

Tom's Court – proposal to commence a road process

Tuesday, 20 June 2023
Infrastructure and Public Works Committee

Strategic Alignment - Strong Economies

Program Contact:

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Public

Approving Officer:

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EXECUTIVE SUMMARY

The purpose of this report is to establish if Council wishes to commence a 'road process' under the *Roads (Opening & Closing) Act 1991 (SA)* (Roads Act) to close and transfer a portion of the unnamed public road at the back entrance of Tom's Court Hotel.

The Karidis Corporation Limited (Karidis) completed the construction of the Tom's Court Hotel late in 2020. Approximately six months before the completion, Karidis communicated to Council a desire to establish a pedestrian link from King William Street to the Tom's Court Hotel. The pedestrian link was proposed to pass through a property on King William Street (also owned by Karidis), across the end of an unnamed public road (the Road) and then into the back entrance of the Tom's Court Hotel.

Karidis initially sought to acquire the Road from Council to facilitate the link. However, it acknowledged that it would take time for the transfer of the Road to occur. Instead, Karidis requested, as an interim measure, that Council authorise Karidis to construct an enclosure (the Structure) on the Road by way of a Permit. Council has authorised the Structure to remain on the Road since 15 December 2020.

On 27 October 2022, Karidis wrote to the City of Adelaide (CoA) to formally request that CoA sell the Road to Karidis by undertaking a 'road process' under the Roads Act. Karidis responded with a revised proposal that would result in a smaller portion of the Road being transferred to Karidis.

RECOMMENDATION

The following recommendation will be presented to Council on 27 June 2023 for consideration:

THAT THE INFRASTRUCTURE AND PUBLIC WORKS COMMITTEE RECOMMENDS TO COUNCIL THAT COUNCIL

1. Approves commencing a road process pursuant to section 5 of the *Roads (Opening & Closing) Act 1991 (SA)* to close and transfer the portion of the unnamed public road lettered 'A' on Attachment A to Item 4.3 on the Agenda for the Infrastructure and Public Works Committee held on 20 June 2023 (the dimensions of which are yet to be determined) to an adjoining owner.
2. Approves, subject to Council commencing a road process to close and transfer the portion of the unnamed public road lettered 'A' on Attachment A to Item 4.3 on the Agenda for the Infrastructure and Public Works Committee held on 20 June 2023 to an adjoining owner, extending the permit granted to Karidis Corporation Limited to occupy the portion of the unnamed public road lettered 'A' on Attachment A until such time as a further report on the matter is presented to Council for consideration.
3. Notes should Council not wish to commence a road process to close and transfer the portion of the unnamed public road lettered 'A' on Attachment A to Item 4.3 on the Agenda for the Infrastructure and Public Works Committee held on 20 June 2023 to an adjoining owner the Karidis Corporation Limited would be notified and the permit granted to Karidis Corporation Limited to occupy the portion of the unnamed public road lettered 'A' on Attachment A would not be extended and the Karidis Corporation Limited would be asked to remove any improvements that it has erected on the road.

IMPLICATIONS AND FINANCIALS

City of Adelaide 2020-2024 Strategic Plan	Strategic Alignment – Strong Economies If Council resolves to commence a ‘road process’ to close the portion of the unnamed public road lettered ‘A’ on Attachment A and transfer it to Karidis Corporation Limited (pursuant to the <i>Roads (Opening & Closing) Act 1991 (SA)</i>), it would enable existing improvements constructed by Karidis (the Structure) to remain on the road, however, this may have impacts for the other owner of land that adjoins that portion of the road.
Policy	In deciding whether or not to close and transfer the unnamed public road lettered ‘A’ on Attachment A, Council will be required to assess the proposed disposal against its ‘ <i>Acquisition and Disposal of Land and Assets Policy</i> ’.
Consultation	If Council resolves to commence a ‘road process’ to close and transfer the unnamed public road lettered ‘A’ on Attachment A, it must provide ‘public notice’ of its intent to do so and also to notify anyone ‘affected’ by the proposal. These are requirements of the <i>Roads (Opening & Closing) Act 1991 (SA)</i> .
Resource	Resources (both financial and staff time) are required to commence the road process.
Risk / Legal / Legislative	Legal advice has been sought on this matter throughout the various stages since Karidis Corporation Limited first approached the City of Adelaide in July 2020. If Council resolves to commence a ‘road process’, it must comply with the requirements of the <i>Roads (Opening & Closing) Act 1991 (SA)</i> .
Opportunities	Not as a result of this report
22/23 Budget Allocation	Not as a result of this report
Proposed 23/24 Budget Allocation	If the public road lettered ‘A’ on Attachment A was transferred (to either adjoining owner), it will be assessed against market value. In addition, the applicant will be charged a fee of \$12,403 for the process.
Life of Project, Service, Initiative or (Expectancy of) Asset	Not as a result of this report
22/23 Budget Reconsideration (if applicable)	Not as a result of this report
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. The Karidis Corporation Limited (Karidis), through a series of related companies, is the owner of the land coloured yellow on **Attachment A**.
2. The land coloured green on **Attachment A** is owned (through a series of related companies) by a different party (the Adjoining Owner).
3. On 12 July 2018, the State Commission Assessment Panel (SCAP) gave Development Plan Consent (S10/32/2018) for Karidis to construct a 14-storey mixed use building on the portion of Karidis' land that is numbered "1" on **Attachment A**. The development was completed at the end of 2020. The hotel in the development is branded as the 'Tom's Court Hotel'.
4. The plans for S10/32/2018 show primary access to the Tom's Court Hotel being from Tom's Court. Notwithstanding this, Karidis recognised that access to the Tom's Court Hotel would be greatly enhanced if it was provided from a major road. Accordingly, Karidis proposed to create a pedestrian link from King William Street to the Tom's Court Hotel. The route for the proposed pedestrian link is shown as a red dashed line on **Attachment A**.
5. The proposed pedestrian link envisaged that the portion of the unnamed public Road lettered 'A' on **Attachment A** (the Road) would be enclosed with a visual screen (the Structure) to bridge the gap between the two Karidis properties and provide a thoroughfare for the patrons of the Tom's Court Hotel as they make their way between King William Street and the Hotel.
6. On 11 July 2020, Karidis approached the City of Adelaide (CoA) expressing a desire to acquire the Road from CoA to facilitate the pedestrian link.
7. Council can close and transfer public roads to adjoining owners by utilising the provisions of the *Roads (Opening & Closing) Act 1991 (SA)* (Roads Act).
8. Karidis' request to acquire the Road acknowledged that a 'road process' under the Roads Act could take time to complete and Karidis therefore sought, as an interim measure, to be able to occupy the Road exclusively so that it could build the Structure. More specifically, Karidis requested from CoA:
 - 8.1 An authorisation (pursuant to section 221 of the *Local Government Act 1999 (SA)* (LG Act)) to make an alteration to a public road (to build the Structure).
 - 8.2 A permit (pursuant to section 222 of the LG Act) to exclusively occupy the Road for a business purpose.
9. Council provided the authorisation and permit that was requested, but only on a temporary basis. For a number of reasons, including the impact of Covid-19 and that the Hotel was, for period, previously being used as a Covid-19 medi-hotel, the permit has been extended a number of times.
10. On 27 October 2022, Karidis wrote to CoA again, formally requesting that Council sell the Road to Karidis (consistent with its original request made by letter on 11 July 2020 as discussed in paragraph 6).

Roads (Opening & Closing) Act 1991 (SA)

11. A council may sell a public road (or portion thereof) by closing and transferring it to an adjoining landowner pursuant to the Roads Act. Where a council is the 'relevant authority' under the Roads Act (it isn't always), the closure and transfer of a road has the following key steps:
 - 11.1 The council must first decide if it agrees, in principle, to close and transfer the road. This is referred to as commencing a 'road process'.
 - 11.2 Where the road that is proposed to be closed and transferred to an adjoining landowner adjoins multiple parcels of land, the council must first invite offers from all owners of the adjoining land. If multiple offers are received, the council must determine which (if any) offer it wishes to progress.
 - 11.3 A plan and other information relating to the proposed closure and transfer must be lodged with the Surveyor-General.
 - 11.4 The council must give 'public notice' of the proposal and also notify anyone 'affected' by the proposal. Anyone is entitled to object to the proposal or request an easement over the road that is proposed to be closed and transferred.
 - 11.5 If an objection or application for easement is received, the council must meet to consider those objections and requests for easements. Parties that objected to the proposal or requested easements are entitled to attend the meeting and make submissions in support of their position.

11.6 The council must then decide whether to make a 'road process order' to close and transfer the road (and what order should be made). To that end, section 16 of the Roads Act, requires a council to have regard to the following considerations when making its decision:

- (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 Planning, Development and Infrastructure Act 2016 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.

12. The requirements of section 16 of the Roads Act (as outlined in paragraph 11.6) should also be considered by a council, to the extent practicable, when deciding whether or not to commence a 'road process' (as outlined in paragraph 11.1). To this end, a report was presented to the City Planning, Development and Business Affairs Committee (the Committee) on 7 February 2023. The Report discussed the criteria in section 16 and identified reasons that supported a decision by the Council not to commence a 'road process'.
13. The Committee debated the matter but did not make a determination as to whether or not to commence a 'road process'. Rather, the Committee first wished to understand the position (response) of Karidis in respect of the acquisition of a smaller portion of the road that would not impact, or would minimise the impact on, the other owner of land adjoining the Road, the Adjoining Owner. Karidis' position in this regard would then inform the Council decision-making regarding the acquisition proposal.
14. Notwithstanding this, the Committee's desire for a revised proposal from Karidis did not form part of its recommendation to Council. Rather, its recommendation to Council was (in part) that it:

"Approves the extension of the current permit for a period of three months and that the matter be brought back to the City Planning, Development and Business Affairs Committee at a future date."
15. On 14 February 2023 Council adopted the Committee's recommendation.
16. The Administration wrote to Karidis, communicating the decision of Council/Committee and requesting a revised proposal that would not impact, or would minimise the impact, on the Adjoining Owner.
17. Karidis responded with a revised proposal that would result in a smaller portion of the Road being transferred to Karidis (see images below).

17.1 Original proposal – Structure as it stands currently (in red)



17.2 Revised proposal – Structure modified (in red)



18. The revised proposal, if implemented, would still impact upon the Adjoining Owner's ability to access and use the adjoining land.
19. In determining whether to commence a road process in respect of the Road (whether or not it aligns with the revised or original acquisition proposals put forward by Karidis), it is relevant to consider the criteria under section 16 of the Roads Act. To that end, the Council is unable to fully assess this criteria, especially the criterion at 16(a) of the Roads Act (which relates to *any objections made by any person pursuant to this Act*), at this time. This is because, whether or not there are formal objections to a road process in respect of the Road (and the nature of any objections) will only be known where the Council commences a 'road process' and consults with those 'affected' by the proposal as required by the Roads Act, including the Adjoining Owner.
20. The recommendation to commence a 'road process' cannot stipulate who the Road might be transferred to because a council must (pursuant to section 12 of the Roads Act) first invite offers from the owners of all land adjoining the Road. Accordingly, prior to entering into any agreement to transfer the Road, Council must first invite formal offers from both Karidis and the Adjoining Owner (the only other owner of land adjoining the Road) to acquire the Road.
21. If multiple offers are received, a further report will be brought back to Council so that it can consider the facts at that time and decide if it wishes to proceed with the 'road process' and if so, to whom it wishes to transfer the Road, once closed.
22. The recommendation of this Report to commence a 'road process' does not identify the extent of the unnamed public road that Council proposes to close and transfer to an adjoining owner. ie. the portion of road lettered 'A' on **Attachment A** does not have any dimensions. This will be determined at a later date when Council has more information, including to whom it wishes to transfer a portion of the road.

Acquisition and Disposal of Land and Assets Policy

23. In deciding whether to close and transfer the Road (to Karidis or the Adjoining Owner), Council is also required to consider if the disposal of land would be consistent with the Council's '*Acquisition and Disposal of Land and Assets Policy*' (the Policy). The Policy requires Council to consider a proposed disposal in terms of the following key criteria:
 - 23.1 Council's required ownership of the Land or Asset for essential civic purposes.
 - 23.2 Current and future alignment to Council's strategic directions.
 - 23.3 City shaping or public value add potential.
 - 23.4 Commercial and financial value of the Land or Asset.
 - 23.5 Community value of the Land or Asset.

24. Whilst an assessment of these criteria may, ultimately, lead Council to decide not to sell the Road (to either Karidis or the Adjoining Owner) the Administration considers that it is, nevertheless, appropriate to commence the 'road process' and let due process run its course so that Council has all the facts in front of it (following the consultation that is required as part of the 'road process').

Current Status of Permit and Structure

25. On 14 February 2023 Council resolved to extend (for a period of three months) the permit granted to Karidis to occupy the Road for a business purpose. This permit extension expired on 31 May 2023.
26. The Administration extended the permit again (until 30 June 2023) in order to provide sufficient time to prepare this Report and for Council to consider it.
 - 26.1 Should Council resolve to commence a 'road process' under the Roads Act in respect of the Road, it is recommended that Council further extend the permit until a further report on the matter is brought back to Council.
 - 26.2 Should Council resolve not to commence a 'road process' under the Roads Act in respect of the Road, it is recommended that Council not extend the permit, at which point the Structure would be unauthorised and will need to be removed.

Summary

27. This Report recommends that Council commence a 'road process' to close and transfer the Road to an adjoining owner. If, as part of that process, Karidis and the Adjoining Owner both submit offers to acquire the Road, a further report will be brought back to Council to decide if it wishes to progress a closure of the Road and to which adjoining owner the Road ought to be transferred to.
28. Council will notify parties 'affected' by the proposed closure and transfer once Council has decided who it wishes to transfer the Road to.

ATTACHMENTS

Attachment A – Site map

- END OF REPORT -