

Richmond
Valley
Council



AGENDA

Extraordinary Council Meeting

I hereby give notice that an Extraordinary Meeting of Council will be held on:

Date: Tuesday, 6 August 2024

Time: 6pm

**Location: Council Chambers
10 Graham Place, Casino**

**Vaughan Macdonald
General Manager**

Statement of Ethical Obligations

In accordance with Clause 3.23 of the Model Code of Meeting Practice, Councillors are reminded of their Oath or Affirmation of Office made under section 233A of the *Local Government Act 1993* and their obligations under Council's Code of Conduct to disclose and appropriately manage conflicts of interest.

Oath or affirmation of office

The Oath or Affirmation is taken by each Councillor whereby they swear or declare to:

Undertake the duties of the office of Councillor in the best interests of the people of the Richmond Valley and Richmond Valley Council, and that they will faithfully and impartially carry out the functions, powers, authorities and discretions vested in them under the Local Government Act 1993 or any other Act to the best of their ability and judgment.

Conflicts of interest

All Councillors must declare and manage any conflicts of interest they may have in matters being considered at Council meetings in accordance with Council's Code of Conduct.

All declarations of conflicts of interest and how the conflict of interest was managed will be recorded in the minutes of the meeting at which the declaration was made.

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1 ACKNOWLEDGEMENT OF COUNTRY

The Mayor will provide an Acknowledgement of Country by reading the following statement on behalf of Council:

"Richmond Valley Council recognises the people of the Bundjalung Nations as Custodians and Traditional Owners of this land and we value and appreciate the continuing cultural connection to lands, their living culture and their unique role in the life of this region in the past, present and future."

2 PRAYER**3 APOLOGIES****4 DECLARATION OF INTERESTS**

(Councillors to specify details of item and nature of interest)

5 MATTERS DETERMINED WITHOUT DEBATE

Each Councillor is given the opportunity to indicate which items they wish to debate or question. Item numbers identified for debate or questioning will be read to the Meeting.

Following identification of the above items a motion will be moved in regard to the balance of items being determined without debate.

6 PROJECTS & BUSINESS DEVELOPMENT

6.1 LAND ACQUISITION 115 UPPER CHERRY TREE ROAD FOR ROAD WIDENING

Director: Ben Zeller

Responsible Officer: Kim Anderson

EXECUTIVE SUMMARY

During the February 2022 natural disaster flood event, a major land slip occurred on the road adjoining 115 Upper Cherry Tree Road, Upper Mongogarie. During immediate reconstruction works, Council entered into an interim Licence Agreement with the adjoining landowner to re-align the road onto their land to restore access to the residents.

Due to the extensive damage to the site, the intent of the Licence Agreement was that the diversion road will be permanently realigned, and that Council will act accordingly to formalise.

Following the disaster claim assessment, evaluation, and tender process Council received funding approval for the reconstruction of the landslip from Transport for NSW (TfNSW) on 8 July 2024. The NSW Essential Public Asset Restoration Guidelines require that Council reinstate the road on the existing alignment.

Council's Asset Planning and Infrastructure Recovery staff support the land acquisition as per the intent of the original Licence Agreement as an alternative contingency protection for this road. It is recommended that Council continues with the land acquisition including the constructed side road. The affected landholder has requested that the unformed Crown Road is provided as compensation for the loss of land.

RECOMMENDATION

That Council:

1. Acquires the land by private agreement by the authority contained in the *Roads Act 1993*. The land identified as being required for the public road realignment affecting 115 Upper Cherry Tree Road, Upper Mongogarie within part Lot 1 Deposited Plan 832403.
2. Authorises the General Manager to:
 - (i) Negotiate the final boundaries of the land acquisition in accordance with this report;
 - (ii) Negotiate the compensation of land acquisition under the provisions to achieve genuine agreement between all parties.
 - (iii) Sign the necessary documentation to implement this resolution, including affixing the Seal of Council as required.
3. Dedicates the acquired land, as public road.
4. Supports an application to the NSW Crown Lands as requested by the affected property owner to formally close the subject Crown Road offered in compensation created from the road realignment.

DELIVERY PROGRAM LINKS

6 - Provide infrastructure that meets community needs

6C - Provide a network of safe, well-constructed local roads, bridges, footpaths and cycleways

6C1 - Deliver local infrastructure maintenance and renewal programs

BUDGET IMPLICATIONS

All costs relating to the reconstruction will be claimed from NSW Disaster Recovery Funding. The land acquisition for public road will be funded from Council's Real Estate Reserve.

REPORT

During the February 2022 natural disaster flood event, a major land slip occurred on the road adjoining 115 Upper Cherry Tree Rd, Upper Mongogarie. During immediate reconstruction works, Council entered into an interim Licence Agreement with the adjoining landowner to re-align the road onto their land to restore access to the residents and community.

Due to the extensive damage to the site, the intent of the Licence Agreement was that the diversion road will be permanently realigned, and that Council will act accordingly to formalise. The landowner did not seek any licence fee or compensation for the creation, use and inconvenience of the side track which permitted other residents along Upper Cherry Tree to access their properties.

Following the disaster claim assessment, evaluation, and tender process Council received funding approval for the reconstruction of the landslip from TfNSW on 8 July 2024. The NSW Essential Public Asset Restoration Guidelines require that Council reinstate the road on the existing alignment.

The affected landowner has requested that should Council not continue to realign the road that they seek full compensation for use of the land, reinstatement of the site including fences, and vegetation to pre-natural disaster condition.

The affected landowner would prefer the land acquisition occurs and that the crown road be offered in compensation. Section 44 *Roads Act 1993* enables land of former public road may be given in compensation for land acquired for the purposes of this Act. Council may seek to transfer the ownership of the road to Council to facilitate the closing. Upon closing, the land would vest in the Crown as it was never constructed limiting Councils ability to offer this in compensation. Alternatively, Council can support an application to NSW Crown Lands as the road authority requesting to formally close the road for disposal to the adjoining landowner.

Due to the significant drainage damage that occurred at the site (identified in Image 2 and 3), Council Asset Planning and Infrastructure Recovery staff support the land acquisition as an alternative contingency protection for this road.



Image 1: Map showing Crown Road to be closed in compensation, and proposed land to be acquired for road acquisition.



Image 2: Upper Cherry Tree Road landslide.



Image 3: Upper Cherry Tree Road post flood aerial imagery of the slip.

CONSULTATION

Subject to the determination of the resolution, Council staff will:

- a) Continue to negotiate with the affected private property landowner to facilitate the land acquisition, and
- b) Request from NSW Crown Lands the closure of the unformed crown road to be provided in compensation for land acquired for public road.

CONCLUSION

Council is required to undertake works to reconstruct Upper Cherry Tree Road following a major landslip during the 2022 flood event. A side detour track was constructed encroaching into the adjoining private land of 115 Upper Cherry Tree Road, Upper Mongogarie. The affected landowner has requested that Council formalise the side detour track as part of the public road and that the unformed crown road be offered in compensation.

It is recommended that Council undertake the land acquisition and request the Crown Road closure as identified in this report.

ATTACHMENT(S)

Nil

6.2 LAND ACQUISITION NAUGHTONS GAP ROAD WIDENING

Director: Ben Zeller

Responsible Officer: Brooke Thomas

EXECUTIVE SUMMARY

Council received funding in 2020 from the Fixing Local Roads Program for improvements and road widening to approximately 300 metres of Naughtons Gap Road (southern boundary of 92 Naughtons Gap Road to the Northern boundary of 925 Naughtons Gap Road).

The construction works were completed in April 2024, which included surface corrections and improvements to the geometric shape of the road to improve safety. The new road alignment encroaches into the adjoining property and Council is required to acquire land for the purpose of widening the road.

Council has been negotiating with the affected property owner to secure the land acquisition by agreement during the design and construction period and aims to reach an agreement by negotiation.

RECOMMENDATION

That Council:

1. Acquires the land identified as Lot 1 DP1307756 required for public road by private agreement, acquisition by consent or through the compulsory acquisition process under the *Land Acquisition (Just Terms Compensation) Act 1991* by the authority contained in the *Roads Act 1993*.
2. Approves the making of an application to the Minister for Local Government for the issue of a Proposed Acquisition Notice under the *Land Acquisition (Just Terms Compensation) Act 1991* with respect to the subject land.
3. Authorises the General Manager to:
 - i. Negotiate the final boundaries of the land acquisition in accordance with this report;
 - ii. Negotiate the compensation of the land acquisition under the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* to achieve genuine agreement between all parties.
 - iii. Sign the necessary documentation to implement this resolution, including affixing the Seal of Council as required.
4. Dedicates the acquired land, as public road.

DELIVERY PROGRAM LINKS

6 - Provide infrastructure that meets community needs

6C - Provide a network of safe, well-constructed local roads, bridges, footpaths and cycleways

6C1 - Deliver local infrastructure maintenance and renewal programs

BUDGET IMPLICATIONS

The road plans, survey, design, and construction were funded by the Safer Roads and Fixing Local Roads Program. The land acquisition compensation will be funded from Council's internal reserves.

