

## ITEM 5

**PROPOSED COMPULSORY ACQUISITION - PROPOSED LOTS 301 AND 302 IN PLAN OF ACQUISITION DP 1265107 PART LOT 1 DP 1264683 - WONGAWILLI ROAD, WEST DAPTO ROAD AND SHONE AVENUE, WONGAWILLI FOR ROAD WIDENING PURPOSES**

This report seeks Council's approval to acquire by compulsory acquisition part Lot 1 in DP 1264683, 63 Wongawilli Road, Wongawilli being Proposed Lots 301 and 302 in Proposed DP 1265107 for road widening purposes (the **Property**). This Property is required as part of Council's Stage 1A HAF Funded West Dapto Road Upgrade. Stage 1A of the Project is to upgrade the intersection of Wongawilli Road, West Dapto Road and Shone Avenue, Wongawilli which includes the rail crossing interface (the **Project**). The Project works will improve the overall safety to both the public road and private rail corridor, that crosses this intersection.

**RECOMMENDATION**

- 1 Council continues to negotiate with the owner of Lot 1 in DP 1264683 for the purposes of acquiring Proposed Lot 301 comprising an area of 103m<sup>2</sup> and Proposed Lot 302 comprising an area of 505.7m<sup>2</sup> in DP 1265107 for road widening purposes in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*, with authority being delegated to the General Manager to complete those negotiations.
- 2 In the event an agreement to acquire Proposed Lots 301 and 302 cannot be reached within a reasonable timeframe, (being at least a minimum period of six months from opening negotiation correspondence) then Council authorise the Compulsory Acquisition of Proposed Lots 301 and 302 in DP 1265107 by authority contained within section 177 of the *Roads Act 1993* via compulsory process pursuant to the *Land Acquisition (Just Terms Compensation) Act 1991*, for the purposes of road widening.
- 3 The necessary applications relating to the compulsory acquisition, for Proposed Lots 301 and 302 including compensation determination be made to the Minister for Local Government and the Governor.
- 4 Upon acquisition being finalised, Council dedicate Proposed Lots 301 and 302 as public road, pursuant to section 10 of the *Roads Act 1993*.
- 5 Council be responsible for all costs including valuation, transfer and legal costs associated with the acquisition of Proposed Lots 301 and 302, in accordance with its obligations under the *Land Acquisition (Just Terms Compensation) Act 1991*.
- 6 The Lord Mayor and General Manager be granted authority to affix the Common Seal of Council to any documentation required to give effect to this resolution and the General Manager be granted authority to sign any documentation necessary to give effect to this resolution.

**REPORT AUTHORISATIONS**

Report of: Lani Richardson, Manager Commercial Operations + Property  
Authorised by: Kerry Hunt, Director Community Services - Creative and Innovative City

**ATTACHMENTS**

- 1 Map - Proposed Lot 301 and 302 in DP 1265107 to be acquired for Road Widening Purposes

**BACKGROUND**

Council at its meeting of 25 May 2020 (Item C1 Minute 389) identified various land and easements to be acquired in order to facilitate the West Dapto Access Strategy (the **Resolution**). The acquisition of the land and easements identified as items 3 (a) through to (g) of the Council Resolution have been completed.

As part of the acquisition, two rail corridor parcels associated with safety improvements to the interface were identified for acquisition and described as Item 3 (h) of Council's Resolution i.e., Proposed Lot 301 and Proposed Lot 302 in DP 1265107 comprising an area of 103m<sup>2</sup> and 505.7m<sup>2</sup> respectively.

Negotiations were not concluded at the time of Council's Resolution for the acquisition of the Property and negotiations have been ongoing since that time.

Part of the delay was a result of a new Triparty Rail Interface Agreement being prepared, between Council, the property owner and TfNSW that was required as part of the Project.

Council obtained valuation advice from Certified Practising Valuers Walsh & Monaghan Pty Ltd to assess compensation payable pursuant to the *Land Acquisition Just Terms Compensation Act 1991 (Just Terms Act)*.

The property owner obtained its own independent valuation advice from Jackson & Co Assets and Property Valuers.

The below table summarises the differences between Council's Valuation (completed in September 2021) and the property owner's counter valuation (completed in May 2022).

Offer	Land to be acquired	Market Value
Council's Offer	Proposed Lot 301	\$7,500
	Proposed Lot 302	\$32,000
	Total	\$39,500
Company's Offer	Proposed Lot 301	\$8,800
	Proposed Lot 302	\$38,000
	Total	\$46,800
Difference		\$7,300

Pursuant to the confidential Council report of 25 May 2020, the General Manager was delegated to negotiate compensation and complete the acquisition for the remaining two sites within the rail corridor on the basis that the compensation amounts for each site are in line with market value as determined by independent valuers.

In principle agreement was reached between Council and the property owner to the acquisition of the rail interface parcels (Proposed Lots 301 and 302 in DP 1265107) required for road widening purposes at a total compensation amount payable of \$46,800, plus the owners legal and valuation costs associated with the transaction in the amount of \$12,000 (in accordance with item 4 of Council's resolution) pursuant to the Just Terms Act.

The property owner has recently closed its business operations at both Russell Vale and Wongawilli Collieries, and it is now recommended Council progress this outstanding acquisition.

Item 3 of the 25 May 2020 Resolution is outlined below:

*"Council delegate authority to the General Manager to finalise negotiations in respect of the acquisitions provided they are in accordance with the information contained in this report."*

The Resolution only permits the General Manager to finalise negotiations in respect of the portions of land and easements identified in the resolution and a new resolution is required to compulsorily acquire the Property.

Council has been unable to finalise the negotiations to acquire the Property by agreement. To bring this matter to a close and avoid further delays in negotiations between the parties it is recommended Council proceed to acquire Proposed Lots 301 and 302 in DP 1265107 by compulsory acquisition.

## PROPOSAL

In order to achieve acquisition of the land required to facilitate Council's Stage 1A Housing Acceleration Funded (**HAF**) West Dapto Road Upgrade and upgrade the intersection of Wongawilli Road, West Dapto Road and Shone Avenue, Wongawilli, and to avoid further delays, it is proposed that Council endorse the acquisition of Proposed Lots 301 and 302 in DP 1265107 and if negotiations reach an impasse proceed by authority contained within Section 177 of the *Roads Act 1993* by Compulsory Acquisition.

The compulsory acquisition is subject to Council resolution to proceed and the necessary applications relating to the compulsory acquisition, if required, including compensation determination being made to the Minister for Local Government and the Governor, and the Valuer General will determine the amount of compensation payable.

In accordance with the Just Terms Act, Council will also be required to pay all costs associated with the acquisition, including the property owners legal, valuation and property adjustment costs.

## CONSULTATION AND COMMUNICATION

- Negotiations have been undertaken with the property owners since 2019 and Council formerly commenced its mandatory six-month negotiation period (the **Mandatory Period**) to acquire the Property by negotiation on 13 December 2021.
- Council obtained independent valuation advice from Walsh & Monaghan Property Valuers
- Council obtained independent legal advice from Kells
- Infrastructure Strategy + Planning and Project Delivery Divisions in relation to the acquisition areas and final designs
- Urban Release – City Strategy
- Land Use Planning – City Strategy
- West Dapto Strategic Land Acquisition Group
- General Counsel – Legal Services
- Chief Financial Officer – Finance
- Genesis Accounting – GST Implications

## PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong 2032 goal ‘We have sustainable accessible and affordable Transport’ and ‘We have a healthy community in a liveable city’.

It specifically delivers on core business activities as detailed in the Property Services Service Plan 2023-24 and works towards meeting the future goal ‘Acquisition of land and easements to meet operational needs in West Dapto’.

## RISK MANAGEMENT

Council Officers have considered and assessed several risks associated with the proposed recommendations. These are summarised below:

1. If Council proceeds with compulsory acquisition via application to Office of Local Government (OLG), should it reach an impasse in the negotiations the potential risks associated with compulsory acquisition include:
  - a. Council must evidence it has made a genuine attempt to acquire the land to satisfy OLG submission to the Minister and to comply with section 10A of the Just Terms Act.
  - b. The property owner may seek to argue Council is not negotiating in good faith, given the permission to pursue compulsory acquisition. That may likely feed into a concern of OLG to delay granting permission until Council completes negotiations.
  - c. Council is required to obtain approval from the Minister prior to issuing a Proposed Acquisition Notice. Whilst ensuring that due process is followed, to meet all compulsory acquisition obligations significantly reduces the chance of the Minister refusing to provide this approval. Once Council decides to issue the Proposed Acquisition Notice (PAN), if it does not wish to proceed with the acquisition, it may still be required to pay the property owners’ compensation proportionate to any loss suffered as a result of the PAN being issued.

- d. Market value of the land will be determined by the Valuer General, and not by agreement between the parties. The sum Council will be required to pay will be unknown until Council receives the Valuer General's final determination. Regardless Council must and will pay market value for the acquisition in accordance with its obligations under the Just Terms Act.
  - e. Council must reimburse the Property owners for all reasonable expenses incurred in respect of the acquisition. This includes costs incurred for obtaining a valuation and legal advice. This amount will need to be paid by Council in addition to the market value of the Property, in accordance with the Just Terms Act.
  - f. There is a chance that the property owners may wish to challenge the amount of compensation payable in the NSW Land and Environment Court. The costs associated with Class 3 Proceedings are unknown. Council's preference is to acquire property by negotiation and only rely on Council's compulsory acquisition rights as an absolute last resort (noting the time, costs and resources extended to a recent compulsory acquisition by Council in Warrawong).
2. There is a need to resolve land acquisition in the immediate future to ensure Council meets its HAF funding obligations.
  3. If agreement cannot be reached with the property owners, there could be delays to the acquisition associated with proceeding to compulsory acquisition and therefore potential delays to the project generally; there could also be additional costs involved with the additional procedural items required.

## FINANCIAL IMPLICATIONS

The current primary source for funding for essential infrastructure at West Dapto includes either Section 7.11 Plan and / or grants.

Funding implications were considered as part of the report to Council at its meeting of 25 May 2020 as part of Wongawilli Stage 2 and these funds were to be allocated from the Capital Project 126672 and the source of funds being partly allocated from Local Infrastructure Fund (LIF) Loan and West Dapto Section 7.11 Contributions.

Council was notified by the (then) Department of Planning, Industry and Environment (DPIE) in September 2020 that West Dapto Road Upgrade Project had been successful in being selected as a Housing Acceleration Funded (**HAF**) project.

This Project became Stage 1A of the HAF Funded West Dapto Road Upgrade.

The HAF Funding Agreement in the amount of \$25.5 million requires a commitment by Council to deliver the road infrastructure in a timely manner based on agreed milestones.

As a result, there is a need to resolve land acquisition in the immediate future for the road widening (Proposed Lots 301 and 302) to ensure Council meets its HAF Grant obligations.

Council has also obtained GST advice in relation to this acquisition matter which indicated for GST purposes, there is no taxable supply on the compensation amount payable.

## CONCLUSION

Securing land to enable the strategic provision of infrastructure delivery is becoming increasingly critical, as more housing development is occurring, particularly in relation to community, open space, and transport infrastructure. The compulsory acquisition of Proposed Lots 301 and 302 will enable Council to progress the road upgrade works to Wongawilli Road/West Dapto Road/Shone Avenue intersection upgrades.



