REPORT BY THE REVENUE AND PROPERTY MANAGER
TO 15 APRIL 2020 ORDINARY MEETING
GOV400087, ROA100007

RECOMMENDATION

That Council:

1. receive the report by the Revenue and Property Manager on the Moolarben Coal Operations P/L Application to Close & Purchase Certain Council Roads; and

2. agree to the terms in the Terms Sheet – Proposed Road Closure and Purchase as appended as Attachment 1 to this Report; and

3. authorise the General Manager to endorse the Terms Sheet – Proposed Road Closure and Purchase as appended as Attachment 1 to this Report; and

4. propose the closure, pursuant to Part 4 Division 3 Roads Act 1993, of the 6 roads being numbered segments 21A, 21B, 21C, 55B, 64, 506, 531, 519, 533 & 534 as cited in Annexures A and B to Moolarben Coal Operations P/L application dated 1 November 2019 of Attachment 2 appended to this Report and of which are Council Public Roads; and

5. upon endorsement of the Terms Sheet – Proposed Road Closure and Purchase, give notice, pursuant to s38B Roads Act 1993, of the proposal to close the 6 roads being numbered segments 21A, 21B, 21C, 55B, 64, 506, 531, 519, 533 & 534 as cited in Annexures A and B to Moolarben Coal Operations P/L application dated 1 November 2019 of Attachment 2 appended to this Report and of which are Council Public Roads; and

6. receive a further report after the notice period pursuant to s38B Roads Act 1993 has ended to consider any submissions received and then, pursuant to s38D Roads Act 1993 determine whether the 6 roads being numbered segments 21A, 21B, 21C, 55B, 64, 506, 531, 519, 533 & 534 as cited in Annexures A and B to Moolarben Coal Operations P/L application dated 1 November 2019 of Attachment 2 appended to this Report and of which are Council Public Roads, are to be closed; and

7. obtain valuations in accordance with the Land Acquisition and Disposal Policy for the road segments numbered 21A, 21B, 21C, 55B, 64, 506, 531, 519 as cited in Annexures A and B to Moolarben Coal Operations P/L application dated 1 November 2019 of Attachment 2 appended to this Report and of which are Council Public Roads; and

8. authorise the General Manager to negotiate sale prices for the transfer of ownership of the road segments numbered 21A, 21B, 21C, 55B, 64, 506, 531, 519 as cited in Annexures A and B to Moolarben Coal Operations P/L application dated 1 November 2019 of Attachment 2 appended to this Report and of which are Council Public Roads, and present the proposal in a further report to
Council; and

9. acknowledge the proposed closure and sale of the road segments numbered 533 (Carrs Gap Road) and 534 (Murragamba Road) as cited in Annexures A and B to Moolarben Coal Operations P/L application dated 1 November 2019 of Attachment 2 appended to this Report, is to be conducted in accordance with the conditions in the Agreement with Respect to Costs dated 6/6/2014 between Moolarben and Council, as appended in the Confidential section of this Business Paper and;

10. authorise the General Manager to decide pursuant to s138 of the Roads Act, Moolarben Coal Operations P/L having early access and occupation on the road segments numbered 21A, 21B, 21C, 55B, 64, 506, 531, 519 as cited in Annexures A and B to Moolarben Coal Operations P/L application dated 1 November 2019 of Attachment 2 appended to this Report and of which are Council Public Roads, and subject to such conditions as are considered appropriate; and

11. authorise the General Manager to sign all documentation, where necessary, in relation to the proposed closure and subsequent sale of the 6 roads being numbered segments 21A, 21B, 21C, 55B, 64, 506, 531, 519, 533 & 534 as cited in Annexures A and B to Moolarben Coal Operations P/L application dated 1 November 2019 of Attachment 2 appended to this Report and of which are Council Public Roads; and

12. authorise the Mayor to sign any documentation, where additionally required to do so, in relation to the proposed closure and subsequent sale of the 6 roads being numbered segments 21A, 21B, 21C, 55B, 64, 506, 531, 519, 533 & 534 as cited in Annexures A and B to Moolarben Coal Operations P/L application dated 1 November 2019 of Attachment 2 appended to this Report and of which are Council Public Roads; and

13. authorise the Common Seal of Council be affixed to all documentation, where necessary, in relation to the proposed closure and subsequent sale of the 6 roads being numbered segments 21A, 21B, 21C, 55B, 64, 506, 531, 519, 533 & 534 as cited in Annexures A and B to Moolarben Coal Operations P/L application dated 1 November 2019 of Attachment 2 appended to this Report and of which are Council Public Road; and

14. require Moolarben Coal Operations P/L be responsible for all costs, including Council’s reasonable legal costs and the cost of the relevant valuation reports obtained by Council associated with the proposed closure and subsequent sale of the 6 roads being numbered segments 21A, 21B, 21C, 55B, 64, 506, 531, 519, 533 & 534 as cited in Annexures A and B to Moolarben Coal Operations P/L application dated 1 November 2019 of Attachment 2 appended to this Report.

Executive summary

This Report seeks to secure a resolution to the proposal by Moolarben Coal Operations P/L (Moolarben) for Council to consider and endorse the Terms Sheet – Proposed Road Closure and Purchase (the Terms Sheet) which relates to the proposed closure of 6 Council roads being numbered segments 21A, 21B, 21C, 55B, 64, 506, 531, 519, 533 & 534 within the Moolarben Coal Complex land ownership footprint (the Road Closure Areas). The Terms Sheet is appended as Attachment 1 to this Report.
Moolarben’s application dated 1 November 2019 (the Application) for the proposed Road Closure Areas which incorporates details of the 6 Council roads being numbered segments 21A, 21B, 21C, 55B, 64, 506, 531, 519, 533 & 534 in Annexure A and; a plan showing the proposed Road Closure Areas in Annexure B, is appended as Attachment 2 to this Report.

