

Item 9: Finance

9.1 Amendment to Deed of Compulsory Acquisition by Agreement Ulan Wollar Road

REPORT BY THE MANAGER PROPERTY AND REVENUE
TO 16 MARCH 2022 ORDINARY MEETING
GOV400098, Roa100367 & 25501

RECOMMENDATION

That Council:

1. receive the report by the Manager Property and Revenue on the Amendment to Deed of Compulsory Acquisition by Agreement Ulan Wollar Road;
2. note that the acquisition of Lot 1 DP 1254551 and the acquisition process required to obtain this Lot was considered and resolved by Council on 15/9/2021 Minute No 271/21;
3. agree to the terms in the revised agreement being *Deed of Compulsory Acquisition by Agreement* and with the accompanying Plan of Lot 1 DP 1254551 to be acquired as appended as Attachments 4 and 3, respectively, to this Report and;
 - a) enter into this agreement with TfNSW and the ARTC as under s29 of the Land Acquisition (Just Terms Compensation) Act 1991;
4. authorise the General Manager and the Mayor, if required to do so, to execute all necessary documentation to effect the revised *Deed of Compulsory Acquisition by Agreement* as appended as Attachment 4 to this Report; and
5. require Peabody Pastoral Holdings P/L or Wilpinjong Coal P/L be responsible for all reasonable costs, including all legal and other out of pocket costs, incurred by Council in considering and preparing the revised *Deed of Compulsory Acquisition by Agreement* as appended as Attachment 4 to this Report.

Executive summary

The purpose of this Report is to seek Council's endorsement to the request made by Transport for NSW (TfNSW) to amend Part B cl1 of the *Deed of Compulsory Acquisition by Agreement* (the Deed) which was previously authorised by Council on 15 September 2021 (Minute 271/21) for the acquisition of Lot 1 DP 1254551 (the Lot). Refer to Attachments 1, 2 and 3 appended to this Report.

If Council agrees to endorse the amendment, the proposed amended version of the Deed (the Revised Deed), appended as Attachment 4 to this Report, will require execution.

Disclosure of Interest

Nil

Detailed report

On 15 May 2019 Council endorsed a *Heads of Agreement for Opening New Aligned Sections of Ulan-Wollar Road* (the HOA) 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) and the closing of existing sections of the Road.

The HOA includes a condition precedent at cl2.2(d) which requires Council to acquire (the Acquisition) the Lot from 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).

In pursuance of acquiring the Lot, at its 15 September 2021 meeting Council resolved to endorse an agreement under s29 of the Act, being the Deed, with TfNSW and ARTC (who holds a leasehold interest over the land).

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 was subsequently forwarded to TfNSW for execution. Although TfNSW agreed with the content in the Deed at the time it was presented to Council on 15/9/2021, TfNSW have not since effected execution and have now requested that amendment to Schedule 1 Part B cl1 of the Deed be considered by Council.

The existing, previously approved clause is as follows:

1. Positive Covenant for Drainage

The Authority must ensure that all future drainage works on the Land are directed into the appropriate approved drainage system and must ensure that no person does any act or thing on the Land whereby stormwater, surface run-off or drainage passes over through or under the Land onto TfNSW's adjoining land, or track work or improvements of any kind of TfNSW (even if on land not owned by TfNSW) except through such works as are existing as at the date of this covenant or as may subsequently be approved in writing by TfNSW in its absolute discretion.

The proposed amended clause is as follows:

1. Positive Covenant for Drainage

The Authority must ensure that when any works are carried out on the Land, stormwater, surface run-off and drainage must be directed into the appropriate approved drainage system. The Authority must ensure that no person does any act or thing on the Land whereby stormwater, surface run-off or drainage passes over through or under the Land onto TfNSW's adjoining land, or track work or improvements of any kind of TfNSW (even if on land not owned by TfNSW) except that stormwater, surface run-off and drainage that does not comply with the terms of this covenant is permitted if the drainage is:

- (a) *through works existing on the Land as at the date of this covenant; or*

(b) *approved in writing by TfNSW in its absolute discretion.*

It is considered there is no substantial difference between the two clauses and as such, it is recommended that Council agree to the request to amend the clause.

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 reviewing and amending Part B cl1 of the Deed, including all of its legal and other out of pocket costs.

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 amendment to the Deed. Any risks associated with the amendment to Part B cl1 of the Deed are considered mitigated.

DIANE SAWYERS
MANAGER PROPERTY AND REVENUE

NEIL BUNGATE
ACTING CHIEF FINANCIAL OFFICER

14 February 2022

Attachments:

1. Council Minute 271/21 of 15/9/2021. (separately attached)
2. Current Deed of Compulsory Acquisition 15/9/2021. (separately attached)
3. Plan of Lot to be Acquired. (separately attached)
4. Amended Deed of Compulsory Acquisition. (separately attached)

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER