

Private Road adjacent to 11 Eliza Street

Strategic Alignment - Strong Economies

Public

Tuesday, 16 May 2023

Infrastructure and Public Works Committee

Program Contact:

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Approving Officer:

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EXECUTIVE SUMMARY

The purpose of this report is to establish if Council wishes to commence a two-stage process to transfer the private road adjacent to 11 Eliza Street to the adjoining owners and authorise the Chief Executive Officer to enter into deeds to facilitate this outcome.

Two further reports will be required in order to transfer the Road to the adjoining owners.

The land shown hatched on **Attachment A** is a private road (the Road). Ownership of the Road is unknown.

Distribution Lessor Corporation (DLC) (SA Power Networks) is the owner of the land-coloured blue on **Attachment A**. DLC wish to acquire the portion of the Road lettered 'A' on **Attachment A** so that it can consolidate its landholdings to meet ongoing electricity needs in the precinct.

The owners of other land adjoining the Road also wish to acquire the portions of the Road lettered 'B', 'C' and 'D' on **Attachment A**. Acquisition of the Road by these adjoining land-owners will allow them to develop their properties more readily.

The acquisition of the Road by the adjoining land-owners can be achieved by Council undertaking a two-stage process. The two-stage process comprises:

- Stage 1 - declaring the Road to be a public road pursuant to section 210 of the Local Government Act 1999 (SA) (thereby taking ownership of it); and then
- Stage 2 - closing and transferring the Road to the adjoining land-owners pursuant to the Roads (Opening & Closing) Act 1991 (SA) (Roads Act).

RECOMMENDATION

THAT THE INFRASTRUCTURE AND PUBLIC WORKS COMMITTEE RECOMMENDS TO COUNCIL:

That Council

1. Approves commencing a two-stage process to transfer the Road to the adjoining land-owners.
2. Authorises the Chief Executive Officer to negotiate the terms of a Deed (or deeds) with the owners of land adjoining the private road shown hatched on Attachment A to Item 5.1 on the Agenda for the meeting of the Infrastructure and Public Works Committee held on 16 May 2023, the terms of which will require Council to undertake a two-stage process to transfer the road to the adjoining land-owners, the two-stage process being to:
 - a. declare the private road to be a public road pursuant to section 210 of the *Local Government Act 1999 (SA)*.
 - b. close and transfer the (by then) public road to adjoining owners pursuant to the *Roads (Opening & Closing) Act 1991 (SA)*.
3. Authorises the Chief Executive Officer and Lord Mayor to execute and affix the Common Seal to deeds and any other documents to give effect to Council's resolution.

