

## **5.7. REQUEST TO EXECUTE PART C ROAD CLOSURE - ADJOINING 12-36 ALCHERA DRIVE, MOSSMAN - LOT 1 ON RP851435**

**REPORT AUTHOR(S)  
GENERAL MANAGER  
DEPARTMENT**

Susanna Andrews, Property Officer  
Darryl Crees, General Manager Corporate Services  
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 so an application can be lodged with the Department of Natural Resources and Mines for a proposed temporary road closure over part esplanade adjoining land located at 12-36 Alchera Drive, Mossman, also described as Lot 1 on RP851435; and**
- 2. requires all costs associated with the temporary road closure be paid by the applicant.**

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### **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 temporary road closure of part of the esplanade on the western side of the South Mossman River adjoining land located at 12-36 Alchera Drive, Mossman, also described as Lot 1 on RP851435. The subject area of esplanade has been utilised by the adjoining landowners for growing sugar cane for several decades.

It is recommended that Council executes the Part C so the application can be lodged with the Department of Natural Resources and Mines.

### **BACKGROUND**

Council has received a request to execute a form Part C for an application to temporarily close a dedicated road on which the adjoining landowners have been growing cane for several decades. The proposed road closure is of part of the esplanade on the western side of the South Mossman River adjoining land located at 12-36 Alchera Drive, Mossman, also described as Lot 1 on RP851435. The land is located in the vicinity of the rear of the Mossman Sugar Mill. Once the Part C has been executed, the landowners will lodge the application with the Department of Natural Resources and Mines (DNRM) for assessment.

Note that although the applicant's cover letter states that the application is for a proposed permanent road closure, the applicant has confirmed this is an error, and the application will in fact be for a temporary road closure.

