

**Subject 4.2 Offer to Purchase Council Land - Lot 522 DP
1168919 Braemar Street Tullimbar (10317751)**

To the General Manager

Directorate: Corporate Policy
Department: Infrastructure Services

Manager: Donna Flanagan – Manager Property and Recreation
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Reason for Confidentiality

This item is classified CONFIDENTIAL under the provisions of Section 10A(2)(c, d(i),d(ii)) of the *Local Government Act 1993*, which permits the meeting to be closed to the public for business relating to the following:

- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business
- (d) commercial information of a confidential nature that would if disclosed:
 - (i) prejudice the commercial position of the person who supplied it
 - (ii) confer a commercial advantage on a competitor of the council

This item, if discussed in the Open Meeting of Council, would be contrary to the public interest because it is premature at this time. The appropriate time for its full release such that the commercial position of the person who supplied it is not prejudiced, would be when the proposed sale is entered into.

Summary

This matter was determined by the Council at its meeting on 14 October 2014, with delegated authority being given to the Mayor and General Manager to conclude the proposed transaction.

During the subsequent negotiations, it became apparent that the GST calculations subsequently proposed by the purchaser differed from those reported to the Council on 14 October 2014. Notwithstanding that the Mayor and General Manager had delegated authority to conclude the matter, they decided to refer the matter back to the Council for its consideration.

This report seeks Council approval to enter into the Put and Call Option Deed for Lot 522 DP 1168919 Tullimbar, being land at Braemar Street Tullimbar previously known as Noble Road Albion Park, Tullimbar Estate with Balmoral Parade Pty Limited, being a company that forms part of the ALLAM Property Group (**APG**). The subject land is shown in attachment 1.

Background

At the Ordinary Council Meeting of 14 October 2014, Council resolved:

1. *That Council enter into a Due Diligence Deed with the party noted in the Report on the terms set out in that report concerning Lot 522 in DP1168919, Braemar Street, Tullimbar.*
2. *That the Mayor and General Manager, or his nominated delegate, be authorised to sign under Council Seal, the Due Diligence Deed.*
3. *That Council delegate to the General Manager the ability to negotiate the Put and Call Option Deed for Lot 522 in DP1168919, Braemar Street, Tullimbar on the terms set out in the Report.*
4. *That subject to the General Managers satisfaction with the Put and Call Option Deed, that Council enter into the Put and Call Option Deed with the proposed purchaser noted in the Report.*
5. *That the Mayor and General Manager, or his nominated delegate, be authorised to execute under Council Seal the Put and Call Option Deed and following that, the Contract for Sale arising out of the Put and Call Option Deed of Lot 522 in DP1168919, Braemar Street, Tullimbar*
6. *That the commercial terms and the proposed purchaser be keep confidential until the Put and Call Option Deed is executed.*

Negotiations have been finalised with APG for the divestment of Lot 522 DP1168919, Braemar Street, Tullimbar. The terms of the agreement include:

1. Purchase Price

APG's offer of \$13.3M was made on the basis that it was a total price inclusive of GST despite the EOI documentation stating that all offers are to be Exclusive of GST.

On this basis, the purchase price was negotiated to be \$13.3M GST Inclusive with the margin scheme be applied to the transaction.

The margin scheme is a method of calculating the GST that must be paid when you sell property as part of your business. The margin scheme can be applied if the sale of the property is taxable supply for the purpose of GST.

There are two methods to calculate the margin scheme, the consideration method or the valuation method. In this case the valuation method has been used as Council purchased the property prior to 1 July 2000. Using the valuation method the 'margin' is the sale price less the value of the property as of 1 July 2000.

The GST to be paid is one-eleventh of the margin and not the normal one-eleventh of the sale price. As such, using the margin scheme will reduce Council's ultimate GST liability as a result of the transaction than it would have been if the margin scheme were not applied. Based on advice received, on the \$13.3 million sale price, the estimated cost for GST is \$909,000.

