

DISPOSAL OF A VALUABLE NON-CURRENT ASSET BEING PART OF LOT 894 ON RP899534, LORIDAN DRIVE, BRINSMEAD – DIVISION 6

PGS | 55/1/2 | #7783320

RECOMMENDATION:**That Council:**

- 1. Applies the exception in section 236(1)(c)(iv) of the *Local Government Regulation 2012* for the disposal of a valuable non-current asset being part of Council freehold lot 894 on RP899534, Loridan Drive, Brinsmead, other than by tender or auction, to the owner of adjoining land being lot 386 on SP106707, 60 Wills Street, Brinsmead; and**
- 2. Supports the disposal of land for the reasons outlined in Table 1 of this report which satisfy the following requirements:**
 - a. The land is not suitable to be offered for disposal by tender or auction;**
 - b. There is not another person who owns other adjoining land who wishes to acquire the land;**
 - c. It is in the public interest to dispose the land without tender or auction; and**
 - d. The disposal is otherwise in accordance with sound contracting principles; and**
- 3. Delegates authority to the Chief Executive Officer pursuant to section 257 of the *Local Government Act 2009*, to negotiate and finalise any and all matters associated with the land dealing subject but not limited to the terms and conditions of the report.**

INTERESTED PARTIES:

- Cairns Regional Council – Landowner of lot 894 and lot 895 on RP899534, Loridan Drive, Brinsmead
- Lauren E. Atkinson and Samuel A. Griffin – proposed Purchaser and landowner(s) of lot 386 on SP106707, 60 Wills Street, Brinsmead

Note: The identification of interested parties is provided on a best endeavours basis by Council Officers and may not be exhaustive.

EXECUTIVE SUMMARY:

The landowners of lot 386 on SP106707, 60 Wills Street, Brinsmead (the **Purchaser**), have requested to purchase part of the adjoining Council freehold land being lot 894 on RP899534. A thorough Council internal review has determined that an area of approximately 160m², as shown in Attachment 1, is surplus to Council needs and disposal to the adjacent owner is appropriate in the circumstances.

Under section 236(1)(c)(iv) of the *Local Government Regulation 2012 (LGR)*, Council may resolve to apply an exception to dispose of land without tender or auction where relevant requirements are met. Information provided in Table 1 outlines how these requirements are met which can be summarised as:

- the subject area is unsuitable for disposal by tender or auction due to its size and irregular shape;
- the owner of lot 386 on SP106707 is the only adjoining property owner for the subject area with the exception of Council;
- it is in the public interest to dispose of the land without tender or auction; and
- the disposal is otherwise in accordance with sound contracting principles.

With consideration to the above, this report seeks Council's resolution to apply the exception under section 236 of the LGR to enable the disposal of part of lot 894 on RP899534, Loridan Drive, Brinsmead, to the adjoining landowner of lot 386 on SP106707.

The sale of this small portion of the lot to the adjoining owner will have negligible impact on the community's use of the area, will reduce Council maintenance obligations and will not affect the primary purpose of the land as a drainage reserve. Given the topography of this site, it presents both operational issues for maintaining and has limited public utility given the difficulty to access. The lot will be sold at market value with all costs associated with the disposal paid by the Purchaser.

BACKGROUND:

Freehold lot 894 on RP899534, Loridan Drive, Brinsmead is a 3,608m² parcel of land created on 21 March 1996 with Council as the registered owner. This lot is within the Sherwood Close Drainage Reserve which interconnects with several other Council freehold lots and forms part of the Brinsmead water drainage network.

On 30 June 2025, Council received an enquiry from the now landowners of lot 386 on SP106707 being 60 Wills Street, Brinsmead, regarding the possibility of purchasing part of lot 894 on RP899534, Loridan Drive, Brinsmead (**Attachment 2** – Locality aerial view).

The landowners have gained a market valuation and are aware of their obligations regarding payment of the agreed purchase price and all other costs associated with the sale as outlined in the "Council Finance and the Local Economy" section of this report.

COMMENT:

Freehold lot 894 on RP899534, Loridan Drive, Brinsmead, contains a concrete lined drain which collects and conveys stormwater and overland flows from surrounding areas before discharging to Hobsons Creek. The subject area is located between the top of the bank and the property boundary adjoining lot 386 on SP106707 being 60 Wills Street, Brinsmead. This portion of land is raised above the balance of the lot and drainage infrastructure and the primary access to this area is via the adjoining landowner's private driveway. As such this part of the lot has historically been maintained by the adjoining landowner and is not typically accessed by members of the public (refer to image in **Attachment 3**).