REPORT

Council received funding in 2020 from the Fixing Local Roads Program for improvements and road widening to approximately 300 metres of Naughtons Gap Road (Southern boundary of 92 Naughtons Gap Road to the Northern boundary of 925 Naughtons Gap Road).

This road was identified as a priority due to vehicle safety based on the existing alignment and the need to improve the existing surface condition of this section of public road. During the planning, design and construction stage, Council actively consulted with all the affected property owners. The road construction was completed, and the road opened in April 2024.

The geometric design required the widening of the existing road reserve which resulted in an encroachment into the land of the adjoining property of 925 Naughtons Gap Road. This included geometric alignment improvement, culverts, and drainage to protect the stabilisation of this section of road.

Council replaced the modified boundary fence for the property owner affected by the road widening to the proposed boundary as part of the project.

The final draft unregistered Deposited Plan 1307756, surveyed by Byron Bay Surveying Pty Ltd identifies the land to be acquired for public road as 720m² (as shown in the attachments) and Council is required to finalise the land acquisition and dedicate the encroached land as public road.

Council is having ongoing discussions with the affected landowner who has been impacted by the road widening and aims to achieve the land acquisition through genuine agreement of all parties.

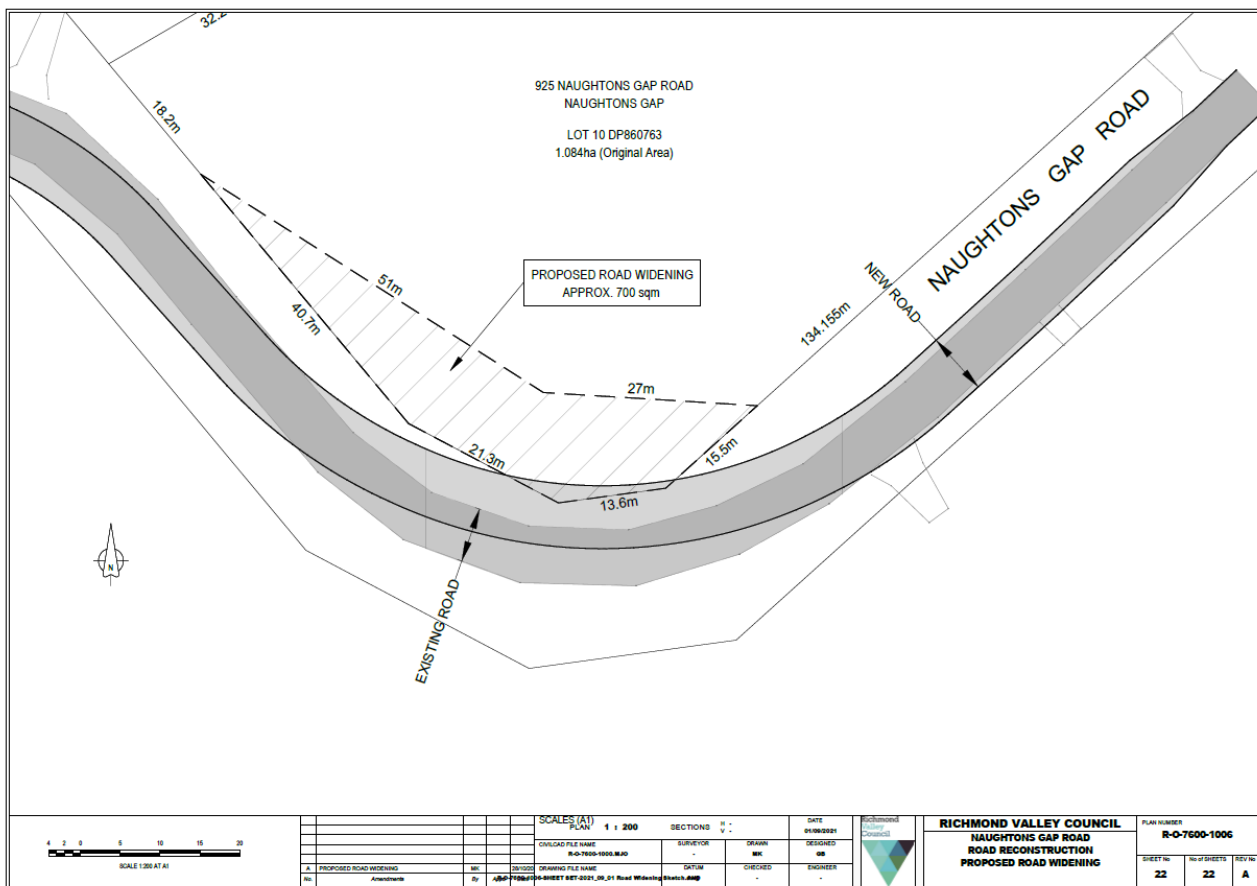


Image 1 – Road Widening Sketch showing approximate area of land acquisition required with road realignment.



Image 2 – Photograph showing the constructed road widening, culvert and associated drainage impacting 925 Naughtons Gap Rd.

CONSULTATION

Council will continue to negotiate with the affected property landowner in attempts to reach a private agreement on the land acquisition.

Council will be required to undertake due process including additional consultation with the affected landholder in accordance with *Land Acquisition (Just Terms Compensation) Act 1991* should both parties be unable to reach a mutual agreement.

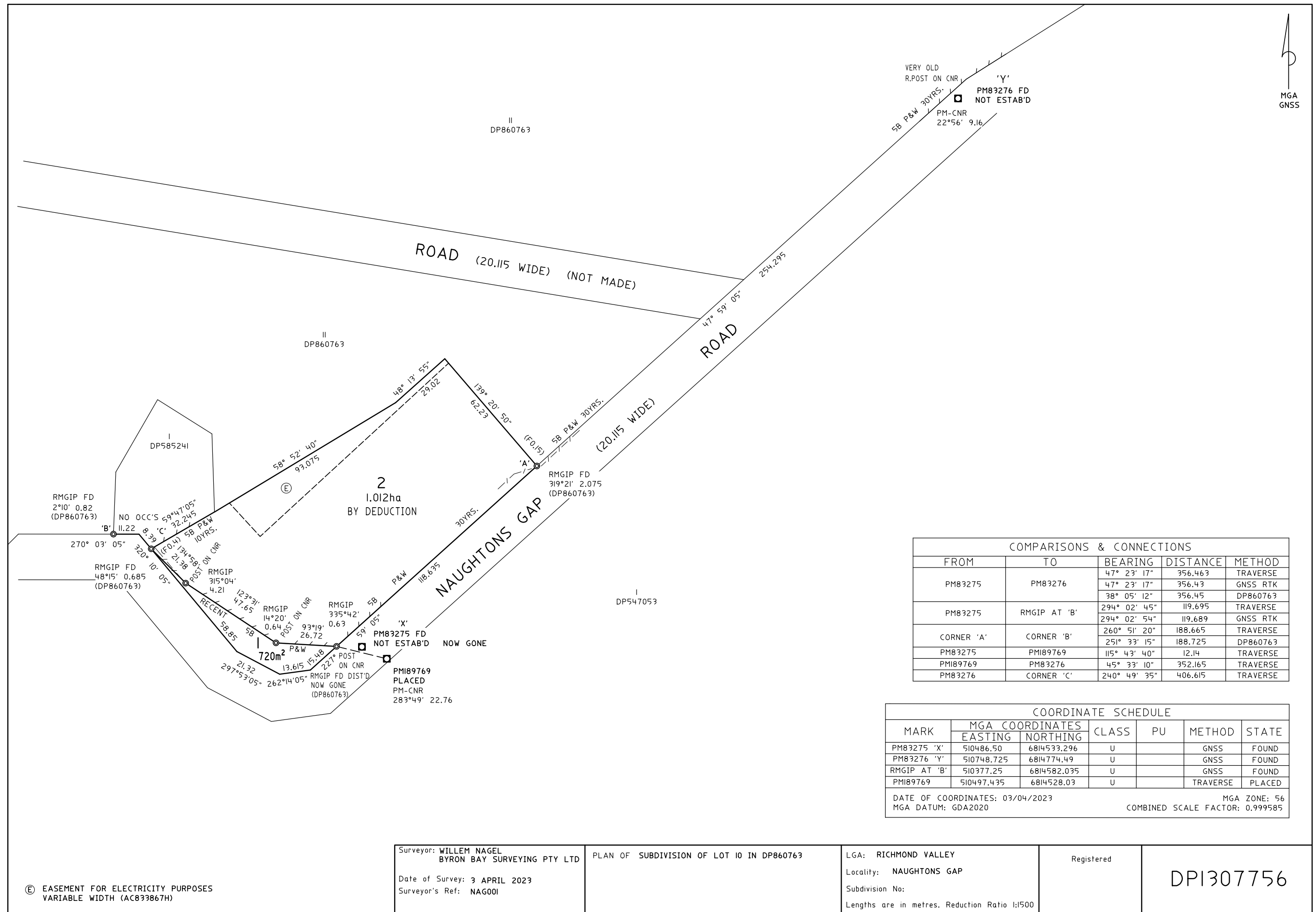
CONCLUSION

Council has undertaken works on Naughtons Gap Road to improve vehicle safety which required a widening of a section of the public road. This has encroached into the adjoining private land of 925 Naughtons Gap Road.