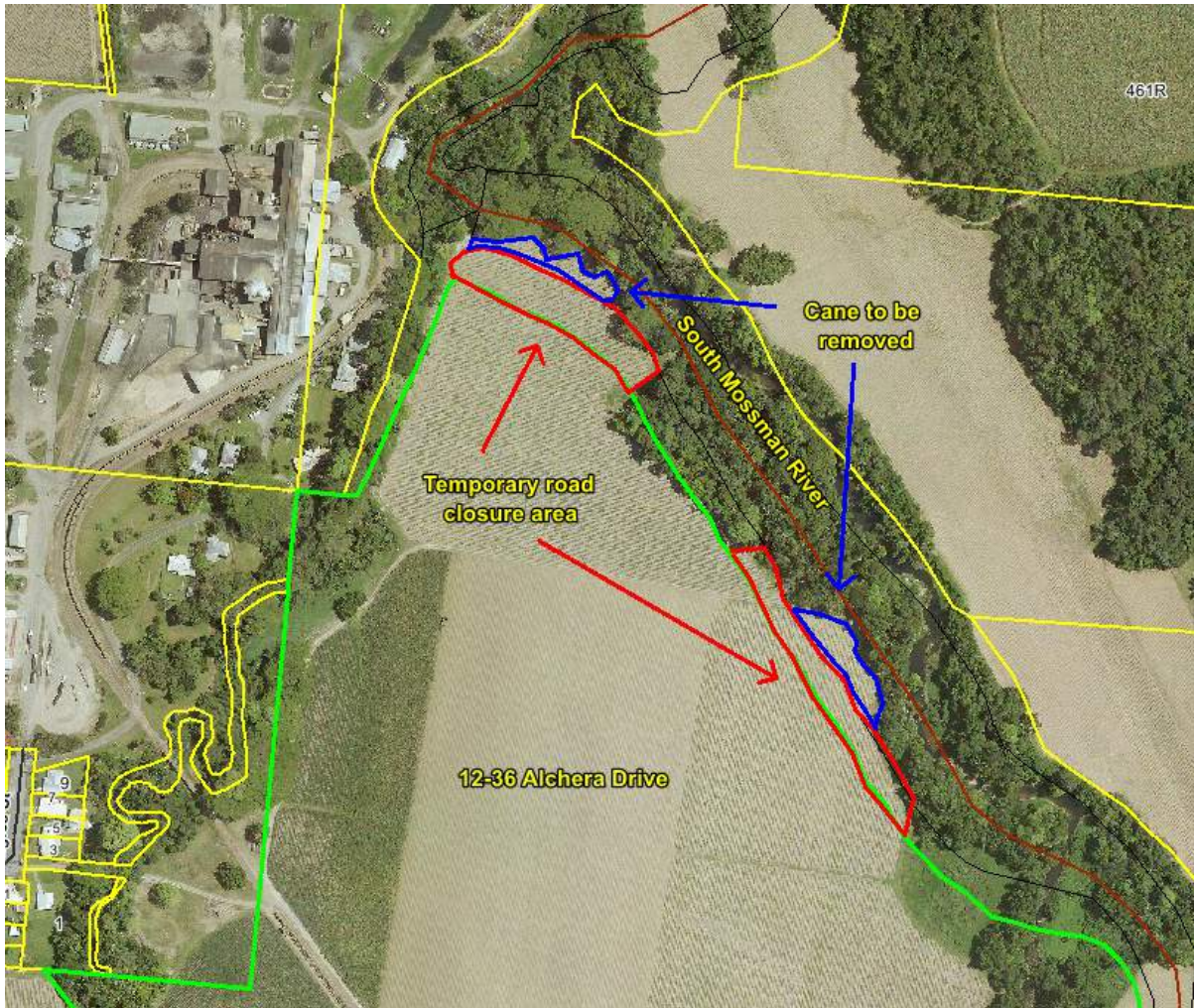


Figure 1.

It is a requirement of the 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 advice from the DNRM about the application process.

By executing the Part C, Council is stating:

1. it has no objection to the application 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 landowners have been unaware of the encroachment of their cane onto the esplanade. The 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 the 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 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.

The proposed temporary road closure will be publicly notified by the DNRM at the time the application is lodged.

## COMMENT

While it is a general principle that esplanade is retained for public use, this is not the recommendation in this case. 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 (marked in blue in the map above), 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.

Council officers see the proposal as a unique opportunity to secure land to protect riparian vegetation both for habitat protection and for ongoing carbon sequestration by the future rationalisation of the entire boundary, particularly along the eastern side of the lot.

When the application comes back for Council's comment officers propose to recommend that the boundary be permanently aligned to reflect the existing line of vegetation along the riparian corridor of the whole parcel. Officers propose to recommend to the DNRM that the farmed portions of the property (currently part of the road reserve) be included as part of the adjoining lot, and that the riparian corridor (existing vegetation) currently part of the lot become part of the esplanade (road reserve).



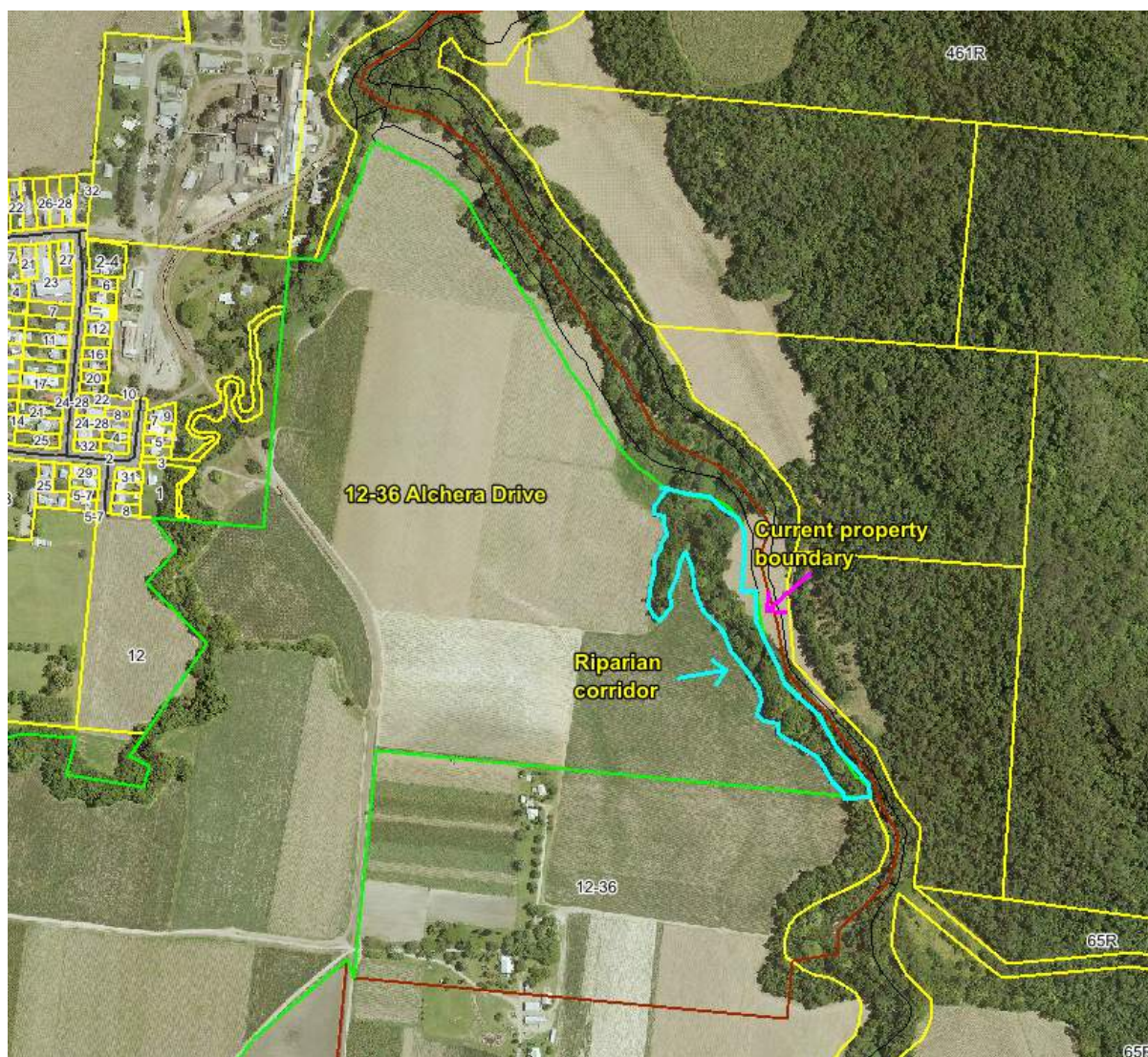


Figure 2.

## PROPOSAL

That Council executes the Part C 'Statement in relation to an application under the *Land Act* 1994 over State land' so the landowner can lodge the application with the DNRM.

## 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

There will be minimal risk management implications for Council.

## SUSTAINABILITY IMPLICATIONS

**Economic:** There are no economic sustainability implications in regard to the request.

**Environmental:** The request may present a unique opportunity for Council to secure land to protect riparian vegetation both for habitat protection and for ongoing carbon sequestration via a proposed rationalisation of the whole boundary to include any riparian corridor within the road reserve.

**Social:** The public has had no enjoyment of the subject area of the esplanade for several decades. In addition, the removal of the cane from the watercourse area will effectively increase the area available to public access.

## CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

### 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:

### Regulator

Required by legislation to provide a specific service.

## CONSULTATION

**Internal:**

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

**External:** Department of Natural Resources and Mines

## ATTACHMENTS

1. Request execute Part C road closure adj 12-36 Alchera Dr Mossman **[5.7.1]**

**Brie Brie Estate Pty Ltd**  
ABN 90767733512

DOUGLAS SHIRE COUNCIL Received	
File Name	Permanent
Document No	
26 MAY 2017	
Attention	RJD
Information	

PO Box 10

Telephone: 07 4098 1522

24<sup>th</sup> May 2017

Douglas Shire Council  
Planning Dept  
Mossman 4873

Dear Sir/Madam

We are seeking a permanent road closure of part of the esplanade on the western side of South Mossman River. As outlined in the attached email from DNR we are required to obtain consent (Form Part C) from council as a first step.

The purpose of the proposed closure is to enable us to continue growing cane there as we have done for many decades whilst being unaware of the encroachment. As can be seen from the attached aerial photograph the encroachment of the cane paddock onto the esplanade is quite small but is nevertheless productive cane land worth preserving. As stated above, cane has been grown there for a considerable amount of time with; we believe no adverse impact on the South Mossman River.

Yours Sincerely,



Gregg Watson  
Director  
Brie Brie Estate Pty Ltd







## **Watson**

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**From:** "DAVIES Jacqui" <Jacqui.Davies@dnrm.qld.gov.au>  
**Date:** Tuesday, May 23, 2017 11:42 AM  
**To:** <briebriestate@conxx.com>  
**Attach:** LA00 - Part A.pdf; LA18 - Road Closure.pdf; LA30 - Part C.pdf; Google Earth Image 2017.pdf  
**Subject:** Application for Temporary Road Closure

Good Morning Greg,

As discussed last week, the area of cane shown in the watercourse area (highlighted blue) will need to be removed as we cannot issue tenure over a watercourse.

To apply for a temporary road closure over the area of esplanade in which you cane is encroaching onto you will need to **speak to Douglas Shire Council and provide them with a copy of the Part C (form attached) and a copy of the a drawing of the area you are applying for. Once you receive this documentation back from Council you can submit your application to the department.**

To lodge your application with the department you are required to complete the following forms:

LA00 – Part A Contact Details

LA18 – Road Closure

LA30 – Part C – to be completed by Council prior to lodgement

Payment of application fee: \$261.70 (if lodged before 30<sup>th</sup> June 2017)

You can lodge your application in person at your nearest business centre, by emailing to [SLAMlodgement@dnrm.qld.gov.au](mailto:SLAMlodgement@dnrm.qld.gov.au) or by posting it to Department of Natural Resources and Mines, State Land Lodgement, PO Box 5318, Townsville QLD 4810.

If a fee applies to your application, payment options are cash (in person only), EFTPOS (in person at some centres only), cheque (in person or by post), or credit card. Cheques should be made out to the 'Department of Natural Resources and Mines' and marked 'not negotiable'. Credit card payments are accepted in person, over the phone, or by Australia Post mail. Please do not send credit card payment forms by email.

Once the application has been lodged with the department, the department will need to assess local community opinion about a proposed closure, a public notice is required (e.g. advertisement in a local newspaper, signs erected on the land). We will provide details once you have lodged your application.

### How your application is assessed

We will assess your application against legislative requirements and our own policies, procedures and guidelines. We will seek the views of other stakeholders (e.g. state, regional and local agencies) and inspect the land if required.

Our review will also include an assessment of whether native title issues need to be addressed, and how this should be done. Depending on the outcome, you may be required to address native titles issues as a condition of the offer.

### What happens next?

Once we have received the advice of other stakeholders and all issues, including native title, have been investigated, we will send you a written notice.

If your application is successful, a written offer will set out the various conditions and requirements. You must complete the acceptance form and return it to us by the date specified or the offer will lapse.



If an area of closed road is to be included into the adjoining land, a survey plan of the road will be required. The survey status of the adjoining land will also need to be maintained.

The costs involved in closing a road will depend on how the land is to be allocated. They could include payments for:

- purchase price, including GST
- first year's rent
- stamp duty on the sale
- lodgement of a plan of survey, if needed
- regulatory fees and charges.

Once you have accepted the offer and satisfied all offer conditions, we will take action to close the road, and notify you that the road has been closed.

If you have any questions please contact me on 4222 5422.

Thanks



**Jacqui Davies**  
 Land Administration Officer  
 State Land Asset Management | North Region  
 Department of Natural Resources and Mines

P: 07 4222 5422

E: [jacqui.davies@dnrm.qld.gov.au](mailto:jacqui.davies@dnrm.qld.gov.au)

A: 5B Sheridan Street, Cairns, QLD, 4870 | PO Box 5318, Townsville, QLD 4810

W: [www.dnrm.qld.gov.au](http://www.dnrm.qld.gov.au)

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# 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 no additional comment, please leave this section blank)

**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](mailto: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**



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Google earth