The Asset Manager, being the Cairns Infrastructure & Assets directorate, in conjunction with other internal stakeholders, have reviewed the matter and determined that the subject area is surplus to Council's current and future requirements. As such, disposal of this portion of land is appropriate in the circumstances as the balance of Council land is sufficient for drainage, access and maintenance.

It is noted that the aerial imagery provided in **Attachment 1** indicates a potential minor encroachment of the purchaser's driveway at 60 Willis Street, Brinsmead, onto Lot 894 on RP899534. At this stage, this observation is based on aerial mapping only.

Should the proposed disposal proceed, a detailed cadastral survey will be undertaken to accurately define the boundaries of the land. This process will confirm whether any encroachments exist and if identified, appropriate steps will be taken to address the matter as part of the disposal process.

To support the disposal, a site inspection was undertaken by Cairns Infrastructure and Assets (**CIA**) as the asset owner for the site. The key findings of the inspection were:

- the original 215 m² area requested by the proponent was reviewed and determined to be unsuitable for full disposal, as it would compromise Council's ability to access and maintain the adjacent drainage infrastructure. Accordingly, the proposed disposal area has been reduced to ensure that adequate access for maintenance is retained.
- any area proposed for disposal must provide for a continuous maintenance access corridor extending from the top of the bank to the boundary of the disposal area. This corridor must remain clear of the steep embankment associated with the drainage channel and be capable of accommodating a range of Council plant and equipment. The revised 160 m² area has been configured to maintain this access.
- the area directly adjacent to the dwelling at 60 Wills Street, Brinsmead, has been identified as surplus to drainage and maintenance requirements. This area is considered unlikely to be impacted by flooding, as it is situated significantly higher than the balance of the drainage reserve, while remaining approximately 1 metre lower than the existing dwelling.

Section 236(1)(c)(iv) of the LGR lists four requirements as stated and considered in the below table, that must be satisfied to allow Council to apply the exception to dispose of land to an adjoining landowner other than by tender or auction.

Table 1: Assessment against requirements of section 236(1)(c)(iv) of the LGR.

Requirement	Reasoning
1. "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."	Due to the irregular shape of the subject area and lack of direct road access, the subject area is not suitable to be disposed of by tender or auction. The subject area is uniquely located between the property boundary of lot 386 on SP106707, 60 Wills Street, Brinsmead and the top of the bank of the drainage area. The subject area is too small to be sold as an individual lot and appears to contain part of the adjoining landowner's driveway.
2. "there is not another person who owns other adjoining land who wishes to acquire the land."	There is no other person who owns land adjoining the subject area. Cairns Regional Council is the only other adjoining landowner to the subject area as the owner of freehold lot 985 on RP899534 (Refer to Attachment 1).
3. "it is in the public interest to dispose of the land without a tender or auction."	<p>The land is currently underutilised and has been deemed surplus to Council's needs as outlined in the sections of this report.</p> <p>Disposal via tender or auction is not appropriate in the circumstances due to the location, size and nature of the subject area as outlined in item 1 of this table.</p> <p>As there are no adjoining landowners for whom this parcel would be appropriate or practical to dispose to, undertaking a tender or auction process is unnecessary and would impose additional time and costs without delivering value for the community or ratepayers.</p>
4. "the disposal is otherwise in accordance with sound contracting principles."	<p>The sound contracting principles under section 104(3) of the <i>Local Government Act 2009</i> are as follows:</p> <ul style="list-style-type: none"> • value for money; • open and effective competition; • development of competitive local business and industry; • environmental protection; and • ethical behaviour and fair dealing. <p>All land disposals are processed in accordance with Council's '<i>Tenure Arrangements and Disposal of Council Property General Policy</i>', in particular part 5 of the associated Administrative Instruction which provides for disposal of Council property which takes the sound contracting principles into consideration.</p> <p>The proposed disposal process is considered to be in accordance with the sound contracting principles based on the following:</p> <ul style="list-style-type: none"> • a valuation report has been obtained and the land

Requirement	Reasoning
	<p>will be disposed of at market value;</p> <ul style="list-style-type: none"> • all other costs associated with the sale will be payable by the proponent; • disposal of the land will reduce Council maintenance obligations and costs; • the proponent is the only directly adjoining landowner; • the land is currently underutilised and deemed surplus to Council's current and future needs; • the area is cleared, vacant land and disposal will not impact the environmental values of the area; • any development of the subject area will be required to address relevant environmental protection requirements; and • disposal via tender or auction is not appropriate in the circumstances due to the location, size and nature of the subject area.

Terms and Conditions

The offer of sale of part of freehold land described as lot 894 on RP899534 to the adjoining landowners of lot 386 on SP106707, 60 Wills Street, Brinsmead will be subject, but not limited to, the following terms and conditions:

- sale limited to an area of approximately 160m² of Council freehold land;
- the proponent/purchaser is responsible for all costs relevant to the Contract of Sale;
- in accordance with Council's '*Tenure Arrangements and Disposal of Council Property Policy*', in particular part 5 of the associated Administrative Instruction which provides for disposal of Council property; and
- should the negotiations become protracted, and the disposal is not finalised within six (6) months of the date of this approval, Council reserves the right to withdraw the offer.

OPTIONS:

Option 1 (Recommended)

That Council:

1. Applies the exception in section 236(1)(c)(iv) of the *Local Government Regulation 2012* for the disposal of a valuable non-current asset being part of Council freehold lot 894 on RP899534, Loridan Drive, Brinsmead, other than by tender or auction, to the owner of adjoining land being lot 386 on SP106707, 60 Wills Street, Brinsmead; and

2. Supports the disposal of land for the reasons outlined in Table 1 of this report which satisfy the following requirements:
 - a. The land is not suitable to be offered for disposal by tender or auction;
 - b. There is not another person who owns other adjoining land who wishes to acquire the land;
 - c. It is in the public interest to dispose the land without tender or auction; and
 - d. The disposal is otherwise in accordance with sound contracting principles; and
3. Delegates authority to the Chief Executive Officer pursuant to section 257 of the *Local Government Act 2009*, to negotiate and finalise any and all matters associated with the land dealing subject but not limited to the terms and conditions of the report.

Option 2:

That Council does not support the application of an exception for the disposal of the subject area.

CONSIDERATIONS:

Risk Management:

Risks associated with the disposal will be managed through the contract of sale and associated provisions including default clauses, dispute resolution and other relevant conditions.

A requirement of the sale will ensure that if negotiations become protracted and the sale is not finalised within six (6) months of the date of the Council Resolution, Council will reserve the right to withdraw the offer.

Council Finance and the Local Economy:

The proponent (landowner of 60 Wills Street, Brinsmead) will be responsible for all costs associated with the sale including but not limited to:

- legal fees;
- survey plan;
- valuation report;
- compensation to Council;
- development application;
- survey plan endorsement;
- bank fees;
- registration fees; and
- duty fees.

A valuation has been obtained for the subject land to inform the proposed disposal. The valuation assessed the originally requested area of approximately 213m² at \$35,000. As the proposed disposal area has since been reduced to 160m² to maintain Council's required access and maintenance corridor, the market value of the revised area is estimated to be in the vicinity of \$27,000.

The valuation was undertaken using the Direct Comparison Approach and adopted the Before and After Method, whereby the land was valued in its existing ('as-is') state and then reassessed with the inclusion of the additional land.

Community and Cultural Heritage:

Nil.

Natural Environment:

Nil.

Corporate and Operational Plans:

This report aligns with the Corporate Plan 2025-2030 with consideration to:

Focus 5: Focused Council - Delivering for community through strong governance and informed decision making. The recommendations in this report aim to ensure informed decision making that is collaborative, transparent and accountable.

Statutory:

Section 236(1)(c)(iv) of *the Local Government Regulation 2012* allows Council to apply an exception to dispose land to any adjoining landowner without undertaking a tender or auction where certain requirements are satisfied as outlined in Table 1.

Council has delegated authority to the Chief Executive Officer to dispose of a valuable non-current asset where an exception has been applied by Council resolution under this provision. The Chief Executive Officer has sub-delegated this power to the Director Planning, Growth & Sustainability and the Executive Manager Licensing & Compliance.

Policy:

The disposal of the valuable non-current asset will be in accordance with Council's '*Tenure Arrangements and Disposal of Council Property General Policy*'.

CONSULTATION:

Discussions have occurred with all relevant internal stakeholders to seek direction on the use of this site. The asset manager is supportive of the recommendation and no objections have been received to the proposal outlined in this report.

ATTACHMENTS:

Attachment 1 – Aerial image defining subject area

Attachment 2 – Locality aerial view

Attachment 3 – Image of proposed disposal area

A handwritten signature in black ink that reads "Patterson". The signature is written in a cursive style with a large initial 'P'.

Amy Patterson
Executive Manager Licensing and Compliance

A handwritten signature in black ink that reads "Mark Davey". The signature is written in a cursive style with a large initial 'M'.

Mark Davey
Director Planning Growth and Sustainability

Attachment 1 – Aerial image defining the subject area



Attachment 2 – Locality aerial view



Lot 894 on RP899534
Sherwood Close Drainage Reserve
(area for disposal)

Attachment 3 – Image of proposed disposal area

