

#### **5.4. TEMPORARY ROAD CLOSURE ADJOINING 12-36 ALCHERA DR, MOSSMAN, DESCRIBED AS LOT 1 ON RP851453**

<b>REPORT AUTHOR(S)</b>	Susanna Andrews, Property Officer
<b>GENERAL MANAGER</b>	Darryl Crees, General Manager Corporate Services
<b>DEPARTMENT</b>	Governance

#### **RECOMMENDATION**

**That Council:**

- 1. advises the Department of Natural Resources and Mines that it:**
  - a. does not object to the temporary road closure of an area of about 1.15 ha of esplanade abutting the north eastern boundary of Lot 1 on RP851435; and**
  - b. requires all costs associated with the road closure be paid by the applicant.**
- 2. delegates authority to the Chief Executive Officer, in accordance with section 257 of the *Local Government Act 2009*, to finalise all matters associated with the temporary road closure.**

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#### **EXECUTIVE SUMMARY**

Council has received a request from the Department of Natural Resources and Mines (DNRM) for its views and / or requirements regarding a proposed temporary road closure of an area of about 1.15 ha of esplanade abutting the north eastern boundary of land located at 12-36 Alchera Drive, Mossman, also described as Lot 1 on RP851435. If the road closure is approved, the proposed use of the subject area will be agricultural, namely cane production.

At the Ordinary Meeting of Council held on 11 July 2017, Council determined to execute a form Part C as road manager in relation to the proposed road closure so the application could be lodged with the DNRM.

The adjoining landowners have been growing cane on the subject road area for several decades and the application sets out to formalise this land use. There are no concerns in regard to the proposal and, following internal consultation, it is recommended Council advises the Department it has no objection to the proposed temporary road closure.

#### **BACKGROUND**

The subject application is for the temporary closure of an area of about 1.15 ha of esplanade abutting the north eastern boundary of land located at 12-36 Alchera Drive, Mossman, also described as Lot 1 on RP851435. The land is located in the vicinity of the Mossman Sugar Mill. The applicant has advised that the proposed use of the area, if the road closure is approved, would be for agriculture, namely cane production.

The subject area of road is shown in the locality plan below:

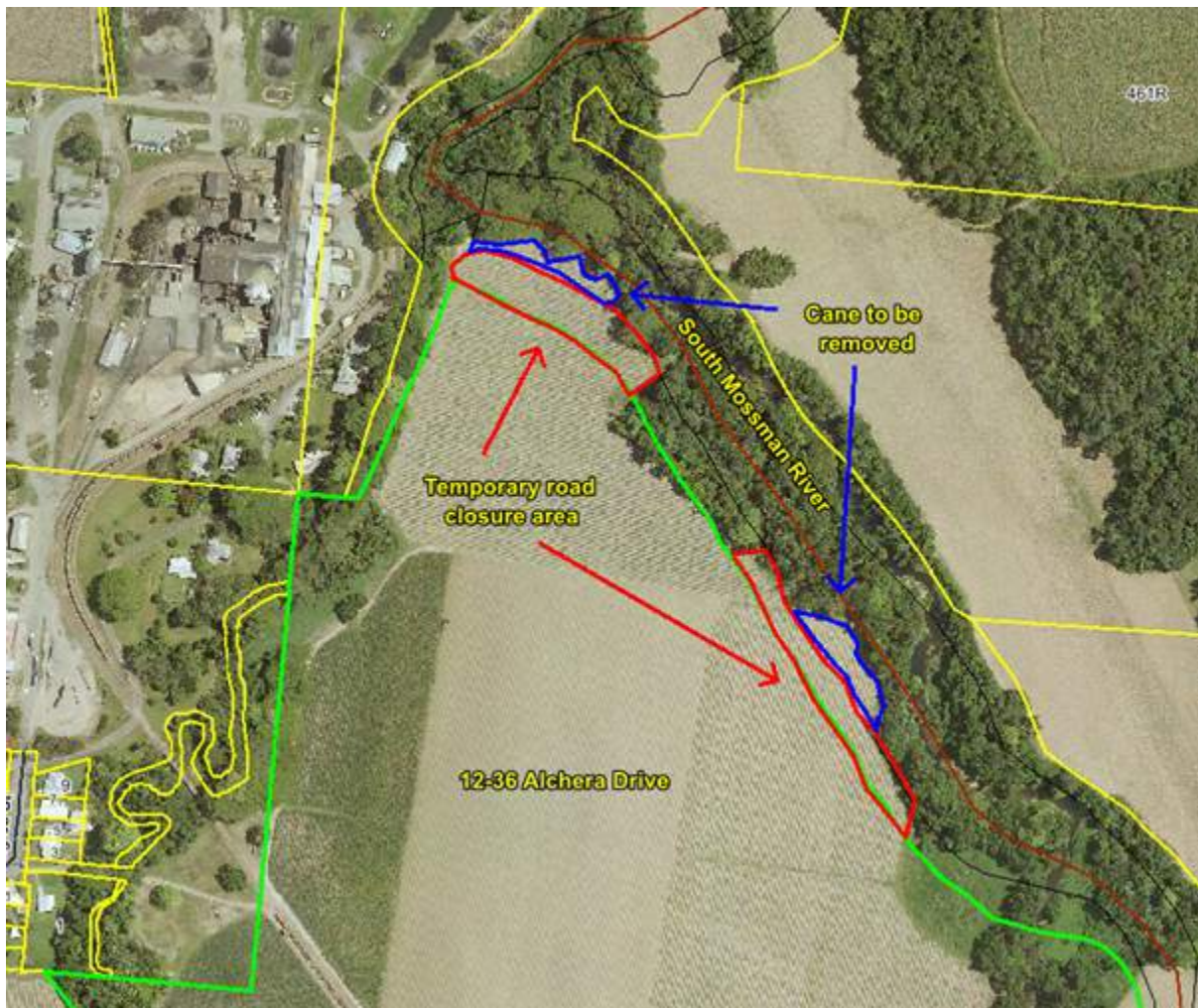


Figure 1. Locality Plan

The application has previously been before an Ordinary Meeting of Council on 11 July 2017 at which Council resolved to execute the Part C 'Statement in relation to an application under the *Land Act* 1994 over State land' so the applicant could lodge the application with the DNRM.

The land the subject of the road closure application has been used by the adjoining landowners for growing cane for several decades and they were unaware of the encroachment of the cane onto the esplanade. The application for temporary road closure seeks to formalise this land use.

DNRM has advised the landowners that areas of cane within the South Mossman River watercourse itself will need to be removed as the DNRM cannot issue tenure over a watercourse.

As outlined in DNRM's policy 'Roads under the *Land Act* 1994 PUX/952/122', temporarily closed road allows a road licence to be issued over the road under section 103 of the Act. A road licence provides a right to exclusive occupation of the road (within the conditions of the licence), but the licence may be cancelled at short notice (generally three (3) months) with no compensation.

A temporarily closed road still remains dedicated for public use even though the public cannot use the road until it is reopened.

Where a temporarily closed road is used for growing crops (eg cane) and the road needs to be reopened, cancellation of the road licence should allow sufficient time to harvest the existing crop.

The alternative to a temporary road closure is a 'permit to occupy'. According to the DNRM policy it is inappropriate for a permit to occupy to be issued for the growing of crops on a road, as a road subject to a permit to occupy is still road available for public use.

The esplanade is not needed for road purposes in the future and there are no native title issues as the subject area for closure is dedicated road.

### **COMMENT**

While it is a general principle that esplanade is retained for public use, the proposed road closure will not be permanent. The public has had no enjoyment of the subject area of the esplanade for several decades. In fact, once the cane has been removed from the watercourse area itself, the land available for public use along the watercourse will effectively increase. No recorded public comment or complaint regarding the encroachment of the cane onto the esplanade has been located by Council officers.

When this application first came to Council for execution of the Part C prior to lodgement with DNRM it was thought possible that there may be an opportunity to secure land to protect riparian vegetation by the rationalisation of the entire boundary particularly along the eastern side of the lot so the riparian corridor could be assimilated into the esplanade.

However, due to the temporary nature of the road closure this will no longer be recommended to the DNRM.

### **PROPOSAL**

That Council advises DNRM that it has no objections to the proposed temporary road closure, and requests that the north eastern boundary of Lot 1 on RP851435 be aligned with the existing riparian corridor such that the riparian corridor currently part of the lot will become part of the esplanade.

All costs associated with the road closure are to be paid by the applicant.

### **FINANCIAL/RESOURCE IMPLICATIONS**

There are no financial or resource implications in relation to the request as the landowner will bear all costs in regard to the application.

### **RISK MANAGEMENT IMPLICATIONS**

Risk management implications for Council will be minimal as the proposed road closure will be temporary, and can be reversed within a reasonable timeframe.

## CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

This report has been prepared in accordance with the following:

### Corporate Plan 2014-2019 Initiatives:

#### Theme 5 – Governance

*5.2.1 – Provide Councillors and community with accurate, unbiased and factual reporting to enable accountable and transparent decision-making.*

## 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:

**Agent** Delivering a programme or activity for another organisation (usually another level of government)

## CONSULTATION

### Internal:

Manager Governance  
Manager Sustainable Communities  
Manager Infrastructure  
Manager Finance & IT  
Development Assessment Coordinator  
Executive Officer

### External:

Department of Natural Resources and Mines

## COMMUNITY ENGAGEMENT

It was determined by the DNRM that public advertising of the proposed temporary road closure was not required. The Esplanade area abutting the north eastern boundary of Lot 1 on RP851435 is a no-through road due to the area of river that severs the road network between the freehold land, Lot 1 on RP851435, and the mill, Lot 1 on RP706243.

The relevant part of the *Land Act* 1994 is section 100 'Public notice of closure':

- (3) However, appropriate public notice of a road closure application is not needed if—  
(a) the road closure application is to close a no-through road.

## ATTACHMENTS

1. Views request temporary road closure **[5.4.1]**



Department of  
**Natural Resources and Mines**

Author Stephen Lavery  
File / Ref number 2017/003817  
Directorate / Unit State Land Asset Management  
Phone (07) 4222 5428

23<sup>rd</sup> November 2017

Douglas Shire Council – Property Services  
Via Email: [Enquiries@douglas.qld.gov.au](mailto:Enquiries@douglas.qld.gov.au)

Dear Sir / Madam

### **Application for temporary road closure**

The department has received the above application. The application is to:

- Temporarily close an area of about 1.15HA of esplanade abutting the north eastern boundary of Lot 1 on RP851435 and shown as Lot A & B on drawing CNS17/052P

The applicant advises that the proposed use of the subject area, if the road closure is approved, would be for agricultural purposes; namely cane production.

To enable full consideration to be given to this matter please submit your agency's views and/or requirements, in writing, to the Townsville DNRM office by **19<sup>th</sup> January 2018**. If no reply is received by that date it will be considered that your agency has no objection to the application.

Any objections received may be viewed by other parties interested in the proposed road closure in accordance with the provisions of the *Right to Information Act 2009*.

If you wish to discuss this matter please contact Stephen Lavery on (07) 4222 5428.

All future correspondence relative to this matter is to be referred to the contact Officer at the address below or by email to [Townsville.SLAMS@dnrm.qld.gov.au](mailto:Townsville.SLAMS@dnrm.qld.gov.au). Any hard copy correspondence received will be electronically scanned and filed. For this reason, it is recommended that any attached plans, sketches or maps be no larger than A3-sized.

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**Postal :**  
DNRM  
PO Box 5318  
Townsville QLD 4810

**Telephone :** (07) 4222 5427  
**Fax:** (07) 4799 7533

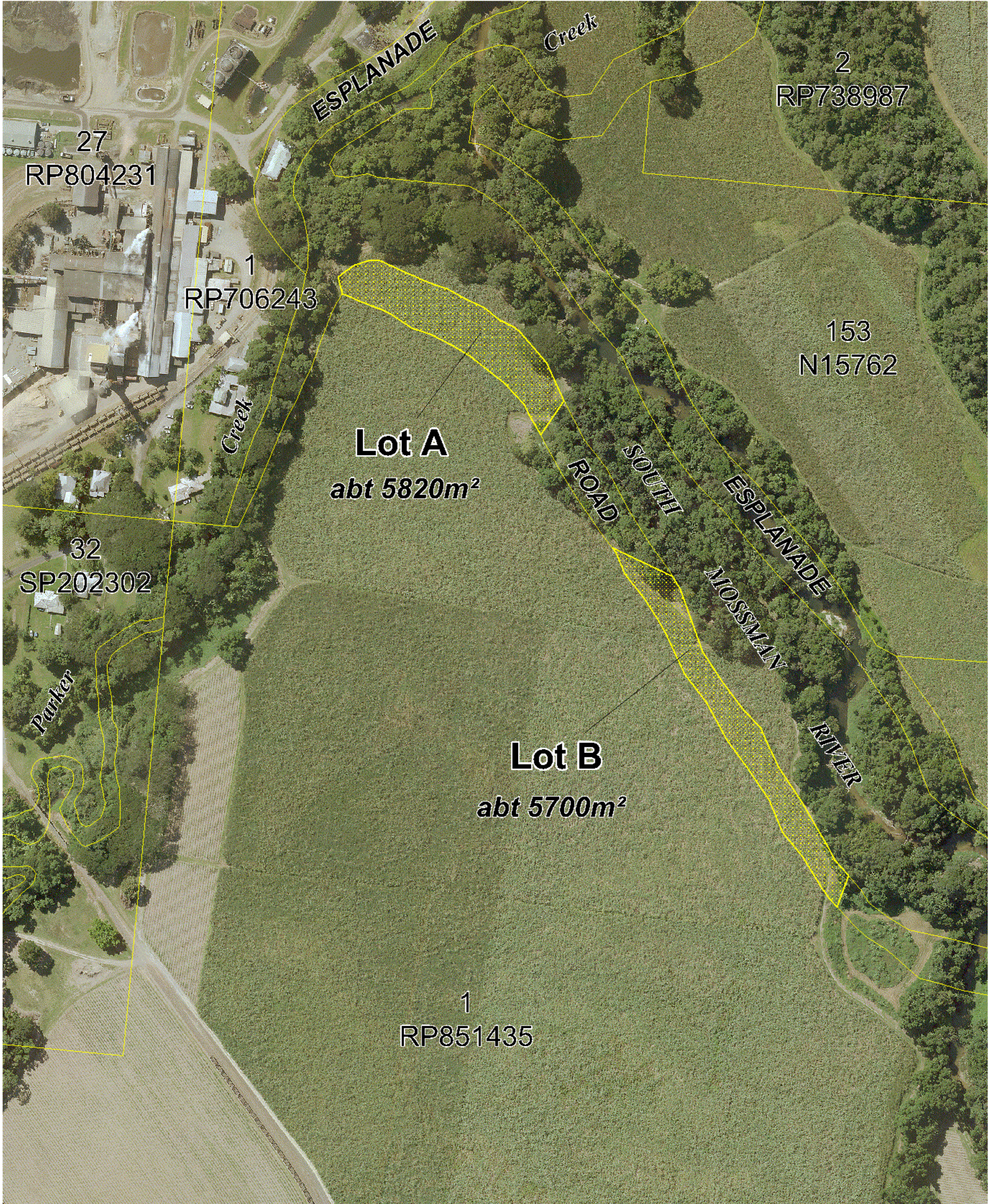
Please quote reference number 2017/003817 in any future correspondence.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Stephen Lavery', with a long horizontal flourish extending to the right.

Stephen Lavery  
Land Officer  
State Land Asset Management  
Service Delivery-North Region

Enc Drawing CNS17/052P



0 | 200 | 400 | 600 | m

**PLAN OF LOTS A & B (Encroachment area)**  
 Covering part of esplanade abutting Lot 1 on RP851435.

SCALE  
 1: 4000



**Queensland**  
 Government

LOCALITY OF MOSSMAN  
 LOCAL AUTH OF DOUGLAS S C

**CNS17/052P**

Map 7965-22343      Compiled from DCDB, Mossman 2016 ortho and sketch on file.

Elvas Ref 2017/003817

Prepared by Don Tennant      Date 23/9/2017

Notings D/B No.