

GO5 – Acquisition Avon Dam Road, Bargo – Road Reserve

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10845

TRIM 8727

EXECUTIVE SUMMARY

- The purpose of this report is to obtain approval from Council to acquire the section of road reserve in Avon Dam Road (between Reservoir and Arina Road, Bargo) being Lot 1 DP 667407 from Water NSW for dedication as public road.
- Continue negotiations with National Parks and Wildlife to acquire the section of road reserve in Avon Dam Road being Lot 1 DP 744545 for dedication as public road.
- That the Mayor and General Manager be given approval to execute all necessary documents in relation to the acquisition of Lot 1 DP 667407, including those that require the Common Seal of Council.

REPORT

In 2015 Council became aware that part of Avon Dam Road, Bargo (between Reservoir and Arina Road, Bargo) had been resumed by the Crown in 1920 for the purpose of constructing an access road to Avon Road Dam and that there was no subsequent record of the road, once constructed, being dedicated as public road.

In May, 2015 Council resolved to progress acquiring the relevant section of road reserve in Avon Dam Road currently used as road. To enable maintenance of the Avon Dam Road Reserve Council should be owner of that reserve (LGA Div. 3 Sec 67).

The two parcels of land affected, one owned by Water NSW being Lot 1 DP 66407 shown in DP 1222199 (Water NSW Land) and the second being Lot 1 DP 744545 owned by National Parks & Wildlife (NPW) shown in DP 1222200 (NPW Land) which were the subject of this resolution.

As part of the Council resolution it was resolved to investigate the above land acquisition matters.

Council's Property Officer engaged a surveyor to produce appropriate registrable plans for acquisition. The acquisition is proposed to progress in two stages. The reason for the two stages is that there are two different owners, different processes for acquisition and only one agreement at hand.

The first stage is for Council to acquire the Water NSW Land from Water NSW for \$1.00. Sydney Water has advised that they are agreeable to the acquisition.

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The red outline in the plan below shows the NSW Water Land proposed to be acquired for \$1.00.

Options available to transfer the Water NSW Land include:

1. Compulsory acquisition by agreement under the Land Acquisition (Just Terms Compensation) Act 1991 or;
2. A conveyance by direct transfer.

Compulsory acquisition by agreement involves Council applying to the Minister for Local Government to recommend to the Governor to declare the land as public road. This process is lengthy and would incur additional legal costs and there is a possibility that approval process may not be granted by the Minister for Local Government and Governor. The benefit however of proceeding via this path is that compulsory acquisition has the effect of extinguishing all existing and prior interests in the land (including Native Title) once the acquisition notice approved by the Governor is published in the NSW Government Gazette.

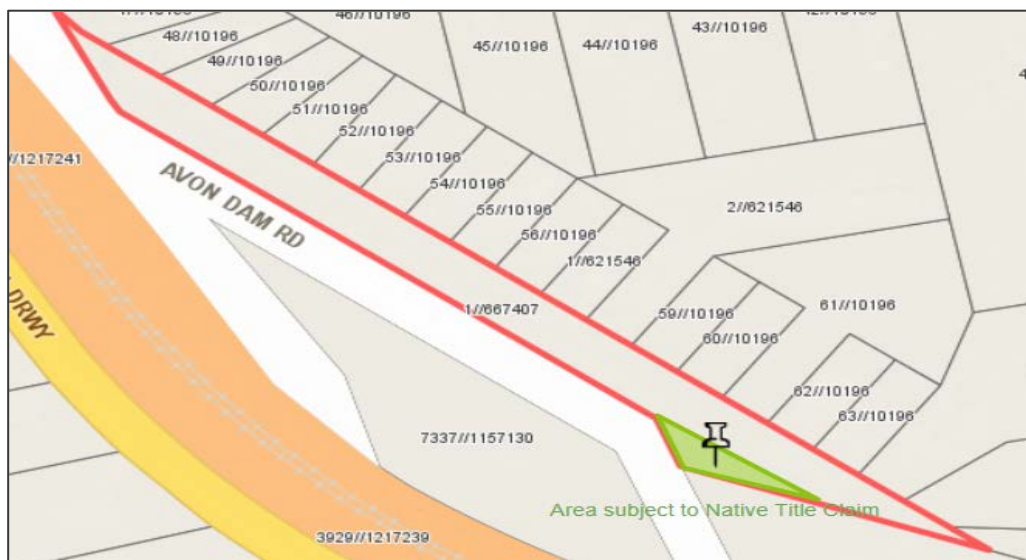
While Conveyance to Council via direct transfer will not extinguish any existing or prior interests in the land, it represents the most expeditious method of acquiring land and would incur minimal expense, including legal fees.

A direct conveyance by transfer of the Water NSW Land to Council is the process recommended by the report writer, noting that in doing so there is always the potential risk of a future Native Title Claim, although that risk is considered to be minimal for the following reasons:

1. Recent searches of the relevant registers have established that there are no current Aboriginal Land Claims and/or Native Title Claims over the NSW Water Land; and
2. The area highlighted in green in the plan below which forms part of the Water NSW Land was included as part of an earlier native title claim, which was discontinued.

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Proposed Road Reserve to be acquired



The NPW land is proposed to progress as a second stage acquisition as the Reservation of land within a State Conservation Area cannot be revoked except by an Act of Parliament. In addition, land within a State Conservation Area cannot be appropriated or resumed except by an Act of Parliament unless it is compulsorily acquired and the State Conservation Area is not affected by the compulsory acquisition.

The road was constructed on NPW Land at least 86 years before its reservation as conservation. It is considered that the proposed acquisition and dedication of the NPW Land as public road will not affect that reservation in any way. Although, ultimately this will be a matter for the Minister administering the NP&W Act to determine and will be subject to a further report to Council once we are able to work through an agreement process with NPW.

CONSULTATION

- Legal Advisor
- Director Infrastructure and Environment
- Manager Governance
- Surveyor

FINANCIAL IMPLICATIONS

Legal costs and disbursements will be incurred in order to progress the transfer. Funding is available in Council's Roads Programming Fund.

Governance

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Funding for the completion of the survey plan is available in Council's Property Restricted Cash Account raised under purchase order, allocated under the budget adjustment in the Quarter Review of 2014/15 Operational Plan.

ATTACHMENTS INCLUDED IN A SEPARATE BOOKLET

1. Plan of Road Opening for the Purposes of the Road Act, 1993
2. Deposited Plan 667407

RECOMMENDATION

1. That Council approve the acquisition by Council of Lot 1 DP 667407 being part of Avon Dam Road, Bargo from Water NSW for the consideration of \$1.00 for the purpose of a public road.
2. That the Mayor and General Manager be given approval to executive all documents in relation to the acquisition of Lot 1 DP 667407 including those that require the Common Seal of Council.
3. That Council approve to continue negotiations with National Parks and Wildlife to compulsory acquire by agreement Lot 1 DP 744545 being part of Avon Dam Road for the purpose of a public road.