

11.3 Road Maintenance on Deadmans Creek Road.DOC

11.3 Road Maintenance Works on Private Land

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Delivery Program Engineering Works

Objective To consider Council's obligations when undertaking road maintenance works on private land.

Background

A review of maintenance works by Council on several private carriageways has raised concerns that Council may not be fulfilling its obligations under Section 67 of the Local Government Act (LGA, the Act).

The following report is intended to inform Council of its obligations under the Act when road maintenance work is carried out on private land.

Road maintenance works on private land are commonly associated with the provision of a waste collection service. Where waste collection vehicles are travelling along a private road, Council must ensure the road is maintained to a suitable standard and that vehicles can manoeuvre safely. Council has traditionally carried out any necessary maintenance on a fee-free basis.

While the focus of this report is on road maintenance works associated with waste collection services; the same considerations could apply to other kinds of work carried out on private land, such as those referred to in the Act.

By way of background, at the last meeting of Council, a Notice of Motion was debated regarding the level of road maintenance services to be delivered for Whytes Lane West. Mr Pickford, the resident who made representations to Council regarding this issue included in his submission concerns that Council was maintaining a private access adjacent to a public road (Whytes Lane West) while declining the request to maintain the public road. The staff comment in response noted that this is a matter staff would review regardless of the determination of Council in respect of Whytes Lane West.

Key Issues

- Equity
- Compliance with legal obligations
- Fees and charges for Council works on private land

Information

LGA Section 67 Private Works states that:

(1) A council may, by agreement with the owner or occupier of any private land, carry out on the land any kind of work that may lawfully be carried out on the land.

Note. Examples of the kind of work that a council might carry out under this section include:

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- *paving and roadmaking*
- *kerbing and guttering*
- *fencing and ditching*
- *tree planting and tree maintenance*
- *demolition and excavation*
- *land clearing and tree felling*
- *water, sewerage and drainage connections*
- *gas and electricity connections.*

(2) *A council must not carry out work under this section unless:*

(a) *it proposes to charge an approved fee for carrying out the work as determined by the council in accordance with Division 2 of Part 10 of Chapter 15 [i.e. LGA Sections 610A and 610B], or*

(b) *if it proposes to charge an amount less than the approved fee, the decision to carry out the work is made, and the proposed fee to be charged is determined, by resolution of the council at an open meeting before the work is carried out.*

(3) *A council must include details or a summary of any resolutions made under this section and of work carried out under subsection (2) (b) in its next annual report.*

(4) *A report of work to which subsection (2) (b) applies must be given to the next meeting of the council after the work is carried out specifying:*

- *the person for whom the work was carried out*
- *the nature of the work*
- *the type and quantity of materials used*
- *the charge made for those materials*
- *the total of the number of hours taken by each person who carried out the work*
- *the total amount charged for carrying out the work (including the charge made for materials)*
- *the reason for carrying out the work.*

Council has in the past extended its waste bin pick-up routes over private land, either for reasons of safety and/or for practical reasons. In such cases, Council has then maintained the road to a standard suitable for use by waste collection vehicles. There are reasons why Council might choose to extend this service across private land, for example:

- *to improve maneuverability and provide a safe turn-round point for waste collection vehicles.*
- *where multiple residences are serviced by a private road at considerable distances from the adjoining public road.*

The following case studies illustrate some of the issues associated with Council providing a waste collection service along a private road:

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- Coolgardie Road

Council waste collection vehicles currently enter a private easement at the end of Coolgardie Road in order to empty bins from up to six properties and also to access a turning circle further along on private land.

Council has maintained this private easement since the service was first extended along the easement (reportedly 10-20 years ago).

In March 2016 Council staff investigated complaints that bins were being permanently left in the private easement and were not being returned to the owners' properties. It is understood that a neighbourhood dispute on this issue has been ongoing.

Staff inspected the waste collection route on 4 April 2017 and formed the view that it made good practical sense to continue this service along the private easement. Otherwise, the collection service would need to terminate at the end of Council's public road boundary at considerable inconvenience to residences. Furthermore, the turning circle at this point is inadequate, and to construct a new one to a suitable standard would likely involve the removal of mature trees and acquisition of land.

