

Unnamed private road between Young Street and Eliza Street

Tuesday, 18 June 2024
Infrastructure and Public Works Committee

Strategic Alignment - Our Places

Program Contact:
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Infrastructure

Public

Approving Officer:
Tom McCready, Director, City Services

EXECUTIVE SUMMARY

On 12 April 2022 Council resolved to authorise the Chief Executive Officer to enter into a Deed with the owners of land adjoining the unnamed private road (with a deceased owner) that runs between Eliza Street and Young Street, with the intent of the Deed being to transfer the road to one of those owners.

The road was offered to the owners of all land adjoining the road, however only one owner, Young Gun Collective Pty Ltd, was interested in acquiring the road.

The Deed with Young Gun Collective Pty Ltd has been negotiated and executed in accordance with Councils resolution. It set out the terms under which the road will be transferred to Young Gun Collective Pty Ltd.

The purpose of this Report is to request that, in accordance with the terms of the Deed, Council:

1. Declare the road a public road (pursuant to section 210 of the *Local Government Act 1991 (SA)*); and
2. Commence a 'road process' under the *Roads (Opening & Closing) Act 1991 (SA)* to close and transfer the road to Young Gun Collective Pty Ltd.

The following recommendation will be presented to Council on 25 June 2024 for consideration

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

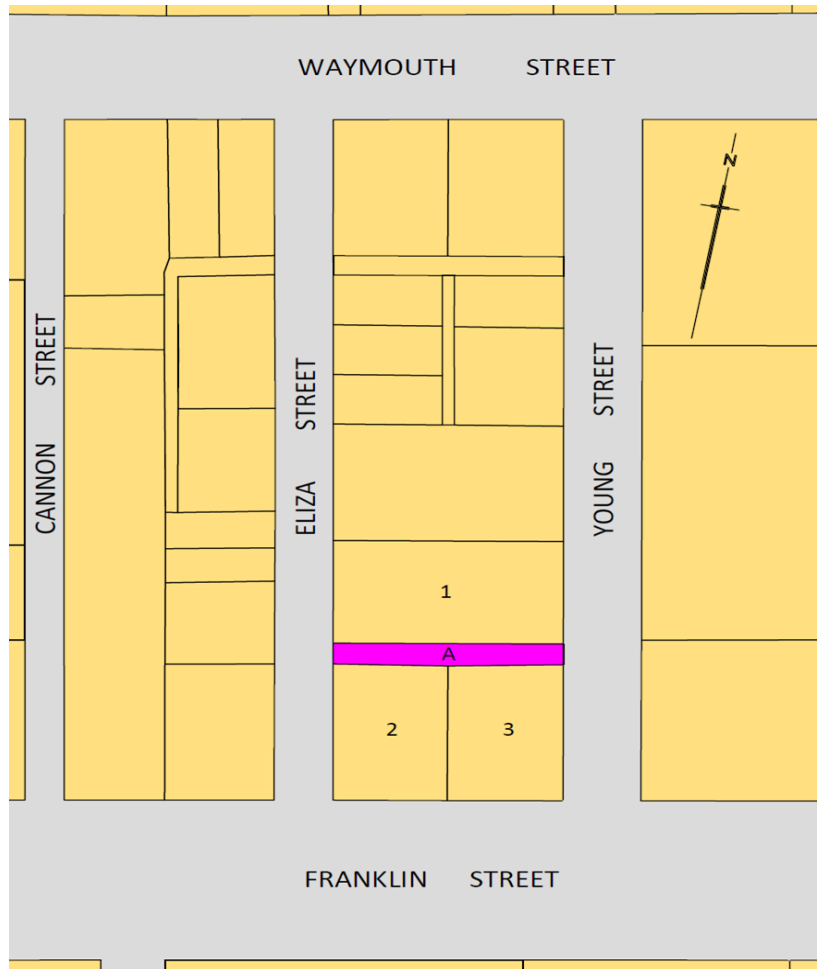
1. Approves, pursuant to section 210 of the *Local Government Act 1999 (SA)*, declaring the private road lettered "A" as contained in Attachment A to Item 7.6 on the Agenda for the meeting of the Infrastructure and Public Works Committee held on 18 June 2024 to be a public road.
 2. Approves, subject to notice of Council's decision to declare the private road lettered "A" as contained in Attachment A to Item 7.6 on the Agenda for the meeting of the Infrastructure and Public Works Committee held on 18 June 2024 to be a public road being published in the SA Government Gazette, commencing a road process pursuant to section 5 of the *Roads (Opening & Closing) Act 1991 (SA)* to close and transfer the land lettered "A" on Attachment A to Young Gun Collective Pty Ltd.
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IMPLICATIONS AND FINANCIALS

