

9.4 Amendment to Road Closure Land Transfer Deed Ulan-Wollar Road

REPORT BY THE MANAGER PROPERTY AND REVENUE
TO 15 SEPTEMBER 2021 ORDINARY MEETING
GOV400088, Roa1000367

RECOMMENDATION

That Council:

1. receive the report by the Manager Property and Revenue on the Amendment to Road Closure Land Transfer Deed Ulan-Wollar Road;
2. agree to the terms in the revised *Road Closure Land Transfer Deed* as appended as Attachment 1 to this Report;
3. authorise the General Manager to endorse the revised *Road Closure Land Transfer Deed* as appended as Attachment 1 to this Report;
4. require Peabody Pastoral Holdings P/L or Wilpinjong Coal P/L be responsible for all reasonable costs incurred by Council in discharging its tasks in accordance with the revised *Road Closure Land Transfer Deed* as appended as Attachment 1 to this Report, including all legal and other out of pocket costs;
5. authorise the General Manager to sign all documentation, where necessary, to transfer the ownership of the different parts of the Road Closure Land, if and when closed, to Peabody Pastoral Holdings P/L and Moolarben Coal Mines P/L as cited in the revised *Road Closure Land Transfer Deed* appended as Attachment 1 to this Report;
6. authorise the Mayor to sign all documentation, where additionally required to do so, to transfer the ownership of the different parts of the Road Closure Land, if and when closed, to Peabody Pastoral Holdings P/L and Moolarben Coal Mines P/L as cited in the revised *Road Closure Land Transfer Deed* appended as Attachment 1 to this Report; and
7. authorise the Common Seal of Council be affixed to all documentation, where necessary, to transfer the ownership of the different parts of the Road Closure Land, if and when closed, to Peabody Pastoral Holdings P/L and Moolarben Coal Mines P/L as cited in the revised *Road Closure Land Transfer Deed* appended as Attachment 1 to this Report.

Executive summary

The purpose of this Report is to seek Council's endorsement to replace the Subdivision Plan embedded in Schedule 1 of the *Road Closure Land Transfer Deed* (the Deed) which was previously authorised by Council on 17 June 2020 (Minute 189/20 and appended as Attachment 2 to this Report).

If Council agrees to endorse the amendment, the revised corrected version of *Road Closure Land Transfer Deed* (the Revised Deed), appended to this Report as Attachment 1, will require execution.

Disclosure of Interest

Nil

Detailed report

Council endorsed the *Heads of Agreement for Opening New Aligned Sections of Ulan-Wollar Road* (the HOA) on 15 May 2019 which recorded Council's, Peabody Pastoral Holdings P/L (PPH), Wilpinjong Coal P/L (WC) and Moolarben Coal Mines P/L (MCM) agreement in respect of the opening and dedication of new, realigned sections of the Ulan-Wollar Road (the Road Dedication Land) and the closing of existing sections of the Road (the Road Closure Land). The HOA is appended as Attachment 3 to this Report.

The purpose of the Deed was to make provision for the matters as referred to at clauses 2.2(b) and 3 of the HOA, namely, the transfer of ownership of different parts of the Road Closure Land, if and when closed, to PPH and MCM. The Deed, which included references at Schedule 1 to the Subdivision Plan, was endorsed by Council on 17 June 2020 (Minute 189/20).

The Deed was never executed as Council's Solicitor subsequently discovered that the Subdivision Plan embedded in Schedule 1 of the Deed by WC's solicitors (Ashurst), was not the correct plan. Rather than showing the Road Closure Land, it showed the lots to be created for the Road Dedication Land.

Ashurst has now provided the correct Subdivision Plan showing the Road Closure Land which has been embedded in Schedule 1 of the Revised Deed. There are no other amendments or revisions required.

It is recommended that Council endorse the Revised Deed to correct the mistake and enable the execution of same.

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

Legislation

Roads Act 1993

Financial implications

PPH or WC will bear all reasonable costs incurred by Council in discharging its tasks in accordance with the Deed including all of its legal and other out of pocket costs.

Associated Risks

Council's solicitor has reviewed the terms of the proposed amended Deed and any risks associated with the land transfer are considered mitigated.

DIANE SAWYERS
MANAGER PROPERTY AND REVENUE

LEONIE JOHNSON
CHIEF FINANCIAL OFFICER

2 August 2021

- Attachments:*
1. Revised Road Closure Land Transfer Deed. (separately attached)
 2. Road Closure Land Transfer Deed endorsed 17 June 2020. (separately attached)
 3. Heads of Agreement endorsed 15 May 2019. (separately attached)

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER