

**Report No. 1.**                    **Acquisition part Crown public road R755687 Main Arm proposed extension to Main Arm Rural Fire Brigade Station**

**Director:**                    Infrastructure Services  
Corporate and Community Services

**Report Author:**            Leslie Beardmore, Leasing and Licensing Coordinator  
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**File No:**                    #E2013/73811

**Theme:**                    Emergency Services  
Property, Procurements and Contract Services

**Summary:**                    NSW Rural Fire Service is proposing an extension to the Main Arm Rural Fire Brigade Station to accommodate a new Category 1 tanker. The Station is located on Council owned Community Land.

The proposed extension requires an encroachment on the adjacent eastern boundary onto Crown Reserve R755687 – a Crown public road.

Correspondence with NSW Trade and Investment Crown Lands Division, as landowners of R755687, confirms that Council should acquire the affected part of the Crown public road for the essential public purpose of emergency services.

The proposed compulsory acquisition is provided for in the Roads Act 1993 and will be processed in accordance with the Land Acquisition (Just Terms Compensation) Act 1991. It will automatically close the affected area of the Crown public road in accordance with the Roads Act 1993.

The first steps in the acquisition process were to have the proposed acquisition area surveyed and a valuation that references the appropriate clauses of that Act. The survey and valuation have been undertaken.

This report seeks Council's approval to proceed with the land acquisition.

## **RECOMMENDATION:**

1.    **That Council proceed compulsory acquisition in accordance with the Land Acquisition (Just Terms Compensation) Act and Section 177 of the Roads Act 1993, for part Crown public road part Reserve 755687 being part Lot 447 DP 257132 ( including all mines and minerals in the land) as identified in the draft plan at Annexure 4(c) #E2013/67385, subject to:**
  - a)   **agreement being reached to the satisfaction of both Council and Crown Lands on the amount of compensation payable;**
  - b)   **consent from Crown Lands for the acquisition; and**
  - c)   **approval from the Minister for Local Government and/or Governor for the acquisition.**
2.    **That Council authorise the General Manager to take the necessary steps to proceed with the land acquisition, including but not limited to:**
  - a)   **negotiate with Crown Lands regarding amount of compensation payable to reach agreement to the satisfaction of both Council and Crown Lands;**
  - b)   **seek consent from Crown Lands for the acquisition;**

This report is for submission to **Ordinary Meeting** Date of Meeting: **20 March 2014**

Signed: .....  
(DIRECTOR)

Signed: .....  
(GENERAL MANAGER)

- b) apply to the Minister for Local Government to approve the giving of a proposed acquisition notice and/or make recommendation to the Governor to publish an acquisition notice by gazettal;
  - c) affix the Council Seal to acquisition and land title documentation for the acquisition of part Lot 447 DP 257132, in accordance with Regulation 400 of the Local Government (General) Regulations 2005.
3. That upon acquisition, Council resolve to classify the land as Community Land categorised as General Community Use – Community Facilities for the essential public purpose of emergency services.

***Attachments:***

- Proposed extension #S2013/8477 [4 pages] ..... **Annexure 4(a)**
- Letter from Crown Lands Division #S2013/9828 [1 page] ..... **Annexure 4(b)**
- Draft plan #E2013/67385 [1 page] ..... **Annexure 4(c)**
- Assessment of compensation #E2013/73728 [47 pages]..... **Annexure 4(d)**

*Annexure 4(d): Due to the size of this document it has been provided on the Councillors' Agenda CD only; an electronic copy can be viewed on Council's website and at community access points around the Shire.*

## Report

### Land Information

#### Proposed land to be acquired:

Description: Part Lot 447 DP 257132 Crown public road (Reserve 755687)  
Address: Main Arm Road, Main Arm  
Owner: State of NSW (Crown Lands)  
Name of Trust: not applicable  
Trust Manager: not applicable  
Purpose: Crown public road

