

DISPOSAL OF LAND, MT COTTON**Dataworks Filename:** 133694 , 133817**Attachment:** [Aerial photograph](#)**Authorising/Responsible Officer:****Gary Soutar
General Manager Infrastructure and
Operations****Author:****Gary Soutar
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PURPOSE

To seek Council approval to dispose of land to Quin Enterprises Pty Ltd via a private sale for the purpose of settling an appeal in the Planning & Environment Court.

BACKGROUND

Quin Enterprises Pty Ltd has approached Council to ascertain whether Council would be interested in a land exchange. The proposal would involve exchanging Council owned allotment Lot 2 RP14837 with Lot 1 RP109322 which is owned by Quin Enterprises Pty Ltd which is currently trading as Resource Recovering and Recycling. Council determined that a land exchange would not be desirable and it counter proposed disposing of the Council allotment to Quin Enterprises via a private sale.

ISSUES

Lot 2 RP14837 is the Council-owned disused quarry which is situated at 684-694 Mt Cotton Road. Lot 1 RP109322 is an allotment situated at 710-712 Mt Cotton Road which recently gained an approval as a landscape supply depot and is the subject of a Planning & Environment Court appeal by the adjoining property owner at 714-720 Mt Cotton Road (owned by Dulio and Maria Polzi).

The land disposal has merit as it would allow Council to dispose of an excess allotment. The proposal is also intended to resolve the appeal by the adjoining owner as Quin Enterprises would move their operations to the Council allotment, thus buffering the existing quarry use from the residential allotment at Lot 2 RP 109322 (the Polzi land).

It would be recommended to Quin Enterprises that they lodge an application over the Council land prior to the settlement of the appeal (while the appeal is put on hold) and assess whether the landscape supply depot would be approved at that location (see below comments from Planning Assessment regarding the proposed use). If the use would not be approved (either by Council or a state referral agency), Quin Enterprise would presumably have no interest in pursuing the sale and the appeal would continue.

An Independent valuation has been undertaken and the Council allotment has been valued at \$336,000.

Landfill issues

At present, Council's site is fully fenced and sits idle. The history of the site is that it was a quarry and then a disposal site for road drain vegetation for approximately 15 years from 1985 to 2000.

It is possible to redevelop the site, however geotechnical investigations will need to be undertaken to assess the extent of contamination and the rehabilitation required. It could be used as a recycled storage area with minimum rehabilitation.

STRATEGIC IMPLICATIONS

Council's corporate plan identifies the ability and obligation for Council to obtain best use of its assets either by functional use or disposal to obtain the best financial return to Council. A land disposal will achieve this objective.

Legislative Requirements

Disposal of land is governed by Sections 224, 227 and 236 of the *Local Government Regulations 2012*, which provides that Council must invite tenders or offer the land by auction, before entering into a contract.

However Council is able to dispose of land other than by tender or auction if:

... (iv) *the land is disposed of to a person who owns adjoining land [and]*

- (A) the land is not suitable to be offered for disposal by tender or auction for a particular reason, including, for example, the size of the land or the existence of particular infrastructure on the land; and*
- (B) there is not another person who owns other adjoining land who wishes to acquire the land; and*
- (C) it is in the public interest to dispose of the land without a tender or auction; and*
- (D) the disposal is otherwise in accordance with sound contracting principles.*

It is considered that the Council land would not be suitable for disposal via tender or auction as its previous use as a quarry and disposal site for road drain vegetation has limited the potential use of the site, such that Quin Enterprises is the only realistic purchaser.

The other adjoining land owners will be approached to ensure that they are not interested in acquiring the Council land, however it is considered unlikely that they will wish to purchase the land due to its previous use.

As the land is proposed to be used to extend the recycling business currently operating out of the adjoining land, it is considered that it is in the public interest to dispose of the land as this assists in the development of a competitive local business. Additionally, as the proposal would settle an appeal, negating Council's requirement to spend on legal costs, it is considered to be value for money.

The sound contracting principles are:

- (a) value for money;
- (b) open and effective competition;
- (c) the development of competitive local business and industry;
- (d) environmental protection; and
- (e) ethical behaviour and fair dealing.

Notice to be provided

Under section 420(2)(a) *Environmental Protection Act 1994*, if an agreement about the occupancy of contaminated land is entered into, the owner of the land must give notice to the other party about any particulars recorded in the Contaminated Land Register.

If notice is not provided in accordance with this provision, the other party who has entered into the agreement may terminate it within 10 days after the person becomes aware of the recording and the owner will be liable for penalties.

The Council land is not currently registered as contaminated, however given that Council is aware of the previous use as a quarry and a disposal site for road drain vegetation, it is recommended that notice of potential contamination be provided to Quin Enterprises.

Risk Management

Where Council decides to dispose of the land, the proper notifications and information relating to potential land contamination will be made available to Quin Enterprises prior to the entering into a contract of sale. Relevant clauses inserted in to the contract of sale will mitigate Council's risk in relation to the potential contamination of the land, including:

1. acknowledgement that Quin Enterprises has received notice of the potential land contamination, prior to entering into the contract;
2. that the land is sold 'as is' and Quin Enterprises are to make their own enquiries and be solely responsible for any clean up; and
3. that Quin Enterprises indemnifies the Council in connection with any matters arising from the previous use of the land and any clean up of the land.

Financial

No financial implications were identified.

People

Not applicable.

Environmental

The sale of the subject site offers the potential for remediation to be undertaken by Quin Enterprises, provided that they are prepared to do so as part of the redevelopment of the site.

Council is not under any obligations to remediate the site if the land use does not change.

Social

Not applicable.

Alignment with Council's Policy and Plans

Disposal of this land supports Council's policy and plans to obtain the best return socially and economically from Council's assets.

CONSULTATION

The General Manager Infrastructure & Operations has consulted with General Counsel, Planning Assessment and the local councillor.

Planning Assessment comments:

Although there seems to be no obvious reason why a landscape supply depot would not be approved on the Council owned site, an impact assessable material change of use application would need to be lodged and assessed before approval is granted.

Further, although the land disposal may help to resolve the issues raised by the appellant Polzi (where there is an existing house in close proximity to the shared boundary), relocation of the use may result in greater impacts on other properties in the surrounding area. A decision to approve the use by Council would potentially be subject to a third party appeal, therefore, it is considered that the application should be lodged, assessed and decided prior to the land disposal being enacted and appeal settled.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

OPTIONS

1. To dispose of council-owned Lot 2 RP14837 via private sale to Quin Enterprises.
2. To retain the allotment in Council ownership.

OFFICER'S RECOMMENDATION

That Council resolves as follows:

1. To agree to dispose of land as described in the confidential report;
2. To delegate authority to the Chief Executive Officer under section 257(1)(b) of the *Local Government Act 2009* to negotiate, make, vary and discharge all documents relating to the above disposal; and
3. That the report and attachment remain confidential.

COUNCIL RESOLUTION

Moved by: Cr M Elliott

Seconded by: Cr M Edwards

That Council resolves as follows:

1. To agree to dispose of land as described in the confidential report;
2. To delegate authority to the Chief Executive Officer under section 257(1)(b) of the *Local Government Act 2009* to negotiate, make, vary and discharge all documents relating to the above disposal; and
3. That the report and attachment remain confidential.

CARRIED 9/0

Crs Talty and Hardman were absent from the meeting.



LOT 2 RP14837

SHELDON

LOT 1 RP109322

LOT 2 RP109322

Mount Cotton Road