

Council Meeting

9/06/2021

Item No	0.0
Subject	256 Coward Street, Mascot - Through Site Link Dedication Offer, Lot 13 DP 1267730
Report by	John Furestad, Contracts Manager
File	F19/17

Summary

As part of the development proposal to develop 256 Coward St Mascot, a through site link for public access was negotiated. The development and the link are now substantially completed.

Karimbla Properties (No 54) Pty Ltd (Meriton) issued Council with a Letter of Offer dated 29 April 2021 (**Attachment 1**) to transfer free of cost to Council the 1386 sqm through site link described as Lot 13 DP 1267730 at 256 Coward Street, Mascot.

The terms of the offer confirm that Meriton/the Strata Corporation are to:

- Unconditionally maintain the Link in perpetuity.
- Renew the Link in perpetuity, upon agreement with Council.

Council must not alter the Link as depicted in the attached AT&L Practical Completion Certificate (**Attachment 2**), unless by written agreement with Meriton.

Should Council become the registered proprietor of the Link, Council is to be responsible for:

- The payment of water and electricity utilities for the link.
- Maintaining public liability insurance over the Link.
- Any other government or statutory charges.

Council has obtained legal advice confirming that the mechanism of transfer would need to be the subject of a Council resolution and the land would be best classified Operational to facilitate outdoor dining permits. Terms are to be as per the Draft Deed of Agreement (**Attachment 3**).

Officer Recommendation

1. That Council accepts the Offer of Transfer of Lot 13 DP 1267730 to Council as a freehold lot and the Draft Deed of Agreement.
 2. That, pursuant to Section 31 of the Local Government Act 1993, Council classifies Lot 13 in DP 1267730 as operational land.
 3. That, pursuant to Section 34 of the Local Government Act 1993, Council gives public notice of its intention to classify Lot 13 in DP 1267730 as operational land.
-

4. A further report be provided after the closure of the public notice period addressing any submissions made.
-

Background

On 24 July 2019, Council and Meriton executed a VPA in relation to the subject development, which included a Public Access Link contribution to the extent of:

The Developer is to carry out and complete the construction of the Public Access Link and embellish it in accordance with the Development Consent DA-2018/1187 and a Public Access Easement is to be registered to secure public access over the Public Access Link.

DA-2018/1187 determined 25 July 2019 Condition 96(a)(i) required that prior to the issue of the relevant Occupation Certificate, Meriton were to:

Embellish and dedicate the portion of land to Council for the purpose of a through site link connecting Coward Street the new John Street to provide public pedestrian access.

The VPA and the DA conditions did not align regarding ownership of the Link.

In late 2020, Meriton indicated a preference for the Link to be dedicated to Council which required the executed VPA to be modified by a Deed of Variation (DoV). However, there was insufficient time to undertake a DoV prior to Meriton reaching development completion.

On 10 February 2021 Legal advice obtained by Council stated that if a DoV mechanism was not possible, another option is a land transfer under s377(1)(h) of the Local Government Act, 1993, which requires a Council resolution. The advice confirmed that dedication as a freehold lot rather than road was most suitable, as it would allow outdoor dining permits to be issued more easily, and not provide the ability for utility providers to dig up the link to install utility services.

Meriton met VPA obligations on 26 March 2021 in regard to physical construction of the Link. Negotiations commenced regarding the transfer of the Link to Council under such an arrangement and specifically, the maintenance agreement in relation to the Link. Meriton are to cover all legal costs and the transfer to Council is to be free of cost and unencumbered.

Classification

Section 25 of the Local Government Act 1993 (the Act) requires all public land to be classified, being either Community or Operational. Under s.27(2) of the Act, the classification may be made by a resolution of the Council under s.31, s.32 or s.33.

If a newly acquired lot is to be classified as operational land (as the first classification), Council can resolve to do this within 3 months of receipt of the parcel and any time prior to its receipt.

Given the operational nature of Lot 13 (being a public outdoor dining area, in part), it is considered that an operational classification is most appropriate. This report seeks endorsement to commence the process to classify Lot 13 DP 1267730 as operational land under s.31(2) of the Act once it passes into Council's ownership.

After determining the intended classification, Council must give public notice and allow 28 days for submissions to be received. A further report be provided after the closure of the public notice period addressing any submissions made and to facilitate a final decision on the classification to be applied.

Financial Implications

Not applicable	<input type="checkbox"/>	
Included in existing approved budget	<input type="checkbox"/>	
Additional funds required	<input checked="" type="checkbox"/>	Ongoing utilities, insurances and any government or statutory charges

Community Engagement

In order for Lot 13 DP 1267730 to be classified as Operational, public notice for a period of 28 days must be given. A further report will be prepared for Council's consideration following the closure of the public notice period.

Attachments

- 1 Offer of Transfer
- 2 AT&L Practical Completion Certificate
- 3 Draft Deed of Agreement - Lot 13 DP 1267730