

11.5 Road Closing - Public Road in Henderson Lane, Lennox Head

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Delivery Program Asset Management

Objective To determine the proposed closing of a section of public road, Henderson Lane, Lennox Head.

Background

Previous reports to Council to consider closing part of the former Henderson Lane (the 'lane') at Lennox Head have been presented at the meetings of 24 August 2017, 27 April 2017 and 23 March 2017. The resolutions supported the road closing with the latest as follows:

"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."

Adjoining landowners and public authorities were advised of the proposal in January 2018. One adjoining landowner, EPIQ Estate developer, objected to the road closing proposal. Subsequently, the 'Deed of Agreement' was unable to be finalised in the months following the Council meeting of 24 August 2017. The result was the road closing application was unable to be finalised and lodged with Crown Lands.

While the deed of agreement was not able to proceed, a number of residents remain interested in achieving the road closure. However, with new subdivision lots in EPIQ Estate adjoining the road proposed to be closed, there is now a group of new landowners with an interest in this proposal, and as per below legislative changes also now impact the process to reconsider the proposal.

Changes to the Roads Act 1993 (the "Act") from 1 July 2018, amended the procedure for closing Council public roads. Previously, in order to close a Council public road, Council was required to make an application to the Minister for approval to close the road, whereas the new provisions under the Act permits Council to close Council owned public roads.

As the road closing was not completed prior to 1 July 2018, the proposed road closing was re-advertised to be in accordance with the new legislation required.

A location diagram is included as Attachment 1. The previous Council reports are included as Attachment 2. The submissions received form part of this report when considering the road closing proposal and are included as Attachment 3.

This report provides Council with a new opportunity to consider the proposal in light of the changes described above.

11.5 Road Closing - Public Road in Henderson Lane, Lennox Head

Key Issues

- Closing a section of Council public road
- If closed, the land will vest in Council and can be disposed of to the adjoining land owners.

Information

As discussed in previous Council reports, the Kell Mather Drive land owners abutting the section of road proposed to be closed have initiated this proposal. These property owners have been maintaining this road area as the road is unformed as a public road.

There are existing mature rainforest trees along the western side of the lane and within the adjoining land (Seaswell Crescent lots). It is the land adjoining the western side of the road that contains the rainforest regeneration area, as shown shaded green in the Diagram 1 below.



Diagram 1 – Subdivision Plan

The Seaswell Crescent properties on the western side of the lane are subject to a restriction on use relating to the regeneration area.

Diagram 2 shows the revegetation works have commenced on these properties.

When this matter was previously reported to Council, under their consent conditions, the developer was responsible for rehabilitation works and as such they were concerned about maintaining unimpeded, legal access to ensure they were able to meet their approval requirements.

11.5 Road Closing - Public Road in Henderson Lane, Lennox Head



Diagram 2 - Littoral Rainforest Regeneration area Seaswell Crescent properties
(Western side of former Henderson Lane)

There is no planned access pathway proposed along this section of Henderson Lane. Therefore the closing and disposal of the road will remove the land maintenance obligation for Council.

If Council closes the road, adjoining land owners are able to purchase the land adjacent to their property. The final configuration of how the land would be disposed of will depend upon which landowners wish to purchase a section of closed road adjoining their existing property.

The disposal of the closed road can only occur whereby all parts of the closed road area can be sold to adjoining land owners. The situation of an isolated section of land (e.g. closed road) remaining would not be acceptable.

There is an existing Council sewer main located within Henderson Lane.

If the road is closed, an 'easement for drainage of sewage' is required over the existing sewer main currently located in Henderson Lane. This easement would be created in conjunction with the plan prepared to identify the road to be closed.

Discussion of Submissions

The road closing proposal was advertised in the Ballina Shire Advocate on 26 September 2018 along with letters to adjoining landowners and notifiable authorities.

Summary of Submissions	
No objection to the proposal	14
Objection to the proposal	2
Total number of submissions	16

The 'no objection' (or support) submissions are from the adjacent landowners in Kell Mather Drive (who instigated the road closing proposal), one land owner from Seaswell Crescent and the notifiable authorities.