City of Adelaide 2024-2028 Strategic Plan	Strategic Alignment – Our Places
Policy	The proposed disposal of the road to Young Gun Collective Pty Ltd was assessed against Council's 'Acquisition and Disposal of Land and Assets Policy'.
Consultation	Public notice was given of Council's intent to declare the road a public road (as is required under section 210(2)(b) of the <i>Local Government Act 1999 (SA)</i>). If Council resolves to commence a 'road process' to close and transfer the road to Young Gun Collective Pty Ltd, parties 'affected' by the proposal, along with the public, will be notified and given the opportunity to object to the proposal or request an easement over the road.
Resource	Various costs will be incurred to transfer the road to Young Gun Collective Pty Ltd. The Deed requires Young Gun Collective Pty Ltd to pay a one-off fee to cover those costs.
Risk / Legal / Legislative	The road will be declared public pursuant to section 210 of the <i>Local Government Act 1999 (SA)</i> . The road will be closed and transferred to Young Gun Collective Pty Ltd under the <i>Road (Opening & Closing) Act 1991 (SA)</i> . Once the road has been transferred to Young Gun Collective Pty Ltd all risk associated with the road will also transfer to Young Gun Collective Pty Ltd.
Opportunities	Transferring the road from a long-deceased owner to a living owner (Young Gun Collective Pty Ltd) will ensure that it is managed and maintained appropriately.
23/24 Budget Allocation	Not in relation to this report
Proposed 24/25 Budget Allocation	Not in relation to this report
Life of Project, Service, Initiative or (Expectancy of) Asset	Not in relation to this report
23/24 Budget Reconsideration (if applicable)	Not in relation to this report
Ongoing Costs (eg maintenance cost)	Young Gun Collective Pty Ltd will be responsible for maintaining the road once it has been transferred to them.
Other Funding Sources	Not in relation to this report

DISCUSSION

1. The land lettered "A" on **Attachment A** is a private road with a deceased owner (the Road). The Road is also lettered "A" on the plan below.



2. In September 2021 the owner of the property numbered "1" on the map above, Young Gun Collective Pty Ltd, approached the City of Adelaide expressing an interest in acquiring the Road.
3. The acquisition of the Road can be achieved by Council undertaking a two-stage process, being:
 - 3.1 Council would declare the Road a public road pursuant to section 210 of the *Local Government Act 1999 (SA)*; and then.
 - 3.2 Council would close and transfer the Road to Young Gun Collective Pty Ltd using the *Roads (Opening & Closing) Act 1991 (SA)*.
4. On 12 April 2022 Council resolved:
 - 4.1. Authorises the Chief Executive Officer to, subject to having first invited (and given due consideration to) offers from all adjoining owners of the road lettered 'A' on Attachment A to Item 12.4 on the Agenda for the meeting of the Council held on 12 April 2022 pursuant to Council's obligations under section 12(3)(b) of the *Roads (Opening & Closing) Act 1991 (SA)*, negotiate the terms of a Deed (or Deeds) with one or more adjoining owners of the road, the essential terms of which will require:
 - 4.1.1. Council to declare the private road lettered 'A' on Attachment A to Item 12.4 on the Agenda for the meeting of the Council held on 12 April 2022 to be a public road.
 - 4.1.2. Council to close and transfer the (by then) public road lettered 'A' on Attachment A to Item 12.4 on the Agenda for the meeting of the Council held on 12 April 2022 to one or more of the adjoining owners of the road pursuant to the *Roads (Opening & Closing) Act 1991 (SA)*.
 - 4.1.3. 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.

5. In accordance with Council's decision, the Road was offered to all adjoining owners. Young Gun Collective Pty Ltd was the only adjoining owner interested in acquiring it.
6. The Administration engaged lawyers to draft a Deed to facilitate the two-stage process outlined in paragraph 3.
7. The Deed has been executed and to progress the matter Council must now undertake a two-stage process in accordance with the terms of the Deed, with the first stage being to declare the Road a public road.
8. Section 210 of the *Local Government Act 1999 (SA)* states that a council may only declare a private road to be a public road if it "makes reasonable enquiries to find the owner and fails to do so".
9. The Administration engaged lawyers to make "reasonable enquiries to find the owner".
10. The lawyers were unable to find the owner (or owners), meaning Council may now progress the two-stage process outlined in paragraph 3 (as is required under the terms of the Deed), noting that all other prerequisites to declaring the Road a public road under section 210 of the *Local Government Act 1999 (SA)* have been fulfilled.

Next Steps

11. Should Council resolve to proceed in accordance with the recommendation, the following actions are proposed:
 - 11.1. Declare the Road a public road.
 - 11.2. Commence the a 'road process' to close and transfer the Road to Young Gun Collective Pty Ltd. The Administration will give 'public notice' of Council's intent to close and transfer the Road. 28 days is allowed for anyone 'affected' by the proposed closure and transfer to either:
 - 11.2.1. object to the proposed closure and transfer of the Road; or
 - 11.2.2. request an easement over the Road.
 - 11.3. At the end of the 28 days a further report will be brought to Council disclosing the feedback received from the public notice process.
12. At this point, Council may then decide to make a 'road process order' to close and transfer the Road to Young Gun Collective Pty Ltd.

ATTACHMENTS

Attachment A – Map showing the Road
