

Late Report Extraordinary Meeting Of Council



Wollondilly Shire Council

Late Report – Monday 8 August 2016

PE2 - ACQUISITION OF LAND AT WARRADALE ROAD SILVERDALE TO COUNCIL

**PE2 – Acquisition of Part of Lot 5 DP 261728 Warradale Road Silverdale
to Council**

LATE REPORT

PE2

Acquisition of land at Warradale Road Silverdale to Council

272601

TRIM DD010.2014.00000675.001

EXECUTIVE SUMMARY

- This report seeks a resolution from Council to compulsorily acquire (**by agreement**) land forming part of Lot 5 DP261728 Warradale Road Silverdale which is currently zoned E2 Environmental Conservation under Wollondilly LEP 2011 currently owned by TJ and RF Fordham Pty Ltd known as:
 - Proposed Lot 401 with an area of approximately 74961sqm for public reserve
 - Proposed Lot 919 with an area of approximately 754sqm for public reserve
 - Proposed Lot 201 with an area of approximately 3038sqm for public reserve
 - Proposed Lot 202 with an area of approximately 1329 sqm for public reserve.
- The land within Lot 5 which is proposed to be acquired by Council is currently subject to consideration for subdivision under DD010.2014.00000675.001.
- The acquisition of these areas is broadly consistent with Council's Dedication of Land Policy. The Proponent has agreed to undertake certain works on the site before acquisition occurs and pay all of Council's reasonable legal costs associated with the acquisition.
- During the pre-lodgement process the applicant was advised that the public reserve allotments would need to comply with the minimum lot sizes however it has since been realised that this is not achievable for the land zoned E2 Environmental Conservation for this land as the minimum lot size is 100 hectares under Wollondilly LEP 2011. Hence, based on legal advice, the alternative method is to seek to compulsorily acquire (by agreement) the land under the Land Acquisition (Just Terms Compensation) Act 1991.
- It is recommended that:
 - Council pursue the compulsory acquisition (by agreement) of the land proposed by the applicant
 - The land be classified as Community Land under the Local Government Act 1993.

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BACKGROUND

DD010.2014.00000675.001 is currently undergoing development assessment. During the public notification period, two submissions were received relating to concerns about road capacity and increased traffic.

Clause 4.1 of the *Wollondilly Local Environmental Plan 2011* sets out the minimum lot size for subdivision on lots across Wollondilly. Where land has a minimum lot size, this will be shown on the Lot Size map which forms part of the WLEP 2011. Not all land has a minimum lot size. Under Clause 4.1, lots (land) can only be subdivided if both lots, after the subdivision, are not less than the lot size shown on the Lot Size Map.

The portion of the two sites, within the proposed planning proposal, where the land is zoned E2 Environmental Conservation have a minimum lot size of 100 hectares. However, other areas within the sites have different minimum lot sizes being 450sq.m (for land zoned R2 Low Density Residential within the Marsh Road site), 700 sq.m (for land zoned R2 Low Density Residential within the Warradale Road site) or 500 sq.m (for land zoned IN2 Light Industrial within the Warradale Road site).

However, the total area of land within the lots which is zoned E2 Environmental Conservation is significantly less than the minimum lot size and so this part of the site cannot be subdivided into a separate lot under Clause 4.1 of Wollondilly Local Environmental Plan, 2011 (i.e. for Torrens title subdivision). This also means that land within the site which is zoned for other purposes, such as residential development, cannot be subdivided as any subdivision will involve the land zoned E2 with a minimum lot size of 100ha.

Due to the LEP provisions relating to subdivision and minimum lot sizes, it is proposed that the land be compulsorily acquired (by voluntary agreement) as this does not constitute 'subdivision' under Section 4B of the Environmental Planning and Assessment Act 1979.

"Section 4B:

... (3).However, subdivision of land does not include: ...

(c) the acquisition of land, by agreement or compulsory process, under a provision of an Act (including a Commonwealth Act) that authorises the acquisition of land by compulsory process,..."

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In September 2015, Council's Land and Property Panel considered the proposed dedication of four open spaces lots to Council – proposed Lots 201 and 202 for drainage reserves and proposed Lots 401 and 919 for an environmental land reserve.

The Panel recommended that Council accept the proposed dedications subject to being funded in accordance with Council's "Dedication of Land Policy". In this case there has been a Voluntary Planning Agreement (VPA) which relates to proposed Lot 201 and 202 as it has always been intended that the remaining land (proposed Lots 401 and 919) would be part of a bio-banking agreement.

A Vegetation Management Plan (VMP) for proposed Lots 401 and 919 has been provided to Council which "*addresses vegetation management strategies for weed control and prevention, stormwater control, revegetation and regeneration, the protection and maintenance of conservation values*". The report includes a 24 month maintenance program and a maintenance payment to Council. With respect to the long term maintenance, the applicant advised that "*the bio-banking agreement will provide funding to Council for the long term maintenance of Lot 401. Council may choose to use this funding for environmental programs as it chooses*".

The applicant has advised that the bio-banking agreement process is underway but it not yet finalised. The BioBanking agreement will generate credits (to be used by the owner as part of the subdivision). All credits will be retained initially by the owner. Once a minimum of 80% of the credits are sold and retired the funding associated with these credits will come to Council as the landowner (subject part of the transfer of the land to Council).

SITE DESCRIPTION

A map and aerial photograph showing the location is included as Attachment 1. Most of the land, which serves as a drainage corridor, is low lying with associated riparian vegetation.

Council's Environmental Services Branch has raised no objections to the acquisition of land by Council.

MATTERS FOR CONSIDERATION

In deciding whether or not to accept the site, the following matters are relevant:

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▪ **Views of Council’s Land and Property Panel**

The Panel recommended that Council accept the proposed dedications subject to them being funded in accordance with Council’s “Dedication of Land Policy” (the Policy). The Policy requires that Council be provided with a source of funds for maintenance costs to cover long term maintenance and in this case the applicant is proposing that Council accept the value of the bio-banking credits as an alternative to a cash payment. This option is consistent with the Policy.

When the Panel initially considered this site the proposed was for land dedication via a Voluntary Planning Agreement, however it has since been realised that due to the minimum lot size that the only option available in this case is to acquire the land under the Land Acquisition (Just Terms Compensation) Act 1991. Hence whilst the VPA process is not applicable in this case the bio-banking arrangement provides a mechanism for Council to recoup funds for the ongoing maintenance of the Environmental Lands.

▪ **Easements, Caveats etc**

Any burdening easement or caveats would need to be removed prior to the acquisition and would be at the owner’s cost.

▪ **Dedication of Land Policy**

The acquisition of the land to Council is generally consistent with the Dedication of Land Policy. The acquisition does not need to be accompanied by a monetary contribution for maintenance purposes.

▪ **Environmental considerations**

Council’s Environmental Assessment Planner has raised no objections to the acquisition of these parcels to Council.

▪ **Process for acquisition**

It is proposed that the ownership of the land be acquisition by Council through under the Land Acquisition (Just Terms Compensation) Act 1991, which would involve acquiring the land from TJ and RF Fordham Pty Ltd for \$1. The completion of the Contract of Sale may require further advice provided by the owner regarding any information that may pose a risk to Council. If so, it is proposed that any such matters that may arise be resolved by the General Manager (with advice from relevant Council staff).

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▪ **Classification under the Local Government Act**

Once the land comes into Council ownership it must be classified as either Community Land or Operational Land under the Local Government Act. It is recommended the land be classified as Community Land. This classification better suits the E2 Environmental Conservation zoning. As Community Land a Plan of Management would need to be prepared to guide future use of the site.

FINANCIAL IMPLICATIONS

The direct financial implications in accepting this land will be minimal and will only involve maintenance costs. These are likely to involve control of weeds in the riparian areas. Costs involved in processing the acquisition process will be nil as the owner has agreed to pay all of Council's legal and associated fees.