2. Due Diligence Period

An initial fee of \$50,000 to secure a 4 months Due Diligence (DD) period will be paid to Council. This fee is non-refundable and will be kept by Council regardless of the outcomes of the DD period. During the DD period APG will make more detailed inquiries regarding contamination, costs, design and other factors related to developing the land.

A separate Due Diligence Deed is not proposed to be entered into as suggested in the previous Resolution as APG refused to enter into such an agreement, preferring to proceed to negotiate the Put & Call Option Deed.

3. Post Successful Due Diligence Period

Following a successful DD period, APG will pay and release a deposit to Council of \$1.3m being 10% of the total price. The \$50,000 Due Diligence fee will form part of this deposit.

APG, at its cost, will undertake a subdivision of the Property into three (3) separate lots. That subdivision must be consistent with the Concept Plan attached to the Option Deed setting out the size and shape of those Lots and is shown in attachment 2.

APG is to acquire the lots created as part of that subdivision based on the following:

- The first lot - eleven (11) months from the Agreement being entered into. APG will pay 30% of the total Purchase Price of \$13.3M on settlement of this lot.
- The second
- lot - within twenty four (24) months from the Agreement being entered into. APG will pay a further 30% of the total Purchase Price of \$13.3M on settlement of this lot.
- The third lot - within thirty seven (37) months from the Agreement being entered into. APG will pay the final 30% of the total Purchase Price of \$13.3 M on settlement of this lot.

4. Guarantee

Allam Homes Pty Limited (being the parent company within the Allam Group) is providing a guarantee of the obligations of the Purchaser under the Agreement.

APG, as part of their original offer to Council, assured Council that the value of the lots yet to be acquired by Allam would always be valued more than the balance of the Purchase Price yet to be paid to Council. To further secure this, the Agreement will contain a mechanism whereby Council can have the remaining lots valued and if that valuation is less than the amount that Council is owed, APG must provide Council with either a cash payment or a Bank Guarantee in the amount of that shortfall.

Financial / Resource Implications

The purchaser is proposing a 'put and call' structure which enables it to call in subsequent stages for development and provides Council the ability to put (sell) at agreed dates and prices. Appropriate security underpinning the future payments has been negotiated by way of a Guarantee as noted.

Legal and Policy Implications

Council Officers and CBRE Real Estate are required to follow all legal requirements in relation to the sale of the property. Council has engaged a legal and probity advisor to assist with the process.

Public/Social Impact

The public and social impact in relation to the sale of Lot 522 DP 1168919 Braemar Street Tullimbar will assist with the creation of the City Hub.

Link to Community Strategic Plan

The sale of Lot 522 DP 1168919 Braemar Street Tullimbar supports the following objectives and strategies of the Community Strategic Plan:

Objective: 2.3 A liveable City that is connected that is connected through places and spaces.

Strategy: 2.3.1 Establish the Shellharbour City Hub as a vibrant civic, commercial and cultural precinct.

Objective: 4.2 Supported by a Council that is responsive, accountable and financially viable.

Strategy: 4.2.1 Undertake Council activities within a clear framework of strategic planning, policies, procedures and service standards.

Consultations

Internal

Nil

External

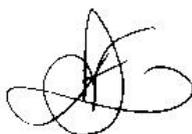
CBRE Real Estate
Marsdens Lawyers
Crowe Horwath Tax Advisors

Political Donations Disclosure

Not Applicable

Recommendations

1. That Council enter into a Put and Call Option Deed for Lot 522 DP 1168919, Braemar Street Tullimbar with the purchaser named in the Report for the amount of \$13.3 Million GST Inclusive.
2. That the Mayor and General Manager, or his nominated delegate, be authorised to execute under Council Seal the Put and Call Option Deed or any other associated documentation for Lot 522 in DP1168919, Braemar Street, Tullimbar.
3. That the commercial terms and the proposed purchaser be keep confidential until the Put and Call Option Deed is executed.



Approved for Council's consideration:

Date of Meeting: 16 December 2014

Attachments

1. Map of Lot 522 DP1168919 Braemar Street Tullimbar
2. Concept Plan

Attachment 1 – Map of Lot 522 DP1168919 Braemar Street Tullimbar



Attachment 2 – Concept Plan

