

**EC3 – Proposed Closure and Purchase of Parts of York Street, Thirlmere Way & George Street and Dedication of Land in York Street and Thirlmere Way, Tahmoor**

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239945

TRIM 5288

**EXECUTIVE SUMMARY**

- The purpose of this report is to endorse Council's Resolution No. 296/2010, 18 October 2010 to support in principle the proposed road closure, sale and purchase of parts of York Street, Thirlmere Way and George Street, Tahmoor to accommodate the extension to the existing Tahmoor Town Shopping Centre (copy of previous report and minutes attached).
- It is recommended that the Mayor and General Manager be authorised to execute all documentation in relation to this matter, including those requiring the Common Seal of Council.
- If the applicant is not successful in obtaining Development Consent, all costs incurred by Council up until that point will be the responsibility of the Developer. If Development Consent requires land to be dedicated to Council, then the dedication shall be considered necessary for the purposes of the development and therefore shall be dedicated at no cost to Council and there shall be no opportunity to seek compensation for such dedication under the terms of any agreement relating to the road closure.
- The existing road configuration in York Street shall be retained until the new alternate access arrangements are in place with all legal instruments in place and the alternate access road and traffic facilities constructed to Council's satisfaction and approval.
- The road closure is conditional on the following:
  - a) That 24 hour access being maintained along the closed section of York Street for passenger vehicles and pedestrians.
  - b) That the minimum clear height of access along the closed section of York Street is no less than 2.6m.
  - c) That a 24 hours security management plan be prepared and implemented, after endorsement by Council and NSW Police.
  - d) That conspicuous signage be provided at each end of the closed section of York Street advising that through access is available for passenger vehicles and pedestrians along York Street.

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- It is further recommended that:
  - the future owner of the closed road reserve enters into a "Deed of Agreement". The agreed compensation will be \$600 per square metre. If the developer does not enter into the agreement within a reasonable timeframe, then Council reserves the right to revalue and renegotiate the agreement.
  - the road will be classified as "Operational Land" in accordance with the Local Government Act 1993 to enable the land to be transferred to the future owner.

**REPORT**

An application for the proposed road closure, sale and purchase of York and George Street, Thirlmere Way Tahmoor was reported to Council on 18 October 2010. Unforeseen circumstances by the applicant prevented finalisation of the agreement. The applicant has re-applied to continue with the application and it is considered prudent due to the time lapse that Council reconsider the application and endorse its Resolution No. 296/2010.

The recommendation and considerations of the report and minutes submitted to Council on 18 October, 2010 will remain valid, subject to the developer progressing with the application in a reasonable timeframe.

The area required for the development may change upon final creation of the allotment and will be subject to final survey.

To go forward with the proposal, the Developer is to enter into a Deed of Agreement to ensure the process is carried out according to Council's obligations under the Roads Act 1993 Part 4 Division 1. Council's solicitor will be engaged to complete the terms and conditions of the Deed of Agreement which is to be in Council's best interest.

To enter into the agreement the applicant is responsible to pay all associated costs and has provided an up-to-date undertaking to do so.

Upon endorsement of the recommendation, Council will proceed with notifications to the public and authorities in accordance with NSW Government Trade and Investment Guidelines.

- a) Advertise an intention to close the Council public road in a local paper circulating in the same area.
- b) Send notification of the proposal to all affected parties and authorities.
- c) Consider all submissions received.

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- d) 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 (if required) to the Minister of NSW Government, Department of Primary Industries.

In 2010 Council carried out extensive community consultation via Community Forum, advertisement, Council's website, Bang the Table, signs in York Street and notification to business operations and owners within the Tahmoor Shopping precinct, as well as letterbox drops to residents along York Street to the north of Thirlmere Way.

Land Valuation

In 2010 three valuations were carried out to determine current value of land. The compensation in 2010 was determined at \$500.00 per square metre with \$1,185,000.00 being estimated compensation.

In 2017 an additional two valuations have been carried out.

Compensation is determined at \$600 per square metre (est.2370sqm x \$600 = \$1,422,000 estimated compensation).

The area of land to be the subject of compensation will be calculated as being the land area for the road closures less the land area for the land dedication. As the final land area will be determined by final road design the amount of compensation to Council will be calculated at \$600 per square metre.

If the applicant does not continue with the application within a reasonable timeframe, Council reserves the right to revalue the land and re-negotiate the terms of agreement.

CONSULTATION

Consultation has occurred with Council's Legal Advisor.

Twenty-eight (28) day community consultation is required to occur.

FINANCIAL IMPLICATIONS

This proposal has not been included in Council's projects or budget and accordingly, all costs will be required to be paid by the applicant.

Compensation received for the closure of the road will assist Council in funding other road related activities, in accordance with the requirements of the Roads Act.

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This matter has no negative financial impact on Council's adopted budget or forward estimates.

**ATTACHMENTS INCLUDED IN A SEPARATE BOOKLET**

1. Minutes 18 October 2010 Council's Ordinary Meeting - IN1 was IN4
2. Agenda 18 October 2010 Council's Ordinary Meeting - IN4

**RECOMMENDATION**

1. That in accordance with the Roads Act, 1993 Part 4 Division 1, and also due to the time lapse, Council proceed with further community consultation and authority notification for a twenty-eight (28) day time period.
2. That after the consultation period has ended, community comments be forwarded to the Minister and the Governor for approval to close the road reserves being Part York and George Street and Thirlmere Way, Tahmoor.
3. That Council, in assessing the application to formally close a portion of York Street, Tahmoor in accordance with the Roads Act, agrees "in principle" to formal closure, subject to the applicant ensuring access is available at all times along the closed section of York Street for passenger vehicles and pedestrians generally and subject to the following:
  - a) Council agree to the proposal "in principle" to initiate the process to close the roads being part of York and George Street, and Thirlmere Way, Tahmoor.
  - b) If a condition of consent to the Development Application requires the dedication of land to Council then that dedication shall be considered to be necessary for the purposes of the development and therefore shall be dedicated at no cost to Council and there shall be no opportunity to seek compensation for such dedication under the terms of any agreement relating to the road closure.
  - c) The existing road configuration in York Street shall be retained until the new alternate access arrangements are in place with all legal instruments in place and the alternate access road and traffic facilities constructed to Council's satisfaction and approval.

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- d) The road closure is conditional on the following:
- 24 hour access being maintained along the closed section of York Street for passenger vehicles and pedestrians
  - The minimum clear height of access along the closed section of York Street is no less than 2.6 metres
  - A 24 hour security management plan be prepared and implemented, after endorsement by Council and NSW Police
  - Conspicuous signage being provided at each end of the closed section of York Street advising that through access is available for passenger vehicles and pedestrians along York Street.
- e) The future owner of the closed road reserve, enter into a Deed of Agreement for the proposal to ensure the process is carried out according to Council's obligations under the Roads Act 1993. Council's solicitor will be engaged to complete the terms and conditions of the Deed of Agreement which is to be in Council's best interest.
- f) The agreed compensation for the land is valued at \$600 per square metre. The area of land to be compensation will be calculated as being the land area for the road closures only. The final areas will be determined if development consent is granted, at the time that engineering plans have been approved. If the applicant does not continue with the application within a reasonable timeframe, Council reserves the right to revalue the land and re-negotiate the terms of agreement.
- g) All costs including legal fees and Council's cost for the road closure must be met by the future owner.
- h) The future owner of the closed road be required to prepare a plan of subdivision to allow the affected road to become a new Lot within a new Deposited Plan. Survey and plan preparation will be at the full cost of the future owner. That the Deposited Plan be registered with the Department of Land and Property Information in accordance with the Deed of Agreement.
- i) The applicant complies with Council's Road Closure Policy (PLA0025). The Road Closure fees are paid by the future owner of the closed road prior to application being lodged with the NSW Government Department of Industry Lands.

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- j) The Mayor and General Manager be authorised to execute all documentation in relation to this matter, including those requiring the Common Seal of Council.
  - k) When the roads are closed the land be classified as "Operational Land" in accordance with the Local Government Act 1993 to enable the land to be transferred to the future owner.
  - l) Proceeds from the sale of the closed roads are secured in the Roads Reserve fund to be used for future road improvements in Tahmoor.
  - m) In the event that the applicant is not successful in obtaining the necessary approvals (Development Consent), the application for the road closure and subsequent purchase and dedication of the land to Council will not proceed from that point onwards. The applicant will be responsible for all costs incurred by Council up until that point in time.
  - n) The proposed agreement will in no way infer or imply approval of any development application submitted to achieve any of these proposals. This agreement is to be made by Council in its role as a land owner and in no way fetters its discretion as a consent authority under the Environmental Planning and Assessment Act, 1979 in the assessment of any future development application relating to these road matters.
4. That Council's decision be reported to the Traffic Committee for information purposes.

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