

5.2. MOSSMAN SEWERAGE TREATMENT PLANT - TENURE

REPORT AUTHOR	Susan Lunn, Property Officer
MANAGER	Terry Farrelly, Manager People and Community Services
DEPARTMENT	People and Community Services

RECOMMENDATION

That Council:

- 1. Proceeds with the previously lodged application for a permanent road closure of road reserve on part of Junction Road, Mossman**
- 2. Applies to DNRME for a Term Lease over the road reserve on part of Junction Road, Mossman to formalise tenure of the land:**
 - a) The Lease rental to be calculated by DNRME as 6% of the land value**
 - b) Council being responsible for all costs associated with the matter, including but not limited to, Survey Plan and legal fees**
- 3. Approves the capital works required to provide access to Lots 165-167 on N157119 for the Traditional Owners to access the land that they own**
- 4. Delegates authority under section 257 of the *Local Government Act 2009* to the Chief Executive Officer to determine and finalise at Council's cost any and all matters associated with the permanent road closure and Term Lease and to execute any agreements, deeds and survey plans**

EXECUTIVE SUMMARY

The Mossman Sewerage Treatment Plant is constructed on a road reserve on part of Junction Road, Mossman rather than on adjacent freehold land owned by Council. Tenure of this land is required and has been in negotiation for some years without a viable arrangement being agreed. Following considerable consultation, DNRME have provided Council with an acceptable solution for tenure.

The rock wall of the sewerage treatment was seriously compromised by flooding and erosion and an engineered, armoured rock has been constructed.

Construction of the rock wall, however, has compromised access for the Traditional Owners to their land being Lots 165-167 N157119.

During the construction of the armoured wall, a benchtop provision was made for a 2 metre access track to the Traditional Owner's allotments. Minor works will be required to bring this access to an acceptable standard.

BACKGROUND

Approximately 30 years ago, the Mossman Sewerage Treatment Plant was constructed upon a road reserve on part of Junction Road, Mossman rather than upon adjacent freehold land owned by Council.

Infrastructure associated with the plant stretches across the entire width of the road reserve and in so doing, restricts access to three lots situated behind the plant which are held in trust by Jabalbina. The lots were previously owned by Council and were transferred to Jabalbina as part of a Native Title determination in 2008 (ILUA).

In order to formalise Council's tenure of the plant on the road reserve, Council made an application to DNRME for a permanent road closure (*July 2017*) with the initial view of purchasing the land. Valuation to purchase the land is circa \$100,000.

Subsequently, access to the lots held in trust by Jabalbina was lost as the wall on the river side of the Plant suffered serious erosion due to a change in the river's course.

In order to resolve the access issue, an approach was made to Jabalbina to enquire if Council could purchase back the subject lots. A response was subsequently received which indicated that this was not possible because the land was subject to the Aboriginal Land Act (ALA).

In view of the response received, Council officers then went back to Jabalbina seeking comment with respect to a proposal to provide access to the subject Lots via a walkway incorporated into the face of the proposed bank stabilisation works on the western (river) side of the treatment plant.

Jabalbina indicated that in order for them to provide such comment to Council, consultation needed to be undertaken on a fee for service basis.

Council officers sought direction on the matter from DNRME who advised:

DNRME has not been subject to a 'fee for service' from adjoining land owners in relation to previous road closure applications:

- Although a properly made application for road closure does not require written advice from the adjoining landowners to each other, Council was encouraged to continue to attempt to consult with Jabalbina as it is in Jabalbina's interest to provide input; and
- The application process will include DNRME advising adjoining landowner/s that an application has been received and requesting them to provide any comments/views to the Department by a nominated date. The adjoining landholder is also provided with a copy of the road closure proposal and gazette notice by the Department

The application process did not proceed at the time due to a number of factors including those forementioned, however works have since been completed to restore the wall which may, with minor additional works, be suitable to provide an access track for the Traditional Owners to the Lots behind.

To progress the matter and formalise tenure over the road reserve, Council officers again sought direction from DNRME who have proposed that Council applies for a permanent road closure (application already held with no further changes or fees required); and rather than

purchase the land, apply to DNRME for a Term Lease which may be surrendered at the time the Sewerage Treatment Plant is rebuilt on Council freehold land.

COMMENT

This matter has been in progress, but “on hold” for a number of years, pending a viable tenure solution. DNRME have now proposed a cost effective tenure solution, which Council officers propose be accepted in order to finalise the land tenure matter.

Once tenure is resolved, suitable access can be considered for the Traditional Owners to access the 3 lots behind the Sewerage Treatment Plant.

PROPOSAL

That Council approves to proceed with the application for permanent road closure over the land occupied by the Mossman Sewerage Treatment Plant and that Council approves to apply to DNRME for a Term Lease over the land.

