

9.5 Acquisition of ARTC Land Ulan-Wollar Road

REPORT BY THE MANAGER PROPERTY AND REVENUE
TO 15 SEPTEMBER 2021 ORDINARY MEETING
GOV400088, Roa100367, 25501

RECOMMENDATION

That Council:

1. receive the report by the Manager Property and Revenue on the Acquisition of ARTC Land Ulan-Wollar Road;
2. notes that the acquisition of Lot 1 DP 1254551 is a condition precedent referred to in cl2.2(d) of the Heads of Agreement endorsed 15 May 2019;
3. resolves to acquire Lot 1 DP 1254551 by compulsory process in accordance with the provisions of the Land Acquisition (Just Terms Compensation) Act 1991;
4. in pursuance of same, enter into the agreement annexed as Attachment 3 to this Report under s29 of the Land Acquisition (Just Terms Compensation) Act 1991 with TfNSW and the ARTC being the *Deed of Compulsory Acquisition by Agreement*;
5. thereafter make application to the Minister and the Governor for approval to acquire the land identified as Lot 1 DP 1254551, being 2074m³, by compulsory process for the purposes of public road, under sections 177 and 178 of the Roads Act 1993;
6. authorises the General Manager and the Mayor, if required to do so, to execute all necessary documentation including following said approval or Deed -
 - a. for the publication of an acquisition notice in the NSW Government Gazette under s19 of the Land Acquisition (Just Terms Compensation) Act 1991;
 - b. the dedication of the subject land as a Council public road in accordance with s10 Road Act 1993;
 - c. the agreement annexed as Attachment 3 to this Report under s29 of the Land Acquisition (Just Terms Compensation) Act 1991 with TfNSW and the ARTC being the *Deed of Compulsory Acquisition by Agreement*; and
7. authorises the affixing of the Common Seal to all documents necessary to formalise the acquisition of Lot 1 DP 1254551 as shown on Attachment 2 to this Report;

Executive summary

On 15 May 2019 Council endorsed a *Heads of Agreement for Opening New Aligned Sections of Ulan-Wollar Road* (the HOA). The HOA included a condition precedent at cl2.2(d) which requires Council to acquire land from Transport for NSW (TfNSW) for public road in accordance with the Roads Act 1993 (NSW) (the Roads Act) and the Land Acquisition (Just Terms Compensation) Act 1991 (the Act).

The purpose of this Report is to seek Council's endorsement to acquire Lot 1 DP 1254551 (the Lot) by compulsory process and progress its completion in accordance with the Act.

The HOA and the plan of the Lot are appended as Attachments 1, 2 respectively, to this Report.

Disclosure of Interest

Nil

Detailed report

Council endorsed 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 acquisition of the Lot to comprise part of the Road Dedication Land is one of the conditions precedent to the operation of the HOA as set out in cl2.2(d) of that document as follows:

(d) Council has acquired the TfNSW Land in accordance with Law (including the Land Acquisition (Just Terms Compensation) Act 1991 as applicable) and also opened it as a Council Public Road and been compensated for all of its reasonable costs in that regard by PPH or WCPL.

The Act outlines a process by which an authority can acquire land. It does not give compulsory acquisition powers to councils, but provides councils with a way to use compulsory powers found in other legislative acts.

Council is required, pursuant to S177 and s178 of the Roads Act, to acquire the Lot for the purpose of a public road by compulsory process in accordance with the Act.

It is recommended that Council resolves to acquire the Lot by compulsory process and progress its completion in accordance with the provisions of Act.

As a part of the compulsory process, a *Deed of Compulsory Acquisition by Agreement* (the Deed) made in accordance with s29 of the Act between Council and TfNSW and the Australian Rail Track Corporation (ARTC) (who holds a leasehold interest over the land), has been drafted. The Deed sets out the terms on which the parties have agreed on all relevant matters concerning the Acquisition and the compensation to be paid for the Acquisition. The Deed is appended as Attachment 3 to this Report.

The compensation sum is \$1,037 (excluding GST), payable to TfNSW for the market value of the TfNSW interest. There is no compensation payable for the ARTC interest but the compensation sum does not include legal costs which Council is required to pay to ARTC and TfNSW in association with the Acquisition. In addition, Council must pay the costs associated with the survey, valuation and registration fees.

The HOA at cl4.2(a) directs that PPH or WC will bear all reasonable costs incurred by Council in discharging this task.

It is recommended that Council enter into the agreement with TfNSW and ARCT under the terms in the Deed.

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

Local Government Act 1993

Roads Act 1993

Land Acquisition (Just Terms Compensation) Act 1991

Financial implications

In accordance with cl4.2(a) of the HOA, PPH or WC will bear all reasonable costs incurred by Council in discharging this task.

Associated Risks

Council's solicitor is progressing the acquisition under the Act on Council's behalf and has also reviewed the terms of the proposed Deed. Any risks associated with the acquisition process or entering into the Deed are considered mitigated.

DIANE SAWYERS
MANAGER PROPERTY AND REVENUE

LEONIE JOHNSON
CHIEF FINANCIAL OFFICER

5 August 2021

- Attachments:*
1. Heads of Agreement endorsed by Council 15-5-2019. (separately attached)
 2. Plan of land to be acquired for the purposes of the Roads Act. (separately attached)
 3. Draft Deed of Compulsory Acquisition by Agreement. (separately attached)

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER