

10.11.TfNSW Litigation

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ENDORSED BY	Therese Cole, Chief Executive Officer
ATTACHMENTS	Nil
CSP LINK	1. Our Living Environment 1.4 Well utilised open space and recreational facilities 2. Our Built Infrastructure 2.1 Infrastructure and assets meet diverse community needs

PURPOSE:

This report is for the Council to consider its options and next steps in the *North Sydney Council v Transport for NSW* LEC Proceedings No. 2002/00161074.

EXECUTIVE SUMMARY:

- Should Council wish to discuss this report it is noted that the attached confidential document includes advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege and because consideration of the matter in open Council would be, on balance, contrary to the public interest as it would affect Council's ability to manage legal matters effectively and in the best interests of the community. As such should this matter be discussed it should be considered in closed session.

RECOMMENDATION:

1. THAT Council adopt the recommendations in the Confidential Report.

2. THAT Council resolves that the identified attachment to this report is to be treated as confidential in accordance with section 11(3) of the Local Government Act for the following reason under section 10A(2) of the Local Government Act:

(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege

It is further noted that release of this information would be, on balance, contrary to the public interest as it would affect Council's ability to manage legal matters effectively and in the best interests of the community.

Background

Council is the Crown land manager of Crown land at Cammeray Park, St Leonards Park, and ANZAC Park under the Crown Land Management Act 2016 (CLM Act).

On 26 March 2021, Transport for NSW (TfNSW) compulsorily acquired a leasehold interest in parts of those parks (the Land), for a term of 4 years and 11 months (Acquisition Period) for the purposes of the Warringah Freeway Upgrade project (the Project). At the end of the Acquisition Period, the Land will be returned to Council (in Council's capacity as Crown land manager). TfNSW may, at a later time, compulsorily acquire some or all of the Land in freehold.

On 7 March 2022, the Valuer-General NSW (VG) determined the compensation to which Council was entitled in the sum of \$35,003 made up of \$3 for market value, and \$35,000 for legal and valuation fees incurred by Council prior to the acquisition. In accordance with the *Land Acquisition (Just Terms) Compensation Act 1991* (Just Terms Act), TfNSW made an offer to Council to pay the sum of compensation determined by the VG.

The proceedings have been brought by Council against TfNSW to object to the offer of compensation by TfNSW. The proceedings concern only the leasehold acquisition of the Land for the Acquisition Period. While it is apparent from the Project approval documents that TfNSW intends to compulsorily acquire a section of Cammeray Park in freehold (ie permanently), this has not occurred and permanent acquisition of that land and the impacts which may result from it are not relevant to these proceedings. Council will have separate entitlements to compensation arising from any future compulsory acquisitions of freehold interests by TfNSW should this take place at some future time.

Report

The proceedings are now well advanced and evidence has been finalised. The hearing is listed for 9 days from 29 April – 9 May 2024 inclusive. The matter had previously been listed for final hearing in October/November 2023 but these dates were vacated by the Court, due to illness of the judge who had been allocated to hear the matter.

A separate confidential report has been provided to Councillors.

Consultation requirements

Community engagement is not required.

Financial/Resource Implications

The financial implications of this report have been addressed in the Confidential Report.

Legislation

Land Acquisition (Just Terms) Compensation Act 1991 and *Crown Land Management Act 2016*