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Our Ref: JBH:NEW:25164

9 December 2025

John Harvey
Jojeni Investments Pty Ltd
21A Redan Street
MOSMAN NSW 2088

By Email: jgharvey22@gmail.com

Dear Mr Harvey

Woodlands North Subdivision (DA 2025.97.1) & Proposed MHE Property: Ocean Drive, Kew

1. Introduction

- 1.1. You have asked us to provide advice concerning a question regarding Port Macquarie Council's power to compulsorily acquire land for the purposes of a road (**Land**) from the Woodlands North subdivision to Lake Ridge Drive.
- 1.2. You have also re-raised with us the question of owners consent for what is known as the Link Road as part of the Subdivision DA or the MHE DA.

2. Executive Summary

- 2.1. Council has the power under the *Local Government Act 1993* (**LG Act**) to acquire land for the purposes of roads.
- 2.2. Land that is compulsorily acquired is to be valued under the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* (**Just Terms Act**).
- 2.3. In our view the voluntary planning agreement that applies to the Land would have the effect of rendering the Land valueless at worst and significantly reduced at best.
- 2.4. We dealt with the question of owners consent in our advice dated [date]. Nothing has changed since that advice was written – because you do not propose to carry out development on the land that will comprise the Link Road you do not need the owner of that lands consent to the lodgement of your application.

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3. The ability to compulsorily acquire

- 3.1. The Woodlands North Subdivision forms part of a land release strategy in Port Macquarie known as Area 15 (**Area 15**).
- 3.2. The land comprised in Area 15 is subject to various voluntary planning agreements made under the *Environmental Planning & Assessment Act* (**EPA Act**).
- 3.3. Those VPA's are in similar terms and contain, amongst other provisions, provisions for the dedication of land to Council at no cost.
- 3.4. Importantly the land which is to comprise Link Road, is land to which a VPA applies, which VPA includes one of the provisions pertaining to the requirement for the dedication of that land to Council at no cost.
- 3.5. This advice is not intended to canvas the power of Council to impose a condition requiring the Link Road to be upgraded prior to a subdivision certificate being issued for the Subdivision DA as we have already dealt with that question. Similarly, we have also dealt with the road construction question in our earlier advice, noting that the obligation to construct the road already exists by reason of condition A07 contained in development consent DA2017.1059¹.
- 3.6. As we understand your query, the question of Council's power to compulsory acquire the Land arises because Council has queried what might happen if, for example, the current owner of the Land does not construct the road or fails to comply with the VPA applying to that land.
- 3.7. Broadly, the power of the Council to acquire the land is conferred by s 186(1) of the *Local Government Act 1993* ("Local Government Act"):

A council may acquire land (including an interest in land) for the purpose of exercising any of its functions.⁴

- 3.8. The "functions" referred to in s 186(1) include those set out in ss 21, 22, 23 and 24 of that Act:

21 Functions under this Act

A council has the functions conferred or imposed on it by or under this Act. ...

22 Other functions

A council has the functions conferred or imposed on it by or under any other Act or law. ...

23 Supplementary, incidental and consequential functions

A council may do all such things as are supplemental or incidental to, or consequential on, the exercise of its functions.

24 Provision of goods, services and facilities and carrying out of activities

¹ Condition A07 requires that "*The development must only proceed in accordance with the approved stages as set out below: - Stage 10 – Construction of Link Road (Road 08) and Lots 122, and 124 to 130*".

A council may provide goods, services and facilities, and carry out activities, appropriate to the current and future needs within its local community and of the wider public, subject to this Act, the regulations and any other law.

3.9. The provision of roads readily falls within the functions of a Council.

3.10. Accordingly, Council can compulsorily acquire the Land.

3.11. Compensation for land which is compulsorily acquired is to be determined in accordance with the Just Terms Act.

3.12. In determining the amount of compensation, regard must be had to the matters set out in s 55(a)-(f) of the Just Terms Act:

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) the disadvantage resulting from relocation,
- (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.

3.13. For the purposes of the Act, the “market value of land” is defined in s 56(1)(a) of the Just Terms Act to mean:

(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,...

3.14. It is important to note that the VPA applying to the Land includes a provision regarding the dedication of the land at no cost to the Council as well as a provision requiring the any future owner to agree to assume the same obligations as those of the current owner in the VPA.

3.15. Furthermore, the VPA includes a provision permitting the Council to compulsorily acquire the Land if the Land is not dedicated to the Council at the time it is required to be dedicated². In those circumstances the VPA operates as an agreement under s30 of the Just Terms Act, with compensation being agreed for \$1³.

3.16. Because of the provisions of the VPA we refer to above we consider that the Land would be valueless at worst or significantly reduced at best.

² The VPA provides when the dedication is to occur (before a subdivision certificate or occupation certificate, as the case may be, is issued) including such times as Council may specify acting reasonably

³ See clause 49 of the VPA

- 3.17. In short, Council could compulsorily acquire the Land if the current owner of the Land does not construct the road. Alternatively, Council could activate the *failure to carry out work* provisions in the VPA and carry out the works itself and recover the cost of doing so against the owner of the Land (or use the security to do so).
- 3.18. Finally we note that any question of lapsing of the development consent to which the approval for the Land is concerned has now been resolved, Council having now accepted that commencement of that consent has now occurred.

4. Conclusion

4.1. In our view:

- (a) There is nothing Council can do to require you to obtain the consent of any other owner of any land in Area 15 to either the Subdivision DA or the MHE DA; and
- (b) The Council can compulsorily acquire the Land, with compensation to be determined in accordance with the Just Terms Act.

Yours faithfully

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4.2. Please let us know if you have any further questions in relation to the above.

Yours faithfully
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