

ITEM 12

PROPOSED ACQUISITION - PROPOSED LOT 9 - PART LOT 2 DP 730326, 290 CLEVELAND ROAD, CLEVELAND FOR ROAD WIDENING PURPOSES ASSOCIATED WITH CLEVELAND ROAD UPGRADE PROJECT

This report seeks Council's approval to acquire part Lot 2 in DP 730326, 290 Cleveland Road, Cleveland (the Property) for road widening purposes required for Stage 2 of Cleveland Road Upgrade Project (the Project).

The area required for acquisition (Proposed Lot 9) comprises an area of approximately 406m² and is shown shaded pink on Attachment 1 of this report. The Proposed acquisition lot numbering which is referenced in this report may be subject to change pending final survey and Plan of Acquisition.

RECOMMENDATION

- 1 Council acquires by negotiation under authority of section 177 of the *Roads Act 1993* Proposed Lot 9 for road widening purposes, being part of Lot 2 in DP 730326 comprising an area of approximately 406m² (subject to final survey and Plan of Acquisition). The General Manager be delegated with authority to complete negotiations, including determining the compensation payable in accordance with this report.
- 2 In the event an agreement cannot be reached within a reasonable timeframe (being at least a minimum period of six months from opening negotiations) then Council is authorised to proceed via Compulsory Acquisition to acquire part Lot 2 in DP 730326 (Proposed Lot 9) 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 road widening purposes.
- 3 The necessary applications relating to the compulsory acquisition, including compensation determination be made to the Minister for Local Government and the Governor.
- 4 Upon acquisition being finalised, Council dedicate Proposed Lot 9 as public road, pursuant to section 10 of the *Roads Act 1993*.
- 5 The necessary applications relating to the compulsory acquisition, including compensation determination be made to the Minister for Local Government and the Governor.
- 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 Proposed Lot 9 being Part Lot 2 DP 730326 Plan of land to be acquired
- 2 Cleveland Road Staging Plan

BACKGROUND

The West Dapto Urban Release Area (WDURA) is the region's largest urban release area and will provide for an estimated 19,500 dwellings and an additional population of about 56,500 people once fully developed. The NSW Department of Planning, Housing and Infrastructure (DPHI) has identified West Dapto as a priority urban release area to provide housing supply for the expected population growth.

The West Dapto Vision 2018 provides the strategic direction for future development of the Release Area and incorporates the West Dapto Structure Plan, Vision, and planning principles.

Providing the supporting public infrastructure is a major focus in the West Dapto Vision. The 2018 Structure Plan guides the future strategic direction of infrastructure requirements such as strategic road alignments, community and educational facilities, recreation and open space and timing within the Release Area. The WDURA will provide local employment opportunities, community and recreational facilities and the conservation of environmentally sensitive areas.

Stage 3 of the WDURA includes Cleveland Road precinct, which was largely rezoned by Wollongong Local Environmental Plan 2009 (Amendment No. 55) on 15 March 2024. On 6 May 2024 Council endorsed rezoning of phase 2 of the precinct, along the watercourses. The combined rezoning will enable some 3,000 lots to be developed within the Cleveland Road Precinct. The need to provide transport infrastructure as identified in the West Dapto Vision (2018) and West Dapto Development Contributions Plan 2020 (2020 CP) is predominately generated by the residential development of West Dapto. As such transport infrastructure is a major component of the 2020 CP and draft 2024 CP and has identified significant upgrades to existing rural roads to urban standard.

In June 2024, it was announced by the Minister for Planning and Public Spaces that the Project was successful in being selected as a Housing Infrastructure Funded (HIF) project. Council is still awaiting formal notification under the program from DPHI and an invitation to enter into a formal Funding Deed.

The HIF Grant in the amount of \$19,900,000, and anticipated Funding Deed will require 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 to ensure Council meets its HIF obligations.

The Project

Cleveland Road is currently a rural-standard road servicing 20 rural dwellings. While the level of service currently provided by this infrastructure is acceptable for this small number of landholders, this road would not be able to safely cater for the increased demand associated with the more than 4,000 planned new dwellings forecast to be constructed within Stage 3 of WDURA. Importantly, this demand not only includes vehicular transport, but active transport such as walking and cycling.

The Project will support the acceleration of the construction of new housing in three development areas within Stage 3 of WDURA.

- The Cleveland Road Precinct which has a forecast development yield of 3,000 new dwellings.
- Stockland Stage 3, currently accessed via Bong Bong Road has a development area forecast yield of just under 1,000 new dwellings.
- A third development located to the west of Stockland's' has not yet been rezoned and is forecast to have a development yield of 700 new dwellings. Development within this area will be able to be considered once the appropriate standard of access roads are provided.

The upgrade of this rural road to an urban-standard 2 – 4 lane sub-arterial road is programmed to be delivered in 6 stages, which are shown in Attachment 2 to this report. Stages 1, 2 and 3 were subject to business case NSW grant funding application.

Land acquisition has been identified as part of the overall Project.

- Stage 1 – there is no property acquisition required.
- Stage 2 – two properties with partial acquisition to be acquired.
- Stage 3 – eight properties with partial acquisition to be acquired.

Negotiations with Property Owners

Council officers commenced initial discussions regarding the Project with affected property owners (in Stages 2 and 3 only) in November 2022. However, formal negotiations for the acquisition do not commence until Council makes the Property owner a formal offer and gives notice of the commencement of the minimum six-month negotiation period required under section 10A of the *Land Acquisition (Just Terms Compensation) Act 1991* (Just Terms Act).

Under Wollongong Local Environmental Plan 2009 (Amendment No. 55), the subject Property is zoned part R2 Low Density Residential, part RE1 Public Recreation and part RU2 Rural Landscape.

Transmission Easements also affect this Property, however, for the purposes of this report and proposed acquisition, those interests are not identified for acquisition. The RE1 Public Recreation zoned portion of the Property is located within the Transmission Easement.

Council has obtained valuation reports from Certified Practicing Valuers Preston Rowe Paterson Pty Ltd to assess the compensation payable pursuant to the Just Terms Act for the various properties affected by land acquisition. Details of the compensation payable have been circulated to Council under separate cover.

Pursuant to the Just Terms Act, property owners are entitled to obtain their own independent valuation advice to inform any counterclaim.

PROPOSAL

To achieve acquisition of the land required to facilitate Cleveland Road Upgrade, and to avoid delays to Council's HIF Funding Grant, it is proposed that Council endorse the strategy to proceed with the acquisition of Proposed Lot 9 and if negotiations reach an impasse proceed by authority contained within Section 177 of the *Roads Act 1993* by Compulsory Acquisition.

The valuer has proposed negotiation parameters to assist Council with negotiations and these details have been circulated to Council under separate cover. It is proposed that subject to independent valuation advice in support, and / or a valuers agreement, Council Officers negotiate with the Property owners in order to finalise this matter. Prior to finalising the acquisition by negotiation or proceeding to compulsory acquisition, a memorandum will be prepared to the General Manager and Director Community Services seeking approval to any offer or compulsory action.

Actions required to compulsory acquire Proposed Lot 9 are:

- A resolution of Council to proceed to compulsory acquisition.
- Application to the Minister for Local Government and the Governor.
- Upon approval by the Minister and Governor, the issue of Proposed Acquisition Notice (PAN) to each interested party noting that the land will be acquired by Council by way of Gazettal after 90 days.
- Following the issue of a PAN, the Valuer General will determine a value for the property to be acquired which binds both Council and respective owners.
- If the parties reach agreement in respect of the acquisition at any time prior to gazettal, the parties may proceed with the transaction by way of a normal conveyancing process.

Ultimately if Council commits to compulsory acquisition, the Valuer General will determine the compensation payable in accordance with the Just Terms Act and Council will be required to pay the market value of the land. The amount Council will be required to pay is unknown until Council receives the Valuer General's final determination.

CONSULTATION AND COMMUNICATION

- Initial negotiations commenced with the Property owner in November 2022 and Council Officers will continue those negotiations in an attempt to acquire via agreement.
- Independent valuation advice from Preston Rowe Paterson
- Infrastructure Strategy + Planning and Project Delivery divisions
- 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

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 2024-25 and works towards delivering 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, summarised below:

- 1 Should it reach an impasse in negotiations including the potential risks associated with compulsory acquisition include:
 - a Council proceeds with compulsory acquisition via application to Office of Local Government (OLG), the OLG may require additional Council resolutions notwithstanding any resolutions arising from this report, since the negotiations have not yet been completed. Council must provide evidence that 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 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 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.
 - c 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.
 - d Council must reimburse the Property owner 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.
 - e There is a chance that the Property owner 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.
- 2 The expected HIF Grant funding is at risk if acquisitions are not finalised.
- 3 The delivery of the Project relies upon the acquisition of the land. If agreement cannot be reached with the Property owner, this could delay the acquisition and potentially delay the Project; there could also be additional costs involved with the additional procedural items required, if the matter progresses to a compulsory acquisition.
- 4 Depending on the timing for land acquisition, there may be a lag between the current version of the West Dapto Development Contributions Plan and the actual compensation values for land acquisition. This timing lag may pose a funding risk. Council's review and revision of the West Dapto Development Contributions Plan is always subject to IPART assessment and ultimate direction from the Minister for Planning and Public Spaces. If the Minister is not supportive of change to the contributions plan there is always risk that Council would need to fund the gap between contributions and actual acquisition costs.

FINANCIAL IMPLICATIONS

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

Local essential infrastructure in the West Dapto Release Area is included in the West Dapto Development Contributions Plan (Section 7.11) to be funded by developers. Local essential infrastructure includes open space (basic level embellishment) and land, transport including roads construction and land requirements, stormwater infrastructure and land only (not works) for community facilities.

The funding for the proposed purchase of essential infrastructure land is West Dapto Developer Contributions. The current West Dapto Development Contributions Plan 2020 (2020 CP) specifically refers to Cleveland Road as TR13 and aligns with proposed land acquisitions required for the Project.

Whilst proposed land acquisition costs are higher than current estimates in the 2020 CP, any shortfall between actual amounts (depending on the phasing of decisions), will require adjustment in future reviews to reflect actual costs, subject to approval from the Minister.

For the purposes of this report the land acquisition costs associated with the Project can be 100% funded by Section 7.11 Developer Contributions, noting the risks outlined in this reports Risk Management section.

In addition to the Developer Contribution, there are potential grants available to fund some of the works and land acquisitions. Grant funding received for works included in the Contributions Plan will result in a future adjustment to the plan, and a reduction to future contributions required from developers, and will assist in the short-term financing issues associated with completion of works and land acquisitions in advance of the developments being realised.

The proposed land purchases are not currently included in the Infrastructure Delivery Plan or Budget for 2024 – 2025. Budget and funding will be proposed for introduction when there is greater certainty around the timing of contract and exchange.

CONCLUSION

The West Dapto Urban Release Area is a challenging area and acquiring the subject property is vital to enable the strategic provision of infrastructure and delivery of housing supply. The acquisition of Proposed Lot 9 will enable Council to progress these infrastructure delivery items.



