

9.4 Management of Council Owned Land at 55 George Campbell Drive Bombira

REPORT BY THE MANAGER PROPERTY AND REVENUE

TO 03 NOVEMBER 2021 ORDINARY MEETING

GOV400088, Lan900050, 24361, 19876

RECOMMENDATION

That Council:

1. **receive the report by the Manager Property and Revenue on the Management of Council Owned Land at 55 George Campbell Drive Bombira;**
2. **delegate authority to the General Manager to determine, after the planning advice regarding permissible use has been received, the most suitable option from those options listed 1-3 in the body of this Report for the management of the land;**
3. **authorise the General Manager to proceed with the necessary steps, undertakings and negotiations, where necessary, to achieve the favoured Option's outcomes;**
4. **authorise the General Manager, to sign any documentation necessary to give effect to this resolution; and**
5. **amend the 2021/22 Budget to allocate a maintenance and operational budget for 55 George Campbell Drive of \$3,000 funded from unrestricted cash.**

Executive summary

The purpose of this Report is to seek a resolution from Council in relation to options to undertake the immediate and short term management of 55 George Campbell Drive, Bombira.

Disclosure of Interest

Nil.

Detailed report

Allotment 63 DP618063 (the Site) having a total area of 16.74ha is located at 55 George Campbell Drive, Bombira and was purchased by Council June 2021 for future development purposes. The Site, is classified as *Operational* land in accordance the Local Government Act 1993 (LGA) and is not currently being utilised by Council. There are no immediate plans for its development.

The Site comprises an 8.5ha developed cherry orchard with drip irrigation. The orchard has been maintained at a level to obtain harvest each year. The remaining area of the Site is open space. A plan and photographs are appended as Attachments 1 and 2, respectively, to this Report.

The Site was rezoned a number of years ago to SP1 – Special Activities, under the provisions of the Mid-Western Regional Local Environmental Plan 2012 (LEP), with the designated purpose

being “Dwelling Incidental with Aviation”. Any other development, except for Aquaculture (with consent) is not permissible.

In relation to the LEP’s conditions, a referral has been made to Planning to ascertain whether there is a prior consent to allow the agricultural use of the Site to continue. Early advice provided by Planning is that:

- there does not appear to be a prior consent for the cherry farm activities;
- that information provided on the maintenance and harvest of the farm to date would most likely meet “existing use rights”

Detailed site information

Council officers have reviewed the previous consents, and have found no approvals for a ‘Cherry Farm’, the only approvals retrieved are:

- DA0173/2014 – Dual occupancy
- DA0152/2012 (MA0016/2020) – Subdivision and aircraft hanger
- DA0091/2009 (MA0041/2013) – Dwelling house
- DA0392/2006 – Dwelling Entitlement

According to the SEE of DA0091/2009, the site was utilised as a vineyard since 1969. The first mention of the cherry orchard was found in the SEE for DA0173/2014. No consent for the cherry farm is found.

A cherry farm would be consistent with the definition of ‘intensive agriculture’, which was permissible without consent under the previous zone of the land (RU4). Although use of the land for ‘intensive agriculture’ is currently prohibited under the current SP1 zone, it would be reasonable that the use has been retained and continues, and the site would benefit from existing use rights, given that:

1. the orchard still exists, and
2. that there is a possible harvest for this season.

That is, you can continue to use the site for the purposes of a cherry farm.

It was also confirmed, that the site could not be used for purposes not related to the SP1 zone – this precludes grazing of livestock, which is defined as ‘extensive agriculture’. This is prohibited in the zone.

Current purpose of site

This site is currently being used in a form of “land banking”. There are no immediate plans for development of the site, and further works are required before plans for development can be established and finalised.

The majority of surrounding privately owned land holdings have been set and maintained as ongoing viable orchard/vineyard/tourism businesses.

Council’s charter as the custodian and trustee of public assets is to effectively manage the holdings for which it is responsible and in a way which is consistent with Council’s economic, social and environmental objectives.

As the owner of the Site, its management in the immediate and short-term future is now required to be addressed.

Options include:-

1. Subject to Planning advice regarding the ongoing use of the Site for agricultural pursuits, undertake regular maintenance of the orchard to bring it up to an acceptable industry and biosecurity standard, along with regular slashing of the open space area.

This outcome may be achieved by leasing/licencing the Site to a tenant who is experienced in this field. The Site is not suitable to allow for ancillary grazing as it is only adequately fenced on two sides, and this is not a permissible use.

Securing a suitable tenant would be undertaken in accordance with Council's Leases and Licences of Owned and Managed Land and Real Property (the Policy). The Policy is appended as Attachment 3 to this Report.

2. If the planning advice is that agricultural pursuits are not permissible, the orchard is to be removed. Thereafter, regular ongoing slashing of the Site may be considered.
3. Regardless of the planning advice, the orchard be removed and regular ongoing slashing of the Site considered.

Note - At the time of writing this Report, a cost to remove the trees and rehabilitate the Site has not been ascertained.

It is recommended to authorise delegated authority to the General Manager determine, after receiving the planning advice, the most suitable option for the maintenance of the Site and proceed with the necessary steps and undertakings to achieve the relevant outcome.

Community Plan implications

Theme	Good Governance
Goal	An effective and efficient organisation
Strategy	Prudently manage risks association with all Council activities

Strategic implications

Council Strategies

Nil.

Council Policies

Leases and Licences of Owned and Managed Land and Real Property.

Legislation

Local Government Act 1993.

The Site is classified as *Operational* land in accordance with Part 2 Division 1 LGAct, therefore Council is not required to publically advertise any proposed agreement to lease/licence.

Financial implications

A small operational budget is recommended in this report, to either establish a lease of benefit to Council, or to carry out minor noxious weed management.

If a lease cannot be entered to maintain the site, then a further budget allocation recommendation will be made through a monthly budget review to establish a budget to remove the trees or otherwise maintain the site.

Budget Year	Operating Performance Ratio	Own Source Revenue	Building & Infrastructure Renewal
2021/22	X	-	-
Future Years	-	-	-

Associated Risks

Planning advice will further direct the best option to undertake in relation to the Site's short-term management.

DIANE SAWYERS
MANAGER PROPERTY AND REVENUE

LEONIE JOHNSON
CHIEF FINANCIAL OFFICER

15 October 2021

Attachments:

1. Plan - Lot 63 DP618063 55 George Campbell Drive Bombira.
2. Photographs - Lot 63 DP 618063 55 George Campbell Drive Bombira.
3. Policy - Leases and Licences of Owned and Managed Land and Real Property.

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER



Plan - Lot 63 DP618063 55 George Campbell Drive Bombira



Orchard



Drip Irrigation



Lot 63



Lot 63

Photographs of Lot 63 DP618063 55 George Campbell Drive Bombira



POLICY

Leases and Licences of Council Owned and Managed Land and Real Property

*A prosperous
and progressive
community.*

ADOPTED		VERSION NO	V 2.0
COUNCIL MEETING MIN	286/20	REVIEW DATE	SEPTEMBER 2024
DATE:	16 SEPTEMBER 2020	FILE NUMBER	COU500044, GOV400047

Objective

Council owns and manages both *Community* and *Operational* land and real property, and unformed Council public roads. Council will manage the use of its holdings for the benefit of the community and/or to maximise the amount of revenue it derives from these holdings.

Some of these land assets are available for short term and long term use under an agreement.

The main objectives of this Policy are -

- in response to Chapter 3 Local Government Act 1993, to acknowledge Council's charter as the custodian and trustee of public assets and to effectively manage the holdings for which it is responsible;
- to outline the general requirements for the grant of occupation agreements for Council owned and managed land and buildings;
- to ensure the grant of occupation agreements meet legislative requirements;
- to ensure management and use of Council owned and managed land and real property is consistent with Council's economic, social and environmental objectives;
- to ensure the grant of occupation agreements are consistent, transparent, fair and impartial.

Scope

This Policy applies to Council owned and Council managed *Community* and *Operational* land and, unformed Council public roads.

This Policy excludes the hire and usage arrangements of land or real property where charges are set within Council's annual *Schedule of Fees and Charges*.

Legislative requirements

Local Government Act 1993

Local Government (General) Regulation 2005

Crown Land Management Act 2016

Crown Land Management Regulation 2018

Crown Lands (General Reserves) By-Law 2006

Conveyancing Act 1919

Real Property Act 1900

Retail Leases Act 1994

Residential Tenancies Act 2010

Roads Act 1993

Aviation Transport Security Act 2004

Aviation Transport Regulation 2005

Civil Aviation Safety Authority

ICAC Direct Negotiations: Guidelines for Managing Risks 2018.

Related policies and plans

- Long Term Financial Plan 2019/29.
- Towards 2030 Community Plan.
- Asset Management Policy.
- Asset Management Strategy.
- Building Maintenance Plan.
- Mid-Western Regional Council Plans of Management for *Community* land.
- Mudgee Regional Airport Master Plan 2015.
- Mudgee Showground Master Plan 2009.
- Mudgee Showground Four Year Business Plan 2016/2017-2020.
- Unmaintained & Unformed Roads Policy.
- Roads Asset Management Plan 2016-2026.

Definitions

CLMA means Crown Land Management Act 2016.

Community Land as defined in Chapter 6, Part 2 of the Local Government Act 1993.

Council means Mid-western Regional Council.

Crown means the NSW Government.

Land as defined in Section 3 of the Real Property Act 1900.

Lease is any agreement under which a person grants to another person for value a right of occupation of premises or land for a particular purpose for a specified term. It gives the tenant a proprietary interest in the real property.

Licence is an agreement that grants a personal right to occupy and use a premises or land for a particular purpose. It does not grant exclusive possession of the land and may permit the land to be used by other persons.

LG Act means the Local Government Act 1993.

Market Rental Value is the amount of annual rent achieved if the occupation had been let in a competitive market.

Minister means Minister for Local Government.

Occupation Agreement means the contract between the user and council to reflect the agreed terms and conditions for the use of the land or facility. A lease or licence is referred to as an agreement.

Operational Land as defined in Chapter 6, Part 2 of the Local Government Act 1993.

Plan of Management as defined Chapter, Part 2 of the Local Government Act 1993.

Real Property means land and all the things that are attached to it.

POLICY: LEASES AND LICENCES OF COUNCIL OWNED AND MANAGED LAND AND REAL PROPERTY | V 2.0 , 16 SEPTEMBER 2020

Regulations means Local Government (General) Regulation 2005.

Roads Act means Roads Act 1993.

Tenant is a person or company or organisation who occupies land or real property rented from the Council. A tenant may be a lessee or licensee.

Policy

An occupation agreement may take the form of either a licence or lease.

Types of occupation may include, but are not limited to, major commercial developments; retail, airport and other commercial businesses; residential; community groups or clubs; agistment and occupation of surplus unformed Council public road reserves.

Types of agreement documentation to formalise an occupation include, licence agreements, retail leases where occupation is subject to the Retail Leases Act 1994; residential leases where occupation is subject to the residential Tenancy Act 2010; all other occupations are leases subject to the provisions and formal requirements under the Real Property Act 1900 and the conveyancing Act 1919.

The lease or licence will be administered in accordance with the LG Act, and CLMA when dealing with *Community* land, *Operational* land and; the Roads Act when dealing with unformed Council public roads.

A proposed lease or licence outcome will be assessed in accordance with, but not limited to, the following –

1. STATUTORY AND STRATEGIC CONSIDERATIONS:

- Land management provisions of the LG Act, CLM Act and Roads Act;
- Other Legislative requirements;
- Native Title interest and Aboriginal Land Claims;
- Planning controls;
- Strategic objectives;
- Asset management objectives;
- Land will be effectively utilised;
- Condition & ongoing maintenance requirements;
- Land classification and zoning;
- Length of tenure and if the duration of the agreement allows Council to respond to any changing operational and community demands and needs;
- Exclusivity or non-exclusivity of use;
- Social and community benefit – address identified community demand and Council's operational needs.