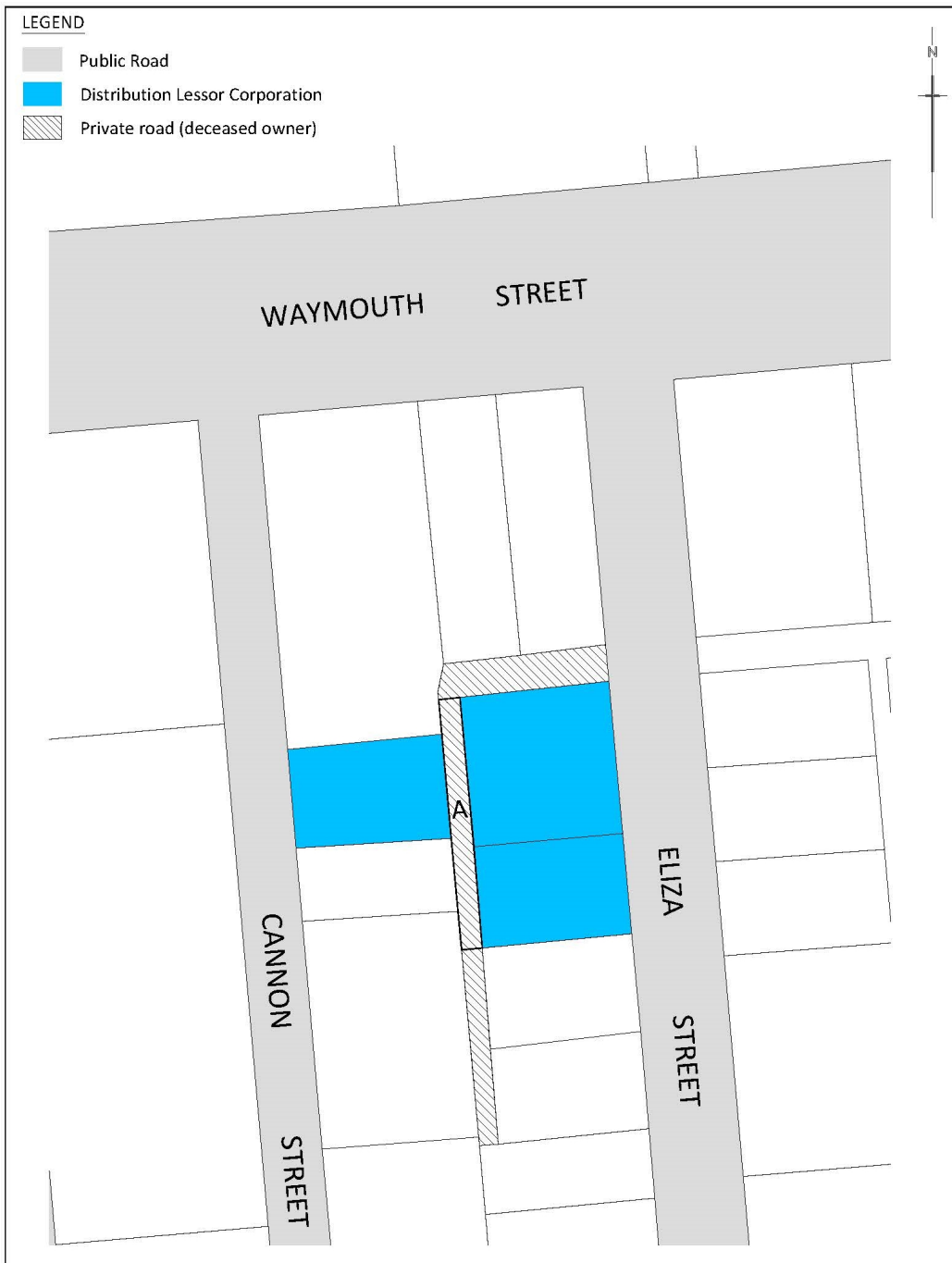
IMPLICATIONS AND FINANCIALS

City of Adelaide 2020-2024 Strategic Plan	Strategic Alignment – Strong Economies The transfer of the private road to the adjoining owners will improve their ability to develop their respective properties.
Policy	The transfer of the private road to the adjoining owners is consistent with the criteria set out in Council's ' <i>Acquisition and Disposal of Land and Assets Policy</i> '.
Consultation	In undertaking the two-stage process to transfer the private road to adjoining owners, we will: <ul style="list-style-type: none"> consult with the public prior to Council making a decision to declare the private road to be a public road (pursuant to section 210 of the <i>Local Government Act 1999 (SA)</i>). consult with parties 'affected' by the proposed closure and transfer of the private road to adjoining owners (pursuant to various sections of the <i>Roads (Opening & Closing) Act 1991 (SA)</i>).
Resource	Resources (both financial and staff time) are required to implement the two-stage process to transfer the private road to adjoining owners.
Risk / Legal / Legislative	There are some risks involved in running the two-stage process to transfer the private road to the adjoining owners; however, these will be mitigated (to the greatest extent possible) via the terms in the (yet to be drafted) deed(s) with the adjoining owners. In undertaking the two-stage process to transfer the private road to the adjoining owners, Council is required to strictly comply with the requirements of section 210 of the <i>Local Government Act 1999 (SA)</i> and the <i>Roads (Opening & Closing) Act 1991 (SA)</i> .
Opportunities	The transfer of the private road to the adjoining owners will improve their ability to develop their respective properties. Council will benefit from income generated from transfer of the road.
22/23 Budget Allocation	Not as a result of this report
Proposed 23/24 Budget Allocation	Not as a result of this report
Life of Project, Service, Initiative or (Expectancy of) Asset	Not as a result of this report
22/23 Budget Reconsideration (if applicable)	The terms of the Deed(s) will require the four portions of the Road to be transferred for consideration based primarily on market values, but also on other relevant factors.
Ongoing Costs (eg maintenance cost)	Not as a result of this report
Other Funding Sources	Not as a result of this report