FINANCIAL/RESOURCE IMPLICATIONS

The land upon which the Sewerage Treatment Plant is currently located would cost in the vicinity of \$100,000 for Council to purchase and this has not been accrued for in the 2020/2021 budget.

A Term Lease over the land would cost in the vicinity of \$6,000 per annum.

A Survey Plan is required by DNRME and Council officers have sought a quote from RPS Group. The quote to complete the Survey Plan is \$6,500 including GST.

The cost of the capital works required to install a track on the rock armoured wall is estimated at \$10,000. Mid Term budget review will be required to allocate this funding.

Consultation occurred between all internal interested Parties within Council and the unanimous view was to enter into a Term Lease with DNRME.

RISK MANAGEMENT IMPLICATIONS

By entering into a Term Lease with DNRME Council would minimise its risk by complying with environment conditions including the tenure of the land.

SUSTAINABILITY IMPLICATIONS

Economic: The proposal to enter into a Term Lease over the land will have minimal impact on the budget.

Rather than purchasing the land, a Term Lease will allow for the lease to be surrendered should the Sewerage Treatment Plant be relocated at some time in the future; and Council would own unuseable road reserve land.

Environmental: Minimal environmental impact

Social: A formalised track to the 3 lots held in trust by Jabalbina for the Traditional Owners will again provide access to their land which is used for recreational purposes.

CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

This report has been prepared in accordance with the following:

Corporate Plan 2019-2024 Initiatives:

Theme 5 - Robust Governance and Efficient Service Delivery

Strong governance and financial management are the foundations of the way in which Council will conduct its business and implement the initiatives of the Corporate Plan.

Goal 1 - *We will conduct Council business in an open and transparent manner with strong oversight and open reporting.*

Operational Plan 2020-2021 Actions:

5.3.4 - *Implement a Council Lease Framework that supports community and commercial leases and shared facilities. Transitions to lease arrangements for all groups in Community Owned facilities to maximise the community benefits arising from the use while ensuring responsible management of community assets, and accountability.*

COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:

Custodian Council owns and manages infrastructure, facilities, reserves, resources and natural areas. In fulfilling its role as custodian, Council will be mindful of the community, the economy, the environment, and good governance.

CONSULTATION

Internal: Manager Infrastructure, Manager Projects, Chief Financial Officer, Manager Water and Waste Water

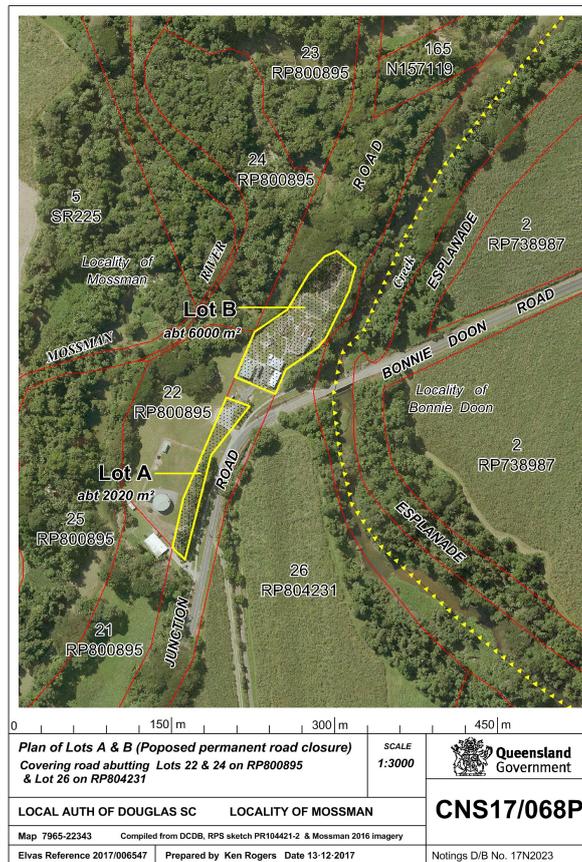
External: DNRME
RPS Group – (survey plans)
Jabalbina Aboriginal Corporation

COMMUNITY ENGAGEMENT

Nil currently, however extensive engagement previously with Jabalbina

ATTACHMENTS

1. Drawing CNS 17068 P [5.2.1 - 1 page]
2. DNRME email to DSC - Mossman Sewerage Treatment Plant [5.2.2 - 2 pages]
3. Survey Plan - original [5.2.3 - 1 page]
4. Lot 22 RP800895 - Wide Aerial View [5.2.4 - 1 page]



Susan Lunn

From: Robert Donovan
Sent: Friday, 5 June 2020 2:46 PM
To: Susan Lunn
Subject: Doc 956875 FW: Application for permanent road closure - Mossman Sewerage Treatment Plant
Attachments: Drawing CNS17 068P.pdf
Importance: High

From: LODGE Karen <Karen.Lodge@dnrme.qld.gov.au>
Sent: Tuesday, 12 May 2020 5:11 PM
To: Robert Donovan <Robert.Donovan@douglas.qld.gov.au>
Cc: Robert Donovan <Robert.Donovan@douglas.qld.gov.au>
Subject: Application for permanent road closure - Mossman Sewerage Treatment Plant
Importance: High

Hello Robert, I hope you are staying safe during the COVID 19 pandemic, it has certainly impacted the way we work!

Reference is made to Council's application for permanent road closure where the constructed Mossman Sewerage Treatment is located on Junction Road, shown as Lots A and B on Drawing CNS17/068P (drawing attached).

In considering the objection received from the owners of Lots 165-167 on N157119, and the constraints in relation to the location of suitable dedicated access in this vicinity, I offer the following proposal to Council for your consideration:

1. Permanently closing the road shown as Lots A and B on Drawing CNS17/068P and offer a Term Lease to Council over the closed road.

The difference is, Council will not be required to pay the market value of the area to be permanently closed (ie. as once the road is permanently close, I will issue a lease instead of freehold). This may be suitable as it is my understanding that Council may not require the current Sewerage Treatment Plant in the long term once a new Sewerage Treatment Plant is built on Council's freehold land.

Also, if a lease issues and then Council longer requires all or part of the lease area (once the new plant is constructed), Council can surrender their lease and the lease land can be re-opened as road for public use. Which will benefit the owners of Lots 165-167 on N157119.

If the application for road closure is approved, and to allow the permanent road closure and the grant of a lease, the following requirements will apply:

- Council will be required to pay annual rent. This will be calculated at 6% of the unimproved value of the subject road closure area (I can arrange an indicative valuation if Council has an interest in this option – let me know)
- Arrange to provide a plan of survey of the area of road to be closed
- The proposed lease will include relevant conditions including this access condition 'The Lessee must, at all times during the term of the lease, allow any person authorised by the owners of Lot 165-167 on N157119 free and unrestricted access **to, from and across the land'** (the text in red may be amended to reflect a particular area of the lease that can be used as access).

Attachment 5.2.2
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If Council wishes to consider this proposal, please give me a call on 40161905 or contact me via email. I would like to actively progress this application with Council, with the view of getting a decision made in the near future. I do apologise for not progressing this application in a more timely manner. Hope to discuss this further with you in the near future.

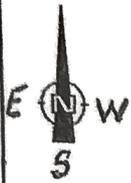
Regards,



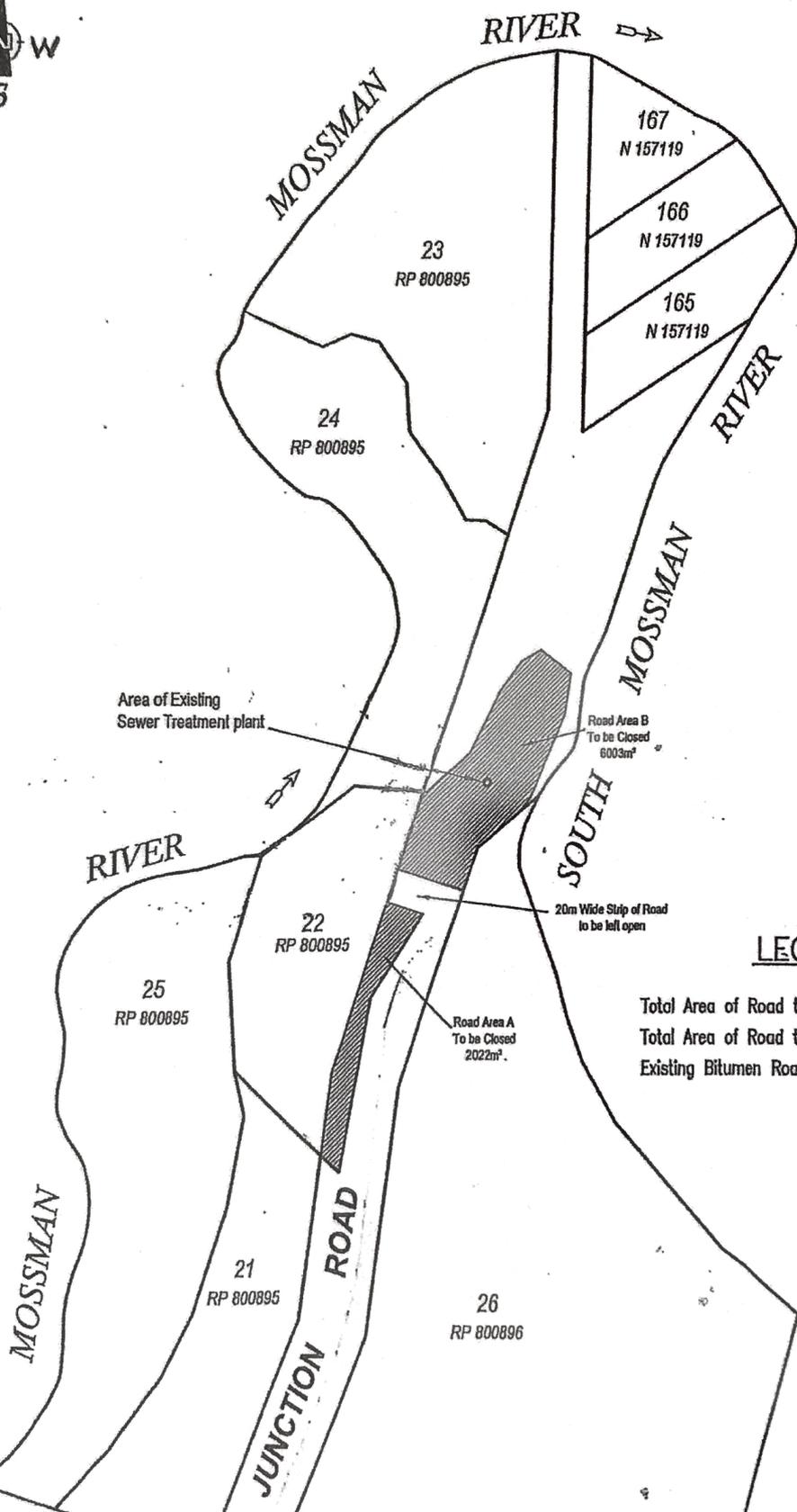
Karen Lodge
Land Officer, State Land Asset Management
Natural Resource, North Region
Department of Natural Resources, Mines and Energy

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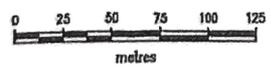


- IMPORTANT NOTE**
- The plan was prepared for the sole purpose of the client for the specific purpose of accompanying an application to the Cairns Regional Council for a recognition of a lot described herein plan. This plan is strictly limited to the Purpose and does not apply directly or indirectly and will not be used for any other application purpose use or matter. The plan is prepared without the assumption of a duty of care in any other person (other than the Client ('Third Party')) and may not be relied on by Third Party.
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 - RPS Australia East Pty Ltd relying on information provided to it by the Client or a Third Party where the information is incorrect, incomplete, inaccurate, out-of-date or unreliable.
 - any inaccuracies or other faults with information or data sourced from a Third Party.
 - RPS Australia East Pty Ltd relying on surface indications that are incorrect or inaccurate.
 - the Client or any Third Party not verifying information on the plan where recommended by RPS Australia East Pty Ltd.
 - judgement of this plan with any local authority applicable recommendation of RPS Australia East Pty Ltd.
 - the accuracy, reliability, suitability or completeness of any approximations or estimates made or referred to by RPS Australia East Pty Ltd in this plan.
 - Without limiting paragraph 1 or 2 above, the plan may not be copied, distributed, or reproduced by any process unless the scales clearly displayed on the plan.
 - Scale shown is correct for the original plan and any copies of this plan should be verified by checking against the lot scale.
 - The dimensions, area, size and location of improvements, lot information (if shown) and number of lots shown on this plan are approximate only and may vary.
 - Cadastral boundaries are obtained by file dimensions and/or digitizing from existing cadastral maps and/or DCDB. These boundaries have not been verified and are approximate only.



LEGEND

- Total Area of Road to be Opened 1920m²
- Total Area of Road to be Closed 8025m²
- Existing Bitumen Road



SCALE 1:2500 IS APPLICABLE ONLY TO THE ORIGINAL SHEET SIZE. (A3)

AMENDMENTS		PROJECT MANAGER	
E44-8910 AMEND DESCRIPTION/ABLES Change Job number		A GARRETT	
CHECKED		SURVEYED	
DRIFTING CHECKED		DRANN ACG 24-10-07	
CAD REF PR104421-2A.dwg		SHEET 1 OF SHEETS 1	
		SHEET SIZE A3	

CAIRNS REGIONAL COUNCIL

PROPOSED SIMULTANEOUS ROAD OPENING & CLOSURE

Sewage Treatment Plant
Junction Road
Mossman

RPS	RPS Australia East Pty Ltd ACN 140 282 282	
	155 Ashdon St PO Box 1518 CAIRNS QLD 4870	
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SCALE 1:2500	DATE 8/8/10	DRAWING NO PR104421-2 A

Councillor Workshop - 3 July 2017

Lot 22 RP800895 - Wide Aerial View

Attachment 5.2.4

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