

11.1 Confidential Update on Illegal Structures over Road Reserve at Ratcliffe Road, Aldinga Beach

Council direction is sought with regard to the illegal structures over road reserve and subsequent transfers of land at Ratcliffe Road, Aldinga Beach.

This is an update on a previously reported project, concept or issue.

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Attachments: 1. Aerial (1 page)
2. Preliminary plan (1 page)
3. Identification survey (1 page)
4. Taylor Brooke and Egan valuation (1 page)
5. Stanley Thompson valuation (2 pages)
6. Egan valuation on parts P and Q (1 page)

1 Executive summary

1.1 Topic

Council direction is sought with regard to the illegal structures over road reserve and subsequent transfers of land at Ratcliffe Road, Aldinga Beach.

1.2 Context

In October 2001 we were approached by Colin, Mary and Damien Brown ("the Applicants") seeking to buy a road reserve that surrounds their properties at Ratcliffe Road, Aldinga Beach (attachment 1).

In considering this request Council resolved on 16 July 2002:

1. *That Council in principle has determined that the unmade road reserves shown as Allotment 1205, 1206, and Road C of LTO Plan 6544, be declared surplus to Council requirements and suitable for closure and amalgamation with adjoining properties*
2. *That Council commences the Road Process for Allotments 1205, 1206 and Road C of LTO Plan 6544, including community notification, in compliance with the process set out in the Roads (Opening and Closing) Act 1991.*
3. *That property owners adjoining the surplus unmade road reserves be contacted seeking their expressions of interest in acquiring the unmade road reserves, on the condition that they are prepared to pay fair market value and to meet all reasonable costs associated with any sale.*

4. *A report be presented to Council detailing the results of the community notification process and the details of the proposed sale and transfer.'*

Council further considered this matter at its meeting of 6 March 2007, where it resolved (in part);

'That, for the unmade road reserve surrounding Allotment 1200, 1201, 1202, 1203 DP 6723 (formerly shown as Allotment 1205, 1206 and Road C of LTO Plan), Council:

1. *Approve the sale of that portion of the unmade road reserve shown as Area A in Attachment 2 to this report to the owners of Allotment 1203 in DP 6723 at 2006 market value plus all costs associated with the sale.*
2. *Approve the sale of the remaining road reserve shown as Area B in Attachment 2 to this report at current market value plus all costs associated with the sale to adjoining owners.'*

A report seeking Council's direction in dealing with the illegal structures over the road reserve was presented to Council at its meeting of 1 July 2008. In considering this matter Council resolved (in part):

1. *Pursuant to Section 262 and/or 234 of the Local Government Act 1999, Council hereby resolves to place an order on the applicants being the owners of the illegal fence and shed or their successors in title, to stop obstructing the road and to remove the structures across portions of unmade road reserve adjacent surrounding Allotments 1200 and 1201 DP 6723 (formerly shown as Allotment 1205, 1206 and Road C of LTO Plan) within 60 days from the date of receipt of notification.*
2. *That council continue to attempt to reach a conciliated outcome in regards to the carport/verandah and garage located adjacent Allotment 1203.*
3. *That council completion date for the independently facilitated conciliation process is 30 September 2008.'*

This report discusses the confidential items to implement Council's resolution of 1 July 2008 to effect an outcome to the matter.

1.3 Suggested outcome

It is suggested that Council consider this item in confidence. Sections 90(3)(b)(i)(ii) of the Local Government Act 1999 is suggested as the most appropriate to use for this purpose.

This item is presented as a confidential item because it contains information on negotiations with several land owners to achieve an equitable position and reveals valuations of the land.

The possible implication of not considering this item in confidence is the release of financial information that will be detrimental to future negotiations with potential purchasers of council land and may have a negative impact on council's position when placing a portion of road reserve on the open market.

2 Recommendation(s)

1. That

- (a) under the provisions of Section 90(2) of the Local Government Act 1999 an order be made that the public be excluded from attendance at the meeting in order to consider in confidence this item.**
- (b) Council is satisfied that it is necessary that the public be excluded to enable the Council to consider the matter at the meeting on the following grounds:**
 - (i) Section 90(3)(b) information the disclosure of which -**
 - (i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and**
 - (ii) would, on balance, be contrary to the public interest;**
 - (c) That accordingly, on this basis the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information or discussion confidential.**

2. That Council declares that the subject land (pursuant to the road closure) is surplus to council's requirements, and consents to the sale and transfer of:

- a. Parts P and Q to the owner of Allotment 1203 for \$27,248 plus GST plus costs to be amalgamated into their existing title.**
- b. Parts N and R to the owner of Allotment 1202 for \$12,267 plus GST plus costs to be amalgamated into their existing title.**
- a. Parts M and S to the owner of Allotment 1201 (or prospective purchaser) for \$11,703 plus GST plus costs to be amalgamated into their existing title.**
- b. Parts T and L to the owner (or prospective purchaser) of Allotment 1200 for \$11,000 plus GST plus costs to be amalgamated into their existing title.**

3. That should the Certificate of Title for Allotment 1199 be amended by the Lands Titles Office to reflect the incorporation of the encroached area (that is the subject of the current fence alignment as identified in attachment 3):

- a. That the affected land which is the subject of this encroachment be made available to be transferred and incorporated into the Certificate of Title for Allotment 1199.**
- b. That any subsequent loss of land within parts P, N, M L and U to the adjoining landowners be adjusted pro-rata for the purchase prices described in Resolution 5.**

- c. That a claim be made against the Lands Titles Office for the consideration for the loss of land value to council, together with associated costs for remediation of the Lands Titles Office error.**
- 4. That Council declares that the subject land that forms part U to be surplus to operational requirements and consents to its placement on the open market for sale as a stand alone allotment with the reserve price commensurate with the valuation dated 25 January 2009 and that if a reasonable offer is made that this be the subject of a further report to Council.**
- 5. That Council authorise the Mayor and Chief Executive Officer to sign and seal any necessary documentation to give effect to the transfer of the portions of road reserve.**
- 6. That Council authorise the Mayor and Chief Executive Officer to authorise documentation necessary in relation to the placement of part U on the open market for disposal.**
- 7. That an order be made under the provisions of Section 91(7) and (9) of the Local Government Act 1999 that the abovementioned document (or part of such document) including the minutes and the report of the Council meeting relating to discussion of the subject matter of that document, having been dealt with on a confidential basis under Section 90 of the Act, should be kept confidential on the grounds of information contained in 90(3)(b) until the property transfers are finalised.**

Key Factors

3 Discussion

3.1 Valuations

Council obtained a valuation from Taylor Brooke Pty Ltd during March 2006 ('the initial valuation', Attachment 4). This valuation was disputed by Mr Colin and Mrs Mary Brown stating that the road reserve had no saleable value.

The refusal of Mr and Mrs Brown to accept the Taylor Brooke valuation was reported to Council at the meeting of 6 March 2007, and Council resolved:

'That, for the unmade road reserve surrounding Allotment 1200, 1201, 1202, 1203 DP 6723 (formerly shown as Allotment 1205, 1206 and Road C of LTO Plan), Council:

- 1. Approve the sale of that portion of the unmade road reserve shown as Area A in Attachment 2 to this report to the owners of Allotment 1203 in DP 6723 at 2006 market value plus all costs associated with the sale.*
- 2. Approve the sale of the remaining road reserve shown as Area B in Attachment 2 to this report at current market value plus all costs associated with the sale to adjoining owners.'*

To assist in the process we approached the Australian Property Institute (API) in March 2007 to obtain an independent valuation of the road reserve that forms the subject of the road closure and transfer. Chris Dreyer from Egan National Valuers was appointed and council received his valuation report in June 2007 ('the second valuation')(attachment 4).

In their letter the applicants stated that the second valuation obtained by council was not independent; that they did not agree with the method used for the valuation; and re-iterated that the road reserve had no saleable value.

In June 2007, following further objections to the valuation, we invited Mr Colin, Mrs Mary Brown and Mr Damien Brown (the applicants) to provide council with a valuation by a recognised independent valuer facilitated by themselves.

The Applicants provided council with a valuation undertaken by the Valuer General's department via Stanley Thompson which did not address the issue of attaching a value to the road reserve component (attachment 5).

In this matter, the values that may be attributed as the purchase price are somewhat driven by what the affected landowners are willing to pay for their respective land parcels. The formal valuations provide us with the context of whether these offers are fair and reasonable.

For the facilitation of discussions in relation to parts L, T, S, M, N and R a third party has provided us with an offer for the purchase of parts L and T. The offer, equating to \$141/sqm (as an indication of what the market is willing to pay) has then been applied in a pro-rata formula across the other minor portions.

The application of \$141/sqm is comparable to the valuations received for the land. The 'quarantined' portion of land (parts P and Q) equates to an application of \$84/sqm (2006 valuation) and the higher expectation for part U is in the order of \$295/sqm (2009 valuation).

The offer of \$141/sqm (which identifies a mid-level application) is comparable to the valuations received and therefore giving guidance that it represents a fair market offer for the land. This rate has been adopted to be applied to allow for equity amongst the parties for the remaining minor portions for the purposes of facilitating a resolution to this issue.

3.2 Appointment of an independent mediator

In 2007 negotiations with the Applicants reached a stalemate after Mr Colin and Mrs Mary Brown (representing the interests of their son Mr Damien Brown) refused to accept the original valuation obtained by council. Their refusal extended to the subsequent independent valuation carried out by the Australian Property Institute appointee from Egan National Valuers.

Council at its meeting of 1 July 2008, resolved to support the involvement of an independent facilitator. In accordance with part 2 of the Council resolution of 1 July 2008, Mr Rob Williamson of Savills was appointed as facilitator/mediator ('the mediator') to work with Mr Damien Brown (owner of Allotment 1203) and council. Mr Williamson was appointed in an attempt to reach a conciliated outcome with

regard to the purchase price for the road reserve adjacent to Mr Damien Brown's property (part P and Q of attachment 2).

3.3 Negotiations with affected landowners

The following provides a summary of the affected landowners to the proposed road closure and the agreed position of these parties.

An agreement must be reached with all affected landowners in order to progress the application for a road closure through the Office of the Surveyor General.

3.3.1 Negotiations with Mr Damien Brown (Allotment 1203) – parts P and Q

Mr Colin and Mrs Mary Brown acted on behalf of their son Mr Damien Brown. Mr Rob Williamson (as mediator) provided them with the latest valuation figures obtained from the Australian Property Institute.

The parties have reached an agreement subject to Council approval.

Council at its meeting of 6 March 2007 resolved (in relation to the subject land – parts P and Q):

'Approve the sale of that portion of the unmade road reserve shown as Area A in Attachment 2 to this report to the owners of Allotment 1203 in DP 6723 at 2006 market value plus all costs associated with the sale.'

Further, Council at its meeting of 1 July 2008 resolved (in relation to this subject land);

'That council continue to attempt to reach a conciliated outcome in regards to the carport/verandah and garage located adjacent Allotment 1203.'

The 2008 resolution granted authority for an independent mediator to facilitate an outcome within the parameters of the respective parties.

Following discussions with Rob Williamson of Savills, Mr Colin Brown made a counter offer of \$21,000 in writing to the mediator. This offer did not mention who would be responsible for associated transfer costs.

In a final attempt to reach an amicable outcome we requested Egan National Valuers to provide a valuation of the market value of the land (parts P and Q) as at 3 March 2003 representing the date at which planning approval was granted for the construction of the carport/verandah and shed with the addition of market rental for the land thereafter (attachment 6).

This was considered to be a fair method of calculating the market value of the land. Thereafter a market rental component was applied until October 2008. (Noting that October 2008 being the date to which the substantive agreement was reached between the parties under the facilitated mediation).

Market value as at 3 March 2003	\$ 24,500
Rent (3 March 2003 – 15 October 2008)	\$ 2,748

An offer of **\$27,248** in full and final settlement (subject to Council endorsement) for parts P and Q was put to Mr Colin and Mrs Mary Brown who accepted it on behalf of their son, Mr Damien Brown.

3.3.2 Negotiations with independent third party (Allotment 1200) – parts L and T

This allotment has recently been placed on the market. A potential purchaser of Allotment 1200 has approached us with a request and subsequent offer to purchase parts L and T, together with part U. We have received separate offers (one for portions L & T and a separate offer for Part U) from the same party.

Council received an offer of \$11,000 (+ GST) plus costs for Parts L and T from an independent third party being a potential purchaser.

$\$141/\text{sqm} \times 78\text{sqm} = \mathbf{\$11,000}$

The potential purchaser has made an offer to purchase Allotment 1200 from Mr Colin and Mrs Mary Brown.

3.3.3 Negotiations with Mr Colin and Mrs Mary Brown (Allotment 1201) – parts M and S

Discussions with Mr Colin and Mrs Mary Brown have been in abeyance on the consideration requested by Council for parts N and R until council's position is resolved (the subject of this report).

Should the methodology of the apportionment of the value as proposed in this report be accepted, the value of \$11,703 (+ GST) plus costs for parts M and S would be proposed to Mr Colin and Mrs Mary Brown to finalise the process.

$\$141/\text{sqm} \times 83\text{sqm} = \mathbf{\$11,703}$

Mr Colin and Mrs Mary Brown have indicated to the independent mediator that they are no longer interested in acquiring the road reserve adjacent to their properties parts M, S, L, T and U.

It is hoped that once a value is resolved by Council that this decision will demonstrate to Mr and Mrs Brown that the acceptance of the \$11,703 plus costs will bring about the finalisation of this process.

3.3.4 Negotiations with Mr James Vivekanandan (Allotment 1202) – parts N and R

Staff met with Mr and Mrs Vivekanandan on 30 July 2008. Mr Vivekanandan purchased Allotment 1202 from Mr Colin and Mrs Mary Brown and received transfer of the property in March 2008.

They have indicated that they wish to acquire the road reserve at the rear of their property to obtain a backyard and provide better security by fencing off the area. They however indicated that they expect fair treatment from council in a similar context as offered to Mr and Mrs Brown.

During the negotiation process, we gave an undertaking that the fence and shed could remain subject to a successful facilitated outcome being achieved.

Council officers discussed a price of \$12,267 for parts N and R with the owner of Allotment 1202.

This price is in line with the independent offer for Part T and L discussed above, proportionally applied to the area of land.

$\$141/\text{sqm} \times 87\text{sqm} = \mathbf{\$12,267}$

Mr and Mrs Vivikanandan have notionally indicated that they consider this figure as fair and reasonable.

3.3.5 Negotiations with Mr Bristow (Allotment 1199) (attachment 3)

Council contacted the owners Mr and Mrs Bristow of Allotment 1199 to discuss the encroaching fence constructed along the eastern boundary of the road reserve (attachment 1). The northern encroachment is approximately 40cm widening to the southern boundary to approximately 2 metres.

Council staff held meetings with Mr Bristow on 3 October 2008 and 4 November 2008 at which we provided him with evidence that his fence is encroaching on council road reserve surrounding Allotments 1200 to 1203, Ratcliffe Road, Aldinga Beach. We also provided copies of the original title CT 2948/150 and the Deposited Plan 6723. At the meeting it became evident that an error occurred in the Land Title Office with the hand written copies of the deposited plan as they were transposed to the resultant title.

Mr Bristow has contacted the Lands Titles Office in an attempt to rectify this matter and they have conducted an investigation into the matter. Mr Bristow indicated to us that he does not wish to acquire the portion of the road reserve from council but that he prefers to physically relocate the fence back onto the surveyed boundary as indicated on the identification survey by Weber Frankiw & Associates (attachment 3). Mr Bristow subsequently discussed the issue with the Lands Titles Office as the anomaly is attributed to an error in the Lands Titles Office.

The Lands Titles Office has contacted us directly to discuss strategies for the rectification of the matter.

The Land Title Office (LTO) has put the following solutions to Mr Bristow and council:

1. That the owners of Allotment 1199 acquire the encroached land from council subject to them paying market value for the land and associated costs for the transfer. The LTO have advised that the cost could be covered by a claim against the LTO.

OR

2. The relocation of the fence resulting in a claim for relocation of fence and shed and lost of land against the LTO.

During April 2009, Mrs Bristow has again contacted council to inform us that the Lands Titles Office has strongly recommended that the Bristows lodge a claim with the LTO (in accordance with Option 1 above). The LTO has asked for all evidence relating to the issue (identification plan, together with a quotation for costs (survey, registration) and the cost of land purchase from council to be provided to them. It is understood that Mrs Bristow will be pursuing this option with the Lands Titles Office to give effect to a resolution to this matter.

3.4 Part U

It is recommended that council places Part U on the open market in its own right to facilitate disposal of a land parcel that can stand independently. The selling of the land independently from the affected landowners will ensure that council maximises its return on this particular portion to receive overall satisfaction from the road closure process.

Council obtained an independent valuation from Southwick Goodyear to determine the current market value of Part U as a stand alone allotment. The value determined on 25 January 2009 is \$90,000. It is recommended that council put this land on the open market as a stand alone allotment through a real estate agent of its choice.

Further reports (should Council support the disposal of the land) will be forwarded to Council throughout the contractual process to engage and provide information and updates to Council (as landowner).

4 Summary

As this matter has been in progress between the parties for over seven years without resolution, the above strategy represents the most beneficial outcome for all parties to bring about a resolution to this protracted process.

The planning consent provided by council (as relevant planning authority) for the placement of the structures upon council land contributed to the complexity of the issue when combined with the separate but related process of commercial transfer of ownership of the land parcels.

Given the complexity of the process and the length of time that this matter has been with council the conciliatory strategy outlined in this report is what is considered to be the best outcome achievable.

It is believed that Council endorsement of this report will bring about finalisation of this process.