

Transport for NSW - Light Rail- Section 29 Land Acquisition Agreement and Land Transfers to the City

File No: X081018

Summary

On 13 December 2012 the City of Sydney entered into a Development Agreement with Transport for NSW for the development of a new light rail system, CBD and South East Light Rail, to connect the City Centre with the suburbs of Kensington and Randwick, via George Street and Surry Hills.

A key City objective of the Development Agreement was to deliver an integrated high-quality public domain. An important component in achieving this objective has been agreement through consensus, between the City and Transport for NSW, to set aside compensable matters in respect of acquisitions of the City's land (Acquisition Land) and interests over City's land balanced against the transfer of surplus project land to the City at no cost (Compensation Land), inclusive of any interests created as a result of the project.

The Compensation Land comprises both road dedications under the Roads Act 1993 and land transferred for community uses, the latter the subject of a Land Transfer Agreement.

Both parties have agreed and finalised a Land Acquisition Agreement pursuant to section 29 of the Land Acquisition (Just Terms Compensation) Act 1991 (Section 29 Land Acquisition Agreement), and a Land Transfer Agreement for the community land transfers, together with plans of subdivision and supporting instruments to dedicate roads and create required easements.

This report seeks Council's endorsement of the Section 29 Land Acquisition Agreement and the Land Transfer Agreement and all supporting documentation for the property transactions to proceed to completion to support the ongoing operational management of the public domain.

Recommendation

It is resolved that Council:

- (A) note that the City and Transport for NSW have agreed that no compensation will be payable under the Land Acquisition (Just Terms Compensation) Act 1991 for land or property interests acquired by Transport for NSW for the CBD and South East Light Rail Project;
- (B) note that Transport for NSW have agreed to transfer land surplus to the CBD and South East Light Rail for no consideration to the City;
- (C) in respect of 'Eddie Ward Park', corner of Marlborough and Devonshire Streets, Surry Hills endorse:
- (i) Transport for NSW acquiring proposed Lot 2 in, plan of acquisition, Deposited Plan 1260627 (Acquisition Land) from the City pursuant to section 29 of the Land Acquisition (Just Terms Compensation) Act 1991;
 - (ii) Transport for NSW dedicating to the City as Public Road proposed Lots 11 and 12 in, plan of subdivision, Deposited Plan 1266757 (Compensation Land);
 - (iii) the pre-existing easements over proposed Lot 12 in Deposited Plan 1266757 for electricity and water.;
- (D) in respect of 'Wimbo Park', Surry Hills endorse:
- (i) Transport for NSW acquiring the following land from the City pursuant to section 29 of the Land Acquisition (Just Terms Compensation) Act 1991:
 - Part 560-576 Bourke Street, Surry Hills, being community land shown as proposed Lot 2 affecting Lots 6 and 7 in Deposited Plan 456577, (Acquisition Land);
 - Part of Olivia Lane, being road and shown as proposed Lot 4, (Acquisition Land);
 - Part of Parkham Place being road and shown as proposed Lot 5, (Acquisition Land);
 - (ii) Transport for NSW :
 - transferring land forming part of 3 Olivia Lane and part 625-629 South Dowling Street, Surry Hills being proposed Lots 2, 3, 4, 5, 6 and 8 in the proposed plan of subdivision (PPN 1272206) being part of Lot 10 in Deposited Plan 817603 and Lot 12 in Deposited Plan 1194942 for community purposes (Compensation Land); and

- dedicating as road, pursuant to the Roads Act 1993, and forming part of 3 Olivia Lane, proposed Lot 9 at the corner of Parkham Place and Nobbs Lane and proposed Lot 10 at the corner of Parkham Lane and Parkham Place in the proposed plan of subdivision of Lot 10 in Deposited Plan 817603 and Lot 12 in Deposited Plan 1194942 (Compensation Land) ;
- (iii) the grant by the City of a 25-year licence for carparking to South Eastern Area Health Service over proposed Lots 4,5 and 6 in proposed plan of subdivision(PPN.1272206) as part of the conditions inherited from Transport for NSW from the Sydney Light Rail Project consent.
- (iv) the grant of various easements benefitting Transport for NSW as described within the report for the purpose of the Sydney Light Rail Project;
- (E) in respect of 'Anzac Parade', Moore Park endorse:
- (i) Transport for NSW acquiring from the City a stratum below part of Anzac Parade, Lot 2 in Plan of Acquisition, Deposited Plan 1266334 pursuant to section 29 of the Land Acquisition (Just Terms Compensation) Act 1991 (Acquisition Land);
- (ii) Transport for NSW dedicating as road, pursuant to the Roads Act 1993, proposed Lots 5 and 6 in the proposed plan of subdivision (PPN 1271476) being part of Lot 2 in Deposited Plan 739594 (Compensation Land)
- (F) delegate authority to the Chief Executive Officer to finalise the negotiation of any terms and conditions of the Section 29 Land Acquisition Agreement and Land Transfer Agreements and any other documents required to support these transactions, and to execute any documentation necessary to give effect to the transactions approved by these resolutions.
- (G) endorse the proposed resolution: 'It is resolved to classify the City acquired property being a subdivision of Lot 10 in Deposited Plan 817603 and Lot 2 in Deposited Plan 1194942, and further described as proposed Lots 2, 3, 4, 5, 6 and 8 in proposed plan of subdivision no.1272206, as operational land in accordance with section 31 of the Local Government Act 1993' be publicly notified for a period of 28 days prior to or following the completion of the acquisition;
- (H) note that a further report, to inform the outcomes of public notification and recommendation on land classification, will follow any notification period.

Attachments

Attachment A. Identification Plans

Attachment B. Commercial Considerations (Confidential)

Background

Light Rail Project

1. The CBD and South East Light Rail (the “CSELR”) is a new light rail network for Sydney that has been operational since December 2019.
2. The CBD and South East Light Rail runs from Loftus Street at the northern end near Circular Quay through George Street, Rawson Place, Eddy Avenue, Chalmers Street, Devonshire Street and Anzac Parade to Alison Road at the southern end of the local government boundary with Randwick Council.
3. The Project was approved as State Significant Infrastructure under Section 115ZB of the Environmental Planning and Assessment Act 1979.
4. The City has contributed \$220 million to the Project for public domain upgrades and improvements, culminating in the pedestrianisation of George Street between Hunter and Bathurst Streets, and other improvements in Surry Hills.

Development Agreement

5. In December 2013, Council approved a Development Agreement with Transport for NSW (TfNSW) which included the City’s public domain requirements and Transport for NSW’s requirements for construction, testing, commissioning and operation of the light rail.
6. The Development Agreement noted that:
 - (a) a sufficient Permanent Light Rail Corridor will be required to enable the Light Rail to be safely commissioned, operated and maintained; and
 - (b) the Permanent Light Rail Corridor rights and obligations will commence after the acceptance of the handover of City’s public domain by the City.
 - (c) The Development Agreement also noted that Transport for NSW agree to dedicate part of the former site of Olivia Gardens to the City for community use and integration into Wimbo Park.
 - (d) As at the date of the Development Agreement, Transport for NSW had not determined whether the Permanent Light Rail Corridor required for the operation of the light rail would be by way of a contractual licence, an interest in land (such as a series of easements or a leasehold interest) or by way of statutory rights or a combination of these mechanisms.
 - (e) The City and Transport for NSW have worked together to formulate the subject land easements, acquisitions, and transfers to ratify the land rights and obligations going forward.
 - (f) Any land within the local government area administered by the City which is compulsorily acquired by Transport for NSW as part of the Project and which is not required by Transport for NSW as part of the Project or for other Transport for NSW requirements and affects or will become the public domain, existing parks, gardens, open space or public domain infrastructure, will be dedicated to the City as soon as practicable after completion of the Project.

