

## ITEM 8

## PROPOSED ACQUISITION OF PART LOT 99 DP 1269057 - PART WEST DAPTO ZONE SUBSTATION SITE - WEST DAPTO ROAD KEMBLA GRANGE FOR ROAD WIDENING

Council identified various lands to be acquired to facilitate the West Dapto Access Strategy and has developed a detailed design for the upgrade of West Dapto Road at Kembla Grange (the Project). This acquisition is required to facilitate the Project.

This report seeks Council approval to acquire part Lot 99 DP 1269057 (Proposed Lot 98) West Dapto Road, Kembla Grange for Public Road pursuant to the provisions of the *Roads Act 1993* for road widening purposes.

## RECOMMENDATION

- 1 Council acquires by authority contained within Section 177 of the *Roads Act 1993* Proposed Lot 98 for road widening purposes, being Part Lot 99 DP 1269057 comprising an area of approximately 392 m<sup>2</sup> (subject to final survey and Plan of Acquisition).
- 2 Compensation be paid to the owner in the amount of \$112,112.00 (GST exclusive).
- 3 In the event agreement to acquire cannot be reached, Council acquire Proposed Lot 98 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 purpose of road widening.
- 4 Council be responsible for all costs including valuation, survey, transfer and legal costs associated with the acquisition of the subject land, in accordance with its obligations under the *Land Acquisition (Just Terms Compensation) Act 1991*.
- 5 This acquisition is not for the purpose of resale.
- 6 The necessary applications relating to the compulsory acquisition, if required, including compensation determination be made to the Minister for Local Government and the Governor.
- 7 Upon acquisition, Council dedicate Proposed Lot 98 as 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.
- 9 The General Manager be granted authority to sign any documentation 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 Business Paper Map - Land proposed to be acquired - Part Lot 99 DP 1269057 - West Dapto Road Kembla Grange
- 2 Draft Plan of Acquisition - showing the Proposed Lot to be acquired as Proposed Lot 98

## BACKGROUND

Council identified various portions of land to be acquired to facilitate the West Dapto Access Strategy. The land to be acquired for the upgrade of West Dapto Road, the subject of this report (see Attachment 1) forms part of Lot 99 in DP 1269057 West Dapto Road, Kembla Grange which is in the ownership of Epsilon Distribution Ministerial Holding Corporation (EDMHC) and forms part of their future West Dapto Zone Substation Site.

The land to be acquired is described as Proposed Lot 98 and comprises an area of 392 m<sup>2</sup>. The draft Plan of Acquisition has been prepared by registered surveyors and will be registered prior to the transaction being finalised.

## Process for Acquisition

Negotiations commenced with Endeavour Energy in May 2021. Endeavour Energy has indicated that any agreement reached would be subject to approval from EDMHC.

EDMHC, on behalf of the State of New South Wales, has entered into a 99-year lease of Endeavour Energy's Distribution Network pursuant to the *Electricity Network Assets (Authorised Transactions) Act 2015* (NSW). This Lease was notified in the NSW Government Gazette on 14 June 2017. The Lessee is the Asset Partnership, which has sub-leased its interest in the lease to the Operator Partnership which operates the business trading as Endeavour Energy.

The acquisition from EDMHC will also require the partial surrender of the lease, to ensure there are no encumbrances on title.

Council obtained a valuation report from Certified Practising Valuers, Walsh & Monaghan Pty Ltd (W & M) to assess the compensation payable pursuant to the *Land Acquisition (Just Terms Compensation) Act 1991* (Just Terms Act). This report assessed the market value of the land to be \$286/m<sup>2</sup> which equates to a compensation amount payable of \$112,112.00 (GST exclusive).

Council, as the acquisition authority, is also responsible for all reasonable costs incurred by Endeavour Energy and EDMHC as a result of the acquisition pursuant to the Just Terms Act. This includes all reasonable legal, valuation and any other costs incurred as a result of the acquisition.

In-principle agreement to this compensation amount has been reached with Endeavour Energy subject to EDMHC approval to the acquisition.

If EDMHC does not ultimately approve the acquisition or agreement is unable to be reached, this report includes a recommendation for Council to progress the acquisition via the compulsory acquisition process via application to the Office of Local Government.

In addition to the compensation amount payable, Council will also need to undertake any property adjustment works post and during construction of West Dapto Road Upgrade which will include replacement of fencing to the adjusted property boundary.

## PROPOSAL

Council acquire Proposed Lot 98 for public road pursuant to the provisions of the *Roads Act 1993* for road widening purposes by authority contained within Section 177 of the *Roads Act 1993*, being part Lot 99 in DP 1269057 comprising an area of 392 m<sup>2</sup> for the compensation amount of \$112,112.00 (GST exclusive).

In addition, pursuant to Just Terms Act, Council will also be responsible for all survey and valuation fees payable including the property owner's reasonable valuation and legal costs associated with the acquisition.

## CONSULTATION AND COMMUNICATION

- Negotiations have been undertaken with the property owner. Council obtained independent valuation advice from Certified Practising Valuers, Walsh & Monaghan Pty Ltd.
- Infrastructure Strategy and 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.
- Capital Program in relation to funding and budget allocation.
- Finance – GST implications and to create the budget number.
- Legal Counsel.

## PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong 2032 Goal 4 'We are a connected and engaged community'. It specifically delivers on core business activities as detailed in the Property Service operational Plan 2022-23.

## RISK MANAGEMENT

Potential risks in respect of this process are identified as follows:

- Whilst Endeavour Energy has provided in-principle agreement to this land acquisition, the acquisition is subject to Endeavour Energy obtaining approval from EDMHC.
- Should EDMHC not provide their approval, Council may progress a compulsory acquisition via application to the Office of Local Government, however, to proceed via a compulsory acquisition has also potential risks outlined below:
  - The market value of Proposed Lot 98 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.
  - Council is required to obtain approval from the Minister prior to issuing a Proposed Acquisition Notice (PAN). 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 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.
  - The additional time and costs associated with a compulsory acquisition process may significantly delay the project.

## FINANCIAL IMPLICATIONS

The GST inclusive price of the compensation amount payable is \$123,323.20. Council will receive a tax invoice from the vendor and will be able to claim back GST of \$11,211.20. The net of GST cost will therefore be \$112,112.00 and this is the amount Council should allow for budgeting purposes.

In addition to the compensation amount payable, pursuant to the Just Terms Act, Council is also required to pay the landowners reasonable costs associated with the acquisition including all survey, valuation and legal costs.

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

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

The funding for all costs associated with this acquisition can be fully funded from HAF and Section 7.11 Plan. This funding is proportioned as follows on the net of GST cost:

Section 7.11*	67%	\$75,115.04
HAF	33%	\$36,996.96
<b>Total of net GST cost</b>	<b>100%</b>	<b>\$112,112.00</b>

*\*Council staff will ensure review of the Section 7.11 Plan includes actual acquisition costs, subject to IPART review.*

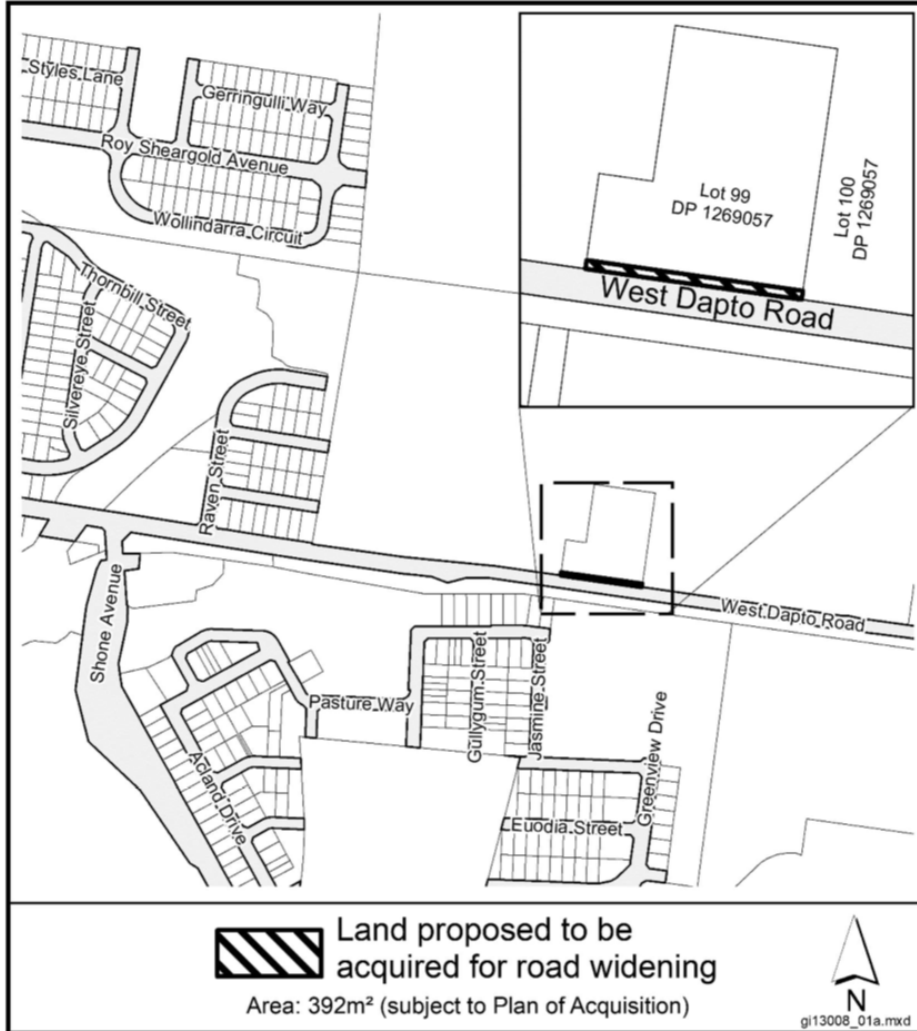
There is a risk that when IPART reviews the Section 7.11 Plan it will not accept the quantum or principles underlying this proposal. If this occurred, the decision to purchase would need to be underwritten by the West Dapto restricted asset which is available to meet infrastructure or planning requirements in the area.

The HAF Funding Agreement 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 short term to ensure Council meets the HAF obligations.

## CONCLUSION

The acquisition is required to facilitate the road upgrade works to West Dapto Road. Therefore, it is recommended that the acquisition be approved as set out in this report.

Attachment 1



While every effort has been made to ensure the highest possible quality of data, no liability will be accepted for any inaccuracy of the information shown.  
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