11.5 Road Closing - Public Road in Henderson Lane, Lennox Head

There are six properties in Seaswell Crescent (EPIQ Estate) which adjoin the western side of the road.

There were three submissions from this group of land owners which included two objections and one 'no objection' (this submission raised other general concerns).

Submissions *supporting* the road closing are discussed below:

1. Maintenance of Existing Road Reserve

The adjoining Kell Mather Drive property owners currently maintain the section of Henderson Lane road reserve from their boundary up to the trees along the western side of the road. The existing trees are located on both the lane and the adjoining land.



Diagram 3 - Looking west from former Henderson Lane at existing trees along the edge of the lane and the revegetation area on the adjoining land

2. Future Consolidation of the Closed Road into Adjoining Property

The closure of the road would provide land which can be consolidated with the adjacent Kell Mather Drive properties.

This would enhance these properties with increased area and also provide a better use for the lane.

3. Littoral Rainforest Regeneration Area

The regeneration area is located within the Seaswell Crescent properties in the EPIQ Estate. The regenerated area, as well as the existing trees, will form a significant buffer between the new homes and the lane. The intention of the regeneration area is to enhance the littoral rainforest remnant. The restriction on use of the land is to protect this regeneration area and to limit access or activities within the regeneration area. It is suggested that any access path constructed through the regeneration area is contrary to the intention of protecting and enhancing the area.

11.5 Road Closing - Public Road in Henderson Lane, Lennox Head

4. Public Access Along the Lane

The closing and disposal of the road would end public access rights along the lane. This would enable the area of lane maintained by the Kell Mather Drive residents to be suitably fenced and enhanced.

There are existing pathway and road networks that provide other suitable pedestrian routes in this locality.

Submissions objecting to or raising concerns about the road closing are discussed below:

1. Pedestrian Access to Henderson Lane

Henderson Lane is a public road along the rear of the Seaswell Crescent properties.

Public access to the lane from these properties would be lost if the road is closed and the land sold to adjoining land owners.

Access from Henderson Lane to the Seaswell Crescent properties can only be for pedestrian use due to the rainforest area (see item 2 below).

It is considered the use of Henderson Lane for access would be limited and possibly only utilised by a few landowners.

For example, any Seaswell Crescent properties with enclosed yards outside the regeneration area or with retaining walls in their properties may have limited ability to use the rear lane access.

2. Littoral Rainforest Regeneration Area Adjoining the Lane

Seaswell Crescent properties have road access to that street and the loss of a second (or rear) pedestrian access to their lots needs to be considered. There are existing limitations on access from Henderson Lane due to the existing vegetation and restriction on use of land relating to the regeneration area that affects the rear of these lots.

These properties on Seaswell Crescent are affected by a 10m wide restriction on use over the rear (or eastern) section of their land that fronts the road (area shaded green in Diagram 1).

This restriction on use is to ensure the remnant littoral rainforest and regeneration area is protected and maintained.

The terms of the restriction, amongst other things, states "*No building or structure inclusive of fencing is allowed to be constructed within the area of the subject restriction*".

As no side fencing is permitted through the area covered by the restriction, land owners in Seaswell Crescent would need to construct their rear fence on the western side of the restriction area should they wish to have an enclosed yard.

11.5 Road Closing - Public Road in Henderson Lane, Lennox Head

Should the lane be closed and sold to others, they could be liable for joint fencing costs along their rear boundary (the eastern side of the restriction area and their common boundary) should their adjoining rear neighbour insist.

This could be addressed by a condition of sale clause stating that each land owner who purchases a section of the closed road will be responsible for any required fencing, however awareness and maintaining this arrangement in the future (post the sale) are likely to be difficult.

The restriction on use does not specifically prevent pedestrian access within or through the designated regeneration area.

The regeneration area is not a physical barrier and access within the area is required to enable regeneration works. It does however prevent the construction of any structure, including a pathway or fencing within the area.

It is the EPIQ developer's obligation to ensure the regeneration area is enhanced and protected during regeneration works. When these regeneration works are completed there will be a significant vegetated buffer that restricts access through the area.

Sustainability Considerations

• **Environment**

The lane contains existing mature trees and is adjacent to the littoral rainforest regeneration area within the Seaswell Crescent properties. The lane has limited opportunities to be fully revegetated due to the proximity of the adjoining residential dwellings in Kell Mather Drive. The road is currently maintained by the adjoining Kell Mather Drive property owners and Council does not undertake any maintenance on this section of the lane.

The closing of the road and consolidation of the land with adjoining properties may result in the better management and 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.

If the road is closed and consolidated with the adjoining private land, it would no longer be available for public use.

• **Economic**

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 the enhancement of the land.

11.5 Road Closing - Public Road in Henderson Lane, Lennox Head

Legal / Resource / Financial Implications

All costs associated with the road closing, survey, legal and infrastructure relocations are to be met by the applicants. The application processing will be undertaken by Council. Upon closure of the road, the land would vest in Council along with any proceeds from the sale of the land.

The section of road proposed to be closed is not identified by Council for current or future road or pathway projects.

There are no financial implications for Council if the road is closed.

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 and tree management program and to clean up any illegal dumping on the land.

At present, the land is maintained by the adjoining Kell Mather Drive residents.

Consultation

This road closing request has been lodged with Council as the roads authority for this public road. This matter has been advertised in the Ballina Shire Advocate and all adjoining land owners and notifiable authorities have been notified by mail.

Options

1. Close the section of public road at Henderson Lane, Lennox Head and consolidate this land into the properties on the eastern side of the lane.

This option is consistent with the previous resolutions of Council and enables the best method for the ongoing orderly management of the land. This option avoids the ongoing maintenance and management of this section of the former Henderson Lane is a cost liability for Council.

The key advantage of this option is it supports the preference of the majority of the current owners at this location.

2. Council declines to proceed with the closing of a section of public road at Henderson Lane, Lennox Head.

Two of the submissions were concerned with removing the public access. While these submission are in the minority, the Council should be very mindful a decision to close the road does remove this fundamental right of access which was available at the time these residents purchased their properties, and these purchases are recent.

If the road was not closed, the residents who currently enjoy the use of the land by practical effect, extensions of their own property, could continue to do so. Setting aside the benefits of control and ownership, the key difference in practice between options one and two is under option two the adjoining landowners are not able to fence the maintained area that currently exists beyond their property boundary.

11.5 Road Closing - Public Road in Henderson Lane, Lennox Head

In considering maintaining the public access, it is noted that Council's tolerance of the existing use of the land by the adjoining owners does mean the access does not appear public, and certainly some members of the public may not even feel comfortable walking along the access given the direct relationship the access has to the adjoining land through the way it is maintained and managed.

Closing the road (or removing impediments) would address this issue, however it can also be argued the existing balance is reasonable in the circumstances.

This option retains the status quo.

3. Close a portion of the section of public road at Henderson Lane, Lennox Head to enable consolidation of a portion into the properties on eastern side of the lane and the retention of the western portion as public access.

The lane is approximately 10 metres wide. It is an option to close a portion of the lane, say 5 metres, of the eastern side to enable this portion to be consolidated into the adjoining properties as per the application.

The advantage of this option is that it can potentially be considered as responding to the residents proposal as it allows the fencing and enclosure of an extension to their properties, albeit not the full amount of land that has been requested. Importantly, the western side would remain in public ownership and be able to be used for public access.

A disadvantage of this option is that with fencing of the eastern side, and the buffer on the western side, it is unlikely the public access portion would be maintained as it is now by the eastern side residents and this would result in additional costs to Council for maintenance.

At the time of writing this report, it is unknown as to whether this compromise position would enjoy the support of the applicants who may feel the reduced land area is not acceptable when balanced against the cost.

Arrangements have been made to provide a copy of this report to the residents at the same time it is published to Councillors. This will provide residents an opportunity to express a view about this option to Councillors or staff prior to, or at, the Council meeting.

4. That Council resolves to close the section of public road at Henderson Lane, Lennox Head and consolidate the land into properties on both sides of the lane.

As per option one, this option removes the public access and as per option three would provide only 5 metres of land for inclusion in the eastern side properties. This option would then also provide 5 metres of land for the western side properties.

The option is presented for equity as it is important to recognize the owners on the western side are entitled to present a similar interest to the land as those on the eastern side.

11.5 Road Closing - Public Road in Henderson Lane, Lennox Head

The only difference between the two sides, setting aside the eastern side has had a longer interest, is the existence of the vegetation buffer which tends to form a type of physical and visual barrier between the western side properties and the lane. While this barrier exists, it is possible to pass through the vegetation buffer and conveniently reach the public land. It is noted that one of the submissions against the proposal, from a western side owner, indicated that if the closure was to proceed, this owner may be interested in purchasing a portion of the closed lane. Therefore for the purposes of equity, this option should also be considered.

The key disadvantage of this option is it can only practically be implemented if all landowners agreed to the costs and the land transfer, and this is considered unlikely.

Option Two is the recommended option, unless there is positive support from the applicants for Option Three.

The reason for this recommendation is that it avoids the concerns associated with the removal of an existing public right to benefit private interests, albeit in this case it is arguable the public benefit is minimal and in reality contained to only a few residents. However, typically Council only considers disposal of land or closure of a road when there is clearly and absolutely no current or likely future public use of the lane.

This option does maintain the status quo, including Council's tolerance for the ongoing use of the lane as, in effect, extensions of the private adjoining land.

As option three might be considered by all residents as a reasonable compromise, to assist Council a draft resolution for this option is provided below.

(If Option Three is supported by the applicants following the publication of this report, Option Three would become the staff recommendation).

- 1. That Council resolves to close the section of public road at Henderson Lane, Lennox Head to enable consolidation of a portion into the properties on eastern side of the lane and the retention of the western portion as public access*
- 2. That Council authorises the Council seal and signatures to be attached to road closing notices, subdivision plans and associated documents to enable the road closing and the subsequent sale of the land. A condition of sale is that any fencing required for a purchased part of the closed road will be the sole responsibility of the purchaser of the land, or any subsequent land owner, whilst ever the littoral rainforest remnant remains.*

As option one represents the current position of Council, a draft resolution for this option is also provided below.

- 1. That Council resolves to close the section of public road at Henderson Lane, Lennox Head.*
- 2. That Council authorises the Council seal and signatures to be attached to road closing notices, subdivision plans and associated documents to enable the road closing and the subsequent sale of the land. A condition of sale is that any fencing required for a purchased part of the closed road will be the*

11.5 Road Closing - Public Road in Henderson Lane, Lennox Head

sole responsibility of the purchaser of the land, or any subsequent land owner, whilst ever the littoral rainforest remnant remains.

RECOMMENDATIONS

1. That Council refuse the application to close the section of public road at Henderson Lane, Lennox Head and note the reason for this decision is to maintain public access in the future.

Attachment(s)

1. Location Plan
2. Report from 24 August 2017 (including attachments) (Under separate cover)
3. Submissions

11.3 Notice of Motion - Council Owned Henderson Land

11.5 Road Closing - Public Road in Henderson Lane, Lennox Head



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Proposed Road Closing
Part of former Henderson Lane

ballina shire council
geographical information system
Projection: GDA94 / MGA zone 55
Date: 16/JUN/2018

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11.2 Road Closing - Henderson Lane

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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

11.2 **Road Closing - Henderson Lane**



ballina shire council
geographical information system
Projection: GDA94 / MGA zone 56
Date: 2/19/2017

Proposed Road Closing of part of the former Henderson Lane (near Kell Mather Drive) Lennox Head

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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).

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.

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

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.

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.

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

- **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.

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.

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

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

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

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.

11.3 Notice of Motion - Council Owned Henderson Land

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

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.

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

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.

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

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)**



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ballina shire council
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Date: 2/19/2017

Proposed Road Closing of part of the former Henderson Lane (near Kell Mather Drive) Lennox Head

Ballina Shire Council
PO Box 450
Ballina NSW 2478
Ballina NSW 2478
02 6686 4444
Council@ballina.nsw.gov.au
www.ballina.nsw.gov.au

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11.3 Notice of Motion - Council Owned Henderson Land

11.5 Road Closing - Public Road in Henderson Lane, Lennox Head

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



11.5 Road Closing - Public Road in Henderson Lane, Lennox Head

File Ref: Henderson Lane
Reply to: Ballina Shire Council, PO Box 450, BALLINA NSW 2478
or Email: council@ballina.nsw.gov.au

Comments on Proposed Road Closure

Dear Sir/Madam

I/We wish to provide my / our opinion in relation to the proposed road closures.

I/We:

Are in favour of the road closure

OR

Object to closure of the following roads for the reasons noted below.

SIGNED: *Peter & Robyn Daniell*
If signing on behalf of a Company please add Company title (E.G., Director)
ABN/Company seal

DATE: *5/10/2018*

Contact Details:
Name: *Peter & Robyn Daniell* *40B Kell Mather Drive*
Home: *0405421896 Robyn*
Mobile: *0410697243 Peter*

PLEASE RETURN THIS PAGE TO BALLINA SHIRE COUNCIL WITHIN 28 DAYS

40 cherry street, po box 450, ballina nsw 2478
t 1300 864 444 e council@ballina.nsw.gov.au w ballina.nsw.gov.au abn 539 29 887 369

11.5 Road Closing - Public Road in Henderson Lane, Lennox Head

File Ref: Henderson Lane

Reply to: Ballina Shire Council, PO Box 450, BALLINA NSW 2478
or Email: council@ballina.nsw.gov.au

Comments on Proposed Road Closure

Dear Sir/Madam

I / We wish to provide my / our opinion in relation to the proposed road closures.

I / We:

Are in favour of the road closure

OR

Object to closure of the following roads for the reasons noted below.

SIGNED: 

If signing on behalf of a Company please add Company title (E.G., Director)

ABN/Company seal

DATE: 8/10/15

Contact Details:

Name: Peter Prince

Home: 02 66 875819

Mobile: 0412 336932

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t 1300 004 444 e council@ballina.nsw.gov.au w ballina.nsw.gov.au abn 538 28 887 369

11.5 Road Closing - Public Road in Henderson Lane, Lennox Head

David Kelly

From: Ballina Shire Council
Sent: Thursday, 18 October 2018 2:18 PM
To: Civil Secretary Mail
Subject: FW: Doc No: 18/72817 Proposed road closure Henderson's Lane

ballina.nsw.gov.au | discoverballina.com
p: 1300 864 444 | f: 02 6686 7035

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-----Original Message-----

From: Luke Russell [mailto:luke@lvr.com.au]
Sent: Thursday, 18 October 2018 12:29 PM
To: Ballina Shire Council
Subject: Doc No: 18/72817 Proposed road closure Henderson's Lane

Hi,
I'm emailing in regards to a letter that we received about the proposed road closing - part of former Henderson's Lane, Lennox Head.
I'm am in favour of the road closure but was wondering what will be done with the land once the road is closed?
Will it be sold or remain council property?
Will it be turned into a restriction on use, vegetation buffer and trees planted similar to the western side of Henderson Lane?

Regards
Luke Russell

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11.5 Road Closing - Public Road in Henderson Lane, Lennox Head

File Ref: Henderson Lane

Ballina Shire Council
PO Box 450, BALLINA NSW 2478

Comments on Proposed Road Closure

Dear Sir/Madam

I/We wish to provide my/our opinion in relation to the proposed road closures.

I/We:

Are in favour of the road closure

OR

Object to closure of the following roads for the reasons noted below.

SIGNED: *W. Wilson*

If signing on behalf of a Company please add Company title (E.G., Director)

ABN/Company seal

DATE: 15/01/18

Contact Details:

Home: _____

Mobile: 0428588944

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11.5 Road Closing - Public Road in Henderson Lane, Lennox Head

File Ref: Henderson Lane

Ballina Shire Council
PO Box 450, BALLINA NSW 2470

David Kelly
Manager Infrastructure
Planning

Comments on Proposed Road Closure

Dear Sir/Madam

I/We wish to provide my/our opinion in relation to the proposed road closures.

I/We

Are in favour of the road closure

OR

Object to closure of the following roads for the reasons noted below.

SIGNED: *Janet Lane*

If signing on behalf of a Company please add Company title (E.G., Director)

ABN/Company seal

DATE: 31/1/18

Contact Details:

Home: _____
Mobile: 0457 745098 / 0457 249302

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11.5 Road Closing - Public Road in Henderson Lane, Lennox Head

File Ref: Henderson Lane

Reply to: Ballina Shire Council, PO Box 450, BALLINA NSW 2478
or Email: council@ballina.nsw.gov.au

Comments on Proposed Road Closure

Dear Sir/Madam

I / We wish to provide my / our opinion in relation to the proposed road closure.

I / We:

Are in favour of the road closure

OR

Object to closure of the following roads for the reasons noted below.

We wish to keep the road open as a
quicker access to town but more importantly
our son who lives at meadows Drive is bringing
up our grand child on his own, and
we provide constant help, and she can have
easy access to us, and vic versa, via
this road.

SIGNED: Cheryl Nash

If signing on behalf of a Company please add Company title.(E.G., Director)

ABN/Company seal

DATE: 13 / 10 / 18

Contact Details:

Name: CHERYL NASH

Home: 0266878620

Mobile: 0431577724

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40 cherry street, po box 450, ballina nsw 2478
t 1300 864 444 e council@ballina.nsw.gov.au w ballina.nsw.gov.au abn 539 29 687 369

11.5 Road Closing - Public Road in Henderson Lane, Lennox Head

David Kelly

From: jeff johnson <jjohnson999@yahoo.com>
Sent: Monday, 8 October 2018 4:43 PM
To: Ballina Shire Council
Subject: Henderson Lane

Follow Up Flag: Follow up
Flag Status: Completed

Dear Council
cc David Kelly

re Proposed Road Closing - Henderson Lane.

We wish to lodge our objection to the proposed road closure as we bought our land specifically because it had the reserve at the back and could provide not only a buffer to the houses behind but also as an access way.

It would be our preference for Council to require the reserve/'road' to be planted to increase the wildlife corridor/buffer.

In the event that it is Council's decision to offer this land for sale we would like to know what it would cost to purchase it.

If this submission could be acknowledged and the proposed price for the land behind our property that would be appreciated.

Kind regards,

Jeff

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11.5 Road Closing - Public Road in Henderson Lane, Lennox Head

David Kelly

From: Jared Alexander <jaredalexander72@yahoo.com.au>
Sent: Monday, 15 October 2018 11:51 AM
To: Ballina Shire Council
Subject: Proposed Henderson Lane Closure

Att: David Kelly

In general I do not object to the closure of Henderson Lane, Lennox Head. I do however have a concern that I would like considered.

I am a property owner on the newly created Seaswell Cres. As I'm sure you are well aware there is a 10m 'Littoral Rain Forest Zone' at the rear of our properties. This LRZ shares a boundary with the parcel of land in question. If this land is divided up and sold, which by the way I also have no objection to, and the new owner wishes to construct a fence on our common boundary, then I will be responsible for half of the cost. Under normal circumstances this would be fair but as these are not normal circumstances I think it would be unreasonable. Because it is not permissible to extend our side boundary fences across the LRZ we are left with no other option than building a fence 10m away from the rear boundary to contain our children and pets. I have long since made my peace with this restriction on my property, but I think having to share the costs for a second fence is unacceptable. Maybe the council would like to share the cost with the prospective new landowners or perhaps build one before selling. (just saying)

I look forward to hearing councils decision on this matter.
Regards,
Jared Alexander

Owner
48 Seaswell Cres
Lennox Head

Current address
7/33-37 Ballina St
Lennox Head

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