Land Acquisitions, Land Transfers, Road Dedications and Interests

7. Attachment A: Land Identification Plans to this report identifies the areas detailed below.
8. A key City objective of the Development Agreement was to achieve an integrated high-quality public domain. This has been achieved through consensus to set aside compensable matters in respect of acquisition of City's land (Acquisition Land) and interests over City's land balanced against the transfer of surplus project land to the City at no cost (Compensation Land), inclusive of any interests created as a result of the Project.
9. The Compensation Land comprises road dedications under the Roads Act 1993 created upon registration of the plan of subdivision and land transferred for community uses, the latter the subject of a Land Transfer Agreement.
10. Both parties have agreed and finalised the documentation for, the Transport for NSW acquisitions pursuant to Section 29 of the Land Acquisition (Just Terms Compensation) Act 1991 (Section 29 Land Acquisition Agreement), and the Land Transfer Agreement for the community land transfers, together with plans of subdivision (including road dedications) and supporting instruments for required easements.
11. The principal documents relating to land acquisitions, land transfers and road dedications include:
 - (a) Deed of Acquisition of Land under Section 29 of the Land Acquisition (Just Term Compensation) Act 1991 (NSW) covering the land Transport for NSW is acquiring from the City and referencing the 'Compensation Land' being the surplus land to be transferred to the City;
 - (b) Land Transfer Agreement - Wimbo Park;
 - (c) Various Deeds for Easements;
 - (d) Plans of Acquisition and Subdivision.
12. Details of the land acquisitions, transfer and other interests are set out below.
13. Transport for NSW are acquiring from the City 1,540.5 square metres in total comprising 774.10 square metre of road and 766.40 square metres of community classified park
14. The Compensation Land totals 7,851.80 square metres and consists of Transport for NSW dedicating 3,700.6 square metres of road and the transferring 4,151.20 square metres of park to the City.
15. The land to be acquired from the City by Transport for NSW and the land and road to be transferred/dedicated to the City's ownership by Transport for NSW is focused on three areas referred to within this report as Eddie Ward Park, Wimbo Park and Anzac Parade. Details of the individual acquisitions and transfers is set out in the following sections.

Focus Area: Eddie Ward Park, Surry Hills

16. Shown within Attachment A: Land Identification Plans.

17. The land to be acquired from the City is proposed Lot 2 in Plan of Acquisition, Deposited Plan 1260627 (being a subdivision of Lot 1 in Deposited Plan 737434) having an area of approximately 558.3 square metres being community land forming part of Eddie Ward Park, leaving a residual area of the Park of 9,124 square metres.
18. The acquisition land is acquired subject to the existing easements burdening the City's land.
19. The land to be transferred to the City and dedicated as road is Lot 11 (136.0 square metres) being land acquired by Transport for NSW from Land and Housing NSW and Lot 12 (558.3 square metres) having a combined total area of 694.3 square metres (Compensation Land).
20. The existing easements burdening Eddie Ward Park (Lot 1 in Deposited Plan 737434) will continue over the land to be transferred back to the City as road (proposed Lot 12).

Focus Area: Wimbo Park, Surry Hills

21. Shown within Attachment A: Land Identification Plans.
22. For the purpose of this report, Wimbo Park is defined as the area of the original park bounded by Olivia Lane and Bourke Street together with the Compensation Land bound by Nobbs Lane, South Dowling Street, Parkham Lane and Olivia Lane.

Acquisition Land

23. The land to be acquired from the City by Transport for NSW within plan of acquisition, Deposited Plan 1260666 has a combined total area of 311.3 square metres and includes:
 - (a) proposed Lot 2 having an area of 208.1 square metres being part of Lots 6 and 7 in Deposited Plan 456577 and being community land forming part of Wimbo Park;
 - (b) proposed Lot 4 having an area of 42.9 square metres, being part of Olivia Lane road reserve; and
 - (c) proposed Lot 5 having an area of 60.3 square metres, being part of Parkham Place road reserve.

Compensation Land

24. The compensation land to be transferred to the City in proposed plan of subdivision, Deposited Plan 1272206 has a combined total area of 4,239.5 square metres and includes:
 - (a) Lots 2, 3 and 8 having a combined area of 3,849.4 square metres for community purposes, noting that Transport for NSW has agreed to the proposed operational classification of this land to facilitate the delivery of the new park.
 - (b) Lots 9 and 10 with a combined area of 88.3 square metres dedicated as public road, and

- (c) Lots 4, 5 and 6 with a combined area of 301.8 square metres which will transfer encumbered by a 25-year licence at \$1 per annum (if demanded) between the City and South Eastern Sydney Local Health District as carparking spaces for the use of the Langton Centre. To enable this licence under the Local Government Act 1993, Transport for NSW has agreed to an operational classification of this land.
25. The proposed plan of subdivision will create:
- (a) easements for services 3 metres and 1.15 metres wide benefitting the City and burdening the Light Rail Corridor land,
 - (b) an easement for drainage 3.5 metres wide benefitting the City and burdening the Light Rail Corridor land,
26. Proposed Lot 2, 3 and 8 will be transferred to the City in fee simple for the purpose of community use (being a subdivision of Lot 10 in Deposited Plan 817603 and Lot 12 in Deposited Plan 1194942).
27. The Land Transfer Agreement acknowledges Transport for NSW's agreement for the City to classify this land as operational to enable the City to both manage the licence to South Eastern Sydney Local Health District and undertake the planned refurbishment of Wimbo Park.
28. Transport for NSW is dedicating proposed Lots 9 and 10 as road (being a subdivision of Lot 10 in Deposited Plan 817603 and Lot 2 in Deposited Plan 1194942).

Focus Area: Anzac Parade, Surry Hills and Moore Park

29. Shown as 05 within Attachment A: Land Identification Plan.

Acquisition Land

30. The land to be acquired from the City is Proposed Lot 2 in Plan of Acquisition Deposited Plan 1266334, Light Rail Tunnel below Anzac Parade, Moore Park.
31. Lot 2 is a stratum lot limited in height and depth with an area of 670.9 square metres.

Transfer Land Anzac Parade (near Martin Road, Moore Park - Road Dedication

32. Shown as 06 and 07 within Attachment A: Land Identification Plan.
33. The land to be dedicated as road totals 2,918 square metres and comprises:.
- (a) Lot 5 having an area of 565 square metres, (being a subdivision of Lot 2 in Deposited Plan 739594) adjoining Martin Road along its eastern boundary and the Light Rail Corridor along its western boundary, and
 - (b) Lot 6 having an area of 2,353 square metres, (being a subdivision of Lot 2 in Deposited Plan 739594), adjoining Anzac Parade along its western boundary and the Light Rail Corridor along its eastern boundary.

Key Implications

Strategic Alignment - Sustainable Sydney 2030

34. Sustainable Sydney 2030 is a vision for the sustainable development of the City to 2030 and beyond. It includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress. This report is aligned with the following strategic directions and objectives:
- (a) Direction 1 - A Globally Competitive and Innovative City
 - (b) Direction 2 - A Leading Environmental Performer.
 - (c) Direction 3 - Integrated Transport for a Connected City
 - (d) Direction 4 - A City for Walking and Cycling
 - (e) Direction 5 - A Lively and Engaging City Centre

Social / Cultural / Community

35. The adoption of the City's public domain standards has achieved an integrated public domain of high quality that supports the City's urban design principles.

Environmental

36. The Light Rail operations will significantly reduce greenhouse gas emissions by reducing the number of cars and buses along the route.
37. The Project will also seek to maximise opportunities for renewable energy production to reduce the light rail's carbon footprint.

Economic

38. Transport for NSW has released a summary of the Business Case appraised by NSW Treasury. The Benefit-Cost ratio (BCR) is evaluated at 2.5; this means that the project provides \$2.50 benefit for every \$1.00 of investment, representing a total benefit of \$4.0 billion against an estimated investment of \$1.6 billion. The majority of the economic benefits, some \$2.2 billion, result from public transport benefits related to faster, more reliable journeys.
39. In addition, the economic modelling of the light rail system has indicated high patronage along the route, leading to an expectation of a cashflow-positive operation.

Financial Implications

40. Transport for NSW and the City have agreed to set aside compensable matters in respect of acquisition of City's land (Acquisition Land) and interests over City's land balanced against the transfer of surplus project land to the City at no cost (Compensation Land), inclusive of any interests created as a result of the project.
41. Any changes to the City's land holdings will be reflected in the City's asset register and valued according to its land classification and recognised in accordance with Australian Accounting Standards and the requirements as set down by the Office of Local Government.

Relevant Legislation

42. Section 377 of the Local Government Act 1993 as amended (which contains the general power of a Council to delegate), a council may, by resolution, delegate certain functions, but not the function to sell or acquire land or other property.
43. Section 25 of the Local Government Act 1993 requires all public land to be classified as either community or operational land.
44. Section 31 of the Local Government Act 1993 requires Council to classify newly acquired land as operational or community land before the date of acquisition of the land or within three months from the date of acquisition of the land.
45. The land transfers within the Wimbo Park focus area require classification.
46. The community classification is intended to support the management of recreational open space and reserves. While the City is to retain the land to be transferred in perpetuity for community recreational use, Transport for NSW acknowledge that the encumbrance of the licence to South Eastern Sydney Local Health District requires an operational classification to ensure the City is able to manage this land in accordance with the Local Government Act 1993. .
47. Similarly, Transport for NSW acknowledge the City's recently approved plans to integrate existing City owned land (original Wimbo Park) and the land to be transferred from Transport for NSW into an enlarged Wimbo Park. The City requires the flexibility to manage the integration of the transfer lands through the development, commissioning and warranty periods to ensure timely delivery and operational handover.
48. Until the redevelopment of the site by the City is completed, the application of a community classification to the proposed acquisition (by transfer) land would be inconsistent with the management of the other City-owned land acquired for similar purposes.
49. It is recommended that Lots 4, 5 and 6 within Deposited Plan 1272206 being the land encumbered by a 25-year licence to the South Eastern Sydney Local Health District be classified as operational to enable the City to manage its obligations.
50. It is recommended that Lots 2, 3 and 8 be classified as operational land to facilitate the implementation of the renewal works planned for Wimbo Park and following operational handover the land would be re-classified as community and categorised through inclusion within a plan of management.
51. This report seeks Council's endorsement to notify a proposed resolution to classify the land as operational land which will enable the City to effectively manage this land.
52. Section 34 of the Local Government Act 1993 requires the proposed resolution to classify be publicly notified and made available for inspection by the public for a period of 28 days. A further report, to inform the outcomes of public notification and for Council to resolve to endorse the classification, will follow the notification.

53. Local Government Act 1993 - Section 10A provides that a council may close to the public so much of its meeting as comprises the discussion of information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.
54. Attachment B contains confidential commercial information and details which, if disclosed, would confer a commercial advantage on a person with whom Council is conducting (or proposes to conduct) business.
55. Discussion of the matter in an open meeting would, on balance, be contrary to the public interest because it would compromise Council's ability to negotiate fairly and commercially to achieve the best outcome for ratepayers.

Critical Dates / Time Frames

56. The Section 29 land acquisitions will be gazetted by Transport for NSW upon registration of the plans of acquisition. Following endorsement by Council the parties will proceed to execute the relevant documentation to enable the acquisition and transfer of the subject land to be effected and work together to expedite the finalisation of the transactions.

KIM WOODBURY

Chief Operating Officer

Nicholas Male-Perkins, Commercial Manager