

5.3. APPLICATION FOR PERMANENT ROAD CLOSURE OVER UNNAMED ROAD RESERVE, ADJACENT TO LOT 129 ON SR454 TOLL GATE ROAD, OAK BEACH

REPORT AUTHOR	Property Services
MANAGER	Lisa Golding, Manager People and Community Services
DEPARTMENT	People and Community services

RECOMMENDATION

That Council:

- 1. Advises the Department of Resources (DOR) that it objects to the application for permanent road closure over unnamed road reserve adjoining Lot 129 on SR454, Toll Gate Road, Oak Beach, indicated as Lot C on drawing CNS22/032P. The reasons for this objection are as follows:**
 - The development as proposed seeks the extension of the residential use into a naturally vegetated gully area that is included in a Conservation Zone. The applicant has not identified how they would achieve the appropriate setbacks from the top of the waterway bank or protect the riparian vegetation.**
 - The Planning Scheme identifies the adjacent Captain Cook Highway as an Iconic Recreation Route and a Scenic Route Buffer/View Corridor. Concern is held with the size of the new lot and whether this gives rise to possible further subdivision and the resultant impact on viewsheds and pedestrian access in the area.**
 - The intent of the land acquisition is unclear, as no formal pre-lodgment enquiry was made. The applicant has not provided sufficient information to enable the request to be supported from a Town Planning perspective.**
- 2. Delegates authority to the Chief Executive Officer in accordance with s 257 of the *Local Government Act 2009*, to finalise any and all matters associated with the application.**

EXECUTIVE SUMMARY

The Department of Resources (DOR) has requested Council's views with respect to an application for permanent road closure over an unnamed road reserve adjoining Lot 129 on SR454, Toll Gate Road, Oak Beach.

After careful consideration, Council Officers are recommending that Council objects to the application. Specifically, s 68(5) of the *Local Government Act 2009*, requires that Council must state the reasons for the objection.

Council officers do not support the permanent road closure because:

- The development as proposed seeks the extension of the residential use into a naturally vegetated gully area that is included in a Conservation Zone. The applicant has not identified how they would achieve the appropriate setbacks from the top of the waterway bank or protect the riparian vegetation.
- The Planning Scheme identifies the adjacent Captain Cook Highway as an Iconic Recreation Route and a Scenic Route Buffer/View Corridor. Concern is held with the size of the new lot and whether this gives rise to possible further subdivision and the resultant impact on viewsheds and pedestrian access in the area.
- The intent of the land acquisition is unclear, as no formal pre-lodgment enquiry was made. The applicant has not provided sufficient information to enable the request to be supported from a Town Planning perspective.

The proposed area of permanent road closure consists of approximately 1720m² and is situated adjacent to the applicant's residential property at Toll Gate Road, Oak Beach.

BACKGROUND

At Council's Ordinary meeting of 19 October 2021, Council resolved to allow the applicant to submit a Form Part C requesting the permanent road closure, with the understanding that Council was not at this stage consenting to the application, but would be permitted to provide feedback to DOR before any decision was made. The resolution also required the applicant to submit a formal pre-lodgment enquiry with Council's Planning Section, to allow officers to assist the applicant work through Planning concerns, before making application for permanent road closure.

A copy of that resolution is as follows:

That Council:

- *Delegates authority to the Chief Executive Officer in accordance with section 257 of the Local Government Act 2009, to execute a Form Part C as Road Manager, advising the Department of Resources (DOR) that Council cannot authorize a proposed permanent road closure over part of unnamed road reserve adjoining Lot 129 on SR454, (identified by the locality map attached to this report), Toll Gate Road Oak Beach, however it requests DOR to consider an application under the Land act 1994 in relation to this matter.*
- *Advises DOR by way of the Form Part C, that Council requires further contact from the Department, before a decision is made on the application.*
- *Advises the Applicant to make a formal pre-lodgment enquiry with Council which contains supporting information with respect to the gully, vegetation and how the proposal addresses the relevant requirements of the Planning Scheme.*
- *Delegates authority to the Chief Executive Officer in accordance with s 257 of the Local Government Act 2009, to finalise any and all matters associated with the application*

COMMENTS

Recent advice from DOR has indicated that the landowner intends to amalgamate the area of road reserve into the adjoining freehold property and use the additional land to include an existing water tank already located on the road area and for maintenance in relation to safety measures to protect against fire and cyclones.

This advice contradicts previous advice from the landowner, where it was indicated that it was intended to use the road closure area to extend an existing garden and to also provide some re-vegetation of the area. The applicant hoped that the proposed revegetation efforts would help solve issues relating to illegal dumping and campers from the beach carpark using the area as a toilet.

Council's Planning Section has raised several concerns about the proposal.

- The area is zoned Conservation and includes a watercourse, but the application does not include consideration of the planning requirements of the site including how the applicant will achieve the appropriate setbacks from the top of the waterway bank or protect the riparian vegetation.
- This area is of local historical significance as the original 'toll gate' on the road between Cairns and Port Douglas and is part of the Great Barrier Reef Drive but the applicant has not provided any indication of how any development would impact on the adjacent scenic route.
- The area includes pedestrian access between the north end of Toll Gate Road and the Captain Cook Highway.
- The intent of the land acquisition is unclear, i.e. whether a future subdivision or building works are planned and despite Council advice to do so in October 2021, the applicant has not made a pre-lodgment enquiry with Planning Officers to work through some of these concerns.

Because of the incomplete nature of the advice received from the applicant and the failure to submit a pre-lodgment enquiry, Council officers are unable to determine whether these outcomes can be accomplished without breaching the planning scheme or negatively impacting pedestrian access and the scenic amenity of the area.

FINANCIAL/RESOURCE IMPLICATIONS

All costs associated with the lodgment of the application at DOR are borne by the applicant.

If the application is approved by DOR, Council does not receive any income in relation to the applicant's requirement to then purchase the road reserve area from the State.

RISK MANAGEMENT IMPLICATIONS

If the permanent road closure is approved by DOR, the applicant would still need to lodge a Material Change of Use Application over the land for residential purposes.

SUSTAINABILITY IMPLICATIONS

- Economic:** It is anticipated that the proposed permanent road closure would have no impact on the surrounding property values
- Environmental:** If the permanent road closure is approved by DOR, then subject to the necessary development approvals from Council, potentially there could be clearing of the subject land for future residential use.
- Social:** No social implications identified.

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 2022-2023 Actions:

Legislative Requirement.

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: Councillor Workshop on 16 August 2022.

Consultation was undertaken with each area of Council, where only the Planning Section raised the following concerns:

- The area is zoned Conservation and is physically constrained by the slope and contours and riparian vegetation associated with the watercourse.
- The Planning Scheme identifies the adjacent Captain Cook Highway as an Iconic Recreation Route and a Scenic Route Buffer/View Corridor.

Concern is held with the size of the new lot and whether this gives rise to possible further subdivision and the resultant impact on viewsheds.

- It would appear from the most recent aerial images that pedestrian pathways give access between the constructed gravel section at the northern end of Toll Gate Road, down to the road pavement of the adjacent Captain Cook Highway.
- Concern has previously been raised in respect to the need to have regard to planning considerations and advice was given that a pre-lodgment enquiry should be sought. However, no pre-lodgment enquiry has been made. Consequently, the applicant has not provided sufficient information to enable the request to be supported from a Town Planning perspective. Eg In a non-urban area the setback for a dwelling house is 10m from the top of bank and for other uses the setback should be expanded to 20 meters. These constraints should be investigated by the applicant prior to Council's consideration of the application.

External: The Department of Resources

ATTACHMENTS

Nil