

5.3. APPLICATION FOR PERMANENT ROAD CLOSURE ADJOINING LOT 129 ON SR454, TOLL GATE ROAD OAK BEACH

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

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, advising the Department of Resources (DOR) that Council cannot authorise 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.**
- 2. 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.**
- 3. 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.**
- 4. Delegates authority to the Chief Executive Officer in accordance section 257 of the *Local Government Act 2009*, to finalise any and all matters associated with the application.**

EXECUTIVE SUMMARY

Council has received a proposal from a landowner with respect to obtaining a permanent road closure over part of unnamed road reserve off Toll Gate Road Oak Beach, adjoining Lot 129 on SR454. If the permanent road closure is approved by DOR, the applicant intends to amalgamate the subject area of road reserve into their adjoining freehold property.

DOR has a form, "LA30 Statement in relation to an application under the Land act 1994 over State land – Part C."

In following the administrative process as detailed on the Part C form, Council is unable to authorise the proposed permanent road closure, as it does not have a local law which empowers it to do so. As such, Council must complete the form, indicating that it requests DOR to consider the application under the *Land Act 1994* with respect to this matter. This is achieved by section 1 of the recommendation.

Internal consultation at Council was undertaken, where it was determined that Planning officers had concerns with the proposal as submitted. Details of those concerns are as follows:

- The development as proposed, appears to seek the extension of the residential use into the naturally vegetated gully area that is included in a Conservation Zone where

the purpose of the zone is to provide for the protection, restoration and management of natural areas; and identified as supporting significant biological and ecological diversity; and

- The Planning Scheme identifies the adjacent Captain Cook Highway as an Iconic Recreation Route and a Scenic Route Buffer / View Corridor. Concern would be held with the size of the new lot and whether this gives rise to possible further subdivision and / or building works and the resultant impacts.

By Council executing the Form Part C, it should be noted that Council is not consenting to the proposed permanent road closure itself. By Council's CEO executing the Form Part C, this only allows the applicant to lodge the Form at DOR.

In addition, the executed Form Part C will request DOR to seek Council's further views on the application. This is achieved by section 2 of the recommendation.

Also as part of the recommendation, an additional clause has been added, advising the Applicant to make a formal pre-lodgment enquiry with Council whereby the above Planning considerations can be further explored.

BACKGROUND

The subject area forms part of unnamed road reserve which is situated on the western side of the Captain Cook Highway at Oak Beach. Under Council's 2018 Planning Scheme, the road reserve is contained in the Conservation Zone and the neighbouring land is situated in the Low Density Residential Zone.

The proposed area of permanent road closure consists of approximately 1800m² and is situated adjacent to the applicant's residential property at Toll Gate Road Oak Beach.

DOR has a form, "LA30 Statement in relation to an application under the *Land Act 1994* over State land – Part C".

COMMENT

The applicant has indicated that if the permanent road closure is approved by DOR, the intent is to amalgamate the road into their adjoining lot, in order to extend their existing garden and to also provide some revegetation of the area. The applicant has also indicated that they are aware that the area of proposed road closure encompasses a natural water way and have subsequently advised that they have no future plans to alter the current water flow path within the subject area.

The applicant also hopes that if the road closure is approved, the proposed revegetation efforts will help solve issues they are currently having to deal with in relation to fire hazard threats, illegal dumping and campers from the beach carpark using the subject area as a toilet.

Property officers undertook consultation with all Council departments on the proposed road closure. As part of the initial consultation, the views of Council's Planning section were provided to the applicant, where it was suggested that an amended application for a substantially reduced area may result in a more favourable outcome. As a consequence, the applicant responded with an amended application, however there was only a small decrease in the area of proposed road closure. Upon further review by the Planners, it was confirmed that there would be no change to the earlier comments.

Details of the concerns raised by Council's Planning section are as follows:

- The development as proposed, appears to seek the extension of the residential use into the naturally vegetated gully area that is included in a Conservation Zone where the purpose of the zone is to provide for the protection, restoration and management of natural areas; and identified as supporting significant biological and ecological diversity; and
- The Planning Scheme identifies the adjacent Captain Cook Highway as an Iconic Recreation Route and a Scenic Route Buffer / View Corridor. Concern would be held with the size of the new lot and whether this gives rise to possible further subdivision and / or building works and the resultant impacts.

PROPOSAL

That Council delegates authority to the CEO to execute the Form C. By Council executing the Form Part C, it should be noted that Council is not consenting to the proposed permanent road closure itself. By executing the Form Part C, this only allows the applicant to lodge the Form at DOR. If Council resolves to adopt part 2 of the resolution contained in this report, this will mean that when Council's CEO executes the Form, Council will choose an option that requires further consultation from DOR, before a decision is made on the application. Consequently, a further Council report on the matter will be required at a later date.

Furthermore, in view of concerns raised by Planning, it is proposed that the Applicant be advised to make formal pre-lodgment to Council, whereby the planning considerations detailed above can be further explored.

The outcome of these discussions can then be incorporated into Council's response when DOR seeks further consultation with Council on the proposed road closure.

FINANCIAL/RESOURCE IMPLICATIONS

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

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

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| Economic: | There would be no associated cost to Council or the surrounding landowners. It is anticipated that the proposed permanent road closure would have no impact upon 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.*

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: Infrastructure – no issues raised.

Project Office – no objection.

Water & Wastewater – have no concerns regarding the road closure and impact on infrastructure, however there is a substantial area they are requiring and it is encompassing a water way, which is a concern.

Governance – no issues raised.

Finance & Corporate Services – no issues raised.

Environment & Planning – The road closure is not supported on the basis that the development, as proposed, appears to seek the extension of the residential use into the naturally vegetated gully area that is included in a Conservation Zone where the purpose of the zone is to provide for the protection, restoration and management of natural areas. The Planning Scheme identifies the adjacent Captain Cook Highway as an Iconic Recreation Route and a Scenic Route Buffer/View Corridor. Concern would be held with the size of the new lot and whether this gives rise to possible further subdivision and / or building works and the resultant impacts.

Consideration could be given to a marginal increase in the site area over the adjacent garden, as identified on the plan below, that did not include any individual access down to the road pavement. Note any proposal for an extension into any part of the adjacent road would need approval for

a material change of use for which an impact assessable development application would be required. The application would need to contain sufficient information detailing the extent of road to be closed, the location of the gully / waterway and the top of bank and how the proposal complies with the development outcomes sort by the Planning Scheme and the relevant codes.

The application would be subject to assessment against the whole of the Planning Scheme, would require referral to the State and would require public notification. Council is required to consider submissions in respect to the development application and as such no further comment is available at this time.

The applicant should reconsider the extent of proposed road closure in light of the above comments.



External: Property owners of Lot 129 on SR454.

ATTACHMENTS

1. Locality Map 2 - Proposed Road Closure at Oak Beach (8) [5.3.1 - 1 page]

Locality Map - Proposed Road Closure at Oak Beach

