

## 13.4 Notice of Motion - Road Closing Application.DOC

### 11.1 Road Closing - Section of Unconstructed Road

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**Delivery Program**     Asset Management

**Objective**             To confirm Council's position on the proposed road closing of a section of unconstructed public road adjacent to 5 and 7 Cunningham Street and 13 and 21 Riverside Drive, West Ballina

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#### **Background**

At the Ordinary meeting held 25 June 2009, Council resolved to support a road closing for a section of unconstructed public road adjacent to 5 and 7 Cunningham Street and 13 and 21 Riverside Drive, West Ballina.

In response to this resolution, the road closing application was submitted to the office of Crown Lands and subsequently approved for closure on 28 May 2012. As the road is unformed, upon closure the land will vest in the Crown (not Council) in accordance with section 38(2)(b) of the Roads Act 1993.

Although the unformed road has been approved for closing, it has not been gazetted as a closed road by the Crown and currently remains as Council public road. For road that is to be vested in the Crown, the subsequent sale and gazettal of the land is to be done concurrently.

Crown Lands advises the land is being prepared for sale as a two lot subdivision.

The NSW Department of Industry – Crown Lands is now preparing to dispose of this land and has requested confirmation from Council, as the current land owner, that Council still supports the road closing. As there is a significant time lapse since the original decision of Council, the purpose of this report is for Council to consider the confirmation request. A site map is attached.

#### **Key Issues**

- The potential closure an unformed Council public road
- Impact on neighbourhood
- Loss of public land

#### **Information**

The road reserve is between Lot 71, DP 246452, No. 5 Cunningham Street, Lot 73, DP 246453, No. 7 Cunningham Street, Lot 81, DP 31154, No. 13 Riverside Drive and Lot 80, DP 31154, No. 21 Riverside Drive, West Ballina (refer to the attachment).

This section of road reserve was dedicated as public road to Council in 1974 as part of the surrounding subdivision. A road was never constructed within this road reserve and is not required to form part of our road network. The land is currently vacant, has no public recreation facilities and is maintained by Council's Open Spaces and Reserves.

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The road closing proposal was submitted by Council with some expectation that the closed road would vest in Council and its disposal or use would be managed by Council. During the road closing process, it became apparent that as the road was never constructed, the road would vest in the Crown upon closing in accordance with the provisions of the Roads Act 1993.

The current land owners of the four adjoining properties were not the land owners when this matter was previously presented to Council in 2009. These adjoining properties have traditional sealed road frontages to Cunningham Street or Riverside Drive, however, they utilise the unformed road for recreational use and occasional vehicle access to the rear of their yards. Council has not approved any formal vehicle access to the rear of these properties from the unformed road.

The road proposed to be closed will not affect any formal public access or functioning of Riverside Drive or Cunningham Street. The land does provide an open space access between the adjoining streets and is utilized by nearby residents for casual recreation purposes.

The unformed road is not required by Council for road improvements or considered necessary for future strategic road use. Council has stormwater and sewer pipes in this land and easements would be required over this infrastructure should the land be sold.

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. This was approved by Council in 2009 and the matter is now about to be finalised.

Council has the opportunity to reassess its position on the matter, however the reasons for considering the closing of this section of road have not changed.

If the road is closed it will vest in the Crown. If the land is disposed of, it could be potentially developed as a single parcel, potentially subdivided into freehold lots to be developed individually or consolidated with the adjoining properties, should the adjoining landowners be successful in the public competitive sale process with Crown Lands. The current intention of Crown Lands is to subdivide the land into two lots for sale.

**Sustainability Considerations**

- **Environment**  
The road closing and subsequent subdivision will provide lots for new development or land able to be consolidated with the adjoining properties. Vacant residential land in this locality is in demand and the development of this site would be considered a suitable use of the land.
- **Social**  
The road is public land and currently provides an informal open space area for recreation and access between existing streets. There are currently no plans to embellish this area as a formal open space recreation area.

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There is a level of enjoyment and use by the adjoining landowners as they have an open space area adjacent to their properties. There are no formal approved accesses from this unformed road to the adjoining properties.

- **Economic**

The recommendation seeks to support efficient land management principles with the unformed road to be closed and developed, subdivided or consolidated with the adjoining land.

The section of road is currently grassed and the maintenance is primarily done by Council with some contribution by the adjoining residents.

#### **Legal / Resource / Financial Implications**

The road is not identified by Council for current or future road projects. The maintenance of the road reserve (eg: mowing) is currently met by Council and arguably this service provides direct benefits for the adjoining landholders, however there is limited benefits to the broader public. The costs associated with the road closing have been covered by Council, as the applicant. Upon closure of the road, the land would vest in the Crown along with any proceeds from the sale of the road.

#### **Consultation**

During the road closing process undertaken by Crown Lands, the previous adjoining land owners were notified by mail and the road closing was advertised in the Northern Star newspaper on 8 June 2011. No submissions were received.

The adjoining landowners have not been consulted during the preparation of this report, however a copy has been provided to them.

#### **Options**

1. That Council confirms support for the road closing and sale of this section of unformed road by the Crown via a public competitive sale process.

The advantage of this option is it ensures the Council does not have any future liability or maintenance attached to this unformed section of road which does not provide a broad public benefit.

2. That Council withdraws support for the road to be closed and sold.

The land would remain as unformed public road and require ongoing maintenance by Council.

3. A third option would be to write to the residents of Cunningham Street and Riverside Drive to assess if there is any objection to the proposal, albeit it is noted in the above report previously there were no submissions received in response to the advertising of the road closing.

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The recommendation below follows the previous resolution of Council which is option one above.

**RECOMMENDATION**

That Council reconfirms its support for the proposed road closing of the unformed public road adjacent to 5 and 7 Cunningham Street and 13 and 21 Riverside Drive, West Ballina and advises the Crown to proceed with the road closing.

**Attachment(s)**

1. Aerial Photo of Road Reserve

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**Proposed Road Closing  
Cunningham Street & Riverside Drive**

**ballina shire council**  
geographical information system  
Projection: GDA94 / MGA zone 56  
Date: 30/11/2017

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