2. COMMERCIAL AND FINANCIAL CONSIDERATIONS:

The most appropriate return; having regard to the proposed use, tenant and the specific property being the subject of the agreement.

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General Principles

DELEGATION

Pursuant to section 377 of the LG Act, the General Manager has been provided with delegated authority to enter into all leases and licenses on behalf of Council.

COMMUNITY LAND

The lease or licence of *Community* land is restricted by the LG Act and must be consistent with the core objectives of the category of land, for a use prescribed by the LG Act or Regulations and expressly authorised in a Plan of Management.

Purposes prescribed by the LG Act for leases or licences of *Community* land are for the provision of goods, services and facilities, and the carrying out of activities, appropriate for the needs within the local community and of the wider public in relation to public recreation or the physical, cultural, social and intellectual welfare or development of persons.

The term of tenure for *Community* land is influenced by the legislative requirements of the LG Act.

OPERATIONAL LAND

The lease or licence of *Operational* land is not burdened with the same legislative restrictions as those of *Community* land.

APPOINTMENT PROCESS

A licensee or lessee will be assigned by a public competitive process, being either by tender, expression of interest or other competitive process, unless there are exceptional circumstances.

In exceptional circumstance situations, it may not be possible to use a competitive process or; while a competitive process may be possible, it may be so impractical or expensive that direct negotiations are the most acceptable way to seek assignment.

All direct negotiations must be undertaken having regard to the guidelines issued by the Independent Commission Against Corruption - *Direct Negotiations: Guidelines For Managing Risks 2018*.

In other circumstances, Council may contract a suitably qualified real estate agent to secure a tenant.

LEASE AND LICENCE TERMS AND CONDITIONS

In all instances, except where deemed a standard agreement template will be acceptable, lease and licence agreements will be prepared and reviewed by Council's solicitor having regard to the proposed use, tenant and the specific property being the subject of the agreement.

Any standard agreement template will be submitted to Council's solicitor for review at least every three years to reflect changes in legislative and administrative requirements.

APPLICATION FEES AND LEGAL COSTS

Unless exempt by legislation, the proposed lessee/licensee shall be responsible for the payment of all application fees (when applicable) and Council's legal costs in the preparation and review of leases and licences.

Prior to engaging legal representation, a quote shall be obtained and provided to the proposed lessee/licensee.

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RENTAL VALUE

Market rental valuations will be obtained from a suitably qualified valuer for all *Community* and *Operational* land and Council public roads. In certain circumstances a rental assessment may be obtained from a suitably qualified real estate agent.

A rental return of less than market value may be considered in specific circumstances.

A market rental review valuation will be obtained for all leases and licences at least every 3 - 5 years and if applicable a tenant will be secured via the Appointment process.

RENT REVIEW AND ADJUSTMENTS

All rents will be reviewed in line with the tenure agreement with the view to being increased annually for the term of the agreement by either a consumer price index adjustment, a fixed percentage, or as specified in the individual agreements.

MANAGEMENT OF LEASE AND LICENCE TERMS AND CONDITIONS

Council will manage the compliance of lease and licence terms and conditions, except in certain circumstances where the management may be contracted to a suitably qualified real estate agent.

MAINTENANCE, IMPROVEMENTS AND PRESENTATION

Responsibilities will be fully detailed in formal agreements.

In relation to buildings and structures, no alterations, modifications or beautifications are to be undertaken without Council's consent.

INDEMNITY

All tenants shall indemnify Council (and the Crown, if applicable), and hold Public Liability Insurance to the minimum value of \$20 million; or other amount as advised by Council.

Variation

Council reserves the right to vary the terms and conditions of this policy, subject to a report to Council.