
Item 9: Finance

9.1 Application for Proposed Road Closure of Slate Gully Road Wollar - Peabody Pastoral Holdings Pty Ltd

REPORT BY THE REVENUE AND PROPERTY MANAGER
TO 20 FEBRUARY 2019 ORDINARY MEETING
GOV400067, R0183001

RECOMMENDATION**That Council:**

1. **receive the report by the Revenue and Property Manager on the Application for Proposed Road Closure of Slate Gully Road Wollar - Peabody Pastoral Holdings Pty Ltd and;**
 2. **agree to close Slate Gully Road Wollar being the subject of Peabody Pastoral Holdings Pty Ltd road closure application and as identified in Attachment 1 to this Report and progress the closure in accordance with Part 4 Division 3 Roads Act 1993, NSW Department of Industry Council road closures Fact Sheet July 2018 and Council's Land Acquisition and Disposal Policy and;**
 3. **accept the offer of \$220,000 (plus GST) made by Peabody Pastoral Holdings Pty Ltd for the purchase of the land vested in Council upon the proposed closure of Slate Gully Road Wollar as identified in Attachment 1 to this Report and;**
 4. **require that Peabody Pastoral Holdings Pty Ltd be responsible for all costs, including Council's reasonable legal costs, associated with the proposed closure and sale of Slate Gully Road Wollar as identified in Attachment 1 to this Report, including Council's reasonable legal costs and the cost of the Valuation report, dated 4 January 2018 and;**
 5. **authorise the General Manager to sign all documentation, where necessary, in relation to the proposed closure and subsequent sale of Slate Gully Road Wollar as identified in Attachment 1 to this Report;**
 6. **authorise the Mayor to sign any documentation, where additionally required to do so, in relation to the proposed closure and subsequent sale of Slate Gully Road Wollar as identified in Attachment 1 to this Report;**
 7. **authorise the Common Seal of Council to be affixed to all documentation, where necessary, in relation to the proposed closure and subsequent sale of Slate Gully Road Wollar as identified in Attachment 1 to this Report; and**
 8. **amend the 2018/19 Operational Plan to include \$220,000 for the proceeds on sale of the asset, with this income being transferred to the Public Road Closure Compensation Reserve.**
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Executive summary

This report seeks to secure a resolution to the proposal by Peabody Pastoral Holdings Pty Ltd (the Applicant) for Council to close and subsequently sell to the Applicant, the entire length of Slate Gully Road Wollar (the Road) as identified in Attachment 1 to this Report.

The proposed Road closure and disposal processes are to be progressed in accordance with Part 4 Division 3 Roads Act 1993 (the Act), NSW Department of Industry Council road closures Fact Sheet July 2018 (the Fact Sheet) and Council's Land Acquisition and Disposal Policy (Policy).

Disclosure of Interest

Nil

Detailed report

In April 2017, the Minister for Planning granted Development Consent (SSD-6764) to Wilpinjong Coal P/L for the Wilpinjong Extension Project. Under this Development Consent, an additional open cut pit in Slate Gully (Pit 8) and associated infrastructure was approved.

Council has now received an application (Application for Closure) from the Applicant for consideration to be given to the closure and subsequent sale to the Applicant, of the entire length of the Road which falls within the Wilpinjong Coal Mine footprint. The application is identified as Attachment 2 to this Report.

The Road is a Council public road, formed and maintained by Council. The Road reserve is 20m and variable and created by Plan 250053. Its 3ha including a 1,348m x 5.0m wide gravel constructed roadway incorporating 4 x piped culverts with table drains and cut off drains on both sides of the Road. The Road currently provides access to 10 x separate allotments, nine of which are owned by the Applicant and one by Wilpinjong Coal Pty Ltd. Photographs of the Road reserve are documented as Attachment 3 to this Report.

As the Road has been formed and maintained by Council, the land, upon proposed closure of the Road reserve, will vest in Council under the Act and Council will be entitled to receive the proceeds of the proposed sale.

The preliminary actions and documentations required by the Act, the Fact Sheet and the Policy prior to presenting this application to Council for consideration, have been completed. These actions and documentations comprise the Road status being the Deposited Plan which created the Road, advertisement of the intention to close the Road in the Mudgee Guardian (27/7/2018 & 10/8/2018) and notification of the proposal to all affected parties and notifiable authorities.

The submission period to receive comments and objections closed on 24/8/2018, with one objection received from Essential Energy. Essential Energy qualified its objection to the proposal by requesting an easement for power lines be created on the survey plan for closure. The Applicant subsequently liaised with Essential Energy in this regard with the outcome being Essential Energy withdrew its objection on 6/12/2018.

