

DISPOSAL OF A VALUABLE NON-CURRENT ASSET BEING PART OF LOT 1 ON RP721342, MARSHALL STREET, MACHANS BEACH - DIVISION 8

PGS | 55/2/4 | #7760227

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 1 on RP721342, Marshall Street, Machans Beach other than by tender or auction, to the owner of the adjoining land being Lot 12 on RP709125, 147 O' Shea Esplanade, Machans Beach; 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 of 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:

1. Cairns Regional Council – landowner Lot 1 on RP721342, Marshall Street, Machans Beach
2. Ricky Scott Haynes – proposed Purchaser and adjoining landowner of Lot 12 on RP709125, 147 O' Shea Esplanade, Machans Beach
3. Philip Craig Hopper and Lisa Jayne Hopper - adjoining landowners of Lot 11 on RP709125 149 O' Shea Esplanade, Machans Beach
4. Stacey Martin Quaid, Kim Maree Ponting and Ponting & Quaid Pty Ltd – adjoining landowners of Lot 1 on RP710133 145 O' Shea Esplanade, Machans Beach
5. Peter Alan Rosssdeutscher – adjoining landowner of Lot 11 on RP710830, 5 Mitchell Street, Machans Beach

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

EXECUTIVE SUMMARY:

The landowner of Lot 12 on RP709125, 147 O' Shea Esplanade, Machans Beach (the Purchaser) has requested to purchase part of the adjoining Council freehold land being Lot 1 on RP721342, Marshall Street, Machans Beach (~71m² as shown in Attachment 1).

It was identified that the fence line at the rear of Lot 12 on RP709125, 147 O' Shea Esplanade, Machans Beach was encroaching onto Council freehold land being part of Lot 1 on RP709125 Marshall Street, Machans Beach.

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

1. the subject area is unsuitable for disposal by tender or auction due to the size and location;
2. the Purchaser who is the owner of Lot 12 on RP709125, 147 O'Shea Esplanade, Machans Beach is the only neighbouring owner interested in purchasing the area;
3. it is in the public interest to dispose of the land without tender or auction; and
4. the disposal is otherwise in accordance with the 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 sale of part of Lot 1 on RP721342, Marshall Street, Machans Beach, to the adjoining landowner of Lot 12 on RP709125.

This small portion of land is deemed surplus and will be sold at market value with all costs associated with the disposal and amalgamation of the land into the adjoining Lot payable by the Purchaser. The sale will result in aligned parcel boundaries bordering the park, creating a more consistent interface, with negligible impact on the public use of the balance of the parkland.

BACKGROUND:

Lot 1 on RP721342, Marshall Street, Machans Beach is Council owned freehold land acquired through a deed of grant in favour of Council of the Shire of Mulgrave in 1952. In 2011, a departmental correction was made to Cairns Regional Council.

The land known as Keith Edwick Park, is a 7,681m² parkland containing BBQ facilities, playground and public toilets. The proposed area to be sold is a small, ~71m² portion in the northeast corner of the park which was historically fenced off by a previous owner which resulted in an encroachment over Council land. The sale of this small area will have a negligible impact on the public use of the balance of the parkland.

The Purchaser has gained a valuation for the land and is aware of their responsibility 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:

The subject area was historically fenced off by a former landowner of Lot 12 on RP709125, possibly due to the alignment with adjacent property boundaries. Community Spaces as the nominated Asset Manager, and other internal stakeholders have reviewed the proposal and determined that there is no Council infrastructure in the subject area and that this portion of the land is surplus to Council’s current and future requirements.

Section 236(1)(c)(iv) of the LGR lists four requirements, stated and considered below, that must be satisfied to allow Council to apply an exception to dispose of a valuable non-current asset other than by tender or auction to an adjoining landowner.

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 boundary compared to adjoining parcels, encroachments and lack of direct road access, the subject area is not suitable to be disposed of by tender or auction. The subject area is also too small to be sold as an individual Lot.
2. “there is not another person who owns other adjoining land who wishes to acquire the land.”	All adjoining landowners (or their agents) have provided written confirmation that they have no interest in purchasing the subject area and have no objection to the other adjacent owner purchasing the subject area. A Council officer has independently verified this with the adjoining landowners and/or their agents.
3. “it is in the public interest to dispose of the land without a tender or auction.”	This portion of land is currently underutilised and deemed surplus to Council’s needs. Disposal via tender or auction is not appropriate in the circumstances due to the location and size of the lot. As there are no other adjoining landowners interested in purchasing the subject area, undertaking a tender or auction process would add unnecessary time and cost without delivering value for the community or ratepayers.
4. “the disposal is otherwise in accordance with sound contracting principles.”	The sound contracting principles under section 104(3) of the <i>Local Government Act 2009</i> are as follows: <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.

Requirement	Reasoning
	<p>Land disposals are managed 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 whilst taking into account the sound contracting principles.</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"> • direct sale provides best value for money by minimising time and costs associated with the disposal; • a valuation report has been obtained and the land will be disposed of at market value; • all other costs associated with the sale will be payable by the Purchaser; • no other adjoining landowner is interested in purchasing the area; • disposal of the land will reduce Council maintenance costs for the area; • the land is currently underutilised and deemed surplus to Council's current or 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 a part of Lot 1 on RP721342, Marshall Street, Machans Beach to the Purchaser being the adjoining landowner of Lot 12 on RP709125, 147 O'Shea Esplanade, Machans Beach will be subject; but not limited to, the following terms and conditions:

- sale limited to an area of approximately 71m² of part of Council's freehold land;
- the Purchaser is responsible for all costs relevant to the Contract of Sale (including but not limited to survey, boundary realignment, valuation, registration, Council legal fees and fencing);
- the sale is conditional upon the property owner obtaining all relevant building and other requisite approvals for any improvements within the encroachment area;

- the sale is conditional on the property owner ensuring the subject area is amalgamated into Lot 12 on RP709125 through an appropriate application for realignment of boundaries and that the property owner procures all the requisite approvals for the use of the subject area;
- 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 sale not finalised within six (6) months of the date of this approval, Council reserves the right to withdraw its 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 1 on RP721342, Marshall Street, Machans Beach other than by tender or auction, to the owner of the adjoining land being Lot 12 on RP709125, 147 O' Shea Esplanade, Machans Beach; 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 of 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 disposal of part of Council freehold Lot 1 on RP721342 to the owner of Lot 12 on RP709125 and advises the property owner to remove any encroachments from Council land within six (6) months from the date of notification.

CONSIDERATIONS:

Risk Management:

Conditions associated with the contract of sale will mitigate risks through clauses relating to default, dispute resolution and other relevant matters.

A condition 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 Purchaser is responsible for all associated costs including but not limited to:

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

A valuation has been obtained for the subject area which determined the value of the approximately 71.5 m² parcel to be \$50,000. The valuation was undertaken using the Direct Comparison Approach with the inclusion of the additional land.

Community and Cultural Heritage:

Nil

Natural Environment:

Nil

Corporate and Operational Plans:

This report aligns with Council's Corporate Plan 2025-2030, including:

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 for the application of an exception to dispose land to any adjoining landowner without undertaking a tender or auction where certain requirements can be 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. The Chief Executive Officer has sub-delegated this power to the Director Planning, Growth and Sustainability and the Executive Manager Licensing and Compliance.

Policy:

The offer will be prepared in accordance with Council's '*Tenure Arrangements and Disposal of Council Property 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.

There is no water or sewerage infrastructure located in the proposed area.

ATTACHMENTS:

1. Locality view and aerial images of subject area.
2. Site inspection photos of the subject area by asset manager.



Amy Patterson
Executive Manager, Licensing and Compliance



Mark Davey
Director, Planning, Growth and Sustainability

Attachment 1: Locality view and aerial images of subject area





Attachment 2: Site inspection photos of the subject area by asset manager.



Area of park view from the subject area to Marshall Street
~ showing that Council has alternate / unrestricted access
to its freehold land and infrastructure through Marshall
Street.

