2 Council pay compensation to owners of Lot 1 DP 628538, No 351 Farmborough Road, Farmborough Heights in the amount of \$31,900.00 including GST.
- 3 Council be responsible for all costs relating to the easement acquisitions including valuation, survey, plan registration and legal costs.
- 4 Council be responsible for all disturbance costs as per section 59 of the *Land Acquisition (Just Terms Compensation) Act 1991* including the landowner's reasonable valuation and legal costs.
- 5 The Lord Mayor and General Manager be granted authority to affix the Common Seal of Council to the survey plan, Section 88B Instrument and any other documentation required to give effect to this resolution.

### REPORT AUTHORISATIONS

Report of: Blake Lampert, Property Services Manager (Acting)

Authorised by: Lucielle Power, Director Community Services - Creative and Innovative City (Acting)

### ATTACHMENTS

- 1 Easements proposed to be acquired over 351 Farmborough Road

### BACKGROUND

#### The Project

Council is undertaking the delivery of the Project in relation to stormwater management at Whytes Gully. The Project is essential for the management of stormwater in accordance with the project approvals and licence conditions. It is critical for the construction and operation of successive landfill cells at the site. The Project involves, amongst other things, excavating and filling certain areas of land and constructing a batter so that stormwater is diverted appropriately and does not pool in areas of active waste placement or existing areas where waste is buried.

The construction of a batter alleviates a substantial geometric constraint, allowing Council to develop a gravity-drained, open channel design that will significantly reduce waste exhumation and improve the safety of permanent structures on the site.

Part of the batter will need to be constructed in the adjoining private land known as Lot 1 DP 628538, No 351 Farmborough Road, Farmborough Heights (351 Farmborough Road). In order to facilitate construction of the batter Council needs to acquire an easement for batter over a portion of 351 Farmborough Road.

### **Easement for batter**

To facilitate the delivery of the Project at Whytes Gully, Council requires an easement for batter over a portion of 351 Farmborough Road. The proposed easement area is 5,742m<sup>2</sup>.

This proposed easement for batter will permit Council to access 351 Farmborough Road within the easement area for the purpose of constructing a batter and maintaining the batter in perpetuity.

### **Easement for access**

In addition, Council also requires an easement for access over a portion of 351 Farmborough Road to facilitate maintenance and general operations at Whytes Gully. The proposed easement area is 16,266m<sup>2</sup> and will entirely overlap the proposed easement for batter.

The proposed easement for access will permit Council to access 351 Farmborough Road within the easement area for the purpose of collecting rubbish, clearing weeds, and maintaining the fence near the boundary of the easement area.

The proposed easement for access will replace a historical licence agreement between Council and the landowners which commenced in 1988 and which served the same purpose as the proposed easement for access.

The proposed easement for access is preferable to the historical licence agreement for the following reasons:

- The easement will be registered on the Certificate of Title for 351 Farmborough Road and will be binding on successive owners in perpetuity. Unlike a licence, it does not require renewal. This provides Council with certainty of tenure over the relevant portion of 351 Farmborough Road.
- The licence agreement requires payment of a yearly licence fee to the landowner equal to 7.5% of the rates payable for the property each year, being approximately \$350.00 per year. It is noted that this fee will continue to increase as rates increase in the future. In contrast, the easement will involve a fixed up-front payment to the landowners and no ongoing fees. This provides Council with financial certainty in relation to its access over the relevant portion of 351 Farmborough Road.

If Council successfully acquires the proposed easement for access, the historical licence agreement will be terminated, and any outstanding licence fees will be paid to the owners of 351 Farmborough Road upon demand as per the terms of the licence agreement.

### **Other relevant information**

Both easements are shown on Attachment 1 to this report.

In initial discussions with the landowners, Council proposed acquiring a portion of 351 Farmborough Road by way of subdivision. Council obtained a valuation from Walsh & Monaghan Valuers which assessed the compensation payable for the proposed land acquisition. During initial negotiations the landowners strongly indicated that they would not agree to sell any portion of their land because they did not want to reduce the overall area of their property.

As an alternative to a land acquisition, Council proposed that it acquire easements, and this was agreed by the landowners. This is acceptable from Council's perspective as the easements will provide Council with the necessary access but are significantly cheaper to acquire than the equivalent portion of freehold land.

### **Agreement from the landowners**

Council has reached agreement with the landowners in relation to the proposed compensation, easement terms and conditions. Council's agreement to the grant of the easement remains subject to Council resolution, being the purpose of this report.

## PROPOSAL

Council acquire an easement for batter and an easement for access over the respective portions of 351 Farmborough Road as shown in Attachment 1 in order to facilitate delivery of the Project and maintenance and general operations at Whytes Gully.

## CONSULTATION AND COMMUNICATION

Extensive consultation was undertaken between the landowners, Project Delivery, Waste Services and Property Services in relation to the Project and the proposed easements.

Legal Services was consulted in relation to the easement terms and documentation.

Herron Todd White Valuers were consulted in relation to a valuation for the proposed acquisitions.

## 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 Wollongong 2028 goal "We are a healthy community in a liveable city".

It specifically delivers on core business activities as detailed in the Property Services Service Plan 2021-22.

## FINANCIAL IMPLICATIONS

The amount of \$31,900.00 (including GST) for the subject easements is based on a report from Herron Todd White Valuers. This amount is considered to be fair and reasonable and has been accepted by the landowners.

It is expected that the balance of disturbance costs including the landowner's legal costs will be less than \$5,000.00 which is considered reasonable.

Council's Project Delivery Division has confirmed that funds for the acquisition and the other expected costs are available from the current year budget allocations.

## CONCLUSION

As the easements are required to facilitate the Project and maintenance and general operations at Whytes Gully, it is recommended that Council approve the acquisitions as outlined in this report.



