

10.3. Sydney Harbour Bridge Cycle Ramp proposal -Transport for NSW Acquisition of Bradfield Park

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ATTACHMENTS: Nil

PURPOSE:

Resolution of Council, 26 April 2022

Council at its meeting on 26 April 2022 considered a report into this matter and resolved:

- 1. THAT this matter be deferred to the May Council Meeting.*
- 2. THAT the report be treated as confidential and remain confidential unless Council determines otherwise.*

This report presents the deferred matter.

Purpose of Deferred Report

The purpose of this report is to inform Council of correspondence received from Transport for NSW (TfNSW) foreshadowing the issuing of a Proposed Acquisition Notice (PAN) for parts of Bradfield Park North and Bradfield Park Central in order that the State Government can construct their proposed Cycle ramp.

EXECUTIVE SUMMARY:

On 24 December 2021, North Sydney Council received a letter from TfNSW in relation to the issuing of a Proposed Acquisition Notice (PAN) for parts of Bradfield Park North. The TfNSW letter attached generally identifies land that is required on a permanently basis for the construction of the cycle ramp in Bradfield Park North and specifically areas of Bradfield Park North and Bradfield Park Central that will be needed for an extended period to undertake the construction of the ramp.

This report is confidential in accordance with Section 10A (2) of the Local Government Act and the Local Government (General) Regulation 2005 for the reasons listed below:

- (d) commercial information of a confidential nature that would, if disclosed; (i) prejudice the commercial position of the person who supplied it; and
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege.

It would, on balance, be contrary to the public interest to consider this matter in open session as publication of all tendered amounts would discourage potential tenderers from submitting commercial information in future and would affect Council's ability to obtain value for money services and it would affect Council's ability to manage legal matters effectively and in the best interests of the community.

RECOMMENDATION:

1. THAT the meeting be closed to the public in accordance with Section 10A(2):

- (d)(i) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it and because consideration of the matter would, on balance be contrary to the public interest as publication of all tendered amounts would discourage potential tenderers from submitting commercial information in future and would affect Council's ability to obtain value for money services.
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege and because consideration of the matter in open Council would be, on balance, contrary to the public interest as it would affect Council's ability to manage legal matters effectively and in the best interests of the community.

2. THAT the report be treated as confidential and remain confidential unless Council determines otherwise.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

1. Our Living Environment

1.4 Public open space and recreation facilities and services meet community needs

2. Our Built Infrastructure

2.1 Infrastructure and assets meet community needs

BACKGROUND

All the land within Bradfield Park Central and Bradfield Park North that are subjected to a compulsory acquisition notice were granted in freehold title to North Sydney Council by two separate gazettal's of both houses of Parliament in 1935 & 1939. The park was established in part to provide curtilage to the nationally and internationally iconic structure that is the Sydney Harbour Bridge, but particularly as partial compensation for the loss of residences and businesses of Milsons Point that were demolished to make way for the building of the bridge.

Over an extended period TfNSW have attempted to create a design to overcome the 55 steps that cyclists are required to navigate to get onto and off the bridge cycle way from Burton Street.

Cycling on the carriageway of the bridge was banned in 1962, and cyclists moved to the former pedestrian walkway on the western side of the bridge and hence the reason the stairs were originally in place.

The community and Council have been involved in numerous discussions over the past 15 years or more with TfNSW on how to best overcome the 55 steps for cyclists to improve access to the bridge.

With regards to the current proposal for the construction of a cycle ramp the following timeline is provided (source TfNSW website)

- **June 2021** TfNSW exhibition of two cycle ramp options linear (exiting within Bradfield Park North) and loop option (Bradfield Park Central)
- **August 2021**, the Minister for Transport announced that a linear bike ramp had been selected as the preferred concept to improve bike access at the northern end of the Sydney Harbour Bridge Cycleway.
- **September 2021** – Design competition undertaken by TfNSW to attain preferred design teams
- **November 2021**, Design competition shortlisted, three design teams selected
- **December – January 2022** Three ramp concept designs, and updated plans for Alfred Street Cycleway placed on public display
- **February 2022** Design Jury selects preferred design team

- **Mid 2022** – Review of Environmental Factors, including detail design, placed on public exhibition.
- **Late 2022** – Delivery contract awarded
- **2023** – Construction starts
- **2024** – Ramp open to the public

To date Council supported by a large section of the community has opposed the linear cycle ramp proposals for a range of reasons including: that the linear ramp will have catastrophic impacts on the use and amenity of this precious open space of Bradfield Park North, the considerable impact to the significant heritage elements of the Sydney Harbour Bridge and surrounds, reduction in aesthetic quality of the place and important view corridors through the park and of the bridge and cyclist/pedestrian conflicts that will be created.

Simultaneously to objecting to the identified linear options Council has been advocating for a design that restricts the cycle ramp to Bradfield Park Central portion of the park.

CONSULTATION REQUIREMENTS

Community engagement is not required.

DETAIL

On **24 December 2021** Council received a notice of intention from TfNSW advising Council that they were planning for the upgrade of the northern access point for the Sydney Harbour Bridge Cycleway. The letter outlines that the proposed construction necessitates the acquisition and lease of multiple lots owned by Council, as delineated by the pink shading and green hatching on TfNSW Sketch Plan SR5816, drawn 09/12/2021 (attached)

TfNSW proposes to lease the subject land during the construction phase of the project, for up to three (3) years and thereafter on a month-to-month basis if required, following which the site will be restored to the original condition prior to commencement of the lease, and the lease will be terminated.

The letter seeks Council's consent to TfNSW's acquisition (initially on a temporary lease basis) of the land by compulsory acquisition as soon as possible. The land to be permanently acquired will be defined by a survey following completion of construction works.

On **20 January 2022**, Council contacted TfNSW and advised that their letter dated Christmas Eve had not been processed until the Christmas holiday period had concluded and Council would need to attain a legal opinion with regards to the legitimacy or otherwise of the TfNSW assertion that they could acquire the Council owned land parcels for the purpose of constructing the cycle ramp. Several other issues were also raised including the construction period, the accuracy of the plans and schedules, term of the required construction lease, compensation offer etc.

21 January 2022 Council received a further letter (attached) from TfNSW effectively responding to issues raised by Council on the 20 January.

25 February 2022 Council contacted TfNSW requesting them to quantify their compensation offer for the proposed permanent and lease compulsory acquisitions in order that the information could be reported to Council.

15 March 2022, Letter received from TfNSW (attached) outlining their compensation offer for the 7,854m² of leased land required for construction over a period of three years, total payable in advance. This offer does not include the permanent land acquisition required that would be determined at the completion of the construction process.

16 March 2022 Legal Advice

The (confidential) legal advice informed Council (attached) in respect to the State's capacity to compulsorily acquire the Council land for the purpose of constructing the cycle ramp and that the compulsory acquisition process can be undertaken in two ways:

The land and interests can be compulsorily acquired **by agreement** under s29 of the Land Acquisition (Just Terms Compensation) Act 1991 LA(JTC) if agreement about compensation and any other terms is reached.

If **s29 agreement cannot be reached**, TfNSW will need to compulsorily acquire the relevant land and interests using the conventional compulsory acquisition process set out in the LA(JTC)Act.

Based on achieving the best economic outcome for Council, the legal advice is that Council should advise TfNSW, that Council will proceed to compulsory acquisition by agreement under s29 Land Acquisition (Just Terms Compensation) Act 1991.

Following this path, Council would then attain a further valuation and commence negotiating with TfNSW for an improved outcome whether that be increased financial compensation or additional works in kind.

It is noted that whether the land is compulsorily acquired by a s29 agreement or by the more conventional process the Council will be entitled to compensation under s54 of the LA(JTC) Act. However under the latter process, the outcome is determined by the Valuer General and Council has no capacity to negotiate.

It is appreciated that the advice to negotiate a compensation agreement with TfNSW is likely to provide the better outcome based on the level of financial compensation or other community benefits that may be negotiated.

However, the fundamental problem with proceeding with this negotiation process is the community that are opposed and are continuing to oppose this development in its proposed linear form will obviously see this as a capitulation of the Council position of advocating for

an improved design outcome for a cycle ramp that is contained within the Bradfield Park Central component of the park.

On this basis and at this time it is considered more appropriate for Council to advise TfNSW that it is not prepared to consent to compulsory acquisition of land required at Bradfield Park for the construction of a cycle ramp, in advance of the final form of the ramp being formally authorised.

In the event the project in its linear form through Bradfield Park North attains approval to proceed through the required and future Review of Environmental Factors statutory approvals process scheduled for mid-2022, the Council could then offer to open negotiations under s29 of the Land Acquisition (Just Terms Compensation) Act 1991.