DISCUSSION

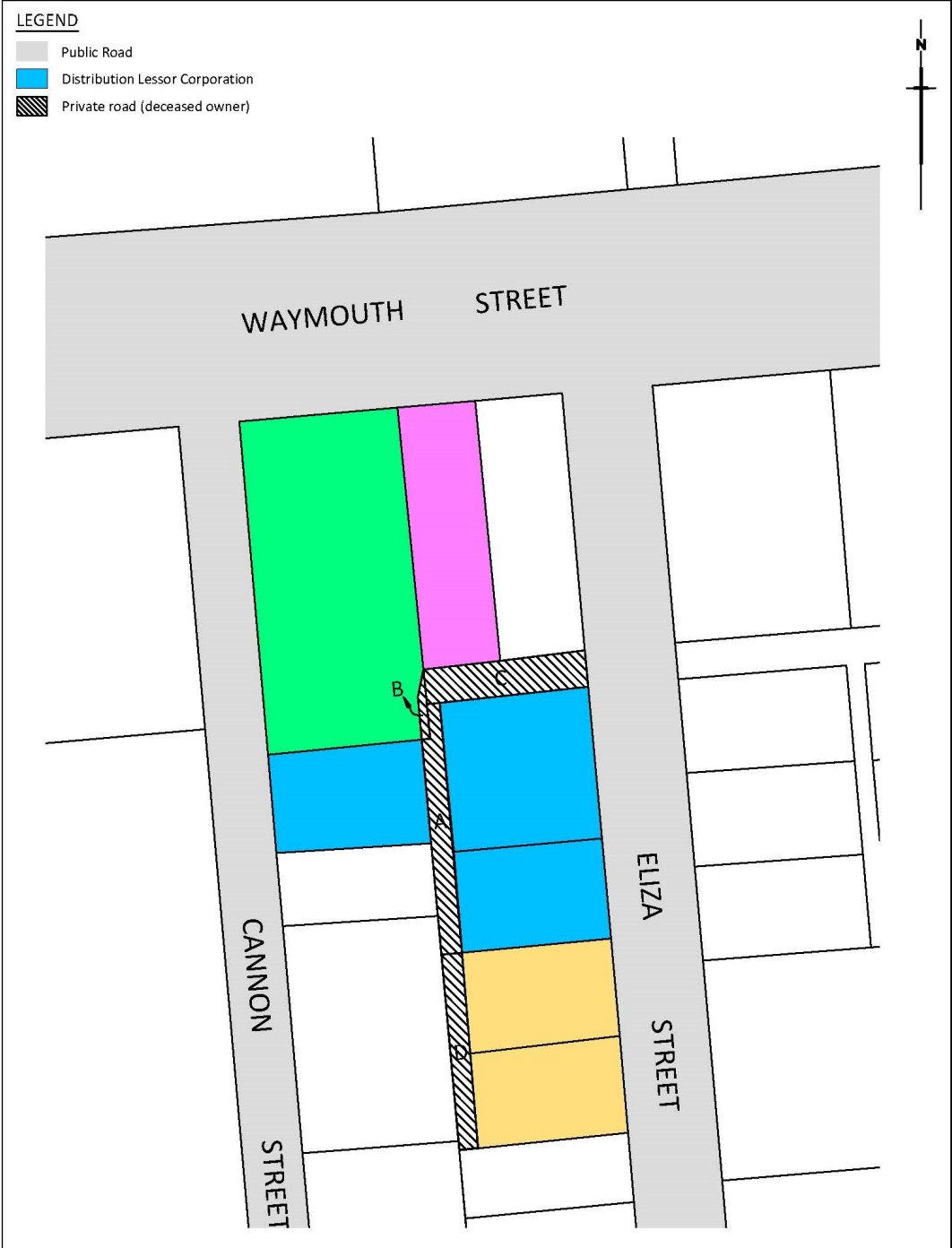
Background

1. In 2015, Distribution Lessor Corporation (DLC) approached the City of Adelaide (CoA), expressing an interest in acquiring a portion of the Road adjacent to Eliza Street (lettered 'A' below):



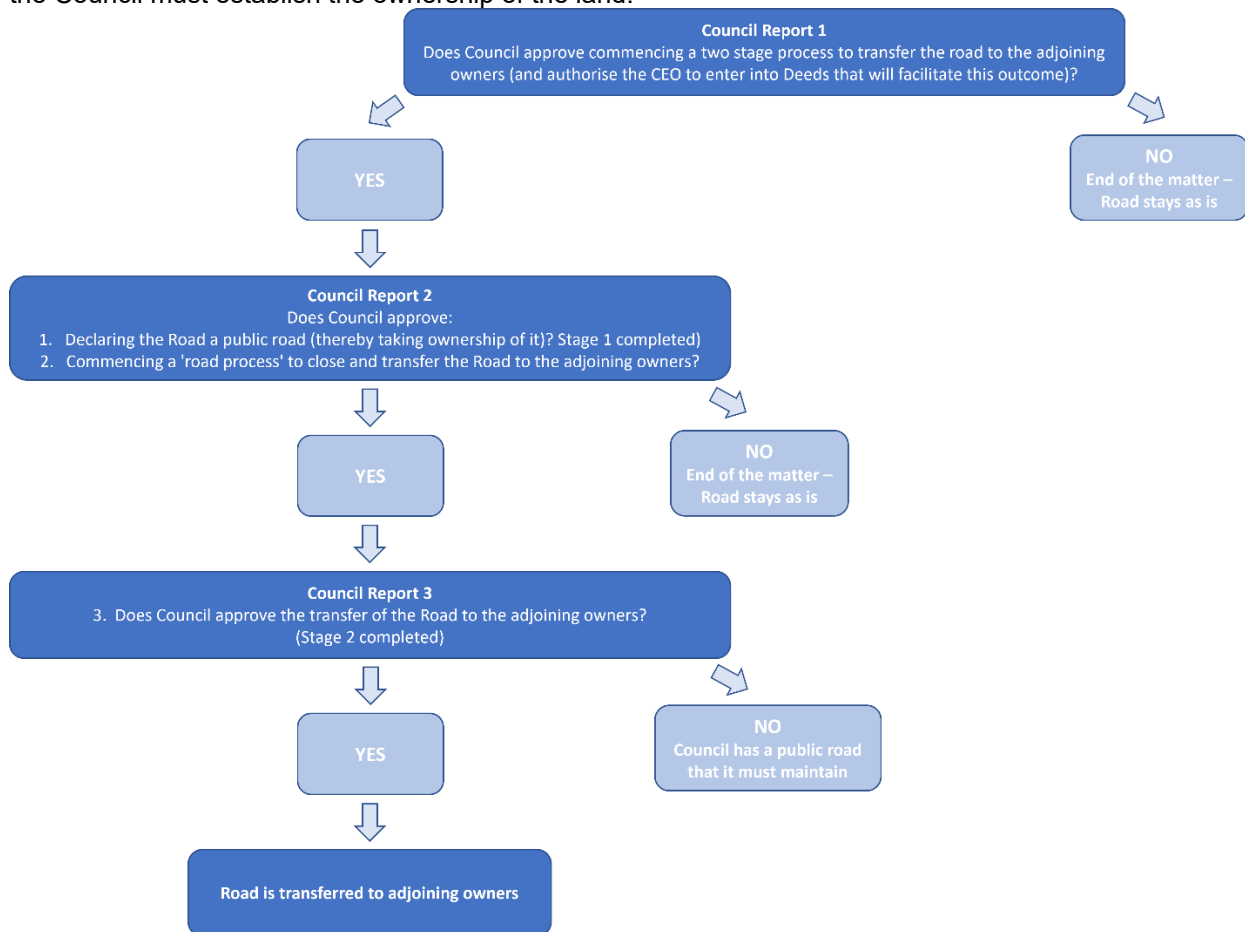
2. In about 1927, DLC, including its predecessors, acquired the land parcel fronting Cannon Street. A substation has occupied that land ever since.
3. In 2014, DLC acquired the land parcels fronting onto Eliza Street with a view to expanding the substation to meet future electricity needs in the area. In total, DLC currently owns land comprising three separate land parcels (in three certificates of title).
4. The current request by DLC would enable them to amalgamate and consolidate their land holdings and make it easier for them to develop the site.
 - 4.1. If this is achieved, DLC would own all of the land coloured blue on the above Map.
5. Following extensive negotiation over a number of years, the following was agreed to:

- 5.1. The portion of Road lettered 'A' on the below Map would be transferred to the owner of the property coloured blue.
- 5.2. The portion of Road lettered 'B' on the below Map would be transferred to the owner of the property coloured green.
- 5.3. The portion of Road lettered 'C' on the below Map would be transferred to the owner of the property coloured purple.
- 5.4. The portion of Road lettered 'D' on the below Map would be transferred to the owner of the property coloured yellow.



Stage One – declaring the Road a public road (pursuant to the Local Government Act)

6. The transfer of the portions of Road to adjoining owners can be achieved by Council undertaking a two-stage process. A flow chart depicting the process is below. In the first stage, before the acquisition can progress, the Council must establish the ownership of the land.



7. In order to declare the Road to be a public road, section 210(1)(b) of the *Local Government Act 1999 (SA)* provides that a council may declare a private road to be a public road providing it undertakes 'reasonable enquiries' to find the 'owner'.
8. Records at 'Land Services SA' indicate that the owner of the private Road in 1873 was David Randall. However, following an extensive search by CoA lawyers, it is unclear who the 'owner' (as that term is defined in the *Local Government Act 1999 (SA)*) currently is.
9. Cowell Clarke lawyers were asked to undertake the required 'reasonable enquiries' to identify parties that are presently entitled to deal with land ie. the 'owner(s)'. None were found.
10. Therefore, the Council has fulfilled the obligation under section 210 (1)(b).
11. We must consult with the public prior to Council making a decision to declare the private road to be a public road (pursuant to section 210 of the *Local Government Act 1999 (SA)*).
12. Section 210(2) of the *Local Government Act 1999 (SA)* requires that prior to Council declaring the Road a public road it must give three months public notice of its intention to declare it public.

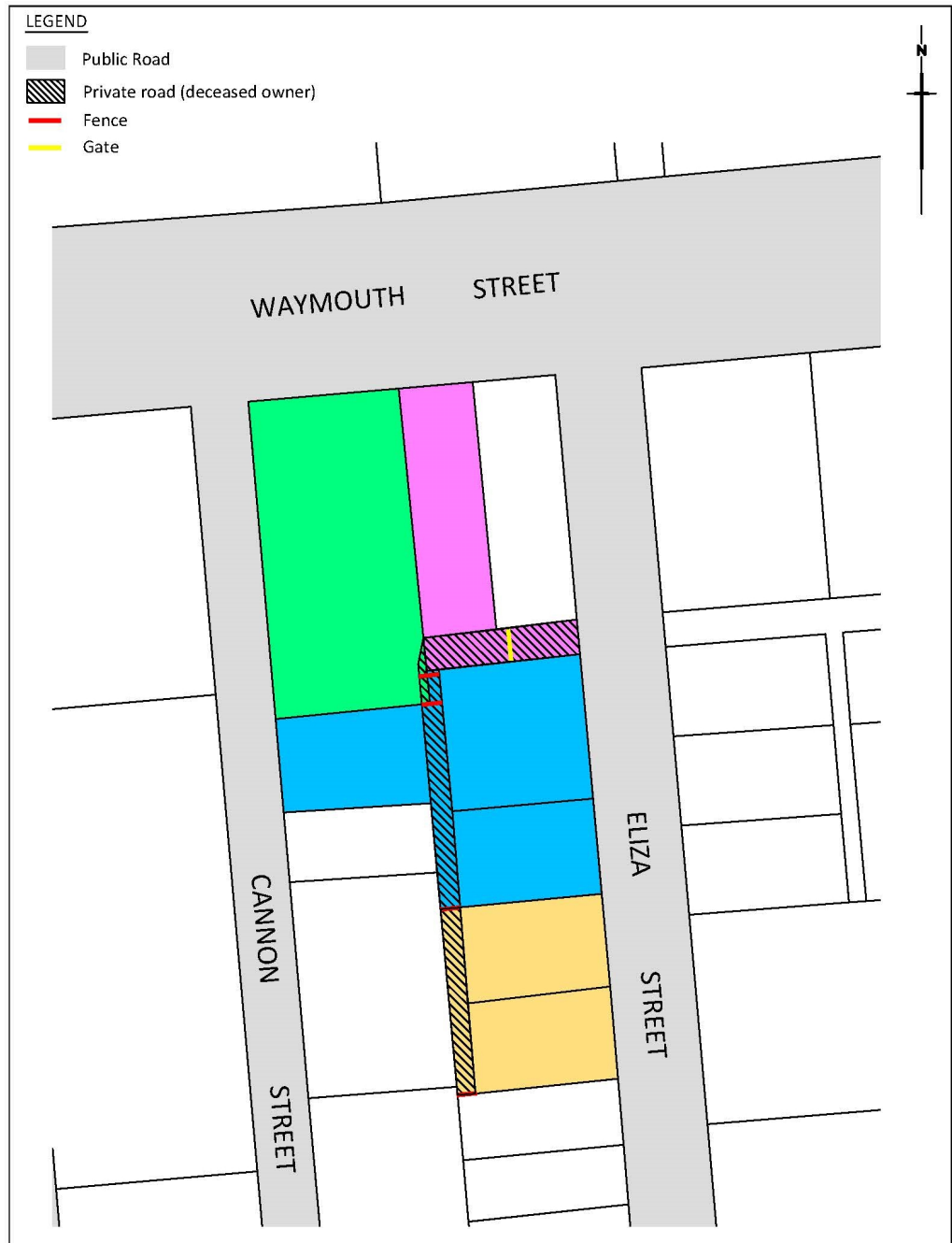
Stage Two - closing and transferring the Road to adjoining owners (pursuant to the Roads Act)

13. In relation to the second stage of closing and transferring the Road, if Council resolves to close and transfer a portion of the Road, it would be obliged, pursuant to section 12 of the Roads Act, to also offer it (or portions of it) to the other owners of the properties adjoining the Road.
14. A 'road process' is required to be undertaken which includes notifying anyone 'affected' by the proposed closure and transfer. Council can then decide whether to close and transfer the road in question and what easements should be granted over the road.

Council's Obligations Pursuant to Section 16 of the Roads Act

15. In deciding whether or not to close and transfer a public road to an adjoining owner pursuant to the Roads Act, Council must take into consideration the requirements of:

- 15.1. Section 16 of the *Roads Act*; and
- 15.2. Council's '*Acquisition and Disposal of Land and Assets Policy*'.
16. Section 16 of the *Roads Act* states that in determining whether to close and transfer a road (the final step in the process), a council must have regard to:
- (a) *any objections made by any person pursuant to this Act; and*
 - (b) *the plans, principles, regulations and other matters to which regard must be had by assessment authorities for determining applications for development authorisation under the Development Act 1993 (SA) in relation to developments in the area to which the proposed road process order relates; and*
 - (c) *whether the land subject to the road process is reasonably required as a road for public use in view of present and likely future needs in the area; and*
 - (d) *alternative uses of the land subject to the road process that would benefit the public or a section of the public; and*
 - (e) *any other matter that the authority considers relevant.'*
17. The requirements of section 16 of the *Roads Act* (as outlined in paragraph 17) should, logically, also be considered by Council, to the extent practicable, when deciding whether or not to commence negotiations and enter into deeds with adjoining owners.
18. In order to determine whether Council should enter into deeds with the adjoining owners to transfer the Road, the points outlined in section 16 of the *Roads Act* have been considered to the extent possible at this time:
- 18.1. Sub Section 16(a) of the *Roads Act* - *any objections made by any person pursuant to this Act*
- 18.1.1. Council will only know what objections there are (if any) if it resolves to, eventually, commence a road process.
- 18.2. Sub Section 16(b) of the *Roads Act* - *the plans, principles, regulations and other matters to which regard must be had by assessment authorities for determining applications for development authorisation under the Development Act 1993 (SA) in relation to developments in the area to which the proposed road process order relates*
- 18.2.1. There are no apparent implications at this stage.
- 18.3. Sub Section 16(c) of the *Roads Act* - *(whether the land subject to the road process is reasonably required as a road for public use in view of the present and likely future needs in the area*
- 18.3.1. There appears to be no reason to retain the Road as a public road at this stage, noting that:
 - 18.3.1.1. The Road will only be a public road as a temporary step in order that Council may close and transfer it to adjoining owners pursuant to the *Roads Act*.
 - 18.3.1.2. The north-south portion of the Road is only two metres wide, which is insufficient for a vehicle.
 - 18.3.1.3. Fences have existed for many years in the locations shown as red lines on the below Map and a gate has existed for many years in the location shown as a yellow line on the below Map. The adjoining owners have occupied those portions of the Road that are fenced during that time.



