

Meeting: Council
Title: George Street Road Closure
Responsible Manager: General Manager, Heather Barclay
Author: Property and Contracts Manager,
James Forde

Item No: 17.1.3
File No: 14.16.1.1
Date: 16 May 2015
Attachments: A - F

Type of Report: **Decision Required**

Pursuant to Section 83(5) of the Local Government Act 1999, the Chief Executive Officer indicates that the matter contained in this report may, if the Council so determines, be considered in confidence pursuant to Section 90(2) of the Local Government Act 1999 on the basis that the information contained in the attached report is information of the nature specified in subsections 90(3)(b) and (d) of the Act being:

(b) information the disclosure of which;

(i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and,

(ii) would, on balance, be contrary to the public interest;

(d) commercial information of a confidential nature (not being a trade secret) the disclosure of which;

(i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and,

(ii) would, on balance, be contrary to the public interest;

The said information relates to the terms of the closure and transfer of George Street.

Recommendation (Public)

That pursuant to Section 90(2) of the Local Government Act 1999 Council order that the public be excluded, with the exception of the Administration being the Chief Executive Officer, Kiki Magro, the General Manager, Heather Barclay, the Property and Contracts Manager, James Forde and Protocol, Compliance and Governance Officer, Deb Bria from being present at the meeting on the

basis that the matter contained in this report is information of the nature specified in subsections

90(3)(b) and (d) of the Act being:

(b) information the disclosure of which;

(i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and,

(ii) would, on balance, be contrary to the public interest;

(d) commercial information of a confidential nature (not being a trade secret) the disclosure of which;

(i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party;

and,

(ii) would, on balance, be contrary to the public interest;

The said information relates to the closure and transfer of George Street.

Recommendation (Confidential)

That Council instruct the Administration to:

1. seek an indemnity from St Andrews School in respect of public liability risk until such time as the gazettal of the closure of the relevant portion of George Street occurs or is otherwise approved by the Minister;
2. take whatever action that may be required to assist the Surveyor General with preparing a recommendation to the Minister
3. in the event that the gazettal of the closure of the relevant portion of George Street does not occur or is otherwise not approved by the Minister, obtain legal advice in respect of Council's position and the options available to it in the circumstances; and
4. in the event that the legal advice referred to in paragraph 2 above is obtained, to provide a further confidential report to Council attaching that advice for its consideration.

Recommendation (Confidential)

That the Council, having considered the said information or matter in confidence under Part 3 of Chapter 6 of the Local Government Act 1999, orders, pursuant to Section 91(7) of the Local Government Act 1999, that the report titled "George Street Road Closure" dated 16 May 2016, and any other documentation relative to the report to be retained in confidence. In addition, that the minutes relating to this Agenda Item be kept confidential until this matter has been finalised excepting that the Council authorises the release of relevant documentation to parties to enact the resolution and that pursuant to Section 91(9)(c) of the Local Government Act 1999 the Council delegates to the Chief Executive Officer the review and power to revoke.

and

That Council resolves to end its confidential deliberations pursuant to Section 90(2) of the Local Government Act 1999 Council and re-admit the public.

Summary

The Administration has been informed by the Surveyor General's office that the closure of George Street will now need to be referred to the responsible Minister for approval or otherwise on the basis that residential objections (in the opinion of the Surveyor General) remain unresolved. This report provides Elected Members with the options available to Council in the circumstances.

Background

On 19 January 2015, Council resolved in confidence to close a portion of George Street and sell the resulting parcel of land to St Andrews School. A Road Process Order was then prepared and executed by Council.

Following further discussions with utility providers throughout 2015, it became necessary to amend the Road Process Order in order to remove certain easements that had been granted. This was done on 18 November 2016 after which an amended Road Process Order was prepared and executed by Council.

In February 2016, the Administration was informed by its consultant, Taslo Land Consultants ("Taslo") that the application had been formally lodged with the Lands Titles Office and was in the process of review. The Administration wrote to St Andrews School on 15 February 2016

to confirm that matter. A copy of the letter to St Andrews School is attached to this report and marked "Attachment A".

On 12 April 2016, the Administration received confirmation from Taslo that the final road plan had been approved by the LTO and that the application was with the Surveyor-General for sign off. It was also stated that the road closure would be gazetted the following week. Taslo provided the Administration with a copy of an email from the Surveyor-General's office confirming that matter. A copy of the relevant email chain is attached to this report and marked "Attachment B".

The Administration informed St Andrews of that confirmation and sought advice from its solicitors regarding the final steps required to complete the transaction. The Administration was advised by its solicitors that the gazettal of the road closure was a formality and that the land would vest in the School once that had taken place.

St Andrews School requested that they be permitted to erect their fence on the basis that School holidays were about to conclude and that the gazettal was a formality. The Administration sought advice from its legal advisors and was informed that the matter was a commercial one between Council and St Andrews School. The Administration agreed to the School's request subject to receiving payment for the land which payment was subsequently made.

On 3 May 2015, however, the Administration was contacted by the Surveyor General's Office and informed that the closure would not be gazetted and would need to be referred to the Minister for approval. The Surveyor General's Office cited outstanding residential objections as the reason the application needed to be referred.

Discussion / Issues for Consideration

Meeting with Surveyor General

The Administration has been working with its solicitors towards a resolution of the issue. The advice obtained is that the merits of the outstanding objections need to be addressed by Council, notwithstanding the clear indication from the Surveyor General's office that the application had been reviewed and approved.

On 10 May 2016, the Administration and its solicitors met with the Surveyor General to discuss the matter. At that meeting, the Administration outlined the history of the matter and the process that had been followed in respect of closing George Street. That history includes, among other things, that:

- Council notified affected persons of its intention to close a portion of George Street in October 2014;
- in response, Council received 4 objections from utility companies and 4 objections from private residents. A representation was also made by Rachel Sanderson MP although she did not object;
- all objectors were invited to attend Council's meeting of 19 January 2016 to speak to their objections. Rachel Sanderson MP was also notified of the meeting. From those invitations, one resident attended;
- having considered all objections and representations, Council resolved to proceed with the closure of George Street and, on 23 January 2015, all objectors and stakeholders were notified of that matter in writing including Rachel Sanderson MP and the Surveyor General's office;

- Over the course of the next 15 months, no further correspondence was received by the Administration from any stakeholders;

A copy of the confidential report to Council dated 19 January 2015 is attached to this report and marked "Attachment C". It contains copies of all objections and correspondence leading up to that Council meeting. A copy of the letter to all objectors and stakeholders dated 23 January 2015 is also attached to this report and marked "Attachment D".

The Administration explained to the Surveyor General that the issue relating to resident objectors had been first raised in November 2015 and that Council had provided all information and correspondence relating to that issue at the time. In particular, Council had, in consultation with Taslo, provided the Lands Titles Office with relevant documentation via emails dated 12 November 2015 and 17 November 2015. These emails request that the Administration be notified in the event that any further information was required.

A copy of the emails to Taslo dated 12 November 2015 and 17 November 2015 are attached to this report and marked "Attachment E" and "Attachment F" respectively. The Administration noted to the Surveyor General that no feedback had been received in respect of that issue at any time prior to the Surveyor General's telephone call of 3 May 2016.

The Administration then took the Surveyor General through each of the objections on their merits. Of the four objections, the following points were noted:

- in respect of John and Christine Gunn, the objection related to the assumed loss of vehicle access to their house which, given only a portion of George Street is being closed, is not relevant;
- in respect of Dr Munawar Rana, the objection related to the potential restriction in heavy vehicular access that may affect a proposed redevelopment of property. That redevelopment has now occurred and the objection is no longer relevant; and
- in respect of Grant and Dorothy Baldwin and Helen McBryde, the objection related to pedestrian access to Smith Street. The Surveyor General was informed that the alternative pedestrian route to that location would be extended by two minutes if George Street was closed.

The Next Steps

The Surveyor General thanked for the Administration for its presentation and apologised to the Town of Walkerville for representations that had been made by his office that suggested the matter had been finalised and was subject only to gazettal.

The Surveyor General was of the view that a site visit was required. He intimated that Rachel Sanderson MP may be invited to that site meeting. The Administration is unsure of the Surveyor General's intentions regarding Ms Sanderson's involvement.

Notwithstanding, the Administration has received some assurances from the Surveyor General that the merits of closing George Street appear to be sound and that there is precedent for road closures of this kind. On that basis, he stated that it is likely he will make an affirmative recommendation to the Minister. Assuming that the Surveyor General recommends the closure of George Street to the Minister, a final decision on the matter should be forthcoming from that office within 4-6 weeks.

The Administration has been in regular contact with St Andrews School who, despite their frustrations, have reiterated their intention to work collaboratively with Council to resolve the matter.

The Administration will provide further updates to Council as the matter develops.

Risks

As outlined in this report, following advice from its advisors, a fence has now been erected by St Andrews School to close the road. Until gazettal or approval by the Minister, however, the road remains a public road that is the legal responsibility of Council. In the event of a public liability incident, Council remains exposed to insurance risk.

On that basis and given the collaborative nature of its dealings with St Andrews School, the Administration recommends that Council instruct it to seek an indemnity from St Andrews School regarding public liability risk until such time as gazettal or approval by the Minister. The Administration is of the view that St Andrews School will be amenable to such an indemnity as the road is effectively closed and under its care and control in any event.

Finally, in the event that the Minister does not approve the road closure, the Administration proposes to seek legal advice regarding its position and the options available to it in the circumstances which advice will be the subject of a further confidential report to Council for its consideration.

Options for Consideration

Option 1

That Council instruct the Administration to:

1. seek an indemnity from St Andrews School in respect of public liability risk until such time as the gazettal of the closure of the relevant portion of George Street occurs or is otherwise approved by the Minister;
2. take whatever action that may be required to assist the Surveyor General with preparing a recommendation to the Minister
3. in the event that the gazettal of the closure of the relevant portion of George Street does not occur or is otherwise not approved by the Minister, obtain legal advice in respect of Council's position and the options available to it in the circumstances; and
4. in the event that the legal advice referred to in paragraph 2 above is obtained, to provide a further confidential report to Council attaching that advice for its consideration.

Option 2

That Council instruct the Administration to:

1. take no action in relation to the matter other than what may be required to assist the Surveyor General with preparing a recommendation to the Minister; and
2. present a further report to Council setting out the Minister's decision in relation to the matter.

Analysis of Options

Option 1 ensures that Council addresses the public liability issues that persist as a result of the Surveyor General's recent actions. It also allows the Administration to present Council with professional advice and the options moving forward in the event that the road closure does not proceed.

Option 2 should be adopted if Council is of the view that no further action should be taken until such time as a decision is made by the Minister.

Community Implications

The closure of a portion of George Street has been of interest to St Andrews School for a number of years. In January 2015, having considered all of the circumstances, Council resolved that the benefits of closing the road i.e. the overarching safety issues for St Andrews students, outweighed any inconvenience that may be caused to a minority of residents in the area.

Governance Implications

There are no specific governance implications for Council to note at present.

Preferred Option and Reasoning

The Administration recommends that Council proceed with Option 1. The public liability issue is a genuine risk for Council that should be addressed as soon as possible. Furthermore, in the event that an adverse decision is made, there are legal timeframes that dictate how and when Council may challenge such decisions, should it deem such action appropriate in the circumstances. By obtaining prompt legal advice, Council ensures that it has adequate time to consider the advice.

Attachment/s

Attachment A	Letter to St Andrews dated 15 February 2016.
Attachment B	Email chain between Administration, its consultant and the Surveyor General's office.
Attachment C	Confidential Report to Council dated 19 January 2015
Attachment D	Letters to stakeholders dated 23 January 2015
Attachment E	Email to consultant dated 12 November 2015
Attachment F	Email to consultant dated 17 November 2015