



# **SUPPLEMENTARY BUSINESS PAPER**

## **ORDINARY MEETING**

**Wednesday 9 December 2009  
at 6:30 pm**



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### 33 COMPULSORY ACQUISITION - TIDC - EXTENSION TO BEROWRA COMMUTER CARPARK

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On 27 July 2009 Hornsby Council received a proposed acquisition notice from the Transport Infrastructure Development Corporation (**TIDC**) under the *Land Acquisition (Just Terms) Act* for a road reserve at Berowra. The subject land was gazetted as a public road in Gazette No.108 of 23 September 1977 and vested in the Council. The land is zoned Special Uses B (Transport Corridor) under the Hornsby LEP 1994, which permits (amongst other things) multi unit housing with development consent.

The Council, on 22 October 2009 submitted a claim for compensation in accordance with s55 of the *Land Acquisition (Just Terms) Act* to TIDC together with a copy of a valuation in support of the claim. The valuation (in excess of \$0.5M) determined the market value of the land on the basis that the highest and best use was as multi-unit housing.

The amount of compensation payable, is affected by the status of TIDC as a Statutory State Owned Corporation and whether it represents the Crown.

TIDC was established as a Statutory State Owned Corporation under the *Transport Administration Act 1988*. That Act is silent as to whether or not the corporation is the Crown. Section 18F of the *Transport Administration Act* provides that the corporation may for any purposes of the corporation acquire land by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.

The *State Owned Corporations Act 1989* deals with the status of Statutory State Owned Corporations. Section 20F of that Act provides that a Statutory State Owned Corporation is not and does not represent the State except by express agreement of the voting shareholders of the State Owned Corporation. Until 27 October 2009, no such agreement had been made by the voting shareholders of TIDC under Section 20F.

By letter dated 29 October 2009 TIDC advised Council that TIDC represented the State when acquiring land which is a public road under the *Roads Act 1993*.

Pursuant to a request from Council on 20 November 2009 TIDC forwarded to Council a copy of an agreement under Section 20F of the *State Owned Corporations Act 1989* signed by the two voting shareholders within the meaning of Section 3(1) of the *State Owned Corporations Act* to the effect that those shareholders agreed that TIDC represents the State when acquiring land which is a public road under the *Roads Act 1993*.

That agreement was signed by Minister for Roads, David Campbell on 10 September 2009 and countersigned by Eric Roozendaal (Treasurer) on 27 October 2009.

On 27 October 2009, the same day, as the agreement under s20F was signed by the Treasurer, the land was acquired by Compulsory Acquisition and the Notice of Compulsory Acquisition of the subject land was gazetted on 30 October 2009.

As a consequence of that agreement under Section 20F, the date of that agreement and the date of the gazettal of the acquisition notice, the provisions of Section 204 and following of the *Roads Act* 1993 apply in lieu of the heads of compensation set out in the Land Acquisition (Just Terms Compensation) Act 1991. Compensation payable to Council under the Roads Act is limited to costs incurred in acquisition, road construction and the like.

The agreement under s.20F by the Minister for Roads and the Treasurer was a deliberate act to deprive Council of its rights to compensation under s.55 of the Land Acquisition (Just Terms) Act, having already incurred the expense of obtaining a valuation based on s.55 of that Act and based on the highest and best use of the land.

Council's legal advice indicates that the process undertaken by the State is lawful, however, it is effectively another example of cost shifting from the State to local government. It also has deprived the Hornsby Shire Council and its residents of a source of funds to provide much needed infrastructure within the Shire.

It is proposed that Council request the Premier to adequately compensate Council for the deprivation of the Shire of much needed financial resources and request all local State Members to make representations on Council's behalf.

### **RECOMMENDATION**

THAT Council

1. Make representations to the Premier The Hon. Kristina Keneally MP for adequate compensation to be paid to Council for the acquisition of land for the extension of the Berowra Community carpark.
2. Write to all its local State and Federal Members requesting their support in Council's representations to the Premier.
3. Write to the Presidents of the LGSA requesting that the Associations make representations on behalf of local government generally for amendment to the relevant legislation to ensure that in respect of compulsory acquisition by the Crown, proper compensation is determined and paid under the provisions of the Land Acquisition (Just Terms Compensation) Act.

NICK BERMAN  
Mayor

#### **Attachments:**

There are no attachments for this report.

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**ITEM 33**