#### Existing land upon which Rural Fire Brigade Station is located:

Description: Lot 1 DP 610487  
Address: Main Arm Road, Main Arm  
Owner: Byron Shire Council  
Classification: Community Land  
Category: General Community Use – Community Facilities  
Zoning: 1(a) hatched – general rural zone  
POM: Generic Plan of Management for Community Land Categorised as General Community Use – Community Facilities #653083 adopted 24 February 2005

NSW Rural Fire Service holds a Service Level Agreement with Council for the use of Council owned Community Land at Main Arm Road, Main Arm upon which the Main Arm Rural Fire Brigade Station is located.

NSW Rural Fire Service is proposing an extension to the Main Arm Rural Fire Brigade Station to accommodate a new Category 1 tanker. Their proposal is outlined at Annexure 4(a). The building extension will be funded by RFS and the Main Arm volunteer RFS brigade.

The proposed extension requires an encroachment area of approximately 104m<sup>2</sup> (approximately 8 metres wide) on the adjacent eastern boundary onto Crown public road – part Reserve R755687.

Since early 2011 NSW Rural Fire Service has been in discussions with Council staff and NSW Trade and Investment Crown Lands Division (“Crown Lands”) to allow the NSW Rural Fire Service to expand the existing Main Arm Rural Fire Brigade Station.

Advice to Council from Crown Lands in September 2012 stated that Crown Lands considered it appropriate for Council to apply to close and purchase the affected part of the Crown public road.

Since that time, Crown Lands have reviewed their advice and in a letter dated 1 August 2013 (Annexure 4(b)) they advised that the best way to proceed at this time is for Council to acquire the affected part of the Crown public road for the essential public purpose of emergency services. This method has the advantage of timeliness, and automatically closes the affected area of the Crown public road.

The proposed compulsory acquisition will be in accordance with the Land Acquisition (Just Terms Compensation) Act 1991 and will automatically close the affected area of the Crown public road in accordance with the Roads Act 1993.

The first steps in the acquisition process were to have the proposed acquisition area surveyed and a valuation referencing the appropriate clauses of the Land Acquisition (Just Terms Compensation) Act 1991.

Staff commissioned a draft plan and valuation (assessment of compensation) and these are attached at Annexure 4(c) and 4(d) respectively. Making an allowance for a boundary buffer, the proposed land acquisition would be approximately 10 metres wide and 13 metres deep with an area of 129.7m<sup>2</sup>.

The proposed acquisition area is 129.7m<sup>2</sup> of vacant land (with the exception of post and wire fencing to the Main Arm Road boundary).

The assessment of compensation has been determined on the basis that Council will attend to and bear the costs of acquisition.

The assessment of compensation should also be re-assessed upon becoming more than 3 months old.

When making an acquisition application to the Minister for Local Government, Council needs to decide what it wants to do about mines and minerals in the land and this must be clearly stated in its application.

The proposed land to be acquired is an unformed Crown Public Road. Council is generally entitled to all minerals in the land acquired.

A formal search of the Register of Native Title Claims and National Native Title Register has been carried out for the Byron Shire Council Local Government Area. The search results provided by the National Native Title Tribunal on 10 December 2013 show that the proposed land acquisition is not subject any claim.

### **Financial Implications**

Costs to conduct the survey and valuation totalling \$2,123.00 (including GST) have been met by the existing 2013/14 Budget.

There will be a further cost to have a plan of subdivision prepared by the surveyor to accompany the application for compulsory acquisition to the Minister for Local Government and (subject to Gazettal) registration at Land and Property Information, and related land rationalisation costs for lot amalgamation etc to the estimated value of \$3,000.

The assessment of compensation under Section 55 of the Land Acquisition (Just Terms Compensation) Act 1991 has been assessed at \$3,500.00 (including GST) plus disturbance.

Estimated additional funding of \$6,500 will be funded by Council from the Emergency Services financial sub programme within Infrastructure Services.

As already stated the costs of the building extension will be funded by RFS and the Main Arm volunteer RFS brigade.

### **Statutory and Policy Compliance Implications**

Department of Local Government Guidelines for Compulsory Acquisition 2006

Land Acquisition (Just Terms Compensation) Act 1991 No 22

#### **5 Acquisition of land to which Act applies**

- (1) This Act applies to the acquisition of land (by agreement or compulsory process) by an authority of the State which is authorised to acquire the land by compulsory process.
- (2) This Act does not apply to any such acquisition if the land is available for public sale and the land is acquired by agreement.
- (3) Land is available for public sale if:
  - (a) the land is advertised by the owner as being available for sale, or
  - (b) the land is listed by the owner with a real estate agent as being available for sale, or
  - (c) the land is otherwise held out by the owner as being available for sale.

29 Acquisition of Crown land

- (1) Land may be compulsorily acquired by an authority of the State under this Act even though it is Crown land.
- (2) If Crown land is subject to a dedication or reservation that (by virtue of any Act) cannot be removed except by an Act, that land may not be compulsorily acquired. However, this prohibition does not apply if the dedication or reservation is not affected by the compulsory acquisition of the land.
- (3) Nothing in this Act affects the acquisition by agreement of Crown land by an authority of the State.
- (4) The provisions of Division 1 (Pre-acquisition procedures) and Part 3 (Compensation for acquisition of land) do not apply to the compulsory acquisition of Crown land if the owners of the land have agreed on all relevant matters concerning the compulsory acquisition and the compensation (if any) to be paid for the acquisition.

38 Compensation entitlement if land (not available for public sale) acquired by agreement

An authority of the State is to take into account, in connection with any proposed acquisition by agreement of land not available for public sale, the same matters as are required to be taken into account under this Part in determining the compensation payable for an acquisition by compulsory process.

54 Entitlement to just compensation

- (1) The amount of compensation to which a person is entitled under this Part is such amount as, having regard to all relevant matters under this Part, will justly compensate the person for the acquisition of the land.
- (2) If the compensation that is payable under this Part to a person from whom native title rights and interests in relation to land have been acquired does not amount to compensation on just terms within the meaning of the Commonwealth Native Title Act, the person concerned is entitled to such additional compensation as is necessary to ensure that the compensation is paid on that basis.

55 Relevant matters to be considered in determining amount of compensation

In determining the amount of compensation to which a person is entitled, regard must be had to the following matters only (as assessed in accordance with this Division):

- (a) the market value of the land on the date of its acquisition,
- (b) any special value of the land to the person on the date of its acquisition,
- (c) any loss attributable to severance,
- (d) any loss attributable to disturbance,
- (e) solatium,
- (f) any increase or decrease in the value of any other land of the person at the date of acquisition which adjoins or is severed from the acquired land by reason of the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired.

56 Market value

- (1) In this Act:

**market value** of land at any time means the amount that would have been paid for the land if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer, disregarding (for the purpose of determining the amount that would have been paid):

- (a) any increase or decrease in the value of the land caused by the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired, and

- (b) any increase in the value of the land caused by the carrying out by the authority of the State, before the land is acquired, of improvements for the public purpose for which the land is to be acquired, and
  - (c) any increase in the value of the land caused by its use in a manner or for a purpose contrary to law.
- (2) When assessing the market value of land for the purpose of paying compensation to a number of former owners of the land, the sum of the market values of each interest in the land must not (except with the approval of the Minister responsible for the authority of the State) exceed the market value of the land at the date of acquisition.

