

## **11.1 Proposed Road Closing - Henderson Lane, Lennox Head**

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### **11.1 Proposed Road Closing - Henderson Lane, Lennox Head**

**Delivery Program**      Asset Management

**Objective**              To revisit Council decision in relation to a proposed road closing of part of the former Henderson Lane at Lennox Head.

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#### **Background**

A report to Council to consider closing part of the former Henderson Lane at Lennox Head was considered at the meeting on 23 March 2017 and in response Council resolved the following:

*“That Council authorizes 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.”*

As it was not possible to implement this resolution in a reasonable time frame, a further report was determined at the meeting on 27 April 2017 resulting in a further resolution which is reproduced below:

*“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.”*

The adjoining residents have now proposed an alternative arrangement to facilitate the road closing. This report is presented to review the resolution refusing the request for the road closing.

#### **Key Issues**

- To review the resolution refusing the road closing application

#### **Information**

A copy of the reports to the March 2017 and April 2017 meetings are attached (see attachment one and two). As per those reports, Council 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”).

The latest request has been from the property owners of 40b, 42, 44 and 46 Kell Mather Drive.

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

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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). The location of these works is shown on attachment four.

The rehabilitation works will provide an enhanced buffer between the existing lots in Kell Mather Drive and the future lots in EPIQ. The rehabilitated area is located in the rear of the future EPIQ lots. It is therefore considered these property owners would have a limited, if any, interest in the closed road beyond the rehabilitated area. However, Council should be mindful of the interests of these future owners when considering this request to close the road.

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 Littoral Rainforest Rehabilitation Plan (LRRP). This condition requires a number of work practices, monitoring and performance goals to be achieved. If these goals are not met, the time period will be extended. In this regard, the initial time period to meet these goals is a minimum of four years.

The Kell Mather Drive landowners have proposed an access agreement to alleviate any concerns from EPIQ regarding their ability to meet the 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.

Through consultation, the residents and the developer have agreed that a deed can be prepared which provides the necessary ongoing access to the site.

This 'Deed of Agreement' is to be legally binding with each property owner, and subsequent owners if properties are sold, to ensure access is available for the developer to meet the requirements of the LRRP.

All the relevant land owners and the developer have provided support for this process.

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To ensure the 'Deed of Agreement' for access provides security for all parties, the creation of an easement on title for the sections of closed road would be considered an appropriate method to ensure the agreement is legally binding on all the affected properties.

The property owners are keen to acquire this section of road and, with support of the EPIQ developer, consider this process will assist in progressing this matter.

This type of arrangement was canvassed previously with Council.

The difficulty is for it to be successful, all parties will need to be satisfied and be signatories to the deed of agreement and other documentation, including cost allocations.

In the view of staff, without full agreement of all the landowners it is unreasonable for Council to allocate staff time and funds to facilitate the preparation of the deed of agreement in light of the risk that the process may not proceed to completion.

As well as each party being satisfied with the documentation, it will be necessary for all parties to be satisfied with the land valuation and transfer costs.

However, if the landowners are prepared to assume that risk and effort, in light of Council's first resolution regarding this matter, this report has been prepared to enable Council to consider indicating its support for such a process to proceed.

### **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**

The landowners have engaged with the developer and agreed a 'Deed of Agreement' is acceptable to enable the necessary access required by the developer to ensure the rehabilitation requirements of the LRRP are met.

If the road closing is to proceed, it will be necessary for the landowners to complete the necessary documentation at their expense.

### **Consultation**

There has been further consultation since the April 2017 meeting. The land owners have engaged with the developer and agreed a 'Deed of Agreement' is acceptable to enable the necessary access required by the developer to ensure the rehabilitation requirements of the LRRP are met.

### **Options**

1. That Council reviews the resolution of 27 April 2017 and supports 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 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 their preference for the road closing application and, if approved, consolidate the closed road with their adjoining properties.

2. That Council maintains its current position, being the resolution of 27 April 2017 to oppose the road closing application for part of the former Henderson Lane adjacent to 37, 40, 42, 44 & 46 Kell Mather Drive at Lennox Head.

Option two enables Council to retain the option to retain this land for future community access, environmental management or public infrastructure, albeit there are no immediate needs identified.

Option two also means no road closing will occur before the new owners in the Epiq estate are established and able to comment on the proposal, although as noted in the report, it is arguable their interest may not be strong.

There are some financial implications to provide ongoing maintenance for the land should Council wish to retain this section of road.

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The recommendation below follows Council's initial preference to support the request from residents, subject to the Council not meeting any of the legal and other costs associated with managing the development execution of a deed of agreement, easement registration and any other documentation.

### **RECOMMENDATIONS**

1. That Council re-establishes its support in response to 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, subject to the execution of a 'Deed of Agreement', and any other documentation or property title registration processes, occurring between all relevant land owners prior to the road closing application being lodged by Council with Crown Lands.
2. That the Council authorises the Council seal to be attached to the road closing application, associated documents and land dealings to finalise the road closing.

### **Attachment(s)**

1. Copy of Council Report from 23 March 2017
2. Copy of Council Report from 27 April 2017
3. Locality Plan - Henderson Lane
4. Location Plan of Rehabilitation Area

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

### 11.2 Road Closing - Henderson Lane

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#### 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.

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#### **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**

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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 benefiting 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**

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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

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**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

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

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

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#### 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.

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#### **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)

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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)**

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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)**

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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**

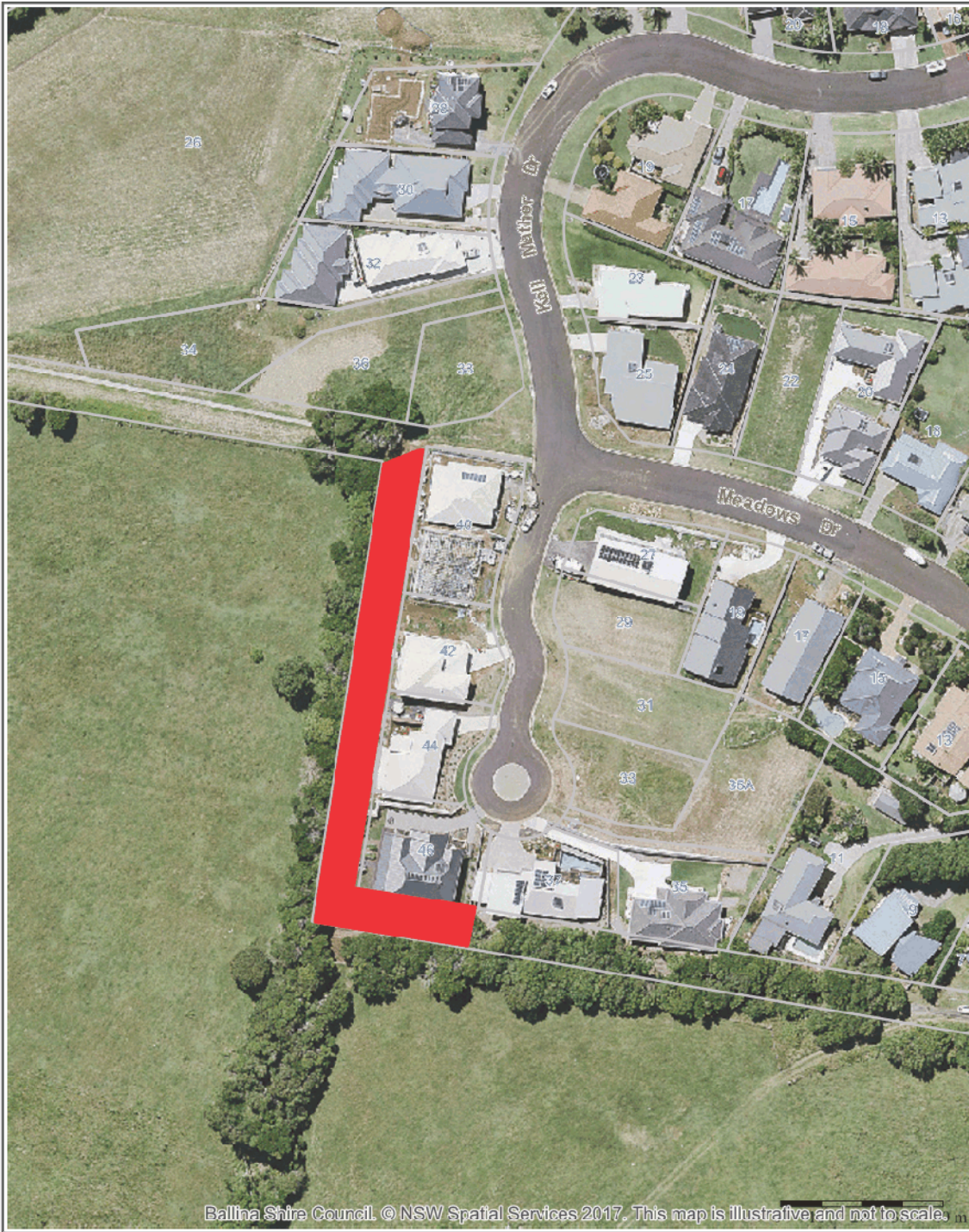
That in relation to Council resolution 230317/6 and in light of the information in the above report advising the resolution cannot be commenced for a minimum period of four years, Council now refuses the request for a road closing application to proceed for part of the former Henderson Lane adjacent 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



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**Proposed Road Closing of part of former  
Henderson Lane  
Rear of 40B, 42, 44 & 46 Kell Mather Drive,  
Lennox Head**

**ballina shire council**  
geographical information system

Projections GDA94 / MGR zone 56  
Date: 14/08/2017

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



Date: 9/10/16  
 Drawn: STM

Client: EPIQ  
 Job No. 14361

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Project: PLAN SHOWING LOCATION OF TREES PROPOSED SUBDIVISION AT HENDERSON LANE LENNOX HEAD