On the other hand, if Council decided to terminate the service at the end of the public road, it would no longer incur the recurrent cost of maintaining the private easement. Alternatively, Council could enter a cost sharing agreement, or require the residents to maintain the road to the required standard if they prefer the service to be extended beyond the public road.

- Deadmans Creek Road

Council maintains Deadmans Creek Road including a 0.5 km gravel section servicing two properties beyond the end of the sealed section of the road. Council maintains the gravel road so that waste collection vehicles can pick up bins at these two properties rather than have residents deliver their bins to the end of the sealed road.

Staff inspected the waste collection route on 4 April 2017 and formed the view that Council is maintaining a considerable length (0.5 km) of gravel road in order to provide waste collection to only two properties. It was noted that a suitable turning circle is available at the end of the sealed section of Deadmans Creek Road.

The private land is burdened by an unformed public road reserve. However, the gravel road lies well outside the public road reserve in places. Where this occurs, Council is in effect maintaining the road on private land.

It is noted that the gravel road is identified as a 'right of carriageway 20 m wide & variable' on DP 771794. However, the right of carriageway does not benefit Council.

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- Whytes Lane (West)

Council maintains an approximate 870 m section of unsealed road along Whytes Lane (West). This comprises approximately 720 m of public road reserve and a 150 m section along a right of way across private land to bin pick-up point for a number of residences. Both these sections of road are maintained to facilitate a waste collection service and this arrangement has likely been in place since the introduction of rural waste services at least some twenty years ago.

Staff inspected the waste collection route on 4 April 2017 and formed the view that it made good practical sense to continue this service along the private road in order that waste collection vehicles can access a more favourable turn-round point.

It is noted that Council resolved at its February 2017 Ordinary Meeting to “include Whytes Lane (West) onto its register of roads to be maintained under the Road Maintenance and Renewal Policy, because of the number of properties this road services (five)”.

During the aforesaid site inspection staff could only identify one property likely to benefit from maintenance of the additional stretch of road referred to in the Council Resolution. It is possible that the other four properties referred to in the resolution are in fact already being serviced along the existing maintained private road. This situation is illustrated in the attached aerial photograph sourced from Mr Pickford’s deputation to the Council meeting.

In light of this information, the Council may like to consider terminating its maintenance of the private access in lieu of its decision to maintain Whytes Lane West. Alternatively, the Council could revisit its decision to maintain Whytes Lane West, subject to complying with Section 67. It is an option to maintain both the public road and the access.

In all of the above cases, the decision to provide a waste collection service across private land is historic and appears to have been determined on a case-by-case basis, rather than on application of any prescribed criteria. Indeed, it may be difficult to establish criteria that would deliver a desirable degree of equity. Furthermore, the instances of road maintenance on private land are few hence may not warrant the need for such criteria.

It would appear then that Council has yet to exercise its obligations under *LGA Section 67* in relation to the road maintenance works on private land along Coolgardie Road, Deadmans Creek Road and Whytes Lane (West).

Essentially, this means that Council needs to determine a fee for the road maintenance works on private land arising from the need to maintain the road to a standard suitable for waste collection vehicles.

It is noted that Council already levies an annual charge for properties that receive a domestic waste management service pursuant to *LGA Section 496*. However, this charge does not make provision for any consequential road maintenance works on private land. Fees for the latter must be determined pursuant to *LGA Section 610B* which states:

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- (1) *A council may determine a fee to which this Division applies only in accordance with a pricing methodology adopted by the council in its operational plan...*
- (2) *However, a council may at any time determine a fee otherwise than in accordance with a pricing methodology adopted by the council in its operational plan, but only if the determination is made by a resolution at an open meeting of the council.*

This suggests that Council must either adopt a fee for road maintenance works on private land as part of its operational plan or otherwise determine a fee (if any) on a case-by-case basis through a resolution of Council.

Sustainability Considerations

- **Environment**

Council provides a rural waste collection service which occasionally, for safety reasons or because it makes good practical sense, involves waste vehicles travelling along private roads.

- **Social**

Council has a Road Maintenance and Renewal Policy which establishes the framework for implementing consistent and equitable road management processes throughout Ballina Shire Council.

Roads vary in their construction and the environment in which they are required to function. Competing demands for resources across a full range of Council services means that the resources available to undertake new construction work and maintenance activities may not always meet community expectations. Council has adopted a strategic approach to road management that delivers the highest level of service within budget constraints.

- **Economic**

A council must not carry out work on private land pursuant to *LGA Section 67* unless:

- it proposes to charge an approved fee for carrying out the work as determined by the Council pursuant to 610A and 610B] of the Act, or
- it proposes to charge an amount less than the approved fee, the decision to carry out the work is made, and the proposed fee to be charged is determined, by resolution of the council at an open meeting before the work is carried out.

Legal / Resource / Financial Implications

This report highlights instances where road maintenance works, aimed at facilitating a waste collection service, have occurred on private land without regard to the provisions in *LGA Section 67*.

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When evaluating the need for a waste collection service involving the use of private land, Council must consider the costs associated with any road maintenance works required to facilitate that service.

A “one solution fits all” approach to determining a fee for such works is unlikely when considering the cost-benefits of each situation. Council could, for example, be benefiting from the use of private land by avoiding the need for capital works on public land that would otherwise be needed, such as for the construction of a vehicle turn-round point.

Consultation

Not applicable.

Options

1. Council shall not provide waste collection services on private land.

Council is not obligated to provide a waste collection service on private land. In the examples discussed above it is feasible to simply terminate the service at the end of a public road reserve, thereby requiring residents to place their bins at that location. Council would then avoid the need to carry out road maintenance work on private land, although this could result in the other works, such as the need to provide a suitable turn-round area for waste collection vehicles on the adjoining public road, as is the case with Coolgardie Road.

2. Council shall undertake a cost-benefit analysis where road maintenance is required on private land, and that the net cost shall be levied against the private landowner(s) on whose land the works are undertaken, or on the residences benefiting from the works.

This would result in a fee being charged on a case-by-case basis that might reasonably reflect the actual cost of maintaining the road to a standard suitable for a waste collection service.

3. Council could develop a pricing methodology and fee structure as part of its operational plan to cover the cost of road maintenance works on private land pursuant to *LGA Section 67*.

Such a fee could be relatively easy to administer but would not necessarily reflect the actual cost associated with each case, although this would depend somewhat on the adopted pricing methodology. As we are currently only aware of three issues, although there may be more, option two is preferred over option three as it is not difficult to administer an actual cost charge to each location and this is considered to be the most equitable outcome.

4. Continue to maintain the private access at Council's expense.

If this is the preferred direction, Council will need to pass a resolution to ensure the works are compliant with section 67. For the purposes of s67 (2)(b), the approved fee would be the actual costs of the work, and the amount of the fee reduced is the whole amount and these costs would need to be reported in Council's annual report.

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The Council is not obligated to provide a waste collection service beyond the public road boundary.

In circumstances where it is preferred for logistical and safety reasons for our waste collection vehicles to use a private accessway, it is reasonable for the owners of the private access way to maintain the road for that purpose (and their other purposes).

That is, these historical arrangements are not considered appropriate now and option two is recommended.

It is always difficult for a Council to withdraw a service, and if the recommendation is supported Council, could provide a twelve month notice period of its intention to enable residents to plan for the change.

Under this option the residents would be able to elect to either transport their bins to the public road for service, or maintain the access way and establish an agreement for Council to use it for the purposes of collecting their waste service.

The recommendation enables a further report to be prepared to Council if there is a need to review the circumstances for each location following feedback from residents at each location.

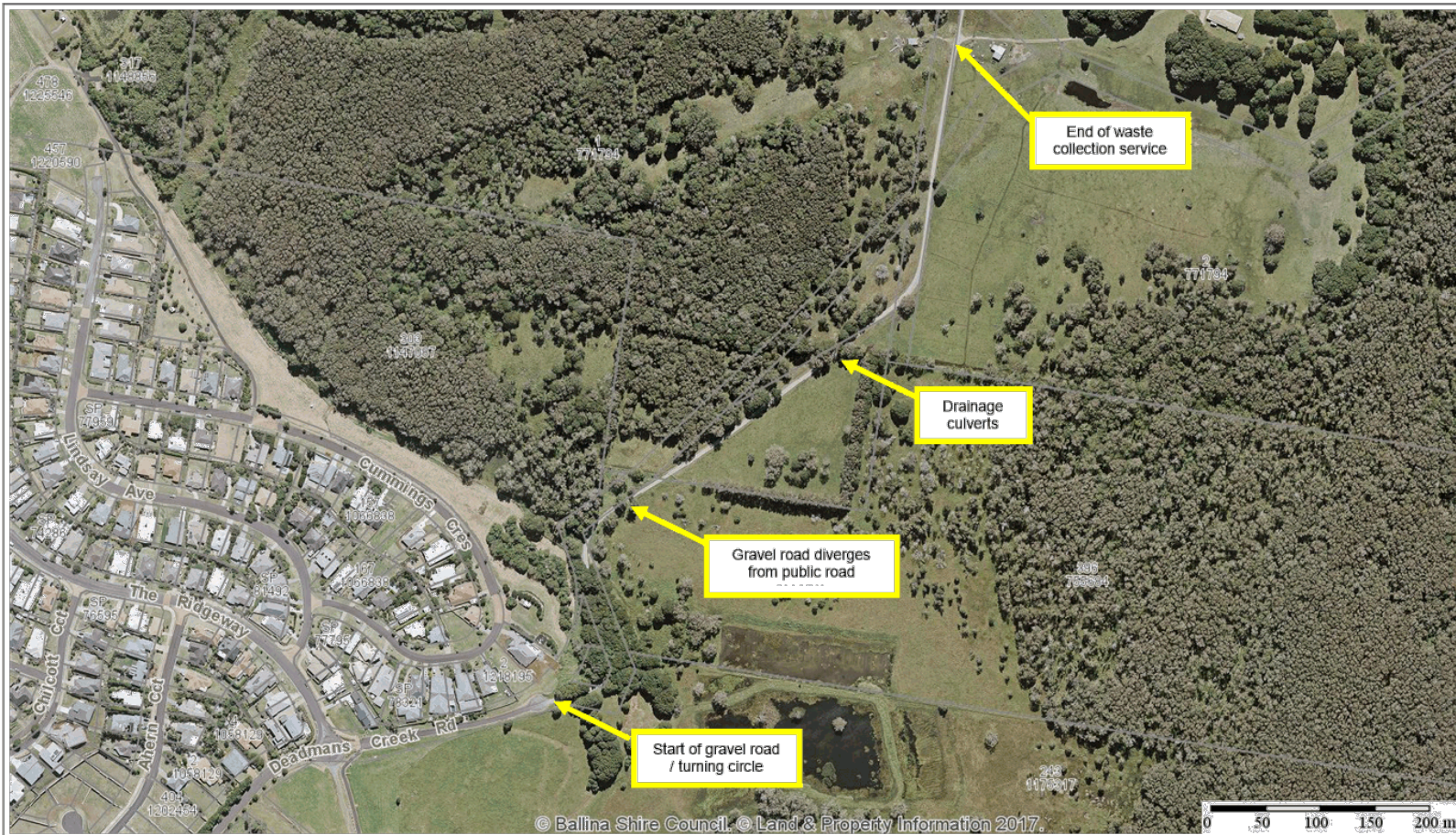
RECOMMENDATIONS

1. That Council notes the history of providing road maintenance services on private land at Coolgardie, Whytes Lane West and Deadmans' Creek Road as outlined in this report.
2. That based on the contents of this report Council confirms that it now considers these arrangements to be an inappropriate use of public monies as they provide a direct benefit to private persons beyond the level of waste collection service provided by Council for all other residents.
3. That Council confirms it will terminate its road maintenance service on private land at Coolgardie, Whytes Lane West and Deadmans' Creek Road, and any other locations that are identified in the future, with a twelve month notice period to residents. Affected residents may elect to receive their waste collection service at a suitable location on a public road, or enter an agreement authorising Council to use the private access, maintained at the owner's expense, for the purpose of providing the waste service.

Attachment(s)

1. Deputation to 23 February Council Meeting

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