



Probity plan

Disposal of land via sale of Pt Lot 68 DP 813538 Marrangaroo

Statement of Business Ethics

Lithgow City Council is committed to conducting business in an open and ethical manner. Council conducts its business with integrity, honesty, transparency and fairness in all matters.

It is Council's policy (1.6 – Land Acquisition and Disposal) to acquire and dispose of land in a manner that is consistent with the Guiding Principles for Local Government including:

- achieving best value for money
- being accountable and transparent
- ensuring all interested parties are given a fair chance
- avoiding conflicts of interest
- minimising risk.

To achieve these objectives Council will adhere with the disposal procedure outlined in Policy 1.6 – Land Acquisition and Disposal and applicable procedures set in legislation and government adopted guidelines.

Purpose

The purpose of this probity plan is to establish and document tasks, procedures and treatment options for managing the disposal of the subject land. This plan will address the following:

- achieving the best value for money
- the reason for using direct negotiation
- dealing with any actual or perceived conflicts of interest
- impartiality and separation of the role of Council as a regulator and a landowner
- ensuring accountability and transparency of process.

Background

Mr Bill Sanderson, then Manager of Metromix Quarry Marrangaroo enquired verbally with Council's property team if Council would be willing to sell a small parcel of land historically occupied by Metromix Marrangaroo Quarry for the purposes of a stockpile area, environmental bund and vegetation screen.

On 6 October 2017 Council responded requesting a formal written offer to initiate the process. Council advised that the process was to demonstrate transparency and to achieve market return in any commercial transaction that may pursue.

On 5 December 2017, Metromix made a written offer to Council to purchase the subject land including a valuation report prepared by Opteon Solutions, offering to purchase the land for \$10,000. The purpose for acquiring the land is to use the area for storing and stockpiling of quarry products such as concrete aggregates or sands and an area to provide a vegetated screen for these activities. The area of land would be added as a new mining lease for the Marrangaroo operations.

Council requested an independent market valuation from Ralph Toyer and Associates. The Valuation Report dated 9 May 2018 valued the parcel of land at \$10,000.

The matter was reported to Council on 23 July 2018 as a Confidential Closed Report along with a number of other unsolicited offers to purchase Council land. Council resolved the following (Min No 18-208)

- 1. Supports in principle the sale of Part Lot 68 DP 813538 having an area of approximately 1.085ha to Metromix Pty Ltd. The General Manager or his delegate be authorised to continue on a direct negotiation basis the terms and conditions of that sale with a final report to be presented to Council including a full probity plan.*

On 9 August 2018, Council wrote to Metromix advising of Council's resolution and outlining a set of draft terms for the sale as follows:

- Purchase price of \$10,000 plus any applicable GST
- Metromix Pty Ltd will be responsible for obtaining all relevant approvals and the costs associated with the subdivision of the land from Lot 68 DP813538 and consolidation with the adjoining quarry site on Lot 1 DP 577347.
- Metromix Pty Ltd will be responsible for all legal costs incurred by themselves and Council in relation to the contract of sale and the registration of the subdivision plan and transfer of title.
- The environmental bund and vegetation screen on the land is to remain in place whilst ever the quarry is in operation and until the site is fully rehabilitated in accordance with the mining lease post the cessation of quarry operations.

Mr Bill Sanderson, then Manager Metromix Quarry Marrangaroo, agreed to these terms on 16 August, 2018.

Due to the delay in the process Council reconfirmed with Metromix that the company still wished to proceed with the sale. Mr Brad Allman, General Manager, Metromix confirmed on 12 April 2019 and advised that Mr Bill Sanderson has since retired from the company and the transaction will now be managed by Metromix's Commercial Manager.

Land Description

The subject land has an area of approximately 1.085ha. A small slightly irregular shaped parcel that may be described as sloping gently to the southern boundary. The parcel adjoins the Lithgow City Go Kart Raceway on the northern boundary and the existing operating Metromix Quarry to the west. The site has no vehicular access to Oakey Forest Road.

The site is zoned E4 Environmental Living with a minimum lot size of 20ha under Lithgow Local Environmental Plan 2014.



Plan of Subject Parcel



Locality Context

Restrictions or Limitations

Classification of Land

The subject land is classified “Operational Land” under Division 1 of the Local Government Act, 1979. As such there is no restrictions on Council relating to disposing of the land through sale.

There are no other identified restrictions or limitations relating to the subject land that negates the ability of Council to dispose of the land.

Council has not identified any existing or future operational use or need for the subject land. The excision of this small parcel will not materially affect the proposed future use of the residual land in Council’s ownership being future residential once the quarry operations have ceased.

Other

It is noted that part of the residue of Lot 68 DP 813538 is restricted by a private lands lease (PLL584) held by Metromix known as the former BHP quarry where BHP extraction has been completed and is used for current water storage. This PLL adjoins the land subject to this Plan to the south.

The quarry operations have historically encroached onto 6,326m² of the subject parcel for use as a stockpile area whilst maintaining a vegetation screen on the remaining portion of the subject land without any legal or formalised agreement with Council. This proposed sale of the subject parcel and consolidation into Metromix holdings and mining lease to the west would rectify this anomaly and ensure future rehabilitation upon closure of the quarry.

Probity and Ethical Principles

Code of Conduct

Council’s Code of Conduct is a formally adopted corporate policy applicable to the Mayor, Councillors, employees, contractors and volunteers working for and on behalf of Council. It provides for ethical governance and appropriate conduct in relation to all of Council activities.

All aspects of this matter are to be carried out in full compliance with Council’s Code of Conduct and all other corporate policies in addition to the principles outlined in this Plan.

Probity Principles

The Macquarie Dictionary definition of probity is “integrity, uprightness, honesty”. Within local government the word “probity” is often used in a general sense to refer to “an appropriate process”.

Council’s Policy 1.6 Land Acquisition and Disposal has identified the following probity matters to be addressed by this Plan.

Achieving best value for money

Council has obtained an independent market valuation for the subject land, dated 9 May 2018 from Ralph Toyer and Associates, which is consistent with the market valuation, dated 26 September 2017 from Opteon Solutions, obtained by the proponents and with their subsequent offer being \$10,000.00.

This is considered to be best value for the land having regard to the following:

- Zoning and minimum lot size of the englobo lot
- Subject parcel has no independent access
- Subject parcel would have no building entitlement
- Subject parcel is unserviced
- Subject parcel lacks appeal given its proximity to the operating quarry activity and as a result of the encroaching land use of the quarry material stockpile and earthen bund wall.
- Subject parcel adds only nominal financial value to the englobo lot within which it is contained.
- Subject parcel only has some practical value to the adjoining land owner to maintain current use of the land for ancillary quarry operations.

Reasons for using direct negotiation method

- The process was initiated by an unsolicited request from Metromix to purchase the subject parcel of land.
- The size, service status and current encroaching land use of the subject parcel of land does not likely represent utility for any other landholder, therefore it is highly unlikely that competition in the market place would yield a better outcome.
- The financial and time costs associated with offering the subject parcel of land to the competitive market would be prohibitive given the low independent fair market valuations obtained and that such fair market value is reflected in the proponents offer.
- There would be wider public benefit achieved if the land was in Metromix ownership and added to existing mining lease (negotiated as a condition of the sale) to:
 - ensure the retention and maintenance of the earthen bund and vegetated screen as the interface between the quarry and adjoining land whilst the quarry is in operation
 - ensure the area is included in any final rehabilitation plans of the quarry upon cessation of the quarry operations
- The subject parcel adds only nominal value to the englobo lot that would remain in Council's ownership. Council does not have any identified future operational or community use for the subject parcel of land and the excision of this small parcel from the englobo lot will not materially impact its future residential subdivision potential.
- The potential risks of direct negotiation in this circumstance have been managed by due process as outlined in Council's Policy 1.6- Land acquisition and Disposal including this Plan.

*It should be noted that a Probity Plan would normally precede any report to Council seeking resolution to support the disposal of the subject land via direct negotiation. In this case, the process and Council policy were still under development when the initial unsolicited request was received by Council and when the matter was initially reported to Council.

Dealing with conflicts of interest

Probity Declaration – Conflict of Interest

All senior officers and Councillors, as designated persons, have previously completed and submitted S.449 Disclosure returns under the Local Government Act, 1979.

No actual or perceived conflict of interest has been identified by any of the officers charged with responsibility for this matter.

All officers are bound by the Council's Code of Conduct and are aware of their responsibilities to disclose interests either pecuniary or otherwise in relation to all Council dealings in which they are involved.

Impartiality

Impartiality shall be ensured throughout the process through the segregation of functions and responsibilities as outlined below.

No single member of staff will be responsible for all aspects and phases of the process. No decisions will be made unilaterally and the elected Council will always be the final decision maker.

Governance and Decision Making Hierarchy

Role of Elected Council

All dealings with Council land must be determined by resolution of the elected Council. A Council's power to dispose of land cannot be delegated to staff or individual councillors.

Role of General Manager

The General Manager consistent with his overall management role under the Local Government Act, will, in monitoring staff actions be mindful of the considerations of this Probity Plan and make all reasonable endeavours to ensure that the community achieves the best commercial and planning outcomes.

Role of Director Economic Development and Environment (DEDE)

The Director of Economic Development and Environment is directly responsible for the management and administration of the matter. The DEDE will act as the General Managers delegate in progressing the matter to the point of final Council resolution.

Role of Strategic Land Use Planner

The Strategic Land Use Planner is responsible for the co-ordination of the tasks involved in the administration of the matter including the preparation of draft reports and correspondence.

Role of Council Development Assessment Staff

A member of Council's development assessment team will be charged with the responsibility of assessing and recommending a determination of the subdivision application and certificate.

The responsibilities of the DEDE in such circumstances to submit a final report to the elected Council will be performed by the General Manager to ensure impartiality between the roles of regulator, administrator and landowner.

Role of Property Officer

Following any resolution of Council to proceed with the sale of the subject land Council's property officer will co-ordinate with Council's Solicitor to prepare the necessary documentation for final execution and registration with Land Registry Services.

Accountability and transparency

A written record of all conversation, meetings and correspondence in relation to this matter shall be registered in Council's electronic record system by the responsible officer.

The processes for receiving, managing and disseminating information are to ensure the security and confidentiality of information in accordance with Council's standard working procedures and Code of Conduct.

All commercial in-confidence information shall also be recorded in the records system with a "confidential" classification.