

AMENDED ITEM



Item No: 5.4
Title: Deferred item - Proposal to Purchase Land known as the Davistown Wetland
Department: Innovation and Futures

30 November 2020 Ordinary Council Meeting

Reference: F2020/00878 - D14117624
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Report purpose

To recommend that Council cease efforts to acquire land known as the Davistown Wetland.

Executive Summary

In response to growing community concern, Council made resolution 1204/19 at the Ordinary meeting of 25 November 2019, to commence negotiations to purchase by agreement, eight lots in Davistown having an area of 19.26ha, being wetlands for environmental protection purposes. However, the vendor's asking price was considerably higher than Council's two market valuations, and as such Council's offer was not accepted.

There was a sum of \$1,436,049 specifically allocated by the former Gosford City Council to purchase wetland parcels. This was to be held in restricted funds under the name of "Davistown Wetlands." These funds were to be used to purchase this land, however it is unclear if these funds are still available. It is also unclear if Council has the financial capacity to manage these lands in perpetuity.

Given the stalemate between Council and the vendor, Council considered compulsory acquisition. Council is required to justify how compulsory acquisition is legally sound to the Minister for Local Government.

The risk of the land being developed is extremely low due to the current planning restrictions including ecology and flooding that severely constrain this land.

Due to the low risk of it being developed, the uncertainty of available funds, and the legislative compliance for compulsory acquisition, it is recommended to discontinue any acquisition (by agreed price or compulsory acquisition) for the present time.

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Innovation and Futures Recommendation

That Council note that this report will not be considered at the Council Meeting of 30 November 2020, to allow the land owners of Davistown Wetlands further time to discuss an alternative proposal with Council staff.

Background

The Davistown Wetlands (the land) includes the following lots:

- 11 Lilli Pilli Street Davistown - Lot 1 DP547660
- 51 Pine Avenue Davistown - Lot 30 DP 456234
- 1 Cross Road Davistown - Lot 31 DP 5820
- 3 Cross Road Davistown - Lot 32 DP 5820
- 10-20 Kincumber Crescent - Lot 52 DP 6014
- 11-29 Kincumber Crescent Davistown - Lot 53 DP 6014
- 108A Malinya Road Davistown - Lot 92 DP 12206
- 83 Malinya Road Davistown - Lot 93 DP 12206

The vendor, being *Illoura Waters Pty Ltd*, has had the land on the market since October 2017. The community became concerned that the land could become developed and approached Council to acquire the land for environmental protection and to “keep it out of the hands of developers.”

The land appears to be severely constrained by environmental protection legislation and flood affectation, making the land difficult to develop. Council refused a development application lodged in 1991 for construction of 16 residential lots on one of the lots due to unresolved environmental and flooding issues.

Community groups have been petitioning Council to acquire the land for environmental protection and management. There are opportunities for the land to be managed as a natural asset, protected (from introduced flora and fauna pest species) and the ecological value of the land improved.

While previously there was a sum of \$1,436,049 allocated in restricted funds under the name of “Davistown Wetlands,” considering the current financial audit, it is unclear if these funds are still available. Further, this fund was established for *all* the wetlands in the Davistown area, not just these eight (8) lots. While Council has considered what these costs may include, currently the management and the further protection of the land has not been appropriately costed.

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Figure 1: The land, being eight lots considered for purchase by Council

Current Status

The land is still “on the market,” and the vendor is determined that Council increase its offer in line with their asking price. In accordance with the Land Transaction Policy, Council is unable to agree to a purchase price higher than the independent valuations received. Should Council wish to acquire the land for its purposes pursuant to the Local Government Act 1993 and Land Acquisition (Just Terms Compensation) Act 1991, then Council could commence compulsory acquisition.

Refer to Attachment 1 and 2 which provides the two independent valuations which Council has commissioned. Attachment 3 provides a copy of the offer which Council has submitted to the vendor and Attachments 4 and 5 provides details of the failed negotiations with the vendor of the land.

Report

At Council’s Ordinary Meeting of 10 August 2020, it was resolved:

- 727/20 *That the Chief Executive Officer continue to pursue an acquisition by agreement of the land known as Davistown Wetlands.*
- 728/20 *That the Chief Executive Officer initiate investigations regarding the eligibility of the land known as Davistown Wetlands for a compulsory acquisition process and provide a report back to Council with the outcome of these investigations.*

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729/20 That Council reopen dialogue with the land owner/representatives during the 12-week period.

Regarding resolutions 727/20 and 729/20, Council has been unsuccessful in negotiating a price by agreement. The current stalemate suggests that Council should discontinue any further negotiations. Refer to Attachment 5 for the latest correspondence received from the vendor rejecting Council's offer.

Regarding resolution 728/20, Council can commence the process of compulsory acquisition, however the eligibility is determined by the Minister for Local Government and/or the Governor. The application would require Council's Environmental Management Unit (as the future asset manager) to develop a case for the potential purpose of the land, being a natural reserve. For example, Council could create a public environmental reserve over the Land, "The Davistown Wetland Environmental Reserve" contributing to tourism and conservation of the natural area.

Consultation

The following areas of Council have been consulted in the writing of this report:

- Legal;
- Property Information Services;
- Environment Management;
- Natural Assets and Biodiversity;
- Finance.

Additional discussions have occurred with the vendor and vendor's representative, *Illoura Waters Pty Ltd* and Council's consultant property valuer.

Financial Considerations

At its meeting held 19 October 2020, Council resolved the following:

1036/20 That any motions put before Council for the remainder of this term of Council that have financial implications require the Chief Executive Officer to provide a report on how those additional costs will be met.

The following statement is provided in response to this resolution of Council.

There was a sum of \$1,436,049 specifically allocated by the former Gosford City Council to purchase wetland parcels. This was to be held in restricted funds under the name of "Davistown Wetlands." These funds were to be used to purchase this land, however it is unclear if these funds are still available. It is also unclear if Council has the financial capacity to manage these lands in perpetuity.

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Link to Community Strategic Plan

Theme 4: Responsible

Goal I: Balanced and sustainable development

R-G4: Serve the community by providing great customer experience, value for money and quality services.

Risk Management

There is considerable reputational risk should Council proceed to acquire the Davistown Wetlands given Council's financial situation and it may be considered unnecessary by the community. This is given:

- the unsuccessful negotiations to date;
- the uncertainty as to whether Council can demonstrate a valid purpose for the land in exercising its functions;
- the existing environmental and planning legislation that regulates the development of the site.

Options

Option 1: That Council discontinue any acquisition of the land known as Davistown Wetlands for the time being. This is the preferred option.

On the basis that negotiations have failed to date, Council is left with the option of doing nothing and not proceeding with the acquisition. Council has indicated that the land could be acquired for environmental protection and not be developed. At the present time, it is unclear whether the land has much development potential. The current planning legislation affords the land various protection mechanisms against much, if any development. Further, the acquisition would come at a cost to Council and require on-going maintenance costs. Given the current financial uncertainty of Council and perception in the community, any forced compulsory acquisition would further compromise Council's reputation.

Option 2: Council compulsorily acquire the land.

Should Council wish to compulsorily acquire the land, the following recommendations are provided:

- 1 *That Council commission a further valuation in line with Land Acquisition (Just Terms Compensation) Act 1991 (JTC Act) requirements, and provide a budget for the on-going maintenance, to ascertain that Council has sufficient funds for the purchase (including associated transaction fees), and maintenance costs;*

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- 2 *That Council develop a 'Purpose of acquisition' statement and confirm details of any proposed environmental reserve;*
- 3 *That Council resolve to compulsorily acquire the land known as Davistown Wetlands including:*
 - *11 Lilli Pilli Street Davistown - Lot 1 DP547660*
 - *51 Pine Avenue Davistown - Lot 30 DP 456234*
 - *1 Cross Road Davistown - Lot 31 DP 5820*
 - *3 Cross Road Davistown - Lot 32 DP 5820*
 - *10-20 Kincumber Crescent - Lot 52 DP 6014*
 - *11-29 Kincumber Crescent Davistown - Lot 53 DP 6014*
 - *108A Malinya Road Davistown - Lot 92 DP 12206*
 - *83 Malinya Road Davistown - Lot 93 DP 12206*
- 4 *That Council issue an Opening Letter to Illoura Waters Pty Ltd pursuant to the JTC Act, to commence the required six (6) month negotiation period;*
- 5 *That Council authorise the necessary applications to the Minister and/or the Governor to approve the compulsory acquisition of the Davistown Wetlands;*
- 6 *Should the Minister approve the application for compulsory acquisition, that pursuant to the JTC Act, Council follow the required processes for acquisition of this land.*

Critical Dates or Timeframes

The acquisition of the Davistown Wetlands is not considered time critical given the land has been on the market since October 2017 and no willing buyer apart from Council has come forth to date. The process for compulsory acquisition may take between 18 months and 2 years to complete.

Attachments

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| 1 | Confidential - Valuation 1 (dated 20-02-2019) - | D14000335 |
| 2 | Confidential - Valuation 2 (dated 05-02-2020) - | D13837202 |
| 3 | Confidential - Letter of offer to Illoura Waters P/L - | D13994050 |
| 4 | Confidential - Summary of Response from Illoura Waters P/L - | D14017691 |
| 5 | Confidential - Email to Illoura Waters and confirmation of price - | D14310688 |