It is recommended that Council undertake the land acquisition as identified in this report.

ATTACHMENT(S)

- 1. Draft unregistered Deposited Plan 1307756**



COMPARISONS & CONNECTIONS				
FROM	TO	BEARING	DISTANCE	METHOD
PM83275	PM83276	47° 23' 17"	356.463	TRAVERSE
		47° 23' 17"	356.43	GNSS RTK
		38° 05' 12"	356.45	DP860763
PM83275	RMGIP AT 'B'	294° 02' 45"	119.695	TRAVERSE
		294° 02' 54"	119.689	GNSS RTK
CORNER 'A'	CORNER 'B'	260° 51' 20"	188.665	TRAVERSE
		251° 33' 15"	188.725	DP860763
PM83275	PM189769	115° 43' 40"	12.14	TRAVERSE
PM189769	PM83276	45° 33' 10"	352.165	TRAVERSE
PM83276	CORNER 'C'	240° 49' 35"	406.615	TRAVERSE

COORDINATE SCHEDULE						
MARK	MGA COORDINATES		CLASS	PU	METHOD	STATE
	EASTING	NORTHING				
PM83275 'X'	510486.50	6814533.296	U		GNSS	FOUND
PM83276 'Y'	510748.725	6814774.49	U		GNSS	FOUND
RMGIP AT 'B'	510377.25	6814582.035	U		GNSS	FOUND
PM189769	510497.435	6814528.03	U		TRAVERSE	PLACED

DATE OF COORDINATES: 03/04/2023 MGA ZONE: 56
MGA DATUM: GDA2020 COMBINED SCALE FACTOR: 0.999585

Ⓢ EASEMENT FOR ELECTRICITY PURPOSES VARIABLE WIDTH (AC833867H)

Surveyor: WILLEM NAGEL
BYRON BAY SURVEYING PTY LTD
Date of Survey: 3 APRIL 2023
Surveyor's Ref: NAG001

PLAN OF SUBDIVISION OF LOT 10 IN DP860763

LGA: RICHMOND VALLEY
Locality: NAUGHTONS GAP

Registered

DPI307756

Subdivision No:
Lengths are in metres. Reduction Ratio 1:1500

6.3 DEDICATION AND CLOSURE OF PUBLIC ROADS

Director: Ben Zeller

Responsible Officer: Kim Anderson

EXECUTIVE SUMMARY

During investigations for the activation of land specific to the Johnston Street Industrial precinct as identified in the Richmond Valley Regional Jobs Precinct, Council has acknowledged the need to pursue the due process to formalise the dedication of public roads and the closure of unnecessary roads within the precinct.

Prior to the *Local Government Act 1919*, roads were created but often not dedicated to the local Council. The *Roads Act 1993*, under sections 16 and 17, provides a process to resolve doubts concerning the status of those roads by publication of a notice to dedicate the public road in the NSW Government Gazette. The Act provides that no compensation is payable.

Two laneways each adjoining Patricia Street, Casino are used as drainage reserves and provide no current or future need as a public road. It is proposed that these laneways are closed and classified as Council operational land. This will support the future planning and development of the Johnston Street Industrial precinct as part of the Regional Jobs Precinct activation.

The road closure process requires public exhibition, notification to relevant authorities and consultation with affected landowners. A future report will be presented to Council for consideration of any submissions received during the road closure exhibition period.

RECOMMENDATION

That Council:

1. In accordance with Section 16 and 17 of the *Roads Act 1993*;
 - (a) serve 28 days' notice on the owners of the land the intention to dedicate the residual roads within deposited plan 976660 as public road, and
 - (b) should no application be made by the owners to the Land and Environment Court within 28 days of that notification, a notice be placed in the NSW Government Gazette dedicating the land as public roads.
2. In accordance with Section 38B of the *Roads Act 1993*, undertake the relevant consultation to close the laneways adjoining Patricia Street as operational land.
3. A further report be submitted to Council at the completion of the consultation.

DELIVERY PROGRAM LINKS

6 - Provide infrastructure that meets community needs

6C - Provide a network of safe, well-constructed local roads, bridges, footpaths and cycleways

6C1 - Deliver local infrastructure maintenance and renewal programs

BUDGET IMPLICATIONS

Costs associated with advertising, plan preparation and registration fees can be funded from the existing real estate reserve.

Section 16(4) of the *Roads Act 1993* (NSW) states that no compensation is payable to any person with respect to any loss or damage arising from the dedication of public road specific to this section.

REPORT

The Richmond Valley Regional Job Precinct (RJP) was announced by the NSW Government in February 2021. The precinct will facilitate the growth of industry, agribusiness and manufacturing in Casino and the North Coast region. The precinct study area covers an area of 510 hectares and is expected to yield approximately 335ha of employment land.

During investigations for the activation of land specific to the Johnston Street Industrial precinct as identified in the RJP, Council has acknowledged the need to pursue the due process to formalise the dedication of public roads and the closure of unnecessary roads within the precinct.

Road dedication as a public road

The roads created as part of the first subdivision plan within the township of Irvington were created earlier than 1883, prior to the commencements of the *Local Government Act 1906* and following that date, never been formally dedicated as a public road. This includes government roads identified within and outside the identified RJP area. It is the intent that Council will formalise all the residual roads within this deposited plan as part of this due process.

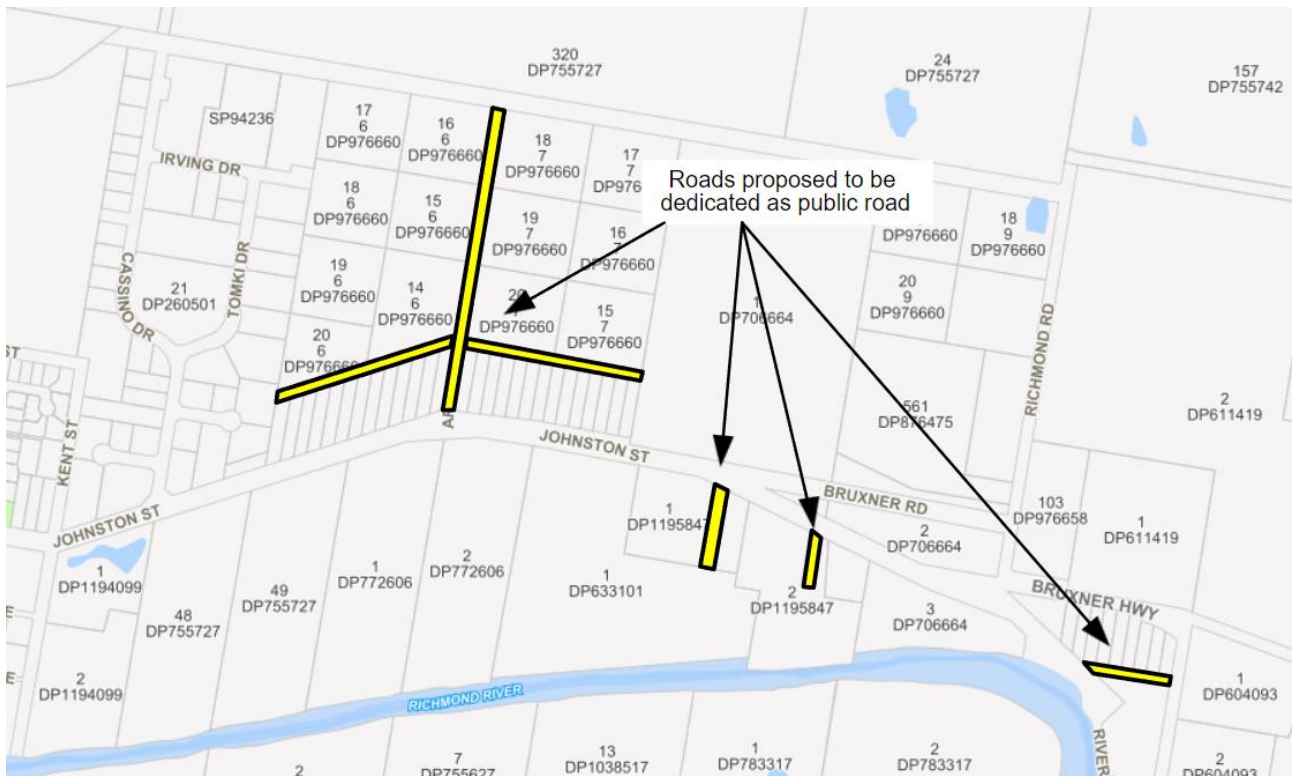
The proposal does not include any sections of road that were created in the original subdivision plans that were subsequently closed and sold as freehold land. The roads to be formally dedicated as public road are identified in Map 1 below.