## Crown Lands Act 1989 No 6

### 106A Limits on compensation payable to reserve trusts

- (1) This section applies:
- (a) to the determination of the amount of compensation payable under Part 3 of the [Land Acquisition \(Just Terms Compensation\) Act 1991](#) in respect of the compulsory acquisition of the whole or part of a reserve described in subsection (2), and
  - (b) to the determination under section 191 of the [Roads Act 1993](#) of the amount of compensation payable or provided under Division 2 of Part 12 of that Act in respect of the acquisition under that Division of the whole or part of a reserve described by subsection (2), and
  - (c) to the determination under section 22A of the [Pipelines Act 1967](#) of the amount of compensation payable in respect of the vesting of the whole or part of a reserve described by subsection (2) or the vesting of an easement over the whole or part of such a reserve.
- (2) The following reserves are described by this subsection:
- (a) a reserve in respect of which a reserve trust has been constituted, whether under this Part or by operation of Schedule 8,
  - (b) a reserve to which the provisions of this Part are applied by any other Act, or which is taken under any other Act to be a reserve under this Part, and in respect of which a reserve trust has been appointed or taken to be appointed, other than a reserve that comprises dedicated land for which a Crown grant was granted to the reserve trust or a predecessor in title before the commencement of the *Crown Lands (Land Titles) Amendment Act 1980*.
- (3) Despite section 55 of the [Land Acquisition \(Just Terms Compensation\) Act 1991](#), in determining the amount of compensation, if any, payable to a reserve trust, regard is to be had to the following matters only (as assessed in accordance with this section):
- (a) the value to the reserve trust of any improvements (including structures) erected or carried out by the trust on the land being acquired or vested, or over which the easement is vested, on the date the land is acquired,
  - (b) the amount of any loss attributable to the reduction in public benefit from any loss of public open space that arises from the acquisition or vesting of the land,
  - (c) the amount of any reduction in the value to the trust, as at the date the land is acquired or vests, or the easement vests, of any other improvements (including structures) erected or carried out by the trust on other land that is caused by the land acquired being severed from other land of the trust,
  - (d) the cost to the trust of acquiring additional land having environmental benefits that are comparable to the land being acquired or vested,
  - (e) any loss attributable to disturbance (within the meaning of section 59 of that Act), other than loss arising from the termination of a lease or licence over the whole or part of the land being acquired.
- (4) For the purposes of a determination of an amount of compensation:
- (a) the Crown is taken to be the holder in fee simple of the land being acquired or vested, or over which the easement is vested, and
  - (b) section 56 (2) of the [Land Acquisition \(Just Terms Compensation\) Act 1991](#) applies as if the value of improvements (including structures) erected or carried out by the trust on the land is the market value of the trust's interest in the land.

- (5) A reserve trust that is, or is managed by, the authority acquiring the whole or part of a reserve is not entitled to compensation in respect of the acquisition or vesting if it decides not to require compensation and does not revoke that decision before the acquisition of the land concerned.
- (6) Nothing in this section affects:
  - (a) any function of the Minister with respect to a reserve trust, including the Minister's functions under sections 102 and 106, or the requirements of section 106, or
  - (b) the rights under the [Land Acquisition \(Just Terms Compensation\) Act 1991](#) of a person from whom native title rights and interests (within the meaning of that Act) in relation to land have been acquired.

#### Roads Act 1993 No 33

#### 41 Compulsory acquisition of land operates to close public road

A public road that is compulsorily acquired under this or any other Act or law ceases to be a public road as a consequence of its compulsory acquisition.

#### 177 Power to acquire land generally

- (1) The Minister, RMS or a council may acquire land for any of the purposes of this Act.
- (2) Without limiting subsection (1), the Minister, RMS or a council may acquire:
  - (a) land that is to be made available for any public purpose for which it is reserved or zoned under an environmental planning instrument, or
  - (b) land that forms part of, or adjoins or lies in the vicinity of, other land proposed to be acquired for the purpose of opening, widening or constructing a road or road work.
- (3) Without limiting subsection (1), RMS may also acquire land that it proposes to declare to be RMS development land.

#### 178 Procedure for acquiring land

- (1) Land that is authorised to be acquired under this Division may be acquired by agreement or by compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).
- (2) A council may not give a proposed acquisition notice under the [Land Acquisition \(Just Terms Compensation\) Act 1991](#) without the approval of the Minister.

#### 179 Restriction on compulsory acquisition of land for resale

- (1) Land may not be acquired by compulsory process under this Division without the approval of the owner of the land if it is being acquired for the purpose of re-sale.
- (2) However, the owner's approval is not required if the land forms part of, or adjoins or lies in the vicinity of, other land acquired at the same time under this Division for a purpose other than the purpose of re-sale or if the land is proposed to be RMS development land.

#### 180 Special provisions relating to land containing minerals

Division 4 of Part 8 of the [Public Works Act 1912](#) applies to the Minister, RMS and a council, and to land acquired by the Minister, RMS or a council, in the same way as it applies to a constructing authority within the meaning of that Act and to land acquired by a constructing authority.

#### 191 Ascertainment of compensation payable

The amount of compensation to be provided is to be determined:

- (a) by agreement between the applicant and each person whose claim has been accepted, or
- (b) failing agreement, by the Land and Environment Court, or
- (c) if the identity or whereabouts of the owner of any interest in the land concerned cannot be ascertained, by the Valuer-General.

## Local Government Act 1993 No. 30

### 377 General power of the council to delegate

- (1) A council may, by resolution, delegate to the general manager or any other person or body (not including another employee of the council) any of the functions of the council, other than the following:
  - (a) the appointment of a general manager,
  - (b) the making of a rate,
  - (c) a determination under section 549 as to the levying of a rate,
  - (d) the making of a charge,
  - (e) the fixing of a fee,
  - (f) the borrowing of money,
  - (g) the voting of money for expenditure on its works, services or operations,
  - (h) the compulsory acquisition, purchase, sale, exchange or surrender of any land or other property (but not including the sale of items of plant or equipment),
  - (i) the acceptance of tenders which are required under this Act to be invited by the council,
  - (j) the adoption of an operational plan under section 405,
  - (k) the adoption of a financial statement included in an annual financial report,
  - (l) a decision to classify or reclassify public land under Division 1 of Part 2 of Chapter 6,
  - (m) the fixing of an amount or rate for the carrying out by the council of work on private land,
  - (n) the decision to carry out work on private land for an amount that is less than the amount or rate fixed by the council for the carrying out of any such work,
  - (o) the review of a determination made by the council, and not by a delegate of the council, of an application for approval or an application that may be reviewed under section 82A of the [Environmental Planning and Assessment Act 1979](#),
  - (p) the power of the council to authorise the use of reasonable force for the purpose of gaining entry to premises under section 194,
  - (q) a decision under section 356 to contribute money or otherwise grant financial assistance to persons,
  - (r) a decision under section 234 to grant leave of absence to the holder of a civic office,
  - (s) the making of an application, or the giving of a notice, to the Governor or Minister,
  - (t) this power of delegation,
  - (u) any function under this or any other Act that is expressly required to be exercised by resolution of the council.
- (2) A council may, by resolution, sub-delegate to the general manager or any other person or body (not including another employee of the council) any function delegated to the council by the Director-General except as provided by the instrument of delegation to the council.

## Local Government (General) Regulation 2005

### 400 Council seal

- (1) The seal of a council must be kept by the mayor or the general manager, as the council determines.
- (2) The seal of a council may be affixed to a document only in the presence of:
  - (a) the mayor and the general manager, or
  - (b) at least one councillor (other than the mayor) and the general manager, or
  - (c) the mayor and at least one other councillor, or
  - (d) at least 2 councillors other than the mayor.
- (3) The affixing of a council seal to a document has no effect unless the persons who were present when the seal was affixed (being persons referred to in subclause (2)) attest by their signatures that the seal was affixed in their presence.



(4) The seal of a council must not be affixed to a document unless the document relates to the business of the council and the council has resolved (by resolution specifically referring to the document) that the seal be so affixed.