ATTACHMENTS

1. Warradale Road Silverdale – Proposed Plan of Subdivision, Crown Road and Aerial Photograph

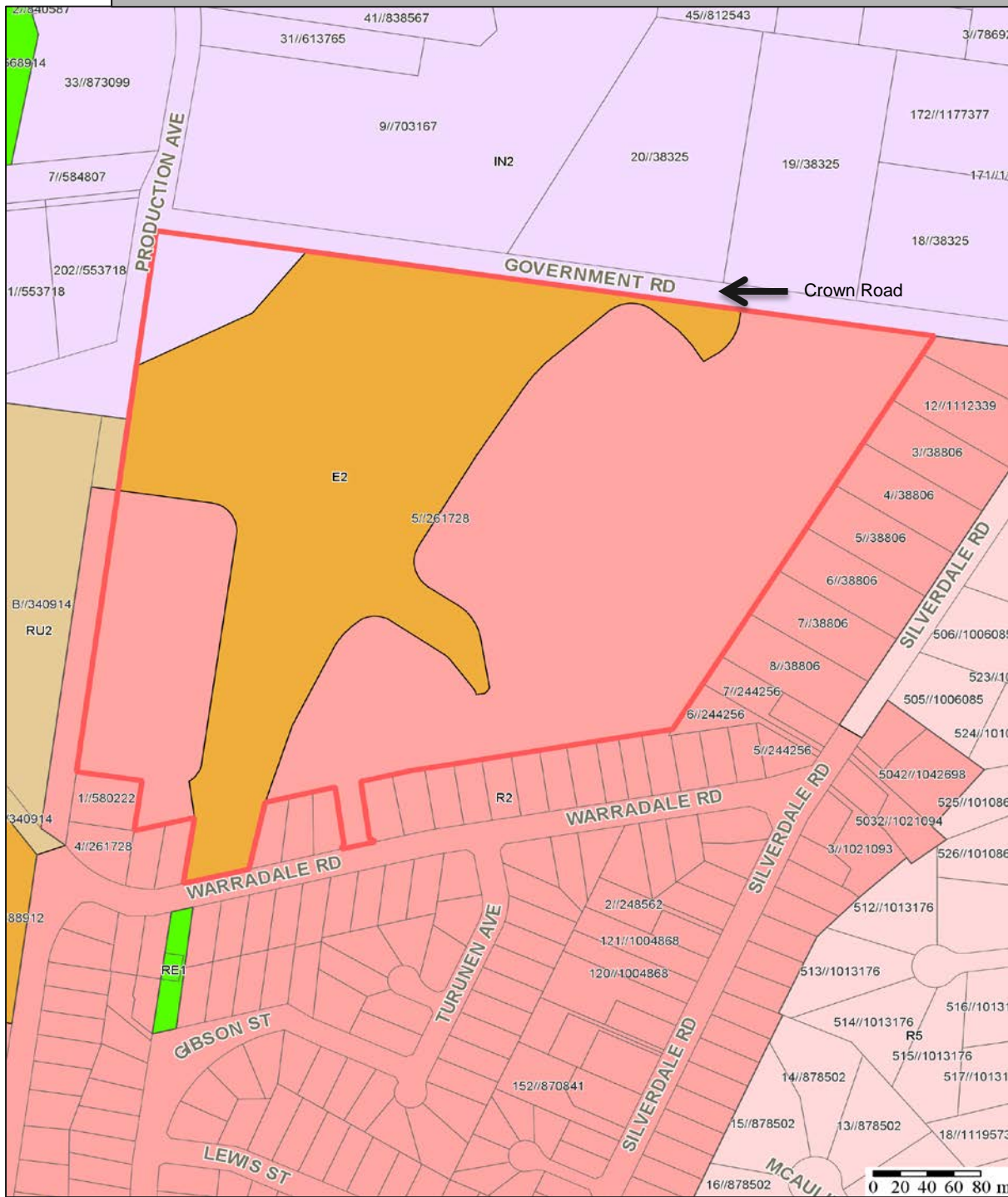
RECOMMENDATION

1. That Council agree to compulsorily acquire (by agreement) land described as being proposed Lot 401, 919, 201 and Lot 202 within Lot 5 DP 261728.
2. That Council resolve to classify the site as Community Land under the Local Government Act, 1993 once the site is in Council ownership.
3. That the compulsory acquisition (by agreement) occur under the Land Acquisition (Just Terms Compensation) Act 1991 by which Council acquire the land from TJ and RF Fordham Pty Ltd for \$1.00.
4. That Council authorise the General Manager to process the acquisition once any additional information required has been provided by TJ and RF Fordham Pty Ltd and assessed by Council staff as adequate.
5. That once the Contract of Sale is finalised, that the Mayor and General Manager be authorised to execute all necessary documents, including those requiring the Common Seal of Council.

Report of Planning and Economy to the Extraordinary Meeting of Council held on Monday 8 August 2016

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ATTACHMENT 1 – DD010.2014.00000675.001– 8 AUGUST 2016



Planning & Economy

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Planning & Economy