Section 16 of the *Roads Act 1993* has provisions for Council to dedicate land set aside for public road from subdivision of land which occurred prior to 1 January 1907. Council may publish within the NSW Government Gazette that the land is free from all trusts, restrictions, dedications, reservations, obligations, and interests and is dedicated as a public road. The Act provides that no compensation is payable for this action.

It is a requirement of the *Roads Act 1993* that before Council can dedicate land as a public road under Section 16, Council must provide at least 28 days' notice of its intention to do so on the owner of the land. Following a period of not less than 28 days, if no declarations are made by the owner of the land to the Land and Environment Court, Council can proceed with dedicating the land as public road.

The exact ownership details at the time of the subdivision are unclear. The date of the registration of the subdivision of deposited plan 976660 is not referenced on the plan and is unknown.

Investigations do suggest that the land may have been originally owned by Adelaide Irvington at the time of the subdivision. Historical land searches reference the government roads for transfers of parcels from Adelaide Irvington with the subdivision allotments as noted within old system book 280, number 119, which is dated 12 April 1883. Given that it has been at a least a minimum 141 years since the registration of deposited plan 976660 it is no longer possible to notify the original owner.



Map 1: Roads to be dedicated as public roads created by subdivision in deposited plan 976660.

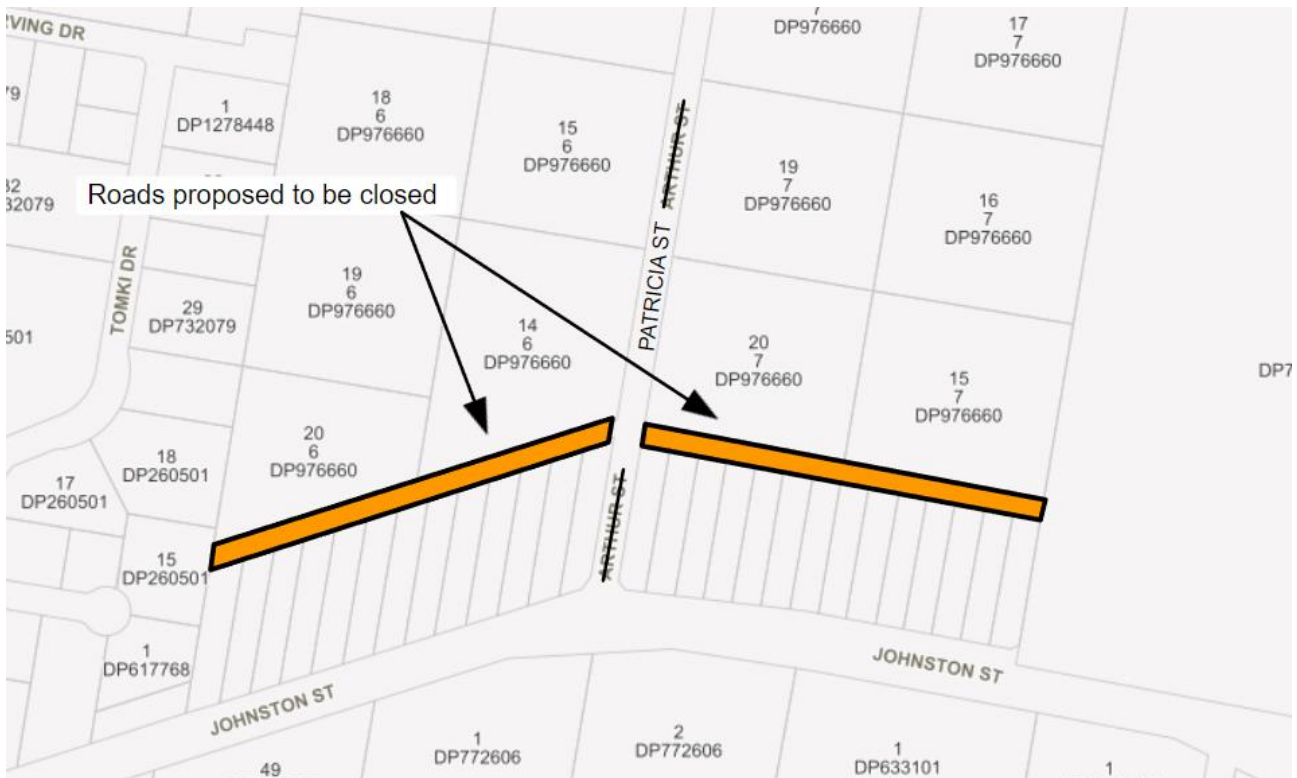
Road closures as Council operational land

The laneways adjoining Patricia Street (previously known as Arthur Street) have been used as drainage reserves. These laneways do not form part of the existing road network and do not serve the present or future need as vehicular access for public road. To support the activation of the industrial land as part of the RJP, it is proposed that the laneways are closed and classified as Council operational land. The laneways applicable to this road closure are identified in Map 2 below.

