

Unnamed Private Road between Young Street and Eliza Street

Tuesday, 5 April 2022

The Committee - Pre-Council Discussion Forum

Strategic Alignment - Enabling Priorities

Program Contact:

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Public

Approving Officer:

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EXECUTIVE SUMMARY

The owner of the property numbered 1 on Attachment A, Young Gun Collective Pty Ltd (as trustee for the Young Gun Unit Trust) (Young Gun), is proposing to refurbish the State Heritage listed building on the property, including by adding a new primary entrance to the building that is compliant with the *Disability Discrimination Act 1992 (Cth)*. Access to the new entrance would be via the unnamed private road lettered A on **Attachment A** (the Road). The Road, which is owned by a long-deceased person, is currently in an average condition and typically has vehicles parked on it.

Given that the new entrance would be the 'front door' for at least a portion of the building and that it will need to accommodate wheelchairs, Young Gun needs to ensure that the Road is in a good condition and that access is unimpeded.

This can only be achieved with long-term certainty by Council either:

1. Declaring the Road public (ie assume ownership of it); or
2. Declaring the Road public and then closing and transferring it to Young Gun (or another adjoining owner, subject to that owner being responsible for maintaining the Road).

The purpose of this Report is to request Council to resolve to undertake one of these options.

The following recommendation will be presented to Council on 12 April 2022 for consideration

That Council

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 # 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:
 - 1.1. Council to declare the private road lettered 'A' on Attachment A to Item # on the Agenda for the meeting of the Council held on 12 April 2022 to be a public road.
 - 1.2. Council to close and transfer the (by then) public road lettered 'A' on Attachment A to Item # 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)*.
2. 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

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| City of Adelaide 2020-2024 Strategic Plan | Strategic Alignment – Enabling Priorities If Council decides to either declare the Road public or transfer it to an adjoining owner of the Road, it will enable Young Gun to provide access to its Building that is compliant with the <i>Disability Discrimination Act 1992 (Cth)</i> . |
| Policy | In deciding whether to declare the Road public or transfer it to an adjoining owner, Council must assess the proposed acquisition or disposal against its ' <i>Acquisition and Disposal of Land and Assets Policy</i> '. |
| Consultation | If Council resolves to authorise the Chief Executive Officer to negotiate the terms of a Deed with Young Gun (or the owner of another property adjoining the Road) to transfer the Road, we will consult with all other owners of properties abutting the Road prior to entering into a Deed, including in relation to Council's obligation to offer the Road to those property owners pursuant to section 12 of the <i>Roads (Opening & Closing) Act 1991 (SA)</i> . |
| Resource | If Council <i>disposes</i> of the Road, some of the administrative costs associated with closing and transferring the Road would be covered by a fee (\$12,250), which would be payable by the purchaser of the Road. We would not receive any money for the Road from the purchaser, because the value of it (as determined independently) is less than what it would cost the purchaser to upgrade it to public road standards (as we would require under the terms of a Deed). |
| Risk / Legal / Legislative | If Council decides to dispose of the Road, the purchaser would be responsible for the risks associated with owning it. Council has the power to acquire a private road pursuant to section 210 of the <i>Local Government Act 1999 (SA)</i> . Council has the power to close and transfer a public road to an adjoining owner pursuant to the <i>Roads (Opening & Closing) Act 1991 (SA)</i> . If Council decides to acquire the Road, it will be responsible for the normal risks associated with owning a public road. |
| Opportunities | If Council decides to either declare the Road public or transfer it to an adjoining owner of the Road, it will enable Young Gun to provide access to its Building that is compliant with the <i>Disability Discrimination Act 1992 (Cth)</i> . |
| 21/22 Budget Allocation | Not as a result of this report |
| Proposed 22/23 Budget Allocation | Not as a result of this report |
| Life of Project, Service, Initiative or (Expectancy of) Asset | If Council decides to acquire the Road, it will be upgraded to public road standards (at Young Gun's cost). Asset renewal would be in line with that for similar sized roads. |
| 21/22 Budget Reconsideration (if applicable) | Not as a result of this report |
| Ongoing Costs (eg maintenance cost) | If Council decides to acquire the Road, maintenance costs would be about \$3,000/year (annualised). |
| Other Funding Sources | Not as a result of this report |

DISCUSSION

1. The property numbered '1' on **Attachment A** (the Property) is owned by Young Gun Collective Pty Ltd (as trustee for the Young Gun Unit Trust) (Young Gun). The Property is contained within Certificate of Title Volume 6117 Folio 596.
2. The land lettered 'A' on **Attachment A** is a private road with a long-deceased owner (the Road). There are over 100 roads that have deceased owners in the City of Adelaide. The Road is 'Old System' land, so is not contained within a certificate of title.
3. The Property has a registered Right of Way over the Road, as do the three Units in Strata Corporation No. 7865 Incorporated which, together, comprise the property numbered '3' on **Attachment A**. The property numbered '2' on **Attachment A**, which is contained within Certificate of Title Volume 5221 Folio 221, does not have a registered Right of Way over the Road.
4. As can be seen on this sketch (Link 1 view [here](#)) from the Certificate of Title for the Property, the Road (which is lettered 'A' on the sketch) is irregularly shaped, being 3.48 metres wide at the western end, 3.88 metres wide at the eastern end and with a 0.30 metre step in width at the mid-point.
5. The Property is occupied by a State Heritage listed building (the Building) comprising a Basement, Ground Floor, First Floor and Second Floor. The Building, which can be seen in these Google images, (Link 2 view [here](#)) was constructed in about 1915.
6. As can be seen in this Google image (Link 3 view [here](#)) taken from Young Street, the ground floor of the Building is over a metre in height above street level.
7. The Building has a single lift (the Lift) that opens directly onto the Road (about halfway along the Road). The Lift door facing onto the Road can be seen in this photo (Link 4 view [here](#)).
8. The Road was, for many years, used as a 'loading dock' from which goods were loaded and unloaded from the Building (via the Lift and adjacent door), which is why an awning/veranda was constructed over a large portion of the Road in 1947. The awning/veranda over the Road can be seen in these photos (Link 5 view [here](#)).
9. Access for the Building does not comply with the *Disability Discrimination Act 1992 (Cth)* (DDA), because the only way to get from street level to Ground Floor is via steps. Once inside the building, the Lift provides DDA compliant access to all other floors.
10. Young Gun has lodged a Development Application to refurbish the Building, including by introducing a new primary entrance ('front door') to the Building that will provide access that is compliant with DDA. The new entrance would be located adjacent to the Lift (i.e. from the Road).
11. DDA compliance for the new entrance would be achieved by saw-cutting and removing the existing floor in the location marked with a red 'X' on this plan (Link 6 view [here](#)) and replacing it with a new floor that matches the level of the Road. Once inside the building, a person could then either walk up a small flight of steps to get up to the First Floor or use a 'chair lift' mechanism (shown on the plan) to achieve the same outcome. As discussed above, the Lift would provide DDA compliant access to all other floors once someone was inside the building. The Lift access from the Road would be bricked up.
12. Given that the proposed new entrance will be the primary entrance to the Building, it is important to Young Gun to have a level of certainty over the management of the Road, most importantly in relation to *access* and *amenity*.
13. In relation to *access*, vehicles are often parked in the Road. Whilst pedestrians would probably be able to manoeuvre around these vehicles to get to the new entrance, people in wheelchairs would find it more challenging, as would anyone trying to deliver goods to the Building.
14. Whilst Young Gun has a registered Right of Way over the Road, it is of very limited use to them because the owner of the Road is the only person that has the legal power to enforce compliance with the Right of Way (i.e. ensure free and unrestricted access along the Road for Young Gun and other adjoining owners with Rights of Way). That owner is deceased, which is obviously a problem for Young Gun as they have no other way to ensure vehicles are not parked on the Road.
15. In relation to *amenity*, given the primary entrance to the Building will be from the Road, Young Gun wants to upgrade the Road in order to make the entry to the Building more appealing to customers/clients. However, with no ongoing certainty in relation to ownership, access, and control, Young Gun is understandably reluctant to invest in that upgrade.

16. The issues associated with *access* and *amenity* can be addressed in two ways:
 - 16.1 By Young Gun (or the owner of another property adjoining the Road) owning the Road (Option A); or
 - 16.2 By the City of Adelaide owning the Road (Option B).

Option A – Young Gun owning the Road

17. Option A can be achieved by Council resolving to declare the Road public (as per Option B) and then (subsequently) resolving to close and transfer the Road to Young Gun pursuant to the *Roads (Opening & Closing) Act 1991 (SA)* (ROC Act).
 - 17.1. In relation to the issue of *access*, once Young Gun own the Road they would be able to stop vehicles parking on it.
 - 17.2. In relation to the issue of *amenity*, once Young Gun own the Road they would be able to upgrade it to a standard of their choosing.
 - 17.3. In relation to *maintenance*, once Young Gun own the Road they are responsible for ongoing maintenance.