A record of the preliminary actions and documentation and subsequent responses is identified as Attachments 4, 5 and 6 to this Report.

Should Council wish to consent to the Road closure application, the matter will be progressed through the further formal processes for road closure as stipulated by the Act, the Fact Sheet and the Policy.

Early Access

The Applicant has not sought to occupy the Road before the proposed sale has been completed i.e. Early Access. The Act provides the authority for a council to close a road to traffic if the proposal is consented to by Roads and Maritime Services under s118 of the Act or; is the subject of an order of the Minister to Council under s120 of the Act.

If the Early Access situation eventuates, the Applicant would then need to obtain consent from Council under s138 of the Act for all works it needs to carry out on the Road. A consent under s138 is required in order to erect a structure or carry out a work in, on or over a public road, or dig up or disturb the surface of a public road.

It is considered that s138 would not allow for works to be conducted beyond the scope stipulated in this section of the Act and, in particular, would not allow for any part of the Road to be subjected to the actual open cut winning of coal, as opposed to, for example, mere surface preparation for such excavation and mining.

The consent would need to be ratified by a suitable written agreement between the Applicant and Council, which would comprise a suite of conditions akin to an ordinary licence and include a requirement for the payment of market rent for the term of the Early Access occupation.

Compensation

As directed by the Policy, a valuation of the Road was obtained by Council in order to determine a starting point for negotiation in relation to the disposal value of the land, which will vest in Council upon closure of the Road. The valuation, dated 4 January 2018, was assessed at \$270,000 (exclusive of GST). The complete valuation report is attached in the Confidential Section of the Business Paper.

On 23 April 2018, Council received a copy of a document compiled by the Applicant's valuer which was in response to Council's valuation report and assessment. The Applicant's valuation was assessed at \$200,000 (exclusive of GST). The Applicant's documentation is attached in the Confidential Section of the Business Paper.

A subsequent discussion between the General Manager and the Applicant has resulted in the Applicant offering \$220,000 (plus GST) for the acquisition of the land, which will vest in Council upon closure of the Road. The Applicant's offer is attached in the Confidential Section of the Business Paper.

The Policy recognises that it is not unreasonable for a disposal value of up to 10% variation from a valuation assessment obtained by Council to be negotiated and agreed upon - a 10% variation in this instance, would result in a \$243,000 disposal price. The Applicant's offer of \$220,000 (plus GST) however, represents only an 18.5% variation.

As further required by the Policy, the explanation for recommending the Applicant's offer of \$220,000 (plus GST) which is outside the stipulated variance, is that the Applicant feels Council's valuation has an added premium on top of the market value which the Applicant considers inappropriate. The compensation offer of \$220,000 (plus GST) is therefore a compromise between Council's valuation of \$270,000 (plus GST) and the Applicant's valuation of \$200,000 (plus GST).

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

Not Applicable

Council Policies

Land Acquisition and Disposal Policy - consideration of individual circumstances of a road proposed to be closed and the requirement for at least one current market value of the land by a registered valuer to determine compensation negotiation for the sale of the land.

Legislation

Roads Act 1993

Financial implications

Section 43 of the Act addresses the disposal of land comprising former public road owned by a council. Revenue received by Council from the proceeds of the sale of the land is to be used for acquiring land for public roads or for carrying out roadwork on public roads.

Accordingly, any sale proceeds will be restricted for use on public roads by transferring the proceeds into the Public Road Closure Compensation Reserve.

In accordance with the Policy, the Applicant will be responsible for all costs incurred in the Road closing process and disposal of the land upon closure, including Council's reasonable legal costs and the cost of the Valuation report dated 4 January 2018.

Associated Risks

Not Applicable

DIANE SAWYERS
REVENUE AND PROPERTY MANAGER

NEIL BUNGATE
ACTING CHIEF FINANCIAL OFFICER

30 May 2018

- Attachments:*
1. Map of Slate Gully Road proposed to be closed. (separately attached)
 2. Application to close Slate Gully Road. (separately attached)
 3. Photographs of Slate Gully Road 4-1-2018. (separately attached)
 4. Record of preliminary actions & documentation - Guardian Advertisements. (separately attached)
 5. Record of preliminary actions & documentation. (separately attached)
 6. Road Status - DP creating Road. (separately attached)
 7. Valuation obtained by Council 4-1-2018. (Confidential - separately attached)
 8. Valuation obtained by Applicant 23-4-2018. (Confidential - separately attached)
 9. Applicants Offer. (Confidential - separately attached)

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER