

9.8 Further Amendment to Road Closure Land Transfer Deed Ulan-Wollar Road

REPORT BY THE MANAGER PROPERTY AND REVENUE
TO 21 FEBRUARY 2024 ORDINARY MEETING
GOV400105, ROA100367

RECOMMENDATION

That Council:

1. receive the report by the Manager Property and Revenue on the Further Amendment to Road Closure Land Transfer Deed Ulan-Wollar Road;
2. agree to the terms in the revised *Road Closure Land Transfer Deed 2023* as appended as Attachment 1 to this Report;
3. authorise the General Manager to endorse the revised *Road Closure Land Transfer Deed 2023* 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 2023* 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 the party/parties as cited in the revised *Road Closure Land Transfer Deed 2023* 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 the party/parties as cited in the revised *Road Closure Land Transfer Deed 2023* 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 the party/parties as cited in the revised *Road Closure Land Transfer Deed 2023* appended as Attachment 1 to this Report.

Executive summary

The purpose of this Report is to seek Council's endorsement of minor changes to the surveyed road-opening plan in the *Road Closure Land Transfer Deed* (the Deed) which was previously authorised by Council on 15 September 2021 (Minute 270/21 as appended as Attachment 2 to this Report).

If Council agrees to endorse the further amendments, the revised corrected version of *Road Closure Land Transfer Deed* (the Revised Deed - 2023), 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 original Deed was endorsed by Council on 20 June 2020 followed by an amended version on 15 September 2021 (Minute 270/21).

None of these previous versions of the Deed were ever executed due to further forthcoming issues brought forward by PPH & MCM's legal representatives.

The current proposed amendments have been brought forward by MCM. The proposed changes are minor in nature and do not change the intent of the Deed and have no effect to Council. The changes from the previous 15 September 2021 version primarily relate to WC and MCM's legal and financial abilities and are summarised as follows:

- Inserted a Foreign Investment Review Board (FIRB) condition precedent, in case PPH/WC requires FIRB approval to enter into the Deed;
- Deleted clause 7.6 relating to the Sale Land, as this clause is no longer relevant. As a consequence, have deleted any reference to MC appointing PPH or WC as its nominee to accept a transfer of the Moolarben Lots; and
- Inserted the Subdivision Plan in Schedule 1.

It is recommended that Council endorse the Revised Deed - 2023 in accordance with the proposal.

Community Plan implications

Theme	Good Government
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 legal representative 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 VAN OOSTERUM
DIRECTOR CORPORATE SERVICES

4 January 2024

Attachments:

1. Road Closure Land Transfer Deed 2023. (separately attached)
2. Minute 270/21 15 September 2021. (separately attached)
3. Endorsed Heads of Agreement for opening new, realigned sections of Ulan-Wollar Road May 2019. (separately attached)

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER