

5.2. EXECUTE PART C PROPOSED ROAD CLOSURE PART CAPE TRIBULATION RD COW BAY

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

RECOMMENDATION

That Council:

- 1. 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 in order to allow an application to be lodged with the Department of Natural Resources and Mines with respect to a proposed permanent road closure over part of Cape Tribulation Road, Cow Bay, which adjoins Lot 442 on RP738994 and Lot 3 on Crown Plan AP19235;**
- 2. requires all costs associated with the road closure be paid by the applicant.**

EXECUTIVE SUMMARY

Council is in receipt of a request to execute, as Road Manager, a Part C Statement in relation to an application under the *Land Act 1994* over State land for a proposed road closure of part of Cape Tribulation Road, Cow Bay, adjoining land described as Lot 442 on RP738994 and Lot 3 on Crown Plan AP19235.

Through Council's internal consultation process there has been no objections raised to this request and it is recommended for approval.

BACKGROUND

It is a requirement of the Department of Natural Resources and Mines (DNRM) for all applications made under the *Land Act 1994* over State land that the applicant must first obtain the consent of the Trustee of a Reserve or Road Manager to the application being lodged. Council is the Road Manager for the land the subject of this application.

Council's consent to the application being lodged is provided by executing a Part C Statement in relation to an application under the *Land Act 1994* over State land, which is provided to Council by the applicant along with a copy of the application.

By executing the Part C, Council is stating:

1. it has no objection to the application being lodged and considers authorisation of the use of the land be dealt with under the *Land Act 1994* by the DNRM; and
2. it is aware of any local non-indigenous or Indigenous cultural heritage values. (Note – this is completed by searching Council's records, Native Title information and mapping, and the Douglas Shire Planning Scheme).

Consent to the application being lodged does not provide Council's consent to the proposal. Council's comment will be sought by the DNRM during the assessment of the application, at which time a further report will be presented to Council for consideration.

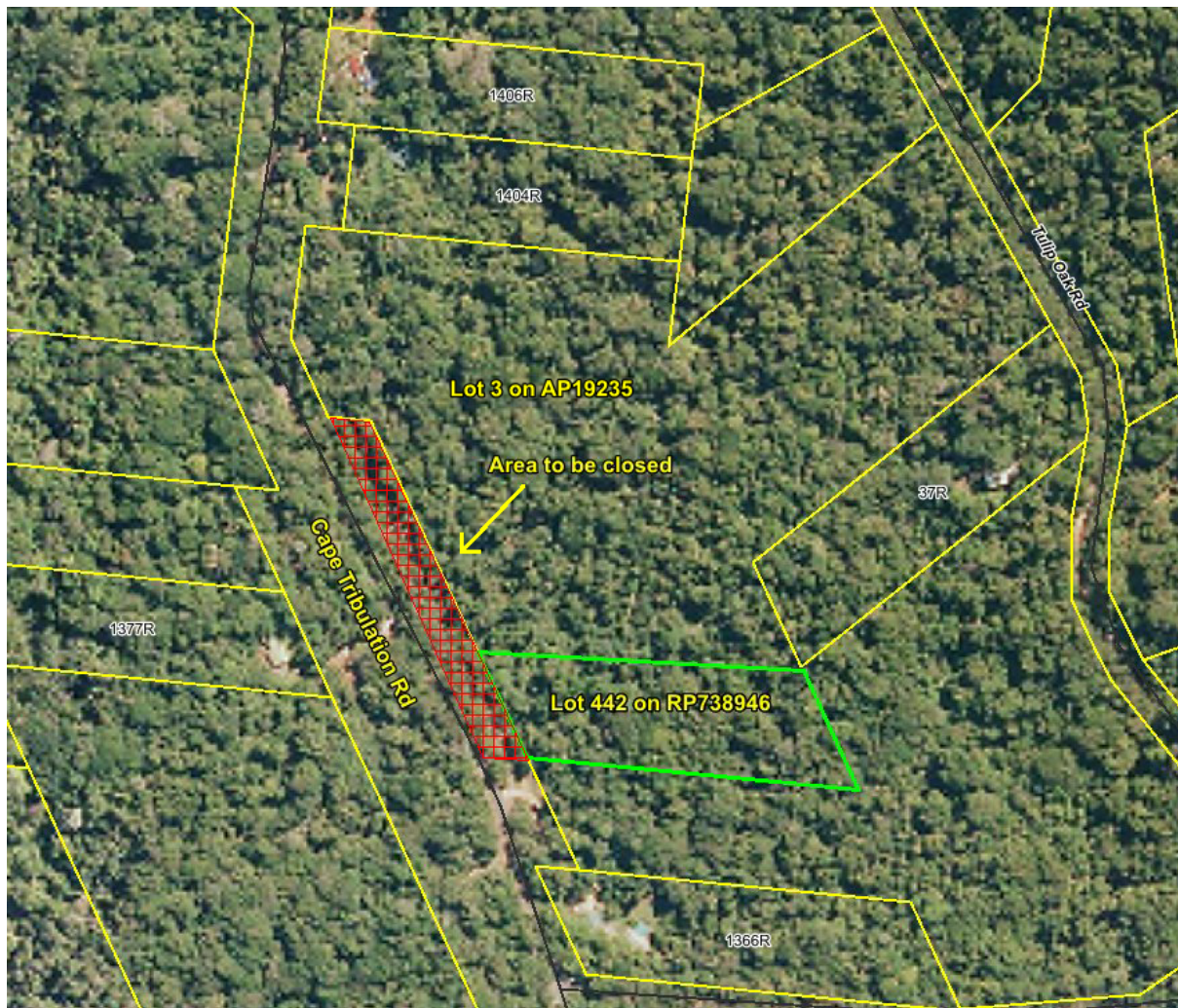
The subject application is for the permanent closure of part of Cape Tribulation Road adjoining Lot 442 on RP738994 and Lot 3 on Crown Plan AP19235, located at Cow Bay. Locality plans appear below with the subject area of road in red hatching and indicated by a red star on the plan further below. The subject area of road is a service road to the adjoining lots.

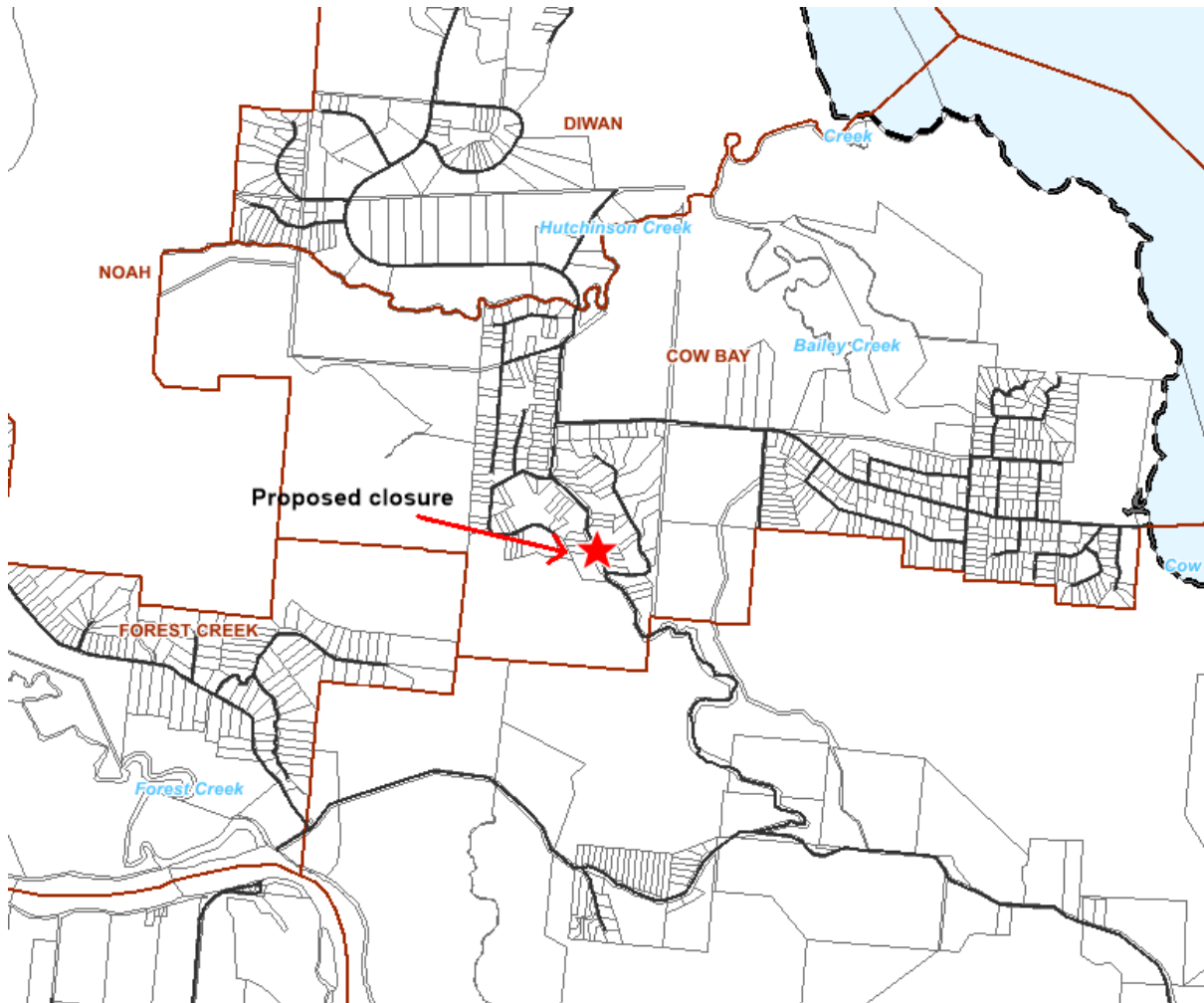
The applicant, the Australian Rainforest Foundation, is the registered owner of Lot 442 on RP738994.

On 9 December 2007 Native Title QUD 6008/98 was determined to exist over Lot 3 on Crown Plan AP19235.

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

Locality Plans





The applicant intends to re-vegetate the area of closed road, and amalgamate it with the adjoining Daintree National Park (Lot 3 on Crown Plan AP19235). The Foundation also proposes to amalgamate Lot 442 on RP738994 into the National Park. The Foundation has confirmed it is currently in the process of gaining approval from the Department of Environment and Heritage Protection for the abovementioned amalgamations of land.

Cairns Regional Council had previously supported similar service road closures adjoining land that has lost its development rights in the Daintree buy-back.

It should be noted that pursuant to section 99 (1) of the *Land Act* 1994 only an adjoining owner for the road may apply for the permanent closure of a road. Preliminary advice from the Department of Natural Resources and Mines is that the application for the closure of that part of the road adjoining the Daintree National Park may be refused.

COMMENT

Council officers raise no concerns in regard to the execution of the 'Part C Statement in relation to an application under the Land Act 1994 over State land', as it merely allows the application to be lodged with the DNRM. Further comment from Council will be sought by the DNRM during the assessment process.

PROPOSAL

That Council authorises the Chief Executive Officer to sign the Part C for the application under discussion.

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial / resource implications in relation to the matter. All costs associated with the road closure will be paid by the applicant.

RISK MANAGEMENT IMPLICATIONS

There are no risk management implications in relation to the matter.

SUSTAINABILITY IMPLICATIONS

There are no sustainability implications in relation to the matter.

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:

Asset-Owner	Meeting the responsibilities associated with owning or being the custodian of assets such as infrastructure.
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CONSULTATION

Internal:	Governance Sustainable Communities Infrastructure Water & Wastewater Finance Planning Coordinator Executive Officer
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External:	Australian Rainforest Foundation
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ATTACHMENTS

1. Application [5.2.1]
2. Additional information [5.2.2]

DEPARTMENT OF NATURAL RESOURCES AND MINES

DOUGLAS SHIRE COUNCIL	
Received	
File Name	Permanent Road Close
Document No	
11 NOV 2016	
Attention	RTD orig ✓
Information	

Application form Contact and Land Details Part A

Application form requirements

1. **Part A:** Contact and land details will need to be completed.
2. **Part B:** Application specific form will need to be completed.
3. Payment of the prescribed application fee, if relevant. A refund of application fees will not be given. (Details of fees are available on the Department of Natural Resources and Mines (DNRM) website or from a regional DNRM office)
4. All parts of this application form need to be completed accurately, otherwise your application may be returned to you to complete.

Important information

All applications will be processed having regard to the requirements of the *Land Act 1994* and related legislation, approved policies and procedures and the requirements of all other agencies with an interest in the land.

All completed applications can be lodged with DNRM by sending information to the following email or postal addresses or in person at your local DNRM business centre.

Email:

SLAMlodgement@dnrm.qld.gov.au

If lodging an application via email the application form must be signed and details of payment method included in the email along with all relevant supporting documentation.

Post:

Department of Natural Resources and Mines
PO Box 5318
TOWNSVILLE QLD 4810

In terms of the *Right to Information Act 2009* interested parties may seek access to DNRM records and view relevant documents.

Information on this form, and any attachments, is being collected to process and assess your application under the *Land Act 1994*. The consideration of your application may involve consultation and if so details of your application may be disclosed to third parties. They will not be otherwise disclosed outside the department unless required or authorised by law.

Contact details**Lodger Details and Mailing Address**

A lodger is only required when a solicitor, bank, consultant etc lodges the application on behalf of the applicant.

Full Name(s)

Title	First name	Surname
	N/A	

Company name(s)

N/A

Postal Address

N/A

Phone number

Mobile phone

Email

Fax



Applicant(s) Details and Mailing Address		
If the applicant is a Corporation, either the Australian Company number, Australian Registered Body number or the Australian Business number must be shown.		
Full Name(s)		
Title	First name	Surname
Mr	Kelvin	Davies
Company name(s)		
AUSTRALIAN RAINFOREST FOUNDATION		
If a Corporation then record <input type="checkbox"/> ACN <input type="checkbox"/> ARBN <input checked="" type="checkbox"/> ABN		
		44 073 434 563
Postal Address		
P.O. BOX 1062		
Mullumbimby 2482, N.S.W.		
Phone number		Mobile phone
		0437 432 119
Email		
Kelvin @ rainforesttrust.org		
Fax		
Future correspondence should be sent to <input type="checkbox"/> Lodger <input checked="" type="checkbox"/> Applicant		

Details of land for which the application is being lodged

1. Select the type of land for which the application is being lodged.		
<input type="checkbox"/> Permit <input type="checkbox"/> Licence <input type="checkbox"/> Trust Land Reserve/Deed of Grant in Trust (DOGIT) <input type="checkbox"/> Other 	<input type="checkbox"/> Lease <input type="checkbox"/> Unallocated State Land (USL) <input checked="" type="checkbox"/> Road	go to 2

✓

2. Enter the description of the land for which the application is being lodged. If this application concerns a road, enter the description of the land adjoining the road.

Schedule 1		
You must enter either the Lot on Plan or Title Reference of the land for which the application is being lodged.		
Lot	Plan	Title Reference
L 442	RP 738994	21209145
Other		NATIONAL PARK (DAINTREE)

go to 3

The details of the land can be found on a current copy of the Title or on your rates notice. If insufficient space, please add additional description as an attachment.

3. Enter additional details of the land

Dealing number

N/A

Tenure type

FREEHOLD

Tenure number

N/A

Local Government

DOUGLAS SHIRE COUNCIL

Other details of land location (optional)

This small service road runs parallel to Cape Tribulation Rd in the Daintree, Nth Qld.

go to 4

4. Have you participated in a pre-lodgement meeting with the department?

☐

Yes

go to 5

☒

No

5. Provide details of pre-lodgement meeting. (optional)

(If there is insufficient space, please lodge as an attachment)

Departmental Officers contact details and any reference number should be included if known.

THIS FORM MUST BE ACCOMPANIED BY THE RELEVANT PART B APPLICATION FORM.



DEPARTMENT OF NATURAL RESOURCES AND MINES

Application for road closure

Part B

Application form requirements

1. This Application is for road closure.
2. Read the respective *Application for road closure* Fact Sheet which include application restrictions
3. Payment of the prescribed application fee
(Details of fees are available on the Department of Natural Resources and Mines (DNRM) website or from a regional DNRM office)
4. Any additional information to support application
5. **Part A:** Contact and details of land will need to be completed and submitted with your application.
6. Your application will not be considered as having been properly made unless all parts of this application form need to be completed accurately, otherwise your application may be returned to you to complete.

Important information

A road is any area of land that has been set aside by legislation for the use of the travelling public. Not all roads are currently formed or being used by vehicles or pedestrians, and some may never be developed or used for that purpose.

An adjoining landholder may apply for a permanent or temporary road closure. A public utility provider as defined under the *Land Act 1994* may also apply for a permanent road closure and an application for temporary closure can be considered for another person for:

- pipes for irrigation purposes that cross the road beneath its surface
- water channels for irrigation purposes that cross the road

A road maybe closed "in strata" to provide for works such as:

- connecting overhead viaduct, or underground tunnel for commercial purposes between two buildings;
- structure which will overhang a road;
- car park or building under or over a road;

You may be required to pay a purchase price for the permanent closure of a road.

When a road is closed permanently, its status changes from 'road' to 'unallocated state land'. Depending on how the land is to be allocated, the area of road to be permanently closed may be:

- incorporated into the applicant's adjoining freehold or leasehold land
- included in an existing reserve or set apart as a new reserve
- retained as a separate parcel of freehold land, although this option is rarely used in view of the planning requirements of local governments.

A road may be permanently closed under the *Land Act 1994* if the Minister is satisfied the road is not the only dedicated access to a person's land; used regularly by the public as a road or stock route; or providing continuity to a road network.

Although the state owns the land in a dedicated road, a local government (section 60 of the *Local Government Act 2009*) is responsible for the day to day management of dedicated roads in its area including their construction and maintenance. The Department of Transport and Main Roads is responsible for management of state controlled roads such as a freeway, highway or 'major road connecting cities'.

Information on this form, and any attachments, is being collected to process and assess your application under the *Land Act 1994*. The consideration of your application may involve consultation, and if so details of your application may be disclosed to third parties. They will not be otherwise disclosed outside the department unless required or authorised by law.



1. The Application is for: ☒ Permanent road closure go to 2
☐ Temporary road closure go to 2

2. If you are not the manager of the road as defined below, have you consulted with the road manager to determine if the road is still required? ☐ Yes go to 3 ☐ No go to 3

Before submitting your application to the Department of Natural Resources and Mines, it is recommended that you discuss your proposal for closure of a local road with the local government responsible for its management, or the Department of Transport and Main Roads for a state controlled road managed under the *Transport Infrastructure Act 1994*.

This will assist you to plan your project and will help reduce the time required to assess your application. It will also provide you with an opportunity to address in your application any issues identified through discussion with the road manager.

A signed 'Part C - Statement in relation to an application under the *Land Act 1994* over State land' from the road manager will need to accompany this application to indicate they are unable to authorise the use and have no objections to the closure of the road.

A road may be permanently closed under the *Land Act 1994* if the Minister is satisfied the road is not:

- (a) the only dedicated access to a person's land;
- (b) used regularly by the public as a road or stock route; or
- (c) providing continuity to a road network.

An application must be refused if the road is still needed in accordance with section 101(3) of the *Land Act 1994*.

Note – A road manager has the powers to authorise various uses on roads. however neither agency is able to permanently close the dedicated road and allocate the land, for another use.

Road Manager is –

- The local government for a road that is controlled by the local council
- For a state controlled road, the chief executive of the Queensland Government agency administering the *Transport Infrastructure Act 1994* such as the Department of Transport and Main Roads.

3. Are you a public utility provider or the registered owner, lessee or trustee of the land adjoining the area of road subject to this road closure application? ☒ Yes go to 4 ☐ No
 Application cannot be considered unless temporary closure is for reasons listed in Question 4

Section 99(1) of the *Land Act 1994* states that only a public utility provider or the registered owner, lessee or trustee of the land adjoining a road may apply for a permanent closure of the road.

Section 99(3) of the *Land Act 1994* limits who can apply for temporary closure of a road to only the registered owner, lessee or trustee of the land adjoining a road or another person for (a) Pipes for irrigation purposes that cross the road beneath its surface or (b) Water channels for irrigation purposes that cross the road.

4. Is the temporary closure to make structural improvements for: ☐ Pipes for irrigation purposes that cross the road beneath its surface
☐ Water channels for irrigation purposes that cross the road go to 5



5. Provide details in Schedule 1 below, of any land you lease from the state or are the registered owner that adjoins or is in the vicinity of the land applied for. go to 6
(If there is insufficient space, please lodge as an attachment)

Schedule 1 You must enter either the Lot or Plan or Title Reference of the land.		
Lot	Plan	Title Reference
L442	RP 738994	21209145

6. Have you made a previous application for closure of this area of road? ☐ Yes go to 7 ☒ No go to 10

7. Was this application refused? ☐ Yes go to 8 ☐ No go to 10

8. Has there been any change in circumstances from the previous application, which may lead to this application being accepted for further consideration? ☐ Yes go to 9 ☐ No go to 10

The application maybe rejected without further consideration.

9. Provide details of the change in circumstances from the previous application. go to 10
(If there is insufficient space, please lodge as an attachment)

10. Is any use currently being made of the road area? ☐ Yes go to 11 ☒ No go to 12

11. Provide details of the current use of road e.g. grazing, encroachment of building or structure go to 12
(If there is insufficient space, please lodge as an attachment)

12. Provide details of the proposed use of the road area. go to 13
(If there is insufficient space, please lodge as an attachment)

The area would be re-vegetated for inclusion and expansion of the Daintree National Park.

13.	Provide details of any additional information to support the application. (optional) (If there is insufficient space, please lodge as an attachment)	go to 14

Attachments

The following will need to be lodged with your application for it to be considered a properly made application. If all this information is not submitted, your application will be returned.

14. Tick the box to confirm the attachments for part of the application.

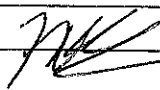
- ☐ Application fee
- ☒ Copy of sketch/drawing showing location and approximate dimensions
- ☒ Signed Part C - Statement from road manager, if required
- ☐ Additional information in support of your application such as written correspondence from the road manager or current users of the road.

It is recommended that any attached plans, sketches or maps be of A4 or A3-size. Your application will not be considered as having been properly made, unless all parts of this application form are completed accurately. In this instance your application may be returned to you for completion.

Declaration

I certify that I have read the information which forms part of this application and the information I have provided is true and accurate.

Signature of applicant (or their legal representative)

 Rebecca Wren McLean

Date: 02 / 11 / 2016

If applicant, section 142 of the *Land Act 1994* states a person is eligible to apply for, buy or hold land under the *Land Act 1994* if the person is an adult, that is, 18 years of age or over.
If the legal representative of the applicant is signing as the applicant then the legal representative's full name must be printed immediately below the signature.



DEPARTMENT OF NATURAL RESOURCES AND MINES

Statement in relation to an application under the *Land Act 1994* over State land

Part C

I/We

, as

Please tick relevant fields –

☐ **Trustee of a Reserve issued under the Land Act**

☐ have no objection to the application and consider authorisation of the use of the land be dealt with under the Land Act by DNRM (a full explanation stating the reason why use cannot be authorised by trustee eg. trustee lease/permit)

☐ are aware of any local non-indigenous or indigenous cultural heritage values (if so full details must be provided and the impacts on the application)

☐ **Road Manager**

☐ have no objection to the application and consider authorisation of the use of the land be dealt with under the Land Act by DNRM (a full explanation stating the reason why use cannot be authorised under Road Manager legislation)

☐ are aware of any local non-indigenous or indigenous cultural heritage values (if so full details must be provided and the impacts on the application)

☐ **Public Utility Provider** (Electricity, Telecommunication, Gas providers) only required for road dealings.

☐ have no objection to the application

☐ object to the application (a full explanation stating the reason for the objection must be provided with this application)

Public Utility Provider includes Telstra Corporation Ltd, Yes Optus, Energex, Ergon, Powerlink. Your Local Government or Dial Before your Dig website may assist in identifying utilities on the subject land.

Road Manager is –

- local government for a road that is under the control of the a local government
- a State-controlled road—the chief executive of the department in which the *Transport Infrastructure Act 1994* is administered

Additional comments –

Provide details of any additional comments or requirements that may affect the future use of the land that the department should consider when assessing this application. (If there is insufficient space, please lodge as an attachment)

Note – a different form of tenure may be considered a more appropriate tenure once the application has been assessed.

If you wish to make a separate submission to the Department of Natural Resources and Mines in relation to this proposed application, please provide a submission within **10 business days** of completing this declaration to SLAMlodgement@dnrm.qld.gov.au.


Authorisation

I certify that I have the authorisation to make this statement and the information I have provided is true and accurate.

I have **signed** a copy of a sketch/drawing in relation to this application.

**Full Name , position and Organisations name
of Road Manager**

Signature



Date:

/ /

This information will not otherwise be disclosed outside of the department unless required or authorised by law such as under the *Right to Information Act 2009*.

END DOCUMENT



**Australian Rainforest
Foundation**

Post: PO Box 1062
NSW 2482

Phone: +61437426 119
ABN 44073434563

Dear Mr Donovan and Douglas Shire Councilors,

I am writing to propose the closure of the northern section of an unsealed road that runs parallel to Cape Tribulation Rd in Cow Bay, Daintree.

The road originally gave alternative access to lots 444, 443, 442, 441 and 440 Cape Tribulation road. Three of these blocks (L444, L443 and L441) were purchased for conservation through the Daintree Rescue Program (1994) and the Daintree Buyback scheme (2004). Lot 442 was also recently purchased by Australian Rainforest Foundation (ARF) for conservation purposes and the most southern block L440 remains privately owned.

The section of this road we are proposing for closure is shown in attachment 1 figures 1 and 2 of the Application for road closure part B. It is the section that runs north from the entry point off Cape Tribulation road and it gives access to only National Park and our newly acquired Lot 422. The section that runs south from this entry point acts as a driveway for L440 and we are not suggesting closure of this section.

Australian Rainforest Foundation is currently in negotiation with the Qld Department of Environment and Heritage to gift Lot 442 (and numerous other properties) for inclusion in the Daintree National Park. In the case this gift is accepted it will create more continuity by bringing this whole section under the same tenure type and management regime. In unlikely case that it is not accepted ARF will use other mechanisms, likely a Nature Refuge conservation covenant, to ensure this property is protected from development in perpetuity. In either case the future of L442 will be that it is protected for the conservation of nature.

With this all in perspective we would like to propose to close and re-vegetate this northern section of this obsolete road. This and other such service roads running parallel to Cape Tribulation road are used for illegal camping and we believe it's closure will have multiple benefits that further enhance the conservation values of the iconic Daintree rainforest.

Kind Regards,

A handwritten signature in black ink, appearing to read "Wren McLean", written over a horizontal line.

Wren McLean
Conservation Officer
Australian Rainforest Foundation Ltd (A Company Limited by Guarantee)

Application for road closure Part B.14) Attachment 1.

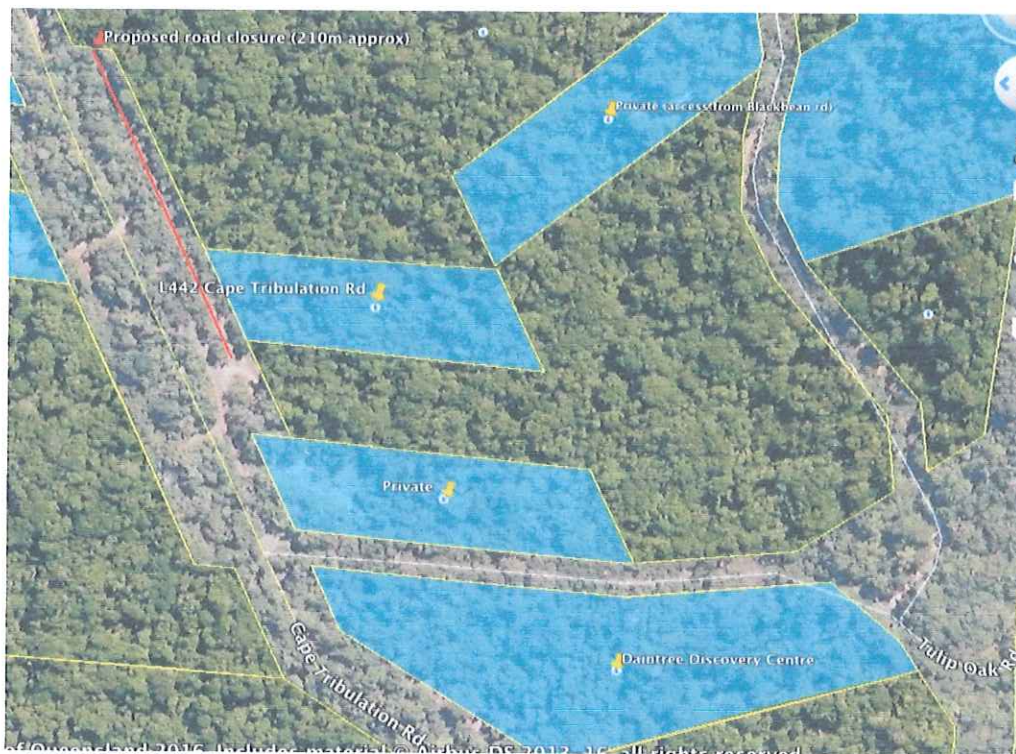


Figure 1. Google Earth Image of land tenure. Freehold (shaded) and Daintree National Park (unshaded). Red line indicates the section of service road proposed for closure.



Figure 2. Photograph of proposed section of road adjoining Lot 442 Cape Tribulation Rd (on right).

Application for road closure Part B Attachment 2

Attachment 5.2.1

WARNING—FOLDING OR MUTILATING WILL LEAD TO REJECTION—PLAN MAY BE ROLLED

TRAVERSES, ETC.

LINE	BEARING	DIST.
36-38	127°30'30"	295.8
43-45	181°32'40"	55.64
47-47A	64°30'	45.162
48-48A	75°32'40"	41.863
49-52	149°32'40"	262.52
51-51A	43°15'40"	41.913

REFERENCE MARKS

STN	TO	BEARING	DIST.	BRAND
20 ^a	OIP	0° 0'	1.006	
36	Pin	90° 0'	1.0	
37	Pin	270° 0'	1.0	
38	Pin	90° 0'	1.0	
39	Pin	270° 0'	1.0	
43	Pin	90° 0'	1.0	
46	Pin	270° 0'	1.0	
47	OIP	64° 30'	7.127	
	ORT.	165° 13'	6.518	
47 ^a	OIP	244° 30'	2.334	
	ORT.	261° 45'	7.242	
48 ^a	OIP	255° 33'	1.046	
	ORT.	3° 41' 40"	3.5	
49	Pin	90° 0'	1.0	
50	Pin	270° 0'	1.0	
51	OIP	223° 16'	0.945	
	ORT.	126° 46'	6.538	
51 ^a	OIP	223° 16'	0.628	
	ORT.	181° 03' 40"	3.253	
52	Pin	90° 0'	1.0	
53	Pin	270° 0'	1.0	

Area of New Road

(36-37-39-38-36).....5916 m²
 (43-44-46-45-43).....1113 m²
 (49-50-53-52-49).....5250 m²
 Total.....12279 ha

NO FIELD NOTES LOGGED	LINES NOT SURVEYED	STNS	CORNERS NOT MARKED	STNS
ORIGINAL PORTION 190	PLAN OF Lots 440 to 452			TOWN
ORIGINAL GRANT N3258	Cancelling part of Portion 190 on plan Sr. 407			PARISH <u>ALEXANDRA</u>
MAP REF.	PROCLAIMED SURVEY AREA	SURVEYED BY <u>Peter Stopford</u>	MERIDIAN <u>of RP 38178</u>	COUNTY <u>Solander</u>
		DATE <u>17, 12, 1982</u>	SCALE <u>1:3000</u>	REGISTERED PLAN <u>738994</u>

CROWN COPYRIGHT RESERVED, REGISTRAR OF TITLES, QUEENSLAND

CISP

Attn Robert Donovan

P.O. Box 723

MOSSMAN QLD

4873.



Post: PO Box 1062 NSW 2482

Phone: +61437426 119

ABN 44073434563

Ms Susanna Andrews
Property Officer
Douglas Shire Council
PO Box 723, Mossman, Qld

23/11/16

Dear Ms Andrews,

I write in regards to your request for further confirmation on Australian Rainforest Foundation's intentions for a permanent road closure over part of Cape Tribulation Road, Cow Bay, adjoining Lot 442 on RP738994 and Lot 3 on AP19235. The answers to your requests are as follows;

1. I confirm that Australian Rainforest Foundation intends the road to be amalgamated with the Daintree National Park
2. I confirm that Australian Rainforest Foundation intends to amalgamate Lot 442 on RP738994 with Daintree National Park
3. I confirm that Australian Rainforest Foundation is currently in the process of gaining approval from the Qld Department of Environment and Heritage for Lot 442 and the abovementioned adjoining road for inclusion in the Daintree National Park. A letter to confirm this has been requested from the Department. It is my sincere hope that this letter will be supplied to us before Friday 2nd December and will be forwarded directly to you.

Kind Regards,

A handwritten signature in black ink, appearing to read "Kelvin Davies".

Kelvin Davies
CEO and Director
Australian Rainforest Foundation Ltd (A Company Limited by Guarantee)



