



COFFS HARBOUR CITY COUNCIL

SUPPLEMENTARY REPORT ORDINARY MEETING

**COUNCIL CHAMBERS
COUNCIL ADMINISTRATION BUILDING
COFF AND CASTLE STREETS, COFFS HARBOUR**

8 MARCH 2012

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The following item either in whole or in part may be considered in Closed Meeting for the reasons stated:

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A portion of this report is confidential for the reason of Section 10A (2):

(d) commercial information of a confidential nature that would, if disclosed:

- (i) prejudice the commercial position of the person who supplied it, or
- (ii) confer a commercial advantage on a competitor of the council, or
- (iii) reveal a trade secret.

and in accordance with Section 10A (1) the meeting may be closed to the public.



COFFS HARBOUR CITY COUNCIL

SUPPLEMENTARY REPORT ORDINARY MEETING

8 MARCH 2012

Mayor and Councillors

CORPORATE BUSINESS DEPARTMENT REPORT

CB12/19 PROPERTY ACQUISITION AT BENNETTS ROAD, COFFS HARBOUR

Purpose:

To seek Council approval to acquire part of the freehold land of 36 Bennetts Road and also an easement over the land.

Description of Item:

For some time now Council has been negotiating with four owners in Bennetts Road to obtain land upon which to build an earth wall detention basin in addition to easements for inundation purposes.

The detention basin proposed at Bennetts Road forms part of Council's Flood Mitigation Strategy for Coffs Harbour. A substantial basin has already been completed at William Sharpe Drive and has been in operation now for approximately two years. Two other basins, in addition to Bennetts Road, are proposed at Spagnolos Road and Upper Shephards Lane. A report to the Ordinary Council Meeting of 9 February 2012 updated Council in relation to the progress on the land acquisition matters related to each project.

The Bennetts Road basin is seen as a priority with design work progressing and Council is now in a position to call tenders for construction once land acquisition matters are addressed.

The pivotal property at Bennetts Road upon which the basin wall is proposed to be constructed is 36 Bennetts Road and is legally described as Lot 100 in Deposited Plan 1134647.

The property encompasses a semi rural holding on the edge of Coffs Harbour urban area which has a total area of 1.965 hectares. The property is zoned 1A Rural Agriculture and 7A Environmental Protection. Constructed on the property is a four bedroom brick residence, a large shed, stock yards, utility shed, boundary and internal fencing.

Cont'd

CB12/19 Property Acquisition at Bennetts Road, Coffs Harbour ...(Cont'd)

The plan attached to this report shows the property at 36 Bennetts Road and highlights the areas proposed to be acquired by Council. This involves a freehold section of 955 square metres and an easement of 1.5 hectares. The easement is for inundation, the terms of which will generally be in line with the following:

Full and free right for the body in whose favour this easement is created, and every person authorised by it, from time to time to inundate and detain flood water on the servient tenement. In exercising these powers, the body in whose favour this easement is created may enter the land to inspect the easement after notification to the owners of the servient tenement.

The servient tenement will not:

- 1. Be permitted to construct any habitable structure or dwelling within the site of the easement provided always that non habitable structures which are legally permissible can be constructed at the risk of the servient tenement; or*
- 2. Store any hazardous chemicals or materials within the site of the easement; or*
- 3. Without Development Consent from the body in whose favour this easement is created install any filling:
 - 3.1 Within 30 metres of a creek, river or stream; or*
 - 3.2 On any area of the easement possessing a slope greater than 15%; or*
 - 3.3 Which involves more than a total sum of 100 cubic metres of material in perpetuity.**

The body in whose favour this easement is created shall not be liable to the servient tenement for any loss, damage to persons or property by virtue of their use of the inundation easement and the servient tenement indemnifies the body in whose favour this easement is created from any claim other than any claim arising out of a breach by the dominant tenement, its agents, contractors and employees of any provisions of this easement.

Negotiations with the property owners and their advisors have been extensive and prolonged. Agreement has recently been reached on the following terms and conditions contained in the confidential attachment.

Council has obtained independent valuation advice as has the property owners. The agreement is considered fair and reasonable to both Council and the owners and represents a compromise from both sides in relation to compensation.

The acquisition of this land and easement will facilitate commencement of construction related to the earth wall associated with the detention basin. Council is continuing talks with the other three owners at Bennetts Road over which easements for inundation are required.

At this point in time Council has no agreement with any of these owners and may have to consider the option of compulsory acquisition in which case a further report will be presented to Council. Council officers are however continuing negotiations in good faith and are endeavouring to reach a resolution that is acceptable to all parties.

Cont'd

Sustainability Assessment:

- **Environment**

There are no environmental impacts in acquiring the land.

The acquisition of the land will assist with ongoing drainage and flood management in this Coffs Harbour area.

- **Social**

The acquisition of the land will have little social impact in itself.

- **Civic Leadership**

In line with the Coffs Harbour 2030 Plan, Council needs to take a leadership role addressing flood and drainage issues for the betterment of the City.

- **Economic**

Broader Economic Implications

There will be minimal implications as a result of this acquisition by Council.

Delivery Program/Operational Plan Implications

Bennetts Road detention basin is part of Council's approved Coffs Harbour flood mitigation program.

Flood mitigation works aim to reduce the severe negative economic impacts arising from floods on infrastructure (both public and private) and the regional economy.

Works are funded via a loan in accordance with Council resolution of 26 November, 2009, together with rate variation funding and approved grant funding under the floodplain management program.

Sufficient funds are available in the budget to cover this land acquisition and the construction of the basin.

Consultation:

Discussion has occurred with relevant staff and the General Manager in relation to the potential purchase.

Related Policy and / or Precedents:

Council is required to legally secure land upon which it proposes infrastructure and construction works and cannot let a tender for the Detention Basin works until this is completed.

Cont'd

Issues:

This acquisition, as with the three others at Bennetts Road that are continuing and are required for the detention basin, have been difficult and highly emotive. Negotiations to date have been ongoing for some 18 months and have been lengthy due in part to the complex and unusual nature of the proposed easement for inundation.

Most of the land that will be affected by the proposed easement is already flood liable. The construction of the detention basin will slightly increase the duration, depth and coverage of water retained during peak flood events on the property. In practical terms the land should see little impact in the way it is currently being used.

Implementation Date / Priority:

The matter will be actioned immediately.

Recommendation:

- 1. That Council acquire the required land and easement over Lot 100 DP 1134647 as described in this report.**
- 2. That Council compensate the owners based on the terms contained within the confidential attachment to this report.**
- 3. That any necessary documents for the acquisition of the property and the easements be executed under the Common Seal of Council.**
- 4. That the freehold section of the property being acquired be classified as Operational Land under the Local Government Act 1993 (as amended).**

**Craig Milburn
Director
Corporate Business**

Attachments:

