

19.4 COMMONWEALTH LAND BIRKDALE PURCHASE NEGOTIATIONS

Objective Reference:

Authorising Officer: Louise Rusan, General Manager Community & Customer Services

Responsible Officer: Graham Simpson, Group Manager Environment & Regulation

Report Author: Stephen Hill, Service Manager Strategic Planning

Attachments:

1. Site Map
2. Commonwealth Property Disposals Policy 2015
3. Letter of Offer from Australian Government - Department of Finance
4. Senate estimates 2014
5. Senate estimates 2016
6. European Heritage Assessment
7. Indigenous Cultural Heritage Study
8. Site Environmental Investigation
9. Historical Certificate of Title
10. Due Dilligence Report
11. Security of Purpose Clause - template
12. Site planning and constraints
13. Valuation Report

The Council is satisfied that, pursuant to Section 275(1) of the *Local Government Regulation 2012*, the information to be received, discussed or considered in relation to this agenda item is:

- (h) *other business for which a public discussion would be likely to prejudice the interests of the local government or someone else, or enable a person to gain a financial advantage.*

PURPOSE

The purpose of this report is to provide an update on the on-going negotiations to acquire the Commonwealth land at Old Cleveland Road East, Birkdale. The Federal Government Department of Finance in confidential correspondence dated 16 November 2018 confirmed the Federal Government agreement to invite Council to make an off-market offer subject to the following:

- Market value – to be based on highest and best use of the site recognising the existing regulatory planning framework and existing values and constraints
- Acceptance of a Security of Purpose clause which recognises that if any zoning change of the property occurs in the next 30 to 40 years any value uplift would be returned to the Commonwealth
- The submission of an offer by 8 February 2019 or sooner

The report recommends that Council resolve to reconfirm its interest in acquiring the land and respond to the off-market purchase offer on the basis of the independent site valuation report prepared by LMW (Brisbane) Pty Ltd trading as LMW.

BACKGROUND

The Birkdale Commonwealth Land is split between two Federal Government Departments, the Australian Communications and Media Authority (ACMA) and Air Services Australia (ASA).

At this stage, Council is in the process of negotiating the potential purchase of the ACMA land 362-388 Old Cleveland Road East described as Lot 1 on RP14143, Lot 2 on RP14144 & Lot 2 on SP146445 (see Attachment 1 – Site Map).

The following provides a summary of the site history.

- June 2009 - Council was approached by the ACMA to identify any interests or development or environmental plans for their site as 362-388 Old Cleveland Road East Birkdale. The ACMA indicate that the site may no longer be required for operational purposes and that they were seeking to gain an understanding of potential stakeholder interest for the land.
- July 2009 – Council’s Chief Executive Officer (CEO) wrote to the ACMA formally stating Council’s preliminary interest in acquiring the land for environmental protection and recreational uses.
- August 2010 – At its General Meeting, Council resolved to adopt a schedule of properties for acquisition using the environment levy. The Commonwealth Land site in Birkdale is included on the schedule.
- June 2011 – Council commissioned a pre-feasibility study to investigate potential recreational and environmental uses of the site and outlined possible development options and approaches for acquiring the land.
- December 2014 – The ACMA formally announced it did not anticipate a continuing requirement to maintain a monitoring station in Birkdale and expected to dispose of the property in accordance with relevant policy, the current policy being the *Commonwealth Property Disposal Policy* (Attachment 2).
- Council at its General Meeting on 28 January 2015 resolved to enter into negotiations with the Federal Government, and relevant commonwealth agencies the ACMA and the ASA with a view to acquiring the Birkdale Commonwealth land as a strategic land acquisition.
- March 2015 – Meeting held with Council officers and representatives of the AMCA and the ASA to discuss the potential future purchase of the surplus Commonwealth lands. At the meeting, Commonwealth officers confirmed the disposal of the ASA and the ACMA land would be required to meet the provisions of the *Commonwealth Property Disposals Policy*. Commonwealth officers also advised that in accordance with the Policy they would be willing to consider pursuing an off-market sale of the land to Council.
- May 2015 – A project plan for the Birkdale Commonwealth Land Review project was finalised and consultants engaged to commence planning investigations. The purpose of the project was to provide technical information which may be required by the Commonwealth to support an off-market purchase in accordance with the *Commonwealth Property Disposals Policy* and to identify the preferred future land uses of the site. The project was subsequently placed on hold pending purchase negotiations.
- January 2016 - Council wrote to the Federal Minister for Finance seeking to enter into negotiations with the ACMA and the ASA about potential off-market purchase of Commonwealth Land at 362-392 Old Cleveland Road East, Birkdale pursuant to the Commonwealth Property Disposal Policy.
- February 2016 - Council received correspondence from the Federal Finance Minister advising Council to raise its interest directly with the ACMA and the ASA.

- May 2016 – Council received advice confirming ACMA officers were supportive of an off-market sale and that no further technical information was likely to be required from Council prior to seeking final Ministerial approval.
- May 2016 onwards – Council continued to negotiate potential off market purchase with the ACMA.
- May 2018 – Federal Government releases budget indicating the ACMA property to be released for housing. In response to the Federal Budget a Mayoral Minute to the General Meeting on the 9 May 2018 reconfirmed the following :
 1. *To enter into urgent negotiations with the Australian Government, ASA and the ACMA with a view to acquiring the land described as Lot 1 RP14143, Lot 2 on SP146445 and Lot 2 on RP14144 362-388 Old Cleveland Road East) and Lot 1 RP101870 and Lot 149 on RP101869 (392 Old Cleveland Road East);*
 2. *All negotiations should make it clear Council’s intention is for the land to be retained for community use, such as educational facilities and recreation, to protect the property’s environmental overlays and significance; and*
 3. *To write to the relevant Federal Minister, Member for Bowman and Chair and Agency Head of ACMA to request the Australian Government immediately rescind its decision to divest the land in 2019-20 for 400 houses, as outlined in the Federal Government 2018-19 Budget Papers.*
- May 2018 onwards - Council has continued to negotiate with the Federal Government with a view to acquiring surplus Commonwealth Land at Birkdale as a strategic land acquisition. The Mayor, Chief Executive Officer and Council officers attended a number of meetings with relevant ministers and federal government officers.
- November 2018 - the Federal Government Department of Finance provided Council with correspondence setting out the terms of a potential off-market purchase of the ACMA land and copies of a number of technical reports including:
 - Site Environmental Investigation
 - Indigenous Cultural Heritage Assessment
 - Heritage Assessment
 - Historical Certificate of Title
 - Due Diligence Report
 - Security of Purpose Clause – Template

The terms of a potential off market purchase of the land include a valuation, a Security of Purpose clause and a time frame requiring Council to submit an offer by 8 February 2019 or sooner. The letter further states that the Commonwealth will commence alternative divestment approaches if there are unreasonable delays in Council’s response.

ISSUES

1. Off-Market Purchase Offer

Over the last 6 months there have been a number of meetings between the Federal Government, the Mayor and Council officers to discuss potential off-market purchase of the Birkdale Commonwealth land by Council. At a meeting held on 15 November 2018 and in subsequent correspondence received by Council (see Attachment 3 - Letter of Offer from Australian Government - Department of Finance), the Federal Government Department of Finance advises

the Government has agreed to invite Council to make an off-market offer consistent with the following:

1. Purchase Price: At the meeting held in November 2018, officers from the Federal Government Department of Finance verbally advised the Federal Government is seeking [REDACTED] from Council for the purchase of the ACMA land.

At this stage, it is unknown whether the requested amount is supported by an independent valuation or not. The correspondence received from the Federal Government Department of Finance notes that the offer should reflect market value assuming the highest and best use of the site 'as is'. It should be noted that reporting and responses prepared to questions raised in the Senate Standing Committee on Environment and Communication and recorded in Hansard noted the site had an estimated land value of \$6.0M in 2014 (see Attachment 4 – Senate estimates 2014) and \$5.0M in 2016 (Attachment 5 – Senate estimates 2016).

2. Security of Purpose Clause (SOP): the off-market sale would be subject to the inclusion of a SOP clause for an agreed term (i.e. 30 - 40 years). The purpose of this is to ensure that should a future zoning change result in the land having a higher value, this value uplift would be returned to the Commonwealth.

In effect the SOP clause requires the purchaser to acknowledge that the property has been sold by the Commonwealth under the Commonwealth's off-market sale program with the understanding that the Property will be used by the purchaser under the current zoning and for the Permitted Use within a 30 – 40 year timeframe (as determined). The clause places a number of obligations on an off market purchaser, these include:

- Obtaining Ministerial approval should the off market purchaser seek a future sale of the property
- An off-market purchaser must, on or before settlement or completion of a sale of the property (or any part of it), pay to the Commonwealth an amount calculated in accordance with a specified formula
- If the property is rezoned or permitted to be used for any other use other than the permitted uses identified in the security of purpose clause, the off-market purchaser will be responsible to pay the Commonwealth any increase in the value of the land.

It is noted that if Council is successful in acquiring the land, any land use investigation is likely to be consistent with the range of uses articulated in the strategic planning framework. It would also be consistent with the recommendations of the Mayoral Minute 9 May 2018 which states:

"All negotiations should make it clear Council's intention is for the land to be retained for community use, such as educational facilities and recreation, to protect the property's environmental overlays and significance".

However, acceptance of the clause may potentially fetter opportunities and changing circumstances that may arise on the site over the next 30-40 years. It is noted that the *Commonwealth Property Disposal Policy* does not require such a clause if the purchase is made at market value. Specifically,

"Where Commonwealth property is sold off-market at below market valuation, the contract of sale includes security of purpose arrangements that "lock in" the future land use, to help ensure that the policy objectives which justify the off-market/ concessional sale are delivered. The inclusion of security of purpose arrangements is a standard condition of the

Finance Minister's approval for an off-market concessional sale (that is, below market value)."

Therefore if such a clause were to be accepted it would be reasonable that some discounting of market value is considered or payment is staged over a period of time, say five years.

3. **Timeframe:** The correspondence notes the Government is committed to divest the Birkdale property by the end of financial year 2019/2020. To facilitate this, Federal Finance Department has requested Council submit its offer by 8 February 2019 or sooner.

The correspondence received also notes that after this time the Commonwealth will commence alternative divestment approaches if there are unreasonable delays in the Council's response, or agreement has not been reached on the proposed conditions to the Commonwealth's satisfaction.

4. **Due Diligence:** To assist Council decision making, the Federal Government Department of Finance has provided copies of the following site investigations and documents:

(i) European Heritage Assessment (Attachment 6)

This report identified the site has heritage values of State significance and recommends that at a minimum the main receiving station should be considered for nomination for entry in the Queensland Heritage Register. The report also recommends a heritage management plan be prepared by the ACMA or as a condition of transfer to any new owner. The report notes that a management plan would provide:

- An on-going plan for the conservation and preservation of the main receiving station
- Recommendations for each of the main elements of the site and the measure for managing or mitigating any impacts from development of the site

This matter is further discussed in the risk section of this report.

(ii) Indigenous Cultural Heritage Study (Attachment 7)

This report identified a number indigenous cultural heritage sites on the southern part of the site that will need to be listed on the Department of Aboriginal & Torres Strait Island Partnership register. These sites are in close proximity to Tingalpa Creek and are located within the conservation zoned portion of the site.

(iii) Site Environmental Investigation (Attachment 8)

Details on this report are provided in the environmental section of this report.

(iv) Historical Certificate of Title (Attachment 9)

(v) Due Diligence Report (Attachment 10)

(vi) Security of Purpose Clause – Template (Attachment 11)

2. Council valuation

After being invited to make an offer for an off-market purchase, Council engaged independent valuer LMW to assess the current market value of the site.

In undertaking the site valuation, the valuer was briefed on the current regulatory planning framework applying to the site including the Regional Plan, koala regulatory provisions and the City Plan as well as state and local level values, hazards and constraints identified on the site (see Attachment 12 – site planning and constraints).

In summary the current planning framework does provide some opportunity for community use, small scale industry, tourism, residential care facility, service stations, sport and recreation activity development within the community facilities zoned portion of the site consistent with the intent of the City Plan strategic framework.

Based on the assessment, the valuation report (see Attachment 13) concludes the site has a current market value of [REDACTED]

This report recommends Council reconfirm its interest in acquiring the land as a strategic acquisition and seek to reach agreement on an off-market purchase consistent with the findings of the site valuation report.

STRATEGIC IMPLICATIONS

Legislative Requirements

The negotiation and purchase of this land must be in accordance with the local government principles under the *Local Government Act 2009*.

Risk Management

If Council does not respond to the request from the Federal Government Department of Finance within the requested timeframe or is unable to reach agreement on an off market purchase there is a risk property could be disposed of on the open market.

The European Heritage Report provided by the Federal Government Department of Finance has identified some specific structures with heritage significance and recommended that a heritage management plan be prepared for the entire site to identify how the site should be managed. The management and cost of the sites heritage values should be addressed as part of the purchase negotiations.

Financial

There is currently no allocated budget for the acquisition of the land. Payment of a deposit will require funding either entirely from Council's general cash balance or from a combination of general cash and the environmental acquisition reserve, utilising savings to be identified from Council's 2018/19 capital program.

Settlement in 2019/20 will require an additional budget ask to be approved as part of Council's 2019/20 budget development process. Options for funding the land purchase include payment from Council's general cash balance, environmental acquisition reserve or a loan.

Should Council choose to purchase the land, in line with Council's current Debt Policy, officers recommend borrowing the funds in 2019/20 due to low interest rates and the intergenerational

nature of the spend. Council will deliberate new borrowings as part of the upcoming budget 2019/20 development process.

Ongoing maintenance of the land will also require additional operating budget which is expected to be approximately [REDACTED] to cover slashing and to assess and program weed management for the site.

Future planning concerning use and management of the land would be subject to future budget submissions.

People

A small working group of Council officers from Environment and Regulation, General Counsel, Strategic Planning and Redland Investment Corporation (RIC) are coordinating the negotiation with consultants. If the property is acquired a project plan would be developed with resourcing requirements to coordinate the associated planning studies, community consultation and future management and land use.

Environmental

The site has been identified as containing a wide range of environmental values including:

Matters of National Environmental Significance: the Environmental Investigation Report (Attachment 7) provided by the Federal Government Department of Finance identified one listed mammal species known to occur on the site and 12 other threatened species that have the potential to occur on the site but likely in low numbers if they do. Report also noted 1 threatened ecological community (sub-tropical and temperate coastal saltmarsh) likely present within 0.7ha in the western portion of the site along the banks of the creek.

Matter State and Local Environmental Significance: The site is identified as containing Matters of State and Local Environmental Significance. The specific values include wildlife habitat, regulated vegetation, essential habitat, small area of high ecological significance wetland and bushland koala habitat.

Coastal Management District and Waterways: The entire site is included within a coastal management district and the strip of land adjoining Tingalpa Creek is identified as a waterway corridor.

Social

The change.org petition in response to the Federal Government intention through its 2018 budget to make the land available for housing shows the community has a strong interest in the future use of this land.

Alignment with Council's Policy and Plans

The potential off market purchase of the land aligns with previous Council resolution to seek to acquire land as a strategic property acquisition.

CONSULTATION

Consulted	Consultation Date	Comments/Actions
General Counsel		On-going consultation with working group established to progress the purchase negotiations with the Federal Government.
Group Manager Environment and Regulation		
Service Manager Strategic Planning		

Chief Executive Officer Redland Investment Corporation	
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OPTIONS

Option One

That Council resolves to:

1. reconfirm its interest to acquire the land;
2. provide the Federal Government Department of Finance with an offer of purchase consistent with the current market valuation subject to further negotiation on the Security of Purpose clause;
3. authorise the allocation of sufficient funds to purchase the property and to fund establishment and maintenance and planning costs during the 2018/19 and 2019/20 financial years;

4. delegate authority to the Chief Executive Officer under section 257(1)(b) of the *Local Government Act 2009* to make, vary, negotiate and discharge a contract, including signing all relevant documents, to purchase the land at fair market value or less should the terms of the sale include a Security of Purpose clause; and
5. maintain this report and attachments as confidential until settlement or as required by any legal or statutory obligation.

Option Two

That Council resolves to seek a commitment from the Federal Government for the land to be gifted to Council.

Option Three

That Council resolves to cease negotiating the purchase of the land and compete to acquire land through open market disposal process.

Option Four

That Council resolves to cease seeking to purchase the land.

Option Five

That Council resolves to take action to acquire land as a compulsory acquisition, following further legal advice in regards the merits and prospects of such an action. A further report be prepared to provide advice on issuing a notice of intention to resume the land through compulsory acquisition under the *Acquisition of Land Act 1967*.

OFFICER'S RECOMMENDATION

That Council resolves to:

- 1. reconfirm its interest to acquire the land;**
- 2. provide the Federal Government Department of Finance with an offer of purchase consistent with the current market valuation subject to further negotiation on the Security of Purpose clause;**
- 3. authorise the allocation of sufficient funds to purchase the property and to fund establishment and maintenance and planning costs during the 2018/19 and 2019/20 financial years;**
- 4. delegate authority to the Chief Executive Officer under section 257(1)(b) of the *Local Government Act 2009* to make, vary, negotiate and discharge a contract, including signing all relevant documents, to purchase the land at fair market value or less should the terms of the sale include a Security of Purpose clause; and**
- 5. maintain this report and attachments as confidential until settlement or as required by any legal or statutory obligation.**