

10.5.3. LATE REPORT - FIN - 27/03/2023 - Lithgow City Council's 2018 sale of land in Barton Avenue Wallerawang

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Summary

Council's Planning Department is currently dealing with a development application for the subdivision of land at Barton Avenue, Wallerawang. The land was formerly owned by Council before it was sold in 2018 (with settlement occurring in 2019).

Public exhibition of the development application has resulted in members of the community seeking clarification about aspects of the sale of the land. The current Council and the administration have been constrained in being able to fully deal with these requests because the original report was, at the time, determined to qualify for consideration in the Closed Session of the Ordinary Meeting held on 25 September 2017. That is, the Council resolved to deal with the report in the section of the Meeting which is closed to the public on the basis of Section 10A (2) (c) and (d) of the Local Government Act 1993 because it related to:

- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.
- (d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it

This report has the intention of providing information to the public about the bases for Council selling the land, and the procedures that were followed.

The original September 2017 report, including all attachments, has been provided to the councillors as a confidential attachment.

General Manager's Comment

This land was sold some years ago. The submission of a development application by the owner has caused some people to enquire about details of the sale.

When this matter was dealt with by the Council in 2017, it was in the section of the meeting that was closed to the public. It is my view that the reasons (commercial information) that existed at the time (in September 2017) for this matter being dealt with in the Closed Session have now passed. Also, local government is subject to the Government Information (Public Access) Act 2009. This Act provides that agencies must disclose information unless there is an overriding public interest against disclosure.

For the above reasons, this report overviews the bases for Council selling the land, and the procedures that were followed.

Through a proper interpretation of the Council's Code of Meeting Practice (clause 3.22), the administration is not able to release the original confidential report. It is however open to the current Council to form a view that it can be publicly released. I recommend that the Council do so. If Council resolves to publicly release the original report this will be attached to the business paper for this meeting on Council's website.

Please note, however, that legal advice which featured in the original report is still subject to legal privilege and so it will need to be redacted from the released report. A copy of this advice was previously separately provided to all councillors as a confidential item.

Commentary

To assist the public's understanding of what are the key aspects of this matter, a precis of the report is provided below –

1. In May 2017 the Council received an unsolicited approach for the sale of part or all of Council land at Barton Av Wallerawang (Pt lot 20),
2. The proponent was seeking land for a development concept which included a school, housing and other infrastructure,
3. The proponent identified two potential development parcels on the land,
4. The Council received legal advice to clarify the legal requirements applicable to the direct negotiation with just one party for sale of Council land,
5. The Council obtained an independent valuation report to determine the value of the land,
6. In August 2017 a written offer was received from the proponent for purchase of the two parcels (with no preferred option), and
7. The matters that the Council had regard for in considering the request to sell the land, including determining value, included –
 - Site details,
 - Public land classification,
 - Value of the land,
 - Strategic objectives or benefits from selling the land, or not doing so,
 - Preferred option (out of the two identified potential development parcels) for disposal,
 - Method of sale, and
 - Policy implications.

Responses to what seem to be the key issues being raised about this matter

1. Why was the land sold, and was full value obtained and retained?

The report comments that -

- The land was classified as Operational, so it was open to the Council to consider its sale as it was surplus land. This differs from land which has been classified Community - which must be used or held by a council for public purposes.
- The Council had not identified a strategic use for the land. Also, in 2017 Lithgow Council did not have a policy position of undertaking development.
- The land was burdened with easements, slopes, a lack of servicing infrastructure and the potential need for amplification of some infrastructure – all of which would influence development potential.
- Council retained 44 hectares with future development potential in the locality.
- The Council received advice about the value of the land from an independent valuer. The land was sold for \$1,000,000 (ex GST) or \$1,100,000 (incl GST). This sale amount was above the valuation.
- It was resolved that the funds from the sale be held for re-investment. An example of how the funds have been re-invested is Council's acquisition of a strategic site at the rear of Lithgow Hospital which is currently the subject of a DA by Lithgow Council for residential subdivision.

2. Why does the current development application not propose a school?

The proponent's **concept** included a school as well as residential lots. But the administration did not recommend, and nor did the Council resolve, for the contract to require that the concept, including a school, be delivered in full.

Today's practices for the sale of Operational Land

In October 2018, Council adopted the Land Acquisition and Disposal Policy (a copy of this policy is attached and sections 4 and 5 are most relevant to this report). Although it is not entirely clear, it may have been the case that this policy was prompted by revised guidelines relating to direct negotiations between government and third parties, which were released by ICAC in late 2018.

The policy confirms that Council must dispose of land through a competitive process, consistent with the principles for local government, by way of auction or expression of interest. The policy offers two exceptions to this standard i.e., direct negotiation may be warranted and used as the method of disposal in very limited circumstances, and tendering may be used if Council resolves to do so, in the particular case. This policy is applied today.

If the Council is motivated to sell land so as to achieve a particular development outcome on the land, then the current administration would turn its mind to the means available to achieve that outcome, and give advice to the Council in that regard. The strength or enforceability of the various means available would need to be considered closely by the Council to gauge if they would in fact be effective. If reasonable doubt existed about enforceability of an outcome then it would be open to the Council not to sell the land.

Attachments

1. CONFIDENTIAL - ECDEV - CLOSED REPORT - CONFIDENTIAL - 250917 - PROPOSED SALE OF COUNCIL LAND [10.5.3.1 - 4 pages]
2. CONFIDENTIAL - Valuation of Ralph Toyer & Assoc - Barton Ave, Wallerawang [10.5.3.2 - 21 pages]
3. CONFIDENTIAL - Wallerawang Land Sale attachments [10.5.3.3 - 2 pages]
4. Policy 1 6- Land- Acquisition-and- Disposal- Policy [10.5.3.4 - 11 pages]

Recommendation

THAT:

1. The report relating to Lithgow City Council's 2018 sale of land in Barton Avenue Wallerawang be received, and,
2. Council take a decision as to the public release of the original report for this matter, recognising that legal advice which featured in that report will be redacted and not released due to it being subject to legal privilege.