

## **WARRUMBUNGLE SHIRE COUNCIL**

### **Ordinary Meeting – 16 May 2019**

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#### **Item 24 Road Closure and Opening on Morrisseys Road**

<b>Division:</b>	Technical Services
<b>Management Area:</b>	Technical Services Management
<b>Author:</b>	Director Technical Services – Kevin Tighe
<b>CSP Key Focus Area:</b>	Public Infrastructure & Services
<b>Priority:</b>	PI3: Roads throughout the Shire are safe, well-maintained and appropriately funded.

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#### **Reason for Report**

To close an unconstructed public road and to purchase a portion of private land on which a public road has been constructed, including giving delegated authority to the General Manager to negotiate with the landowner and execute all documentation associated with the proposed road closure and conveyancing transaction.

#### **Background**

Under section 38A of the *Roads Act 1993*:

*‘A council may propose the closure of a council public road for which it is the roads authority if:*

- (a) the road is not reasonably required as a road for public use (whether for present or future needs), and*
- (b) the road is not required to provide continuity for an existing road network, and*
- (c) if the road provides a means of vehicular access to particular land, another public road provides lawful and reasonably practicable vehicular access to that land.’*

The original alignment of Morrisseys Road (shown as proposed Lots 2, 3 and 4 on the attached draft Plan of Subdivision) has never been constructed or used as a road. This “paper” road is not reasonably required in Council’s road system now or in the future. Accordingly, it is proposed to close the unconstructed public road by following the notification and gazettal process provided for in Part 4 Division 3 of Roads Act 1993.

Once closed, the land comprising the former public road will vest in the Crown which adjoining landowners can then negotiate with the Crown to purchase.

The current alignment of Morrisseys Road includes a small portion which has been constructed on private land (Lot 1 DP 531365). While it has been physically constructed, it has not been opened as a public road. This land is identified as proposed Lot 1 on the attached Plan. The area of Lot 1 is 1132m<sup>2</sup> (0.11ha).

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To rectify this irregularity it is necessary for Council to acquire the land comprised in proposed Lot 1 and to open and dedicate the land as a public road by registering a plan. Preliminary negotiations indicate the landowner is willing to sell proposed Lot 1 to the Council, without Council needing to compulsorily acquire the land.

Council resolved to investigate and negotiate closing a public road and opening a road in the vicinity of Lot 23 DP805612 on the 16 July 2009. At the time, the report to Council was considered in committee and a copy of that report is attached under confidential cover. A process of opening and closing roads was commenced, which included preparation of a survey plan and making application to Crown Lands and engagement of a Solicitor. However the process faltered when signatures from relevant property owners could not be obtained due to probate constraints and due to the loss of a survey plan. Furthermore the actual process of opening and closing a public road has since changed.

### **Issues**

In order to allow officers to carry out the steps necessary to close the unconstructed public road and to purchase proposed Lot 1, resolutions of Council is required. Section 377(1)(h) of the *Local Government Act 1993*, the authority to purchase land rests with Council and cannot be delegated, accordingly a specific resolution is required.

### **Options**

Council has limited discretion in this matter as Morrisseys Road has been physically constructed and is in use over private land. The ownership and status of proposed Lot 1 needs to be regularised, either by negotiate a purchase of the land or by compulsory acquisition. Delegation of authority to the General Manager is required to finalise tasks associated with land purchase, road opening and road closing. If the process is not finalised and there is no change to current status, there may be disadvantage to property owners and the legal status of a section of Morrisseys Road may be compromised.

### **Financial Considerations**

The costs associated with preparing a survey plan, advertising, plan registration and legal fees is estimated to total \$9,000. These expenses may be funded from the budget allocation for road maintenance.

### **Attachments**

1. Draft Plan of Subdivision of Lot 1, DP531365 – Morrisseys Road.
2. Confidential Business Paper Report Item 2C – 16 July 2009

### **RECOMMENDATION**

That Council:

1. Authorise the General Manager to negotiate with the landowner for the purchase of a portion of Lot 1 DP531365 (identified as proposed Lot 1 on the draft Plan of Subdivision attached to the Report to Council).

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2. Authorise the purchase of a portion of Lot 1 DP531365 (identified as proposed Lot 1 on the attached draft Plan of Subdivision) on terms negotiated by the General Manager.
3. Authorise the General Manager to sign all documents associated with the conveyancing transaction (including a Client Authorisation Form to effect the transaction).
4. Pay the landowners' legal and other costs associated with the transfer.
5. Close the unconstructed public road adjoining Lot 22 DP 805612, Lot 23 DP 805612 and Lot 1 DP 531365 in accordance with Part 4 Division 3 of the *Roads Act 1993*.
6. Authorise the affixing of the Council seal to any documentation so requiring it for the items above.