

Leichhardt Municipal Council



AGENDA

ORDINARY MEETING

**28 APRIL 2009**

SUPPLEMENTARY REPORTS

ITEMS 22B & 45

**LEICHHARDT MUNICIPAL COUNCIL**

**ORDINARY MEETING OF COUNCIL**

NOTICE IS HEREBY GIVEN OF THE FOLLOWING **SUPPLEMENTARY ITEMS** FOR THE **ORDINARY MEETING** OF THE LEICHHARDT MUNICIPAL COUNCIL TO BE HELD IN THE COUNCIL CHAMBERS, LEICHHARDT TOWN HALL, 107 NORTON STREET, LEICHHARDT, ON **TUESDAY 28 APRIL 2009**.

Peter Head  
GENERAL MANAGER

**27 APRIL 2009**

**BUSINESS:**

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**LEICHHARDT MUNICIPAL COUNCIL**

**REPORT**

**DIVISION:** ENVIRONMENTAL AND COMMUNITY MANAGEMENT

**SUBJECT:** **ITEM 22B VICTORIA ROAD UPGRADE: PROJECT APPROVAL**

**AUTHOR & TITLE:** DAVID PARSELL – TEAM LEADER STRATEGIC PLANNING

**FILE REF:** F07/00282 – 2

**DATE:** 3 August 2018

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**DIRECTOR'S SUMMARY - ORGANISATIONAL IMPLICATIONS**

**Financial Implications:** None at this stage

**Policy Implications:** Nil

**Strategic Plan Objective:** Community Wellbeing  
Accessibility  
Place Where We Live and Work  
Sustainable Environment

**Staffing Implications:** Nil

**Notifications:** Nil

**Other Implications:** Nil

## 1. **Purpose of Report**

The purpose of this report is to advise Council that the Minister for Planning has approved the proposed Victoria Road Upgrade, subject to conditions. The report also outlines:

- The Department of Planning assessment report
- The conditions of approval imposed by the Minister for the project
- Council's concerns that were and were not addressed
- The prospects for a legal challenge to the Minister's determination
- The RTA has compulsorily acquired leases for 30 months of two parts of King George Park and part of Bridgewater Park.

## 2. **Recommendation**

2.1 That Council receive and note the report and endorse the actions taken by staff to date.

## 3. **Background**

### **December 2007**

On 21 December 2007, the Minister for Planning declared the Victoria Road Upgrade to be a Major Project under Part 3A of the *Environmental and Planning Act 1979*. The Project is for the upgrade of Victoria Road between Westbourne Street, Drummoyne and The Crescent, Rozelle, extending for approximately 3.5 kilometres and including:

- The implementation of bus lanes
- The construction of an additional bridge to the west of the Iron Cove Bridge;
- Provision of a tidal flow traffic scheme within Drummoyne; and
- Altered traffic arrangements and roadway adjustments through Rozelle

### **July 2008**

In response to the Director General's Requirements, issued in July 2008, the RTA prepared an Environmental Assessment which was exhibited by the Department of Planning between 22 October 2008 and 25 November 2008.

The Environmental Assessment identified and addressed potential environmental impacts of the project. A Draft Statement of Commitments was included in the Environmental Assessment. It identified the proposed

commitments by the RTA to undertake certain works or agreements in relation to mitigating the impacts of the project.

### **November 2008**

At its Ordinary Meeting on 25 November 2008 Council considered a report on the matter and resolved to:

#### **C413/08**

- 1. Recommend the Department of Planning not proceed with the Part 3A assessment of the Victoria Road Upgrade until the Environmental Assessment is amended to reflect Council's concerns*
- 2. support the objective of improving the efficiency and reliability of bus services on Victoria Road*
- 3. support improvements to cyclist and pedestrian facilities in Drummoyne and Rozelle*
- 4. recommend that the RTA not proceed with the proposal to duplicate Iron Cove Bridge and reconsider the alternatives available*
- 5. recommends that the RTA not proceed with the current proposal until such time as an Integrated Transport Plan has been developed for the Metropolitan Area*
- 6. indicate to the Minister of Planning that Council will not enter into a lease with the RTA for the use and occupation of King George Park or Bridgewater Park.*

Council subsequently lodged a submission with the Department of Planning on 3 December 2009 which reflected Council resolutions and identified general and specific concerns. Both the aforementioned Report and submission are attached to this Report as Annexure A and B respectively.

### **March 2009**

At its Ordinary Meeting on 24 March 2009 Council considered a report (Item 13A) outlining the RTA's response to the issues contained within the submissions received during the exhibition period for the proposal. This report identified issues and place specific undertakings or commitments by the RTA in relation to the Leichhardt LGA.

In regard to that report Council resolved:

#### **C89/09**

- 1. That Council receive and endorse the report.*
- 2. That Council notes the revised Statement of Commitments and RTA undertakings identified in this report in relation to the proposed Victoria Road Upgrade.*

3. *That Council negotiates with the RTA in relation to the compulsory acquisition of a lease for the use and occupation of King George Park in accordance with the provisions of the Land Acquisition (Just Terms Compensation Act) 1991 and the Crown Lands Act 1989.*
  
4. *That Council writes to the RTA and Minister for Planning noting that no side street traffic modelling has been done within the Municipality to establish the impact on local residents car and public transport use. Further that this modelling is key, not as the RTA states “for identifying any measures to encourage the traffic to use the main roads”, but rather as it fails to address the significant impact issues of this project on the side street traffic and public transport, particularly the impact of buses entering from Roberts Road and therefore the Iron Cove proposal should be halted until this full review is conducted.*

The aforementioned Report is attached to this Report as Annexure C.

#### **4. Report**

##### **4.1 Project Assessment Report**

Before the Minister could make a determination on the project, the Department of Planning was required to undertake an assessment of the Victoria Road Upgrade and prepare an assessment report for the Minister. The assessment report is attached to this report as Annexure D. In assessing the project the Department considered the:

- RTA Environmental Assessment
- RTA Submissions Report
- RTA revised Statement of Commitments
- Issues raised in the submission received

In its assessment report the Department acknowledged there were *significant environmental constraints associated with the project*, in particular: traffic and transport impacts during construction, social and economic impacts including the loss of car parking, construction noise impacts and the visual amenity and urban design aspects of the project.

Despite these concerns the Department states it is of the opinion that *on balance the project is justified and in the public interest*. The Department anticipate that the RTA’s revised proposal, Statement of Commitments and the recommended conditions of approval, should ensure that the project is designed, constructed and operated to meet acceptable environmental and amenity limits.

As a result, the Department recommended that the Minister of Planning approve the Victoria Road Upgrade, subject to the recommended conditions of approval.

The Director General provided the assessment report to the Minister for Planning, Kristina Keneally in order for her to determine whether the proposal should be approved.

#### 4.2 Minister’s Approval and Conditions

On 9 April 2009 the Minister for Planning approved the Victoria Road Upgrade under Part 3A of the *Environmental and Planning Act 1979*, subject to conditions of approval. A copy of the approval and conditions is attached to this report in Annexure E.

The terms of the Minister’s approval require the RTA to carry out the project in accordance with the:

- Major Project Application
- Environmental Assessment
- Submission Report, which includes the revised Statement of Commitments (this statement sets out the commitments the RTA is prepared to make for environmental management and mitigation measures on the site).
- The conditions of the Ministers Approval

#### 4.3 Council’s Submission

The Department of Planning’s assessment report and the Ministers conditions of approval did respond to a number of the concerns Council raised in its submission made 3 December 2008. A summary table of these concerns and the responses is provided in Annexure F to this report.

The Minister’s conditions of approval have attempted to address a number of council’s concerns included in its submission, including:

Social & Economic Impact	<ul style="list-style-type: none"> <li>• RTA must consult with Council regarding the use of and minimising the impacts to King George Park during construction, including the relocation of the children playground, impacts to pedestrian and cyclist access and retention of vegetation (condition 2.30)</li> </ul>
Contamination	<ul style="list-style-type: none"> <li>• A Site Audit Statement must be prepared by an</li> </ul>

	accredited Site Auditor for the project (condition 2.38)
Noise & Vibration	<ul style="list-style-type: none"> <li>• RTA required to undertake on going noise monitoring and preparation of noise and vibration and management plan (conditions 2.11 - 2.15 &amp; 6.4)</li> </ul>
Urban Design & Visual Amenity	<ul style="list-style-type: none"> <li>• RTA required to prepare an urban design and landscaping plan (condition 6.4)</li> </ul>
Heritage	<ul style="list-style-type: none"> <li>• RTA required to prepare a Heritage Management Plan for project (conditions 2.16 - 2.23 &amp; 6.4)</li> </ul>

Council concerns and/or recommendations raised in its submission that were **not** addressed adequately in either the assessment report or the Minister conditions of approval include:

Transport	<ul style="list-style-type: none"> <li>• Inadequate justification of project</li> <li>• Inability to show how project will achieve stated objectives</li> <li>• Insufficient justification for dismissing alternate proposals</li> <li>• Inadequate analysis into impact on the local traffic network</li> <li>• Inadequate justification for rejecting the need for the development of an Integrated Transport Plan for the metropolitan area</li> </ul>
Social & Economic Impact	<ul style="list-style-type: none"> <li>• No social impact assessment regarding the loss of the use of King George Park in either the construction phase or thereafter</li> </ul>
Contamination	<ul style="list-style-type: none"> <li>• No validation report will be undertaken</li> </ul>

#### 4.4 Legal challenge to the Minister's determination

##### ***Roads Act***

Council understands that the various rowing clubs are seeking their own legal advice on whether there are grounds to successfully challenge the approval based on an argument that the new bridge will interfere with the current rowing courses.

The Roads Act (s.80) states that:

*any person may object to the proposed construction of the bridge or tunnel across navigable waters on the ground that the person would suffer special damage, as specified in the objection, if the bridge or tunnel were*



*constructed, being damage arising from the restriction of public rights of navigation of those waters.*

Accordingly, Council has no role to play in this potential challenge as it does not conduct any water based activities affected by the bridge.

### **Part 3A Environmental Planning and Assessment Act**

A bit like a challenge to the grant of development consent by Council, an objector to a Part 3A Approval can only challenge the Minister's approval where it can demonstrate to the Land and Environment Court in Class 4 that there has been an error of law in the assessment or determination of sufficient magnitude to warrant the Court declaring the Approval null and void.

While expert evidence can be relevant, Class 4 cases are based on legal arguments. While objectors may be aggrieved by an Approval because they do not agree the application is meritorious that lack of merit is not of itself enough to support a challenge.

The Class 4 jurisdiction of the Court relates to challenges based on legal issues not merit issues and the losing party usually is ordered to pay the costs of the successful party. Depending on the complexity of the challenge and the length of the hearing, costs for both parties are likely to exceed \$100,000 and may be much higher. Further, unlike Class 1 matters (applicant merit based appeals), the unsuccessful party can appeal to the Court of Appeal against the Land and Environment Court's decision.

A review of previous Part 3A challenges, indicates that few succeed (the same is true for challenges to development consent granted by a council). The Environmental Defenders Office has acted for the objector in a large number of the Part 3A challenges to date given the significant impacts on the environment or habitat associated with regional Part 3A Applications (coal mines, new subdivisions etc).

Lastly, even if an objector is successful in the Land and Environment Court and any subsequent appeal to the Court of Appeal, this does not stop the Minister from redoing the assessment and approval this time without making any legal errors.

Accordingly, Class 4 actions are rarely commenced unless there is counsel's advice that there are good prospects of success.

Unlike a merit appeal, where the applicant (or an objector to a designated development) has only 28 days of the Notice of Determination to lodge an Appeal, a Class 4 challenge to a Part 3A approval can be made anytime within 3 months of public notice of the decision (s.75X(4)).

#### **4.5 RTA Compulsorily Acquired Leases – Bridgewater & King George Parks**

As reported previously, on about 18 December 2008, the RTA served Proposed Acquisition Notices, in respect of the proposed compulsory acquisition of 30 month leases, addressed:

- to Council in respect of part of Bridgewater Park which is owned by Council, and
- to King George Park (R89316 and R100045) Reserve Trust in respect of part of King George Park. King George Park is registered in the name of the State of New South Wales but is owned by the Reserve Trust of which Council is the manager.

The Proposed Acquisition Notices advised that after at least 90 days, the RTA intended to compulsorily acquire leases for a term of 30 months.

The Notices also advised that after the compulsory acquisition of the leases by gazettal, the Valuer-General would value the compensation to be paid and this would be offered. Enclosed with the Notices were Claims for Compensation forms which the Notices advised were to be completed by Council and returned, failing which the Valuer-General would assess the compensation without being advised of Council's opinion of the value. Claims for Compensation were completed on behalf of Council for part of Bridgewater Park and for the Reserve Trust in respect of part of King George Park. For King George Park, the claim also stated that other interested parties were the State Government as registered proprietor and Council itself as manager of the reserve trust. RTA acknowledged receipt of the claims and advised that copies would be sent to the Valuer-General for assessment of the compensation to be paid for the compulsorily acquired leases.

On 17 April 2009, by notice published in the NSW Government Gazette on that day, the RTA compulsorily acquired leases for 30 months of two parts of King George Park and part of Bridgewater Park.

Council will shortly receive from the RTA an offer of compensation based on the Valuer-General's valuation. Council will then have to decide whether to accept the offer or commence proceedings in the Land and Environment Court for a higher amount.

#### **4.6 Project Website**

As required by the Ministers conditions of approval (condition 5.3) the RTA has established a dedicated website for the project, which appears to have been renamed to the 'Inner West Busway along Victoria Road'.

The website includes artist's impressions, animations, videos, fact sheets and information pertaining to construction, project documents and improvements to cyclist and pedestrian facilities.

The website can be found at: <http://www.innerwestbusway.com.au>

## **5. Summary/Conclusions**

On 9 April 2009 the Minister for Planning approved the Victoria Road Upgrade under Part 3A of the *Environmental and Planning Act 1979*, subject to conditions of approval. Whilst a number of the concerns Council raised in its submission were addressed, the project assessment failed to adequately justify the need for the project, whether the project will achieve its stated objectives, or why other alternatives were discarded.

## LEICHHARDT MUNICIPAL COUNCIL

# NOTICE OF MOTION

**DIVISION:** MOTIONS OF WHICH DUE NOTICE HAS BEEN GIVEN

**SUBJECT:** **ITEM 45 - CALL FOR FOIS ON M4EAST AND VICTORIA ROAD/IRON COVE BRIDGE DOCUMENTS**

**FILE REF:** F09/

**DATE:** 3 August 2018

**WORD PROCESSING REF:** G:\BP\Agendas\2009 Agendas\April 09\Supp Book 28 04 09 Book 3.doc

### **Moved: Cr Porteous**

While the M4 East project was shelved by the Government in 2005, it is now clear that the State Government is planning a \$9.7 billion, 14 kilometre tollway that would connect the M4 at Strathfield with the Anzac Bridge, Sydney Airport and Victoria Road at Drummoyne. This project is effectively a new three-pronged M4 East and its most likely route will be under and through the inner west city suburbs of Lilyfield, Rozelle, Drummoyne, Marrickville, Leichhardt, Annandale, Glebe and Haberfield. Furthermore it is likely that a full release of documents on the new M4 East project will reveal that the recently approved Victoria Rd/ Iron Cove Bridge project is in fact an integral part of the new three-pronged M4 East project.

The State Government has consistently demonstrated that it is not transparent in release of documents and its statements of consulting with the community and council are little but a sham. It is therefore essential that Leichhardt Council initiate its own FOIs to enable the council and the community to be fully informed on these tollway plans and the profound impact they will have on the Leichhardt Municipality.

### **Recommendation:**

That Leichhardt Council immediately commence proceedings for the release of the following documents under FOI:

- a. From 2004 to 2009 all documents, including plans, relating to the M4 East extension or any further extensions, including any extensions to Port Botany, Sydney airport or towards the CBD,

- b. From 2004 to 2009 all documents, including plans, relating to the F6 (also known as the M6) corridor, including any extensions to Port Botany, Sydney airport or towards the CBD.
- c. From 2004 to 2009 all documents, including plans and correspondence, relating to the other new road projects within the Leichhardt Local Government Area
- d. The discussion paper on the extension to the M4 East motorway prepared for public consultation by the Office of the Coordinator-General in the Department of Premier and Cabinet and any correspondence, including letters, faxes and emails, that relate to the preparation and finalisation of this discussion paper, and any document which records or refers to the production of above documents.
- e. All documents, including all correspondence, relating to the planning work being undertaken jointly by the State and Federal governments on the underground metro to Parramatta, also referred to as the North West Metro. All documents within the NW Metro planning documents that make reference to the Government's preferred route for the M4 East and the impact this has on the NW Metro. Also the November 2008 feasibility study on the NW Metro.
- f. All documents, including all correspondence, relating to the planning work being undertaken for the Victoria Rd/Iron Cove Bridge project.
- g. All documents relating to the development of an Inner West Motorway dated from 2005 to 2009.
- h. Any documents or drafts of former Premier Iemma's "Connecting Sydney's Gateways" transport document which details the extent of the Government's preferred route for the M4 East.

Finally it is moved that Councillors be immediately informed when any of these documents are obtained by Council and briefings arranged on their contents where requested.