

11.1 Proposed Road Closing - Henderson Lane, Lennox Head.DOC

11.2 Road Closing - Henderson Lane

11.2 Road Closing - Henderson Lane

Delivery Program Asset Management

Objective To determine Council's response to the proposed closing of part of the former Henderson Lane at Lennox Head.

Background

This report is presented to Council to consider closing part of the former Henderson Lane at Lennox Head. Although this section of road is no longer used by vehicles, Henderson Lane is a Council public road and Council is the roads authority to manage the road.

The road reserve is 10.06m wide at this location and is no longer used by vehicles. The surrounding road and pedestrian network does not currently use this section of road as a designated public thoroughfare, although there may be future public uses for the land.

There are six properties adjoining this section of road and any road closing would only proceed if all adjoining land owners support the proposal to close and purchase the section of closed road adjacent to their property.

Key Issues

- Closing a section of public road
- Land would vest in Council upon road closure and would be disposed of to the adjoining land owners.

Information

Council has received a request from the property owners of 37 and 40-46 Kell Mather Drive to close an unused section of Henderson Lane (the "road"). This section of road abuts the rear of these properties and the diagram (attachment one) shows the location of the proposal.

This section of Henderson Lane was in use as a rural road prior to development of the 'Lennox Meadows' Estate. This road abuts the rear of some properties in Kell Mather Drive on the eastern side and the EPIQ Estate on the western side.

The Kell Mather Drive properties abutting the road have been recently developed with residential dwellings and these properties enjoy direct access to, and some use of, the adjoining road.

Some maintenance is also undertaken by these property owners to ensure the land does not become overgrown and/or infested with pests.

There is no vehicle access proposed to any of the properties adjoining this section of road.

11.2 Road Closing - Henderson Lane

There is existing vegetation along the western side of the road and within the adjoining EPIQ Estate.

The development consent for the EPIQ development requires works within their property adjacent to this road reserve in accordance with their Littoral Rainforest Rehabilitation Plan. Although the developer is not required to undertake any rehabilitation works within the road reserve, unencumbered access to their site from the road reserve may be necessary to ensure the rehabilitation works are not hindered.

The developer is not opposed to the road closing after the completion and approval of their adjoining rehabilitation works, however is concerned a road closure at this time may hinder their works.

Council's Civil Services Group has assessed the current and potential uses of the road if retained as public road.

There are currently no proposed pedestrian links or infrastructure works to be undertaken within the road.

The road is currently not maintained to a standard for vehicle use and is overgrown in many parts.

The current road network servicing the adjoining Kell Mather Drive properties and the proposed lots in EPIQ Estate are not relying on this road for access.

The surrounding road networks will provide the access links for the adjoining properties. There is an existing sewer main within the road and an easement benefitting Council would need to be created over this sewer main if the road is closed.

Council's Strategic Planning Group has also provided advice which supports the retention of road reserves within urban growth areas. Although there may not be plans for future uses, it would be prudent to retain these road reserves to provide options which may be beneficial at a later date.

This broader public use may include access pathways, revegetation areas or environmental offsets that could offset some future maintenance burden on Council.

The closure of a section of road with numerous adjoining land owners relies upon support from all adjoining land owners who are prepared to purchase a section of closed road.

The two significant stages which require adjoining land owner support are the road closing application and, if approved, the sale of the closed road to adjoining land owners.

The sale process requires a financial commitment from the owners and the land must be transferred in a manner such that no isolated closed road parcels remain. The processing of the land transfers will require a coordinated approach as numerous financial and legal actions will be required due to the number of land owners involved.

11.2 Road Closing - Henderson Lane

Council is the roads authority for this public road and any request to close a section of Council public road must first be endorsed by Council before lodging a road closing application with Department of Industry - Lands.

The road is Council public road and upon closing, the land would vest in Council.

The road closing application requires the proponent to provide all the necessary information and to meet all costs through this process. Should the road closing proceed, a Registered Valuer will be engaged to prepare a valuation report to be used as the basis of negotiations for the final sale price for the sections of closed road.

Sustainability Considerations

- **Environment**

The road reserve has limited revegetation opportunities due to the proximity of the adjoining residential dwellings in Kell Mather Drive, however, the road is adjacent to the littoral rainforest revegetation area proposed on the EPIQ Estate. The road is currently maintained to various standards by some residents and, to a lesser extent, Council. The sale and consolidation of the land with adjoining land will remove the public commitment of resources to maintain this area and may result in enhancement of the land.

- **Social**

The road is public land and does provide public access. There is no formed walkway along this road and the future needs of this land within a growing urban area are not fully known. The benefits of retaining this land for future public use does provide the community with options should future needs be identified. Alternatively the road could be closed and consolidated with the adjoining private land and therefore would not be available for public use.

- **Economic**

The recommendations seek to support efficient land management principles. The options reflect the outcomes of retaining the land in public ownership and the inherent costs of maintenance or to close and sell the road and relieve the public cost burden.

Legal / Resource / Financial Implications

All road closing fees and costs are met by the applicant. The application processing is undertaken by Council and Crown Lands and upon closure the road would vest in the Council. There are no financial implications for Council if the road closing process is the preferred option.

The retention of the road as public land will require a future commitment from Council.

There may be financial implications and liability for Council to maintain this area through a weed/tree management program and to clean up any illegal dumping.

At present, the land is partly maintained by the adjoining residents.

11.2 Road Closing - Henderson Lane

Consultation

The road closing request has been lodged with Council as the roads authority for this section of road. The interested Kell Mather Drive residents have lodged a single request for the section of road to be closed.

The EPIQ development is not part of the request and has provided a response to the proposal as discussed previously in the report.

If Council supports the road closure, Council will undertake the necessary advertising and consultation as part of the road closing process prior to a road closing application being lodged with Crown Lands.

Options

1. That Council supports the request for a road closing application to proceed for part of the former Henderson Lane adjacent to 37, 40, 42, 44 and 46 Kell Mather Drive at Lennox Head.

The advantage of this option is to ensure the Council does not have any future liability attached to this unnecessary section of road. It also allows for the adjoining land owners to proceed with the road closing application and, if approved, consolidate the closed road with their adjoining properties. This may well be the most efficient and best use of the land and therefore be a preferred outcome for the adjoining landowners and the community.

2. That Council opposes the request for a road closing application to proceed for part of the former Henderson Lane adjacent to 37, 40, 42, 44 and 46 Kell Mather Drive at Lennox Head.

The advantage with retaining this section of public road is it remains in public ownership and it can be used for future community access or public infrastructure. There are financial implications to provide ongoing maintenance for the land should Council wish to retain this section of road.

While option one is most likely to be the preferred way to manage this land in the long term, option two is recommended, at this point in time, having regard to the previously arranged access requirements for the Epiq development and the advice from Council's Strategic and Community Facilities Group discussed in the report.

RECOMMENDATION

That Council declines the request for a road closing application to proceed for part of the former Henderson Lane adjacent to 37, 40, 42, 44 and 46 Kell Mather Drive at Lennox Head, for the reasons outlined in this report.

Attachment(s)

1. Henderson Lane Aerial Diagram

11.4 Road Closing - Henderson Lane, Lennox Head (Review)

11.4 Road Closing - Henderson Lane, Lennox Head (Review)

Delivery Program Asset Management

Objective To review Council's resolution relating to the proposed road closing of part of the former Henderson Lane at Lennox Head.

Background

A report to Council to consider closing part of the former Henderson Lane at Lennox Head was determined at the meeting on 23 March 2017 with the following resolution:

"That Council authorises the General Manager to proceed with the road closing application at a time that takes into account the EPIQ development rehabilitation plan requirements to Council's satisfaction within a reasonable time period."

This report is presented to review the resolution in relation to a 'reasonable time period'. The time period constraints imposed on the adjacent rehabilitation area on the adjoining EPIQ development refer to a minimum of four years, with the option for this period to be extended if rehabilitation works are incomplete.

This is considered to be a long period of time for a resolution to be open.

Key Issues

- Reasonable time period

Information

A copy of the report to the March meeting is attached. As per that report Council has have received a request from the property owners of 37 and 40-46 Kell Mather Drive to close an unused section of Henderson Lane (the "road").

This section of road abuts the rear of these properties and the diagram (attachment two) shows the location of the proposal.

This section of Henderson Lane was in use as a rural road prior to development of the 'Lennox Meadows' estate. This road abuts the rear of some properties in Kell Mather Drive on the eastern side and the EPIQ Estate on the western side.

There is existing vegetation along the western side of the road and within the adjoining EPIQ Estate.

The development consent for the EPIQ estate requires works within their property adjacent to this road reserve in accordance with their Littoral Rainforest Rehabilitation Plan (LRRP).

11.4 Road Closing - Henderson Lane, Lennox Head (Review)

Although the developer is not required to undertake any rehabilitation works within the road reserve, unencumbered access to their site from the road reserve may be necessary to ensure the rehabilitation works are not hindered.

The developer is not opposed to the road closing after the completion and approval of their adjoining rehabilitation works, however is concerned a road closure at this time may hinder their works.

The current development consent for EPIQ (DA 2016/238), condition 65, refers to the LRRP.

This condition requires many work practices, monitoring and performance goals to be achieved. Should these goals not be met, the time period will be extended.

In this regard, the initial time period to meet these goals is a minimum of four years.

In light of the need for access by the EPIQ developers, the Kell Mather Drive landowners have proposed an access agreement to alleviate any concerns from EPIQ regarding their ability to meet their LRRP obligations.

As with any property access agreement, it is made between, and requires the consent of, all property owners. The road is currently owned by Council, but if closed and sold to the adjoining owners, any agreement would be part of the land transfers.

To ensure the access agreement provides security for all parties, the creation of an easement on title would be considered an appropriate method to achieve this. The property owners are keen to acquire this section of road and they are looking at options for the matter to progress.

The road closing process takes a minimum of 12 months and the added complexities of multiple owners and easement agreements will result in an extended time frame and considerable more financial and human resources to resolve.

Furthermore, the creation of an easement may not solve all the issues as there is a risk of non-compliance, and the terms and conditions of an easement can create problems in the future.

The minimum four year period, or extended time period, may result in a change in land owners, land owner circumstances or Council policy and it is considered prudent to refuse the road closing request at this point in time and reconsider a new road closing request at a more appropriate time.

Sustainability Considerations

- **Environment**

The road reserve has limited revegetation opportunities due to the proximity of the adjoining residential dwellings in Kell Mather Drive, however, the road is adjacent to the littoral rainforest revegetation area proposed on the EPIQ Estate. The road is currently maintained to various standards by some residents and, to a lesser extent, Council.

11.4 Road Closing - Henderson Lane, Lennox Head (Review)

The sale and consolidation of the land with adjoining land will remove the public commitment of resources to maintain this area and may result in enhancement of the land.

- **Social**

The road is public land and does provide public access. There is no formed walkway along this road and the future needs of this land within a growing urban area are not fully known. The benefits of retaining this land for future public use does provide the community with options should future needs be identified. Alternatively the road could be closed and consolidated with the adjoining private land and therefore would not be available for public use.

- **Economic**

The recommendations seek to support efficient land management principles. The options reflect the outcomes of retaining the land in public ownership and the inherent costs of maintenance or to close and sell the road and relieve the public cost burden.

Legal / Resource / Financial Implications

All road closing fees and costs are met by the applicant. The application processing is undertaken by Council and Crown Lands and upon closure the road would vest in the Council. There are no financial implications for Council if the road closing process is the preferred option.

The retention of the road as public land will require a future commitment from Council.

There may be financial implications and liability for Council to maintain this area through a weed/tree management program and to clean up any illegal dumping.

At present, the land is partly maintained by the adjoining residents.

Dealing with this matter now will require the creation of legal agreements and easements and this will add to the complexity, cost and time to complete the land transfer.

Consultation

There has been no further consultation since the March 2017 meeting

Options

1. That the Council reviews the resolution of 23 March 2017 and opposes the request for a road closing application to proceed for part of the former Henderson Lane adjacent to 37, 40, 42, 44 & 46 Kell Mather Drive at Lennox Head.

The advantage with retaining this section of public road is it remains in public ownership and this position can be reassessed for road closure when the adjoining LRRP works are completed.

11.4 Road Closing - Henderson Lane, Lennox Head (Review)

Council also retains the option to reconsider this land for future community access or public infrastructure. There are financial implications to provide ongoing maintenance for the land should Council wish to retain this section of road.

2. That the Council supports the resolution of 23 March 2017 for a road closing application to proceed for part of the former Henderson Lane adjacent to 37, 40, 42, 44 & 46 Kell Mather Drive at Lennox Head as per the resolution of 23 March 2017.

The advantage of this option is it meets the preferences of the adjacent residences and it does remove future liability attached to this road for Council.

It also allows for the adjoining land owners to proceed with the road closing application and, if approved, consolidate the closed road with their adjoining properties.

The period of four years is considered to long for a Council resolution to be open and not implemented. As per the information in this report, during that time it is possible land ownership and interests may change, and the work required to create easements is not justified and carries some risk for Council.

On this basis it is recommended Council revisit this issue once the rehabilitation works have been addressed and access via this road reserve is no longer required.

RECOMMENDATION

That in relation to Council resolution 230317/6 and in light of the information in the above report advising the resolution cannot be commenced for a minimum period of four years, Council now refuses the request for a road closing application to proceed for part of the former Henderson Lane adjacent to 37, 40, 42, 44 & 46 Kell Mather Drive at Lennox Head until such time as the Littoral Rainforest Restoration Plan works have been completed to the satisfaction of Council.

Attachment(s)

1. Report to 23 March 2017 Ordinary Council meeting
2. Henderson Lane Locality Plan

11.1 Proposed Road Closing - Henderson Lane, Lennox Head.DOC