This Report also seeks to secure a resolution for the proposed closure of the Road Closure Areas pursuant to Part 4 Division 3 Roads Act 1993 (the Act) and Council’s Land Acquisition and Disposal Policy (the Policy) along with a resolution to exercise the scope of s138 of the Act to allow Moolarben early access and occupation to perform certain works on the Road Closure Areas.

Disclosure of Interest

Nil.

Detailed report

Road status investigations indicate that the Road Closure Areas are Council public roads pursuant to s7(4) of the Act. The Road Closure Areas have evidence of construction/value added works having taken place over time. Accordingly, the land upon closure of the Road Closure Areas will vest in Council pursuant to s38E(2)(a) of the Act.

The investigations, which include photographs of the Road Closure Areas, are appended as Attachments 3 and 4 to this report.

The following project approvals contemplate these road closures:

1. Project Approval 05_0117 – Moolarben Coal Project Stage 1 approved by the NSW Minister for Planning on 6 September 2007 (as modified).
2. Project Approval 08_0135 – Moolarben Coal Project Stage 2 approved by the Planning Assessment Commission (as delegate of the NSW Minister for Planning) on 30 January 2015 (as modified).

In addition to the above Approvals, the Agreement with Respect to Costs (the Cost Agreement) dated 6/6/2014 between Moolarben and Council directed the closure and subsequent transfer to Moolarben of Carrs Gap Road (numbered segment 533) and Murragamba Road (numbered segment 534). The Cost Agreement is appended in the Confidential section of this Business Paper.

Moolarben’s Application for the proposed Road Closure Areas which incorporates details of the 6 Council roads being numbered segments 21A, 21B, 21C, 55B, 64, 506, 531, 519, 533 & 534 in Annexure A and; a plan showing the proposed Road Closure Areas in Annexure B, is appended as Attachment 2 to this Report.

The Terms Sheet records Moolarben’s and Council’s understanding in respect to the proposed closure of the Road Closure Areas and compensation payable to Council upon transfer of the land to Moolarben.

The main provisions of the Terms Sheet are summarised as follows -

1. Council will proceed to close the Road Closure Areas pursuant to the Act.
2. Following closure, Council will sell the road segments numbered 21A, 21B, 21C, 55B, 64, 506, 531 & 519 to Moolarben.

3. Both Moolarben and Council will engage valuers to prepare valuation reports for the above segments. Subsequent negotiations will be conducted.

4. The sale prices and process for Carrs Gap Road (numbered segment 533) and Murragamba Road (numbered segment 534) have already been determined and are cited in the Cost Agreement.

Commencement of the Road Closure Process

The proposed closure of the Road Closure Areas and their subsequent sale to Moolarben will be progressed pursuant to the Act and the Policy.

It is recommended that Council propose the closure of the Road Closure Areas upon the endorsement of the Terms Sheet and proceed to give notice of the proposed closures.

A further report will be presented to Council after the notice period has expired to consider any submissions received and to determine that Council intends (subject to the decisions made regarding any submissions) to close the Road Closure Areas which are Council Public Road.

s138 of the Act – Works and structures on the Road Closure Areas

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 an early access request is approved by either s118 or s120, an applicant would then need to obtain consent from council under s138 of the Act for certain works it needs to perform or carry out on that part of 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; or remove or interfere with a structure, work or tree on a public road.

The consent would need to be conditional detailing the works that would be allowed to be performed on the Road segment prior to its closure and transfer. Any approval would be subject to appropriate conditions akin to a licence and include a requirement for the payment of market rent for the term of the early access occupation.

It is noted that Council has already issued a s138 approval to Moolarben for mine infrastructure works to be conducted within some of the Road Closure Areas. A copy of this approval is appended as attachment 5 to this Report.

The Cost Agreement also gives Moolarben early access to Murragamba Road for road upgrade purposes.

It is considered that s138 would not extend so as to allow any part of the Road Closure Areas to be subjected to the actual open cut winning of coal.

It is recommended to authorise the General Manager to decide pursuant to s138 of the Roads Act, Moolarben Coal Operations P/L having early access the Road Closure Areas, subject to such conditions as are considered appropriate.
Community Plan implications

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<tr>
<th>Theme</th>
<th>Good Governance</th>
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<td>Goal</td>
<td>An effective and efficient organisation</td>
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<tr>
<td>Strategy</td>
<td>Prudently manage risks association with all Council activities</td>
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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 to obtain a valuation for each road and the methodology of the valuations.

**Legislation**
Roads Act 1993

Financial implications

s43 of the Act addresses the disposal of land comprising former public roads 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, Moolarben 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 valuations obtained by Council.

Associated Risks

Any risk should be mitigated by the proposed Terms Sheet and by any separate approval relating to access to the Road Closure Areas.

DIANE SAWYERS
REVENUE AND PROPERTY MANAGER

LEONIE JOHNSON
CHIEF FINANCIAL OFFICER

30 March 2020

Attachments:
1. Terms Sheet - Proposed Road Closure and Purchase. (separately attached)
3. Road Status Investigations - Part 1. (separately attached)
4. Road Status Investigations - Part 2. (separately attached)
5. s138 Approval. (separately attached)
6. Agreement With Respect To Costs 6/6/2014. (Confidential - separately attached)

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER