

**Subject 4.1 Council Land - Proposed Disposal - Lot 5
DP244190 Hargraves Avenue, Albion Park Rail
(10784044)**

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)(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 proposed to conduct) business;
- (d) commercial information of a confidential nature that would be disclosed:
 - (i) Prejudice the commercial position of the person who supplied it
 - (ii) Confer a commercial advantage on a competitor of the Council

Council will be considering the possible divestment of Lot 5 in Deposited Plan 244190 Hargraves Avenue, Albion Park Rail. Whilst any decision to sell such asset must be made in the public domain, consideration of the information pertaining to the proposed sale must be conducted in confidential session, to enable candid debate of commercial details, options and strategies without prejudicing the Council's commercial interest, thereby protecting the public interest.

Summary

The purpose of this report is to seek Council approval to enter into a Contract for Sale of Lot 5 in Deposited Plan 244190 Hargraves Avenue, Albion Park Rail for the value of \$280,000 (exclusive of GST). It also seeks approval for the proceeds of the sale to be allocated to an Airport restriction to assist with the implementation of the Illawarra Regional Airport Strategic and Business Plan.

The subject land is classified as Operational Land in accordance with s25 of the *Local Government Act 1993* (NSW) and is shown in **Attachment 1**.

Council acquired the subject land in 1973 for the purpose of 'aerodrome'. The subject site forms part of the land surrounding Illawarra Regional Airport (Airport). On 23 June 2015, Council adopted the *Illawarra Regional Airport Strategic and Business Plan*. The subject land is identified within the document as land being owned by Council and as not being required for future operational or community purposes for the Airport or surrounds and therefore surplus to Council's needs.

Background

On 14 July 2016, Council received an offer from an adjoining landowner to purchase the subject land. Mr Caunt (the interested party) is sole Director of 'Caunt Capital Pty Ltd' whom has formally made an offer to purchase the subject land for the consideration of \$280,000 (exclusive of GST).

The adjoining sites to the north and east of the subject land are affiliated with Caunt Capital Pty Ltd (Lot 14 DP244190) and Mr S Caunt and Mrs L Caunt (Lot 1 DP1191146). The adjoining site to the south (Lot 68 Sec N DP11034) is owned by another party. Council wrote to this owner who didn't show any interest in purchasing the subject land.

In previous years the subject site was under an agreement for 'agistment purposes'. The agreement was terminated and the agistee has vacated the land.

Legal and Policy Implications

A resolution of the Council is required to accept the offer presented and to dispose of the subject land in accordance with s377 of the *Local Government Act 1993* (NSW). There are no previous resolutions of the Council relating to the proposed disposal of the land.

Council Decision Making During Merger Proposal Periods – Section 23A of the Local Government Act 1993

The Office of Local Government's Guidelines '*Council Decision Making During Merger Proposal Periods (December 2015)*' seeks to assist councils in serving their communities effectively and provide clear guidance on what is and is not appropriate and permissible during the merger proposal period. In the case of this report, the purpose is to seek Council approval to enter into a Contract for Sale of Lot 5 in Deposited Plan 244190 Hargraves Avenue, Albion Park Rail Council Decision Making During Merger Proposal Periods – Section 23A of the *Local Government Act 1993*.

The provision made in Council's current Operational Plan which contemplates the disposal of operational surplus land is reported under action 4.1 *Effectively manage Council's property dealings and portfolios (2.3.6)*

The Office of Local Government's document *Council Decision Making During Merger Proposal Periods* states:

- "Council's the subject of merger proposals should not enter into a contract or undertaking involving the expenditure or receipt by the council of an amount equal to or greater than \$250,000 or 1% of the Council's revenue from rates in the preceding financial year (whichever is the larger), unless:
 - The contract or undertaking is entered into as a result of a decision made or procurement process commenced prior to the start of the merger proposal period; or
 - entry into the contract or undertaking is reasonably necessary for the purposes of:
 - meeting the council's ongoing service delivery commitments to its community; or
 - to implement an action previously approved under a council's Delivery Program or the Operational Plan for the relevant year.

In this instance, the proposed disposal of Lot 5 in Deposited Plan 244190 Hargraves Avenue, Albion Park Rail is not in breach of the above guidelines because the amount proposed to be received by council is not equal to or greater than \$250,000 or 1% of the Council's revenue from rates in the preceding financial year.

During this period, Council is committed to implement and operate in accordance with the adopted Community Strategic Plan 2013-2023, Delivery Program 2013-2017 and Operational Plan 2016-2017. This matter supports and follows the objectives and strategies outlined below in this report.

Disposal of Surplus Land and Buildings

A provision within Council Policy titled '*Disposal of Surplus Land and Buildings*' (Adopted 4 February 2014), notates that a non-competitive process of direct negotiation may be adopted following the steps outlined below:

1. *Making equal offers to all adjoining landowners*

Equal offers to purchase the subject land was forwarded to each of the adjoining landowners. The landowner of Lot 68 Sec N DP11034 did not express interest in purchasing the subject site.

2. *Obtaining two valuations*

Council officers commissioned two independent valuers which assessed the market value range from \$295,000 (Herron Todd White) as shown in **Attachment 2** to \$315,000 (PJC Property Services) (exclusive of GST) as shown in **Attachment 3**.

3. *Pre-establishing a range for negotiation based on the two valuations.*

The interested party commissioned their own independent valuer (Opteon Property Group) which assessed the market value at \$220,000 (exclusive of GST). A copy of this valuation was not provided to Council officers; however, it was provided to Council's Valuer to review in relation to Council's valuation.

A meeting was convened between the Valuer who valued the subject property at the highest value at \$315,000 (exclusive of GST) and the interest party's Valuer to discuss the rationales and methodology that were applied.

It was agreed similar comparables were used which included a very recent sale within Industrial Lane, Oak Flats.

The Proponent's valuer re-assessed the value range to be \$220,000 - \$250,000 (exclusive of GST) as shown in **Attachment 4**.

Council's valuer supported a counter-offer of \$280,000 (exclusive of GST), an extract of an email to Council officers dated 7 July 2016 stated:

"I confirm that the verbal counter offer of \$280,000...remains firm and it is recommended that it be formally conveyed to the purchaser (subject to Council approval). No further reduction in value is warranted."

A meeting was held with the interested party who re-iterated his interest in the subject site and formally submitted an offer of \$280,000 (exclusive of GST). The interested party is aware that a resolution of the Council is required to dispose of Council land.

Financial Resources Implications

The Illawarra Regional Airport Strategic and Business Plan sets out a number of activities which should be undertaken at the Airport. Council at this stage has little funds to undertake any development at the Airport. It is possible some of the proceeds of this sale could be used to support that plan.

Each party to the Contract will be responsible for their own legal costs.

Public and Social Impact

The subject land is not identified in the Illawarra Regional Airport Strategic and Business Plan as being required for future operational or community purposes for the Airport or surrounds and therefore is surplus to council's needs.

The divestment of the subject land may enable the funds to be directed to the implementation of the identified projects in the Illawarra Regional Airport Strategic and Business Plan.

Link to Community Strategic Plan

The proposed disposal of the subject land supports the following objectives and strategies of the Community Strategic Plan:

Objective:	2.3	A liveable City that is connected through places and spaces
Strategy:	2.3.6	Deliver sustainable management of the community's assets for current and future generations
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

PJC Property Services
 Herron Todd White
 Opteon Property Group Valuer
 Marsdens Law Group
 Sparke Helmore Lawyers

Political Donations Disclosure

Not Applicable

Recommendation**That Council:**

1. **Confirm its consideration of the guidelines issued by the NSW government in accordance with Section 23A of the Local Government Act, 1993, in resolving on this matter.**
2. **That Council enter into a Contract for Sale for Lot 5 Deposited Plan 244190 Hargraves Avenue, Albion Park Rail, with the purchaser named and the contract price as noted within this report.**
3. **That the funds from the proceeds of the sale be allocated to an Airport restriction to assist with the implementation of the Illawarra Regional Airport Strategic and Business Plan.**
4. **That the Mayor and General Manager, or his nominated delegate, be authorised to sign under Council Seal, the Contract for Sale for Lot 5 Deposited Plan 244190 Hargraves Avenue, Albion Park Rail and other associated documentation.**
5. **That the commercial terms and the proposed purchaser be kept confidential until settlement of the matter has taken effect.**



Approved for Council's consideration:

Date of Meeting: 8 November 2016

Attachments