18.3.1.4. Adjoining owners are entitled to seek easements (including Rights of Way) over the Road pursuant to section 13 of the Roads Act if they require access along it. It is at Council's discretion whether it grants this easement and Rights of Way.

18.4. Subsection 16(d) of the Roads Act - alternative uses of the land subject to the road process that would benefit the public or a section of the public

18.4.1. There is no obvious alternative use for the Road.

18.5. Subsection 16(e) of the Roads Act - any other matter that the authority considers relevant

18.5.1. This Report addresses the matters considered to be relevant. The Council is at liberty to take into account any other matter it considers to be relevant at this time.

Council's Obligations Pursuant to its 'Acquisition and Disposal of Land and Assets Policy'

19. If Council proposes to *dispose of* the Road, the '*Acquisition and Disposal of Land and Assets Policy*' requires Council to consider the disposal in terms of the following key criteria:

19.1. Council's required ownership of the Land or Asset for essential civic purposes

19.2. Current and future alignment to Council's strategic directions

- 19.3. City shaping or public value add potential
- 19.4. Commercial and financial value of the Land or Asset
- 19.5. Community value of the Land or Asset
- 20. In relation to '*Council's required ownership of the Land or Asset for essential civic purposes*', this was considered in paragraphs 19.3 and 19.4, which found that the Road is not required for '*essential civic purposes*'.
- 21. In relation to the '*Current and future alignment to Council's strategic directions*', closing and transferring the portions of the Road to adjoining owners is aligned with the themes of '*Strong economies*' and '*Enabling Priorities*' in Council's Strategic Plan (2020-2024). The adjoining owners have clearly articulated that the transfer of the portions of Road to them will improve their ability to develop their respective properties.
 - 21.1. Whilst the Strategic Plan states (under the theme of '*Strong Economies*') that Council wants to achieve '*Main Streets and laneways activated for economic growth*', the Road is too narrow to achieve this, being only two metres wide along the north-south portion of it.
- 22. In relation to '*City shaping or public value add potential*', the Road offers no benefit in this regard.
- 23. In relation to '*Commercial and financial value of the Land or Asset*', the four portions of the Road would be transferred for consideration based primarily on market values, but also on other relevant factors.
- 24. In relation to '*Community value of the Land or Asset*', this was considered in paragraphs 19.3 and 19.4.

Next steps

- 25. If the steps outlined in the two-stage processes are completed successfully, two additional reports to Council will be required in order to transfer the Road to the adjoining owners.
- 26. The first report will recommend that Council:
 - 26.1. declare the Road a public road pursuant to section 210(1) of the *Local Government Act 1999 (SA)* (thereby taking ownership of it); and subsequently
 - 26.2. commence a 'road process' (pursuant to section 5 of the Roads Act) to close and transfer the Road to adjoining owners.
- 27. The second report will recommend that Council 'make a road process order' pursuant to section 15 of the Roads Act to close and transfer the Road to the adjoining owners.

ATTACHMENTS

Attachment A – Map showing the Road

- END OF REPORT -