

ITEM 7 ACQUISITION OF LAND FOR ROAD PURPOSES - LANE 52 THIRROUL

The land known as Lane 52 at Thirroul [‘the Land’] is part of a residual parcel of land from an early subdivision. Whilst there was some confusion surrounding the status and ownership of the Land, the local community have known and used the Land as a public road since its existence.

The Land is legally identified as part Volume 1923 Folio 23 being Lot 3 DP 166257 standing in the name of Mr Edward Hewitt as registered proprietor and owner. As Council understands it, Mr Hewitt is deceased thus ownership of the Land remains in his Estate.

The purpose of this report is to obtain the approval of Council to compulsory acquire the land to ultimately enable it to be gazetted for dedication as a public road.

RECOMMENDATION

- 1 Council authorise the acquisition of part Volume 1923 Folio 23 being Lot 3 DP 166257 known as Lane 52 Thirroul for road purposes.
- 2 Pursuant to section 186 of the Local Government Act 1993, Council make application to the Minister for Local Government for the compulsory acquisition of part Volume 1923 Folio 23 being Lot 3 DP 166257.
- 3 Compensation be paid to the land owner at an amount determined by the Valuer General in accordance with the provisions of the Land Acquisition (Just Terms Compensation) Act 1991.
- 4 Council be responsible for the land owner’s reasonable costs, if any, associated with Council’s acquisition, including legal costs as required under the provisions of the Land Acquisition (Just Terms Compensation) Act 1991.
- 5 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.
- 6 The General Manager be authorised to execute any transactional document required to finalise the compulsory acquisition and to give effect to this resolution.
- 7 Following acquisition of the land, Council dedicate the land as public road in accordance with section 10 of the Roads Act 1993 by publication of a notice in the NSW Government Gazette.
- 8 Upon Gazettal of the acquisition notice all rates and charges are discharged and the rates in the amount of \$22,747.51 are abandoned.

REPORT AUTHORISATIONS

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

Authorised by: Sue Savage, Director Community Services - Creative + Innovative City (Acting)

ATTACHMENTS

- 1 Cadastral and Aerial Maps

BACKGROUND

The Land is part of a residual parcel of land from an early subdivision in Thirroul. Whilst there was some confusion surrounding the status and ownership of the Land, the local community have known and used the Land as a public road since its existence. Council, on the other hand, has recorded the Land as privately owned and rateable.

Rates have been levied historically and interest and other charges have accrued over time equating to the total current outstanding amount of \$22,747.51.

The existence of these outstanding rates triggered an initial review and decision to list the land for sale for unpaid rates in or around 2010. That decision, however, was ultimately reversed to allow further investigation regarding legal title and Council's strategic objective generally with respect to the Land.

Legal title

The Land is legally identified as part Volume 1923 Folio 23 being Lot 3 DP 166257 standing in the name of Mr Edward Hewitt as registered proprietor and owner. As Council understands it, Mr Hewitt is deceased thus ownership of the Land remains in his Estate.

The existence and validity of this title, together with Department of Industry – Lands' advice that the Land is not formally recorded nor dedicated as a road, confirms its private ownership status. It also confirms that Council can acquire it should it seek to do so.

Another difficulty that arose during investigation into the title surrounded a road dedication notation.

Ordinarily, Council could rely upon section 16 of the *Roads Act 1993* ('Roads Act') to simply dedicate the Land via gazettal without acquiring it due to the existence of a road dedication notation. Whilst title to the Land includes a relevant road dedication notation – confirming the Land was set aside for the purposes of road – that notation was recorded on a Plan of Subdivision registered after 25 February 1920, being a date that falls approximately six weeks after the cut-off date required to rely on Council's powers under section 16.

Given Council cannot rely upon section 16 of the Roads Act, it must first acquire the Land either through section 713 of the *Local Government Act 1993* for unpaid rates, or alternatively, through the compulsory acquisition process, should it seek to formalise the road dedication.

Strategic objective

As Council seeks certainty to ensure the Land remains what is generally understood as a public road available to the community and to provide the community with ongoing public access to adjacent lands, Council has determined that it should not exercise its power of sale under section 713 of the *Local Government Act 1993* for unpaid rates but rather to compulsorily acquire the Land in accordance with the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* ('Just Terms Act') and to subsequently dedicate that Land as a public road pursuant to section 10 of the Roads Act.

This position is consistent with internal consultation as set out below. It ensures certainty as to the acquisition and subsequent road dedication and will also discharge the outstanding rates accrued to date.

Road dedication

In similar circumstances where parcels of land set aside for the purposes of road (as in this case), Council would ordinarily rely on its rights under section 16 of the Roads Act entitling Council to simply dedicate the land as road via Gazette without the need of acquisition.

For clarity, section 16 of the Roads Act provides a valid mechanism for Council to simply dedicate a parcel of land as a public road where that land is set aside for the purposes of a road left in a subdivision of land effected before 1 January 1907 (the date of commencement of the *Local Government Act 1906*) or in a plan of subdivision that was registered by the Registrar-General before 1 January 1920 (the date of commencement of the *Local Government Act 1919*).

The difficulty here, as raised briefly above, is that the road dedication notation to the Land is recorded on a plan of subdivision registered on 25 February 1920, being a date that falls approximately six weeks after the cut-off date required in section 16 of the Roads Act.

In other words, Council cannot rely upon its section 16 Roads Act rights and must first acquire the Land to subsequently dedicate it as public road pursuant to section 10 of the Roads Act.

Effect of acquisition

Upon publication in the Gazette of the acquisition notice formalising the compulsory acquisition, the Land will immediately be vested in Council and freed and discharged from all interests, restrictions,

dedications, reservations, rights, charges and rates in, over or in connection with the Land pursuant to section 20 of the Just Terms Act.

In other words, Council will receive clear title to the Land as the existing outstanding Council rates in respect of the Land will be freed by virtue of section 20. Given this, following acquisition of the Land, it is recommended Council update its records, including outstanding rates and charges in respect of the Land (by waiver or otherwise) to reflect the discharging of rates.

Land details and just compensation

The Land area is approximately 1,322m² (subject to survey) and is currently zoned R2 Low Density Residential.

A formal valuation has been obtained from a registered valuer assessing just compensation payable by Council to the land owner in the sum of \$30,000.00 exclusive of GST, if any. That amount was determined by Council’s valuer pursuant to the Just Terms Act provisions.

Although it is Council’s understanding that the Land is valued at approximately \$30,000.00, the exact amount of compensation payable to the land owner will ultimately be determined by the Valuer General.

This amount is also conditional upon whether the Valuer General accepts Council’s request to reduce the compensation amount by the sum equivalent to the unpaid rates. If that determination is made, and presuming the valuation remains at approximately \$30,000, the overall net cost to Council to acquire the Land may be reduced to approximately \$7,000.

If it is the case that the land owner does not make a claim for compensation under the Just Terms Act – as anticipated here given the deceased ownership nature – Council may be required to hold the compensation amount in trust to be dealt with in accordance with section 51 of the Just Terms Act. Should this scenario eventuate, Council will comply with its statutory obligations under that section.

PROPOSAL

It is proposed that Council approve the compulsory acquisition of the Land and subsequently dedicate it as a public road.

CONSULTATION AND COMMUNICATION

Relevant internal consultation has been held with appropriate divisions of Council and the proposal to compulsorily acquire the land for public benefit and subsequently dedicate the land as public road is supported. Comments from the relevant Council officers are set out below:

Council Officer	Comment
Senior Landscape Engineer Architect	‘It doesn’t form a logical open space parcel... it looks like a lane... functionally at least, so it...should be a WCC lane’.
Land Use Planning Manager	‘...should be acquired for... a pedestrian/cycle route (as well as a watercourse under the railway)’.
Parks and Open Space Manager	‘would not support this parcel for Open Space acquisition’.
Coordinator Heritage	‘..no real heritage opinion to add, except to note that the owner of the land “Hewitt” is the namesake of the creek “Hewitt’s Creek” and was an early landholder in these parts.... Further research into the old title history might answer this’.
City Wide Development Manager	‘It is and has been used historically for pedestrian and cyclist access under the rail line. There was talk of whether it could be converted to Open Space but that hasn’t been supported through other divisions’.

Council Officer	Comment
Urban Release Manager (Acting)	'...the land should be acquired to allow for active transport (walking, cycling). Connections across the railway line are a valuable asset and we should be trying to maximise the use of these for network connectivity/permeability where possible ...the subject lane allows for connections with areas to the west...would allow for convenient access to...bus services for residents east of the railway line'.
Manager Infrastructure Strategy and Planning	'...the existing pavement will only be maintained to existing low standard and not be improved. The route will support pedestrian and active transport connectivity however there are currently no plans for formal footpaths or cycleways along this route...'

PLANNING AND POLICY IMPACT

The acquisition is in accordance with Council's policy "Land and Easement Acquisition and Disposal" Wollongong 2028 Community Goal and Objective.

This report contributes to the Wollongong 2028 Objective "Our natural environment, waterways and terrestrial areas are protected, managed and improved" under the Community Goal "We value and protect the environment".

It specifically delivers on core business activities as detailed in the Property Services Service Plan 2019-20 "sale and purchase of land on behalf of Council".

FINANCIAL IMPLICATIONS

A valuation report has been obtained from a registered valuer, assessing the likely compensation amount payable to be the sum of \$30,000 exclusive of GST. Despite this, if Council resolves to compulsorily acquire the Land, the final compensation amount will be determined by the Valuer General pursuant to the Just Terms Act and may or may not be reduced by the unpaid rates amount.

Whilst Council will make appropriate recommendations to the Valuer General to consider the unpaid rates amount in its determination for compensation, that determination is ultimately at the sole discretion of the Valuer General.

Funds have been allocated for this acquisition from Project 127658 Lane 52 (Lot 3 DP 166257).

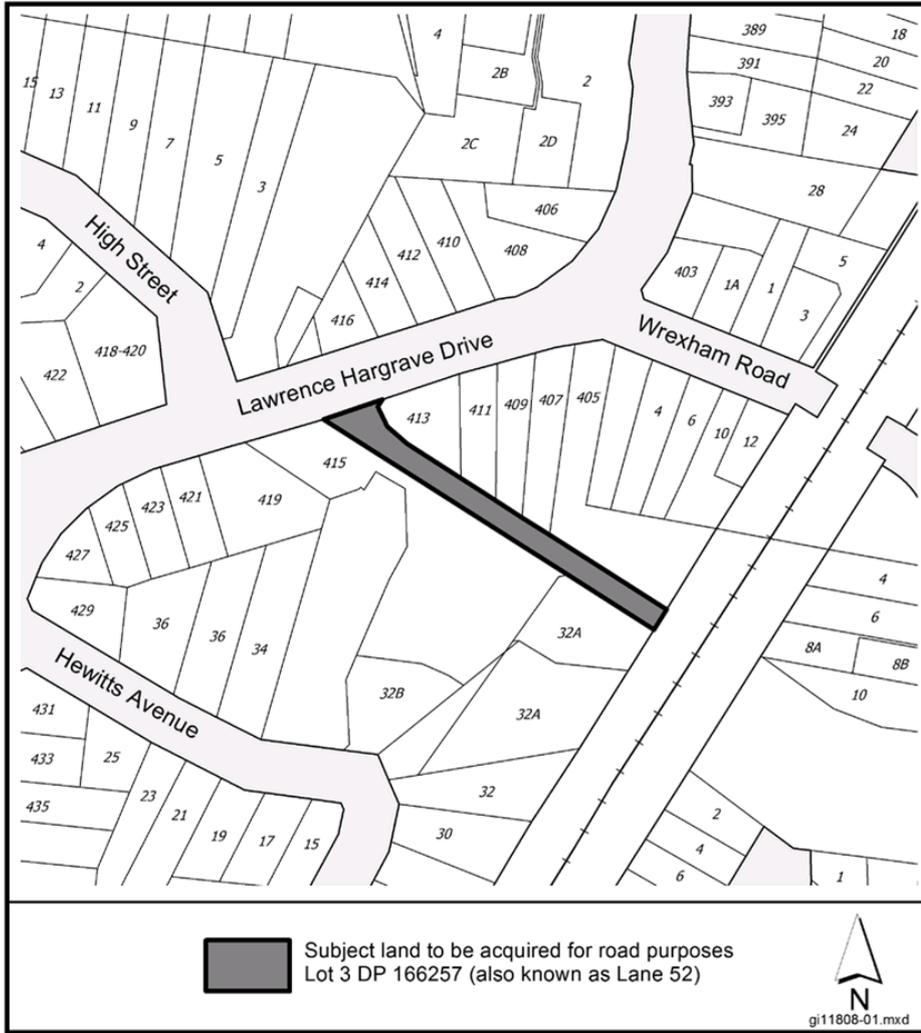
CONCLUSION

As Council cannot rely upon its section 16 Roads Act rights, it should formalise the dedication via compulsory acquisition if it seeks certainty to ensure the parcel of Land remains a road.

Upon gazettal of the acquisition notice, Council should then proceed to dedicate the Land as road under section 10 of the Roads Act. Such dedication will provide the community with ongoing public access as an active transport (pedestrian/cycle) route connection under the railway line.

The gazettal of the acquisition notice will discharge all outstanding rates and charges by virtue of section 20 of the Just Terms Act and the rates in the amount of \$22,747.51 will subsequently be abandoned.

It is therefore recommended Council approve an application for the compulsory acquisition of the land known as Lane 52 at Thirroul, and upon acquisition, it be dedicated as public road pursuant to section 10 of the Roads Act.



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