Option B - City of Adelaide owning the Road

18. Option B can be achieved by Council resolving to declare the Road a public road pursuant to section 210 of the *Local Government Act 1999 (SA)* (LG Act).
 - 18.1. In relation to the issue of *access*, we would install 'No Stopping' parking controls in the Road to ensure people did not park vehicles in it – as is the case in most other lanes in the City.
 - 18.2. In relation to the issue of *amenity*, we would upgrade the Road to 'public road standards' once we owned it.
 - 18.3. In relation to *maintenance*, this remains the responsibility of Council in perpetuity.
19. We believe it is in Council's interests to pursue Option A over Option B and request that Council adopt Option A by authorising the Chief Executive Officer to negotiate the terms of a Deed with Young Gun (or another prospective purchaser) that will allow the Road to be transferred.

'Short-form' easement versus 'long-form' easement

20. If Council transfers the Road to an adjoining owner (i.e. adopts Option A), the owners of the other properties abutting the Road would be entitled under the ROC Act to apply for easements over the Road (including Rights of Way).
21. In most instances the Right of Way granted over private road via a 'road process' under the ROC Act is a 'short-form' easement that simply states the Right-holder (the party with the Right of Way) is entitled to free and unrestricted access along the road. However, a Right of Way can also be in the form of a 'long-form' easement. A 'long-form' easement can be drafted in the same way as a contract, with terms that reflect the individual circumstances of each road and the rights and obligations of the owner(s) and Right-holder(s).
22. Whilst a 'short-form' easement might seem adequate, it may not serve the interests of both the owner of the road and the Right-holder(s).
23. Some of the issues that may be experienced in relation to private roads that are subject to Rights of Way that are 'short-form' easements, along with how those issues would be addressed (in relation to the Road) via 'long-form' easements are discussed at Link 7 view [here](#).
24. The advantages and disadvantages of Option A and Option B have been considered in relation to 5 criteria – financial, legal, strategic, environmental and community as identified at Link 8 view [here](#).

Acquisition and Disposal of Land and Assets Policy

25. Assuming Council chooses either Option A or Option B (Council can decide to do neither), it will either be acquiring land (by declaring it public) or disposing of land (by transferring it (having first acquired it)). As such, it will need to consider the acquisition or disposal in accordance with Council's (recently amended) '*Acquisition and Disposal of Land and Assets Policy*' (the Policy), which was adopted by Council on 27 January 2022.
26. If Council proposes to dispose of the Road (Option A), the Policy requires Council to consider the disposal in terms of the following key criteria:
 - 26.1. Council's required ownership of the Land or Asset for essential civic purposes.
 - 26.2. Current and future alignment to Council's strategic directions.
 - 26.3. City shaping or public value add potential.

- 26.4. Commercial and financial value of the Land or Asset.
- 26.5. Community value of the Land or Asset.
- 27. If Council proposes to acquire the Road (Option B), the Policy requires Council to consider the acquisition in terms of the following key criteria:
 - 27.1. Alignment with Council's strategic drivers.
 - 27.2. Potential to add value and support Council's city shaping objectives.
 - 27.3. The ability to unlock supply.
 - 27.4. Creation of new commercial and financial value.
 - 27.5. Provision of community benefits and public value.
 - 27.6. Potential to consolidate Land or Assets with Council's existing holdings.
- 28. These key criteria (for both acquisition and disposal) were considered as part of the analysis undertaken in paragraph 24.

Analysis

- 29. Both Option A and Option B will allow Young Gun to provide DDA compliant access to the Building.
- 30. Young Gun has indicated that it would prefer to own the Road (i.e. Option A); but is also comfortable with the City of Adelaide owning the Road (Option B).
- 31. In summary, Council's decision to adopt either Option A or Option B should be guided by how much control it wishes to exercise over the Road into the future.

Conclusion

- 32. Taking all matters into consideration we believe that, on balance, it is in Council's interests to adopt Option A (the recommendation of this Report) because it will avoid the risks associated with owning the Road and reduce ongoing costs associated with what was a private road / laneway, whilst still protecting the interests of the owners of other properties that adjoin the Road.
- 33. This would be achieved by entering into a Deed with the prospective owner, the terms of which would require them to grant 'long-form' easements to the owners of other properties that adjoin the Road which, in turn, will minimise the potential for conflict between the parties.
- 34. As discussed, an important clause in the Deed (between the Council and the prospective purchaser of the Road) would require the prospective purchaser to pay to have it immediately upgraded to public road standards.

DATA AND SUPPORTING INFORMATION

Link 1 – Sketch from certificate of title

Link 2 – Google images of the Building

Link 3 – Google image of Building from Young Street

Link 4 – Photo of Lift door opening onto the Road

Link 5 – Photos of the Road (and awning/veranda)

Link 6 – Proposed alterations to Building to create a new primary entrance

Link 7 – Issues associated with 'short-form' easements and potential solutions via 'long-form' easements

Link 8 – Acquisition and Disposal of Land - Key Criteria

ATTACHMENTS

Attachment A – Map showing the Road and adjoining properties