

**TITLE: [GM-OC] Land Development & Disposal of Council Land - Tweed Heads, Bogangar and Murwillumbah**

**ORIGIN:**

**Design**

**SUMMARY OF REPORT:**

At its meeting held on 6 March 2007, Council received a report relating to the development and disposal of several Council owned parcels. The report is attached as a confidential attachment.

It was resolved to pursue various actions to enable the disposal of these parcels and this report is an update on those actions.

**RECOMMENDATION:**

**That Council:-**

- 1. Adopts the Probity Plan prepared by Maddocks Lawyers in relation to the disposal of the Bay Street Road Closure, Lot 1 in DP 848723;**
- 2. Adopts the Probity Plan prepared by Maddocks in relation to the sale of Bay Street Fire Station site comprised of Lot 7035 in DP 1053313, Lot 1 in DP 880816 and Lot 8 in Section 2 in DP 759009, Proudfoots Lane site comprised of Lots 1 to 3 in DP 772254 and Lot 4 in DP 772202, Sunnyside Car Park comprised in Lot 1 in DP 709231 and Lot 3 in DP 842350 at Hastings Road, Bogangar;**
- 3. Approves entering into negotiations with prospective purchasers following due process by public tender or public auction.**
- 4. The ATTACHMENT be treated as CONFIDENTIAL in accordance with Sections 10A(2)(c) and (d) of the Local Government Act, 1993, because:**
  - (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, or**
    - (ii) confer a commercial advantage on a competitor of the council, or**
    - (iii) reveal a trade secret.**
- 5. All documentation to be executed under the Common Seal of Council.**

**REPORT:**

At its meeting held on 6 March 2007, Council received a report relating to the development and disposal of several Council owned parcels. The report is attached as a confidential attachment.

It was resolved to pursue various actions to enable the disposal of these parcels and this report is an update on those actions.

Council's resolution of 6 March 2007 provided:

*"That Council:*

1. *Proceeds with an application to close that part of Bay Street, Tweed Heads currently known as Lot 1 in DP 848723;*
2. *Approves entering into a Contract for Sale for the purchase of Lot 7035 DP 1053313 with the Department of Lands in the sum of \$425,000 and a further report in regards to timing, financing and contractual conditions be prepared.*
3. *Classifies Lot 7035 DP 1053313 as "operational land" pursuant to Section 25 of the Local Government Act 1993.*
4. *Engages a probity officer to manage the disposal of the land parcels subject of this report;*
5. *Engages a marketing strategist/consultant to ascertain the highest and best use of the land parcels subject of this report;*
6. *Council advertises its intentions to market these parcels to achieve the highest and best use in the context of recommendations made by the Tweed Heads Master Plan, DCP B19 and Retail Analysis by Core Economics."*

**Probity Advice**

In pursuance of its resolution, Maddocks Lawyers were engaged as probity advisors in relation to the disposal of the land parcels.

Maddocks prepared a Confidential Probity Briefing Paper, which is a confidential attachment to this report.

This paper provides a foundation for Council to consider probity obligations and outlines the requirements to establish a disposal process that will support Council's obligations as the owner of public assets and ensure due diligence is accordingly applied to this process.

Probity plans have now been drafted, one specific plan for the Bay Street Road Closure and a generic plan for the remaining parcels at Tweed Heads (Bay Street Fire Station site), Murwillumbah (Proudfoots Lane, Sunnyside) and Bogangar (Hastings Road).

These draft Probity Plans are also confidential attachments to this report. It is recommended that the Plans be adopted and Council proceeds with the necessary steps for the disposal of the lands adhering to the probity requirements of the Plans.

One of the recommendations of the Plans is that a Project Team be created to oversee the implementation of and adherence to the Plan during the course of marketing and negotiations. The Project Team is to be comprised of a Chairperson and Co-ordinator.

It is recommended that the Property & Legal Services Officer be installed as the Chairperson, and the Corporate Compliance Officer be installed as the Co-ordinator with appropriate sub-delegations applied to enable these officers to undertake the tasks required under the Probity Plan to dispose of Council land.

It is to be noted that the Plan applies to Councillors (and Administrators), members of the Project Team, other members of staff and any external advisors engaged to provide services to Council in relation to the disposal of the parcels subject of the Plans.

The Plan also details the roles and responsibilities of those involved in the disposal process and the role of the General Manager, emphasising the role of strict confidentiality and the handling of proprietary information that will arise in relation to the disposal of the parcels. This proprietary information includes expressions of interest and tenders that will be received during the disposal process. The Plan advises that all associated staff must sign a confidentiality agreement and declare any pecuniary interest that may arise at any stage during the disposal process.

### **Marketing**

In response to the Probity Plans provided to Council, valuations are currently being sought to provide a basis of anticipated returns on the parcels, in some cases to update valuations already held by Council and in other cases, fresh valuations for those parcels that have more recently been considered available for sale.

In line with its resolution of 12 March, 2007, Council has recently accepted tenders for the marketing of the parcels subject of this report.

These tenders are under assessment at the time of writing this report.

Below is a summary of the actions taken and proposed to be taken for each parcel:

### **Bay Street Road Closure**

Pursuant to Council's resolution, an application, dated 12 March 2007, was lodged with the Department of Lands to proceed with the closure of the road parcel.

Discussions were held with Maddocks in relation to overtures received by developers representing the owners of Tweed Centro. The report of 6 March referred to these overtures and advice was sought as to Council's position with regard to direct negotiations, the exclusion of competition and the perception of improper conduct in view of ICAC guidelines.

As part of their consideration of the issues, Maddocks recommended that the road closure application be cancelled to avoid a perception of improper conduct, partiality or predetermination of the matter, as the application may be viewed to have been a direct response to the overtures from the Walker Group. A letter was sent to the Department of Lands cancelling the application for road closure on 14 August 2007.

A draft Probity Plan was provided for the disposal of the Bay Street road closure in early September, 2007. As noted above, the Plan is a confidential attachment to this report.

Regular discussions with Maddocks have resulted in their advising that in conjunction with the Department of Lands, there may be a case for direct dealings with the Walker Group. The Plan provides for this process to be undertaken.

It is recommended that Council adopt the Probity Plan for the Bay Street road closure parcel and proceed with discussions with the Walker Group, in accordance with the Probity Plan.

The proceeds of the sale, as it is a road closure parcel, are to be used in accordance with the *Roads Act 1993*, which states in section 43(4) that the proceeds are to be used for road works on public roads or acquiring land for public roads.

It is anticipated that part of the proceeds of the sale are to be directed to the public road component of the Jack Evans Boatharbour, Tweed Heads Masterplan recommendations, and the balance to be determined.

### **Bay Street Fire Station**

It was resolved at the 6 March 2007 meeting to proceed with the purchase of the Bay Street Fire Station parcel, Lot 7035 in DP1053313.

There was a delay in the issue of Contracts, as the Department attended to actions to obtain a title for the land, as no title had issued previously.

The counterpart Contract for the Sale of Land was received from the Department on 16 October 2007.

The counterpart Contract was forwarded to the Department to initiate exchange of Contracts on 25 October 2007. The Contract is unconditional and completion, with vacant possession, will occur twenty eight (28) days following exchange.

The deposit monies, in the sum of \$42,500 came from the Land Development Reserve, and the balance payable on settlement, \$382,500 will be funded temporarily from the ELE Reserve until the parcel is sold.

As noted in the report of 6 March, Council owns land adjacent to the Fire Station site, Lot 8 Section 2 DP 759009 and Lot 1 in DP 880816. These two parcels are to be consolidated with Lot 7035 following completion.

The Department of Planning are currently undertaking a review of the Tweed Heads precinct, including the parcels referred to above. This review is directed to appropriate planning to invigorate development in the precinct and it is recommended that these parcels are retained until the review is completed, anticipated to be in early 2008.

Council has requested a re-assessment of the valuation of the site to reflect the current market climate, this request is made in response to the development that has taken place in the Tweed since the previous valuation, prepared in November 2006.

It is to be noted, that the closed road parcel, Lot 1 in DP 880816, was gazetted as a temporary road for the purposes of car parking, shortly after the road was closed. This was to enable the use of the parcel for parking and the designation as road extended Council's indemnity over public road to extend to the use of the land as a car park.

As for the sale of the Bay Street road closure, a component of the proceeds of the sale (that is, the road closure parcel, Lot 1) must be directed to roadworks on public road or the acquisition of land for roads

It is anticipated that the proceeds of the sale of Lot 1 are to be directed to the public road component of the Jack Evans Boatharbour, Tweed Heads Masterplan and the balance to be determined. The proceeds of the sale of the other two parcels are anticipated to be utilised for the embellishment of the public domain components of the Tweed Heads Master Plan, which includes the Jack Evans Boatharbour.

### **Hastings Road, Bogangar**

It has been established that no statutory trust exists in relation to this parcel as it was properly re-classified as operational land, by gazettal on 11 March 2005.

The Development Control Plan for Bogangar is the subject of a separate report recommending its adoption. It is to be noted that this parcel was identified as being suitable for sale to fund the construction of the multi-level car park to the south, closer to the business precinct of Cabarita.

It is anticipated that some of the proceeds of the sale will be directed to car parking, Main Street and road improvements in the Cabarita Town Precinct, with the balance to be determined at a later date.

The generic Probity Plan recommends that the land be sold by public tender or auction, this is to allow the inherent value of the land to be determined by the market.

### **Proudfoots Lane**

A valuation was obtained for this site, together with advice in relation to the buoyancy of the local commercial market and timing of a potential sale.

The valuation provided a determination indicating that there would be no benefit in delaying the sale to maximise the return. The current market is very strong and has been strong for the last couple of years, and that a sale in the near future would take advantage of the current optimism.

The valuer was also requested to comment on the impact on value due to the need to provide car parking on site to replace what is currently available. The response was that the determination is based on sales evidence of normal and conventional properties, where the purchaser has an unfettered right to use the land as they wish, including redevelopment.

It follows that if the land is thus constrained it will likely have a discount effect on the sale price received.

In light of the interest in the site, it appears that this site is suitable for immediate sale, subject to the excision of the sewer pump station.

The valuer recommended the sale of the site by public auction, however, a marketing agent is to be appointed who will further advise in this respect.

**Sunnyside Car Park**

In the 6 March report, it was noted that this site has the potential for the construction of a multi-level car park as an adjunct to a future development, where the car parking contributions may be accepted as construction costs, subject to development approval.

The car park, Lot 1 in DP 709231, is burdened by a restriction on use for the benefit of Lot 2 in the same DP, that Lot 1 is to only be used for public car parking purposes.

In the Probity Briefing Paper, it was recommended that Council seek independent legal advice in relation to whether clause 56 of the Tweed LEP impacts on the restriction. The advice obtained by Council indicates that the use of Lot 1 for other purposes will be allowable.

This precludes entering into direct negotiations with the owners of Sunnyside and allows the property to be placed on the open market.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

1. **Confidential Attachment** - Council Report dated 6 March 2007; (DW 1550835).
  2. **Confidential Attachment** - Council Resolution dated 6 March 2007; (DW 1555385).
  3. **Confidential Attachment** - Confidential Probity Briefing Paper; (DW 1628673).
  4. **Confidential Attachment** - Probity Plan – Bay Street Road Closure; (DW 1700760)
  5. **Confidential Attachment** - Probity Plan - Residue Parcels; (DW 1700760).
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