

GO4 – Permanent Closure of Road Reserves, Opening of Road Reserves and Land Swap – Spring Creek Road, Mt Hunter

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10845

TRIM 8466

EXECUTIVE SUMMARY

- The purpose of this report is to rectify the encroachment of Council infrastructure (bridge) located on privately owned land at Spring Creek Road, Mt Hunter.
- That Council now resolve to proceed with the road closure and road opening (land swap) in accordance with the attached plan which encumbrances part of Lot 1 DP 744750 and part Lot 100 DP 811464 Spring Creek Road, Mt Hunter for the purpose of acquiring the land where the bridge has been constructed.
- Council proceed with notifications via advertising, correspondence to adjoining land owners and authorities in accordance with NSW Government Trade & Investment Guidelines. Once submissions are received Council make application to the Minister and Governor for approval to close part of the road reserve and transfer the road reserve to the adjoining owners under Section 177(1) and 2(a) of the Roads Act 1993.
- Compensation will be in accordance with the report. Upon closure the road will be classified as Operation Land.
- Council requests the Minister for Local Government to approve a reduction in the notification period from 90 days to 30 days as agreement has been obtained from both effected land owners.
- It is recommended that the Mayor and General Manager be authorised to execute all necessary documents relating to the road opening, road closing (land swap) including those documents that require the Common Seal of Council in accordance with the recommendation.

REPORT

In 2013 Council replaced a timber bridge on Spring Creek Road as part of the Bridges Loan program as the bridge was nearing the end of its functional life and required replacing. The bridge was located on privately owned land which affected two adjoining owners of Lot 1 DP 744750 and Lot 100 DP 8211464 Spring Creek Road, Mt Hunter.

GO4 – Permanent Closure of Road Reserves, Opening of Road Reserves and Land Swap – Spring Creek Road, Mt Hunter

The Crown Lands Department were not in favour of the agreement reached with the effected land holders as the land nominated before the swap was not equivalent and would require further financial reconciliation.

It is proposed to rectify the encroachment by closing and opening road reserves and transferring land to the effected landholders consisting of a near equal land area - eg:- land swap.

As the road reserves are not formed, Council is required to obtain permission for this arrangement from Crown Lands in accordance with the attached map.

The adjoining owners have provided written approval in principle for the land swap in accordance with the following conditions:

- That Council will transfer Land Title of the closed road to the adjoining owner for no further consideration
- That the owners will consent to the Council creating the new road reserves within the land holders property as shown on the attached plan
- That all project works are to be at no cost to the owners of the property
- Council will pay the property owners reasonable legal fees for obtaining advice and producing their Certificate of Titles at the Land and Property Information Office when required
- Council has, at its expense, repair and replace fencing (this work has been completed)
- That no compensation will be payable to the land holder for disturbance or the like as a result of the proposed project
- That the existing roads that are to remain unchanged are hatched in grey on the attached plan.

In accordance with Section 94(2)(c) of the State Environmental Planning Policy (Infrastructure) 2007, the relocation of the road reserve is permissible to be undertaken without development consent.

NSW Government Trade & Investment (Crown Lands) require Council to:-

1. Advertise the Road Closure.
2. Send notification of the proposal to all affected parties and authorities at the time of advertising providing twenty eight (28) day submission period.
3. Council to consider all submissions received and take action to resolve any objections, where there is a concern as to the validity of any objections.

GO4 – Permanent Closure of Road Reserves, Opening of Road Reserves and Land Swap – Spring Creek Road, Mt Hunter

4. Once all submissions/objections have been resolved or Council forms the opinion that no further progress can be made, Council prepare a report with a summary and assessment of the submissions/objections, with the recommendation and options to the Crown.

Sections of the Roads Act that applies:

Section 44 provides land forming part of a former public road may be given, by or with the consent of the person in whom it is vest, in compensation for other land acquired for the purposes of the Act.

Section 38 advises that:

- (b) In the case of a public road that was previously vested in a Council (other than a public road in respect of which no construction has ever taken place), remains vested in the Council, and
- (c) In any other case, becomes (or, if previously vested in the Crown, remains) vested in the Crown.

The proposal will be carried out under the roads Act 1993 Section 177 (1) and 2(a):

- (1) The Minister, RMS or a Council may require land for any of the purposes of this Act.
- (2) Without limiting subsection (1), the Minister, RMS or a Council may acquire:
 - a) land that is to be made available for any public purposes for which it is reserved or zoned under an environmental planning instrument.

To close road reserves and open road reserves in a land swap arrangement as per attached map, once the road is closed it will be classified as "Operation Land".

CONSULTATION

Legal advice
Adjoining owners
Office of Local Government
Department Trade & Investment Crown Lands
Infrastructure & Environment Directorate

FINANCIAL IMPLICATIONS

Funding has been allocated and is available under 2017/18 Budget - Major Works Program (Ref: Trim 8466#58).

GO4 – Permanent Closure of Road Reserves, Opening of Road Reserves and Land Swap – Spring Creek Road, Mt Hunter

ATTACHMENTS

1. Plan of proposed road closure and road opening, land swap arrangement.

RECOMMENDATION

1. That Council now resolve to proceed with the road closure and road opening (land swap) in accordance with the attached plan which encumbrances part of Lot 1 DP 744750 & part Lot 100 DP 811464 Spring Creek Road, Mt Hunter for the purpose of acquiring the land where the bridge has been constructed.
2. That Council proceed with notifications via advertising, correspondence to adjoining land owners and authorities in accordance with NSW Government Trade & Investment Guidelines (Crown Land).
3. That the compensation to the adjoining property owners to be in accordance with the report.
4. That Council make an application to the Minister and the Governor for approval to close part of the road reserve and transfer the road reserve to the owners of Part Lot 100 DP 811464 and Part Lot 1 DP 744750 Spring Creek Road, Mt Hunter under Section 177(1) & 2(a) of the Roads Act 1993 in accordance with NSW Government Trade & Investment Guidelines.
5. That Council requests the Minister for Local Government to approve a reduction in the notification period from 90 days to 30 days as agreement has been obtained from both effected land owners.
6. That the roads being closed be classified as "Operational Land" in accordance with the Local Government Act, 1993 to enable the land to be transferred to the adjoining land holders.
7. That the Mayor and General Manager be authorised to execute all necessary documents relating to the proposal including those documents that require the Common Seal of Council.