Council must ensure that any road closure does not result in land locked property, such that each parcel of land must continue to maintain lawful access to a public road. A condition of the road closure would be that the adjoining parcels are required to be consolidated to ensure that the land parcels maintain lawful access to a public road being Patricia Street or Johnston Street (Bruxner Highway).

Council is required to undertake public consultation in accordance with Section 38B of the *Roads Act 1993* to close the public roads. A future report will be presented to Council for consideration of any submissions received during the exhibition period.

The land is proposed to be classified as Council operational land and will form part of the future industrial activation development as identified in the RJP.



Map 2: Roads to be closed and classified as Council operational land.

CONSULTATION

Road dedication as public road

The *Roads Act 1993* requires Council's using Section 16 to dedicate land as a public road to serve its intention to do so on the owner of the land. This provision was proclaimed legislation at the time when some of the original subdividers were alive and easily located. The date of the plan of subdivision is not noted on the plan and is unknown. Through investigations it has been identified that the title transfers from Adelaide Irvington referenced the government roads on deeds dating back to 1883.

Given that it has been at a minimum of 141 years since the registration of deposited plan 976660 it is no longer possible to notify the original owner.

It is therefore proposed to advertise Council's intention to dedicate the residual roads within deposited plan 976660 on Council's website and online newspaper. The minimum required advertising period required by the *Roads Act 1993* is 28 days. If no application is made by the owner of the land to the Land and Environment Court after this time, a notice will be placed in the NSW Government Gazette dedicating the land as public road.

For roads created in subdivisions pre 1907 to date, the *Roads Act 1993* does not require public consultation. A notice in the NSW Government Gazette is the minimum requirement.

Road closure

Council is required to undertake the relevant public consultation in accordance with Section 38B of the *Roads Act 1993* to close a public road. This includes notification to relevant authorities, advertising in a local newspaper, writing to affected residents and adjoining landholders with a minimum 28-day period for submissions.

CONCLUSION

That Council undertake the process to resolve doubts concerning the status of the residual roads created within deposited plan 976660 by publication of a notice to dedicate the public road in the NSW Government Gazette.

That Council would undertake the relevant public consultation in accordance with Section 38B of the *Roads Act 1993* to close the public roads as operational land as identified in this report.

A further report on the road closures will be submitted to Council at the completion of the public consultation for final determination.

ATTACHMENT(S)

Nil

7 MATTERS REFERRED TO CLOSED COUNCIL

RECOMMENDATION

That Council considers the confidential report(s) listed below in a meeting closed to the public in accordance with Section 10A(2) of the Local Government Act 1993:

7.1 Tender VP416665 - Construction of Casino Pool Clubhouse Upgrade

This matter relates to (d)(i) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.

This matter is considered to be confidential under Section 10A(2) - (a) of the Local Government Act, and the Council is satisfied that discussion of this matter in an open meeting would, on balance, be contrary to the public interest as it deals with personnel matters concerning particular individuals (other than councillors).

7.2 Tender VP411925 - Construction of Broadwater Bridge Replacement

This matter relates to (d)(i) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.

This matter is considered to be confidential under Section 10A(2) - (a) of the Local Government Act, and the Council is satisfied that discussion of this matter in an open meeting would, on balance, be contrary to the public interest as it deals with personnel matters concerning particular individuals (other than councillors).

7.3 Tender VP416151 - Casino Sewage Treatment Plant Concept Design

This matter relates to (d)(i) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.

This matter is considered to be confidential under Section 10A(2) - (a) of the Local Government Act, and the Council is satisfied that discussion of this matter in an open meeting would, on balance, be contrary to the public interest as it deals with personnel matters concerning particular individuals (other than councillors).

7.4 Tender VP417765 - Evans Head Sewage Treatment Plant Stage 2 Detailed Design

This matter relates to (d)(i) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.

This matter is considered to be confidential under Section 10A(2) - (a) of the Local Government Act, and the Council is satisfied that discussion of this matter in an open meeting would, on balance, be contrary to the public interest as it deals with personnel matters concerning particular individuals (other than councillors).

8 RESOLUTIONS OF CLOSED COUNCIL