

## Development & Environment Committee

**Meeting Date:** Tuesday, 05 October, 2021  
**Location:** Teams Meeting  
**Time:** 5.00pm

**Membership** (Quorum - 5)  
 Clr Mitchell Pakes - Chairperson  
 Clr Bob Proudfoot  
 All Councillors  
 Chief Executive Officer or nominee

**Please note:** The proceedings of this meeting (including presentations, deputations and debate) will be webcast and may be recorded and broadcast under the provisions of the Code of Meeting Practice. Your attendance at this meeting is taken as consent to the possibility that your image and/or voice may be recorded and broadcast to the public.

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*Local Government Act - Section 10A(2)(g) - Advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.*

*There is a public interest consideration against disclosure of information as disclosure of the information could reasonably be expected to prejudice the prevention, detection or investigation of a contravention or possible contravention of the law or prejudice the enforcement of the law.*

## **DE21.119 Proposed Road Closure - Lot 4 DP 872852 (Vincentia) St Georges Basin Country Club and Response to Questions on Notice**

**HPERM Ref:** D21/354817

**Department:** Technical Services  
**Approver:** Paul Keech, Director - City Services

**Attachments:** 1. Checklist Road Closures [↓](#)  
2. Road Closure Procedure [↓](#)

### **Reason for Report**

To provide Council with the opportunity to consider the proposed road closure adjoining Lot 4 DP 872852 Vincentia as shown in the aerial image below with the intention to sell to the St Georges Basin Country Club.

### **Recommendation**

That Council

1. Resolve to close the road reserves that adjoin Lot 4 DP 872852 Vincentia and sell to the owner of Lot 4 being the St Georges Basin Country Club with compensation for the sale of the land payable based on Independent Valuation advice.
2. Impose the conditions on the proposed closed road requested by Council's Environmental Services Department as shown below:
  - a. The 88B Instrument must contain a provision that it cannot be varied, modified, or released without the consent of the relevant parties as appropriate and without the consent of the Shoalhaven City Council.
  - b. The covenant must stipulate that:
    - All native vegetation must be retained unless subject to a formal development application approval under the NSW EP&A Act 1995.
    - All retained native vegetation must be declared off limits to course users
  - c. Upon endorsement by Council the covenant must be registered with LRS or the appropriate land registration body at the time of registration.
3. Require the portion comprised in the road closure be consolidated into one lot with the parent Lot being Lot 4 DP 872852.
4. Require all costs associated with the road closure, registration of documents and sale to be borne by St Georges Basin Country Club.
5. Authorise the Chief Executive Officer to sign any documentation required to give effect to this Resolution and to affix the Common Seal of the Council of the City of Shoalhaven to all documentation required to be sealed.

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## Options

1. As Recommended

Implications: The road closure can proceed. Clearing of native vegetation within the proposed road closure will not be legal without approval from Council and a development consent.

2. Council could accept the above recommendation without the Covenant requested by Council's Environmental Services Department.

Implications: The road closure can proceed. This option is not recommended though because up to 0.5ha of vegetation could be legally removed within the proposed road closure area without the need for an approval process.

The resolution that would support this option would be

Points 1, 3, 4 and 5

3. Council could choose to reject the road closure application with a view to assess any road closure as part of a future Development Application/ Planning Proposal for the site if/when an application is made.

Implications: St Georges Basin Country Club would be required to lodge a new road closure application in conjunction with a Development Application/Planning Proposal. The St Georges Basin Country Club have indicated that this would prevent the road reserve areas being covered by their public liability insurance.

A resolution that would support this option would be;

That Council reject the road closure application for the road reserves that adjoin Lot 4 DP 872852 Vincentia, with a view to assess any road closure as part of a future Development Application/ Planning Proposal for the site if/when an application is made

## Background

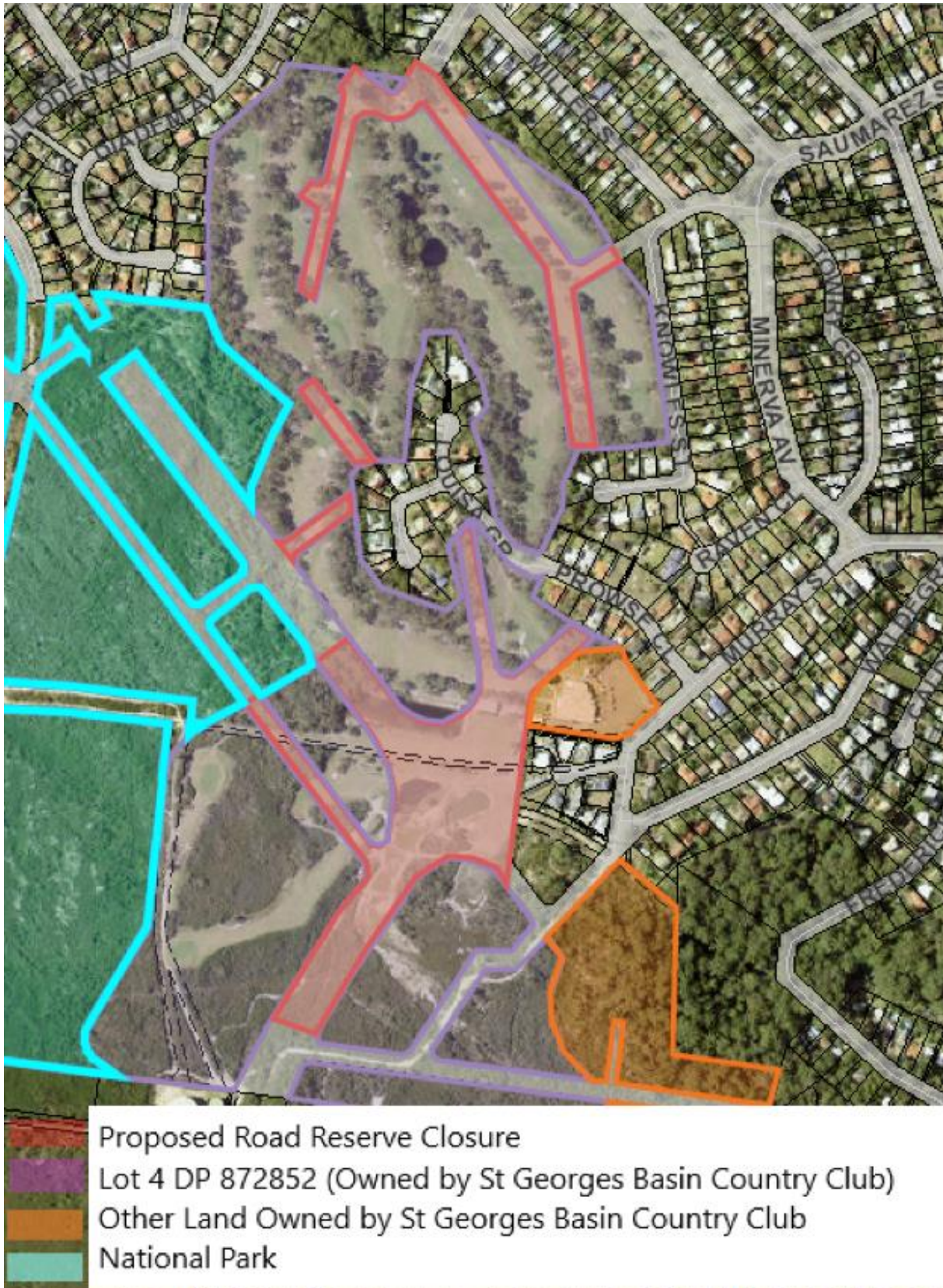
An application to close this road was made in 2012, however this was rejected by Crown Lands in 2017. This was due to the application not being completed by the date in 2017 when changes to the Crown Land management Act meant that Crown Lands could no longer determine these matters.

St Georges Basin Country Club lodged an application with Council in March 2021 to close and purchase portions of Council's Road reserve that are currently being utilised by the Golf Club.

Council was advised the road closure was necessary due to the parts of the golf course built within the road reserve (shown in aerial image below) not being covered under the Club's Public Liability Insurance.

The proposed road closure area is not currently used for access purposes.

Aerial Image of Proposed Roads to be closed.



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### Environmental Considerations

The parent lot is known as Lot 4 DP 872852 and is a well-known birdwatching and bushwalking area.

Parts of the road reserve encroach into native heathland. This heathland is known to provide habitat for threatened fauna species including White-footed Dunnart, New Holland Mouse, Eastern Chestnut Mouse, Eastern Pygmy Possum, Ground Parrot, Eastern Bristlebird.

A scientific paper by Garry Daly, Ecologist in 2017 recorded these species within the golf course. There are also numerous records of the threatened Giant Burrowing Frog within close proximity to the course and road reserve.

The road reserves will be consolidated into the parent Lot which is Zoned RE2 – Private Recreation. Under Council's DCP Chapter G4, which defines 'declared' vegetation protected by the NSW Vegetation SEPP, however, this excludes RE2 zoned lands.

This means that there will be no protection for native vegetation under the Vegetation SEPP for vegetation currently within the road reserve unless a Covenant is applied to the land.

### Response to Questions on Notice – Road Closure / Land Sale – Vincentia Golf Club

The following questions on notice (*in italics*) were put forth at the Development and Environment Committee meeting held on 7 September 2021. Answers follow each question.

#### Question 1.

*That Council explain the process normally followed in the sale of surplus road reserves including the extent of notification on this particular proposal?*

The process for the sale of surplus road reserves is included as Attachment 1 (D21/419989) and is summarised below

1. Application made
2. Details and legal status determined
3. Council seeks internal operational feedback
4. Council seeks feedback from notifiable authorities, for example utility service providers
5. Council seeks external (Public) feedback
6. Council obtains an independent valuation of the land
7. A report is written, with the results of the feedback for Councillors to consider whether to proceed with the road closure and sale or not

#### Question 2.

*The land over which the "paper" roads sit is occupied by the St Georges Basin Country Club (Vincentia). Under what documented arrangement or legal authority does the Vincentia Golf Club occupy the land? Is there a lease in place and is there an agreed rent?*

Authority to occupy 'paper' roads was given as part of prior development application approvals.

#### Question 3.

*In a public notice of 11<sup>th</sup> August 2021, it was announced that "upon closure of the road(s) Council intends to sell the land to the adjoining landowner, St Georges Basin Country Club (Vincentia)." Would it be normal process to arrive at this "intention" and express it in a public notice before any community consultation or resolution of councillors has occurred? Has Council discussed the option of advertising the land on the open market or leasing it?*

The St Georges Basin Country Club has applied to Council to close the road reserve and purchase the land. As part of the road closure and sale process Council advertises the requests from applicants, in this instance the request to close and purchase the land, as part of the community consultation process. Feedback from the community is then taken into consideration when reporting the road closure to Councillors for a resolution.

Question 4.

*Is the parcel of land intended for sale comprised of any land other than that released by the road closures?*

This application is only applicable to land released by the proposed closure of the road reserve.

Question 5.

*How will the sale price of the land be determined and with what zoning would the land be sold? The parent Lot 4 DP 872852 is zoned RE2.*

An independent valuer would be used to determine the sale price. The land would take on the zoning of the parent lot Lot 4 DP 872852 i.e., zoned RE2 – Private Recreation.

Question 6.

*Did the proposal to sell the land arise from an approach by St. Georges Basin Country Club, if not how was it initiated?*

Yes, an application was made by St. Georges Basin Country Club to close the road reserve and purchase the land.

Question 7.

*What state legislation and Council policies guide the closure and any subsequent sale of the roads and are closure and sale two distinct and separate processes?*

- Roads Act 1993
- Crown Lands Management Act 2016
- Local Government Act 1993
- Council Procedure PRD16/283 – Dealing with Requests for the Closure, Sale or Transfer of Council and Crown Roads – Attachment 2 (D21/419995)

Question 8.

*Community understanding is that the golf course and road land was originally part of a grant from the Halloran Family to SCC for recreational purposes. Can Council confirm this?*

Road reserves cannot be granted for recreational purposes. Council rating records indicate that the Council has not been in ownership of the golf course land.

Question 9.

*Will any contract of sale for the land include a covenant that prevents its use for residential development?*

No, however any future residential development would be subject to a planning proposal/development application.

**Community Concerns**

*These centre around the future plans of the St. Georges Basin Country Club in relation to Vincentia Golf Course and speculation is strong that they may involve redevelopment of the holding to restore liquidity. A resolution has apparently been submitted for the Club AGM on 19<sup>th</sup> September asking the Board and Management to clarify their intentions for the future of the Vincentia Golf Club.*

Question 10.

*Does Council consider that it's in the public interest to ask for submissions on the proposed closure of the road reserves and sale of the land to the most likely purchaser before the community has clarity around the intentions of that purchaser?*

Any future development plans would be assessed as part of a planning proposal or development application. The community has opportunities during a planning proposal or development application to make comment and submissions, with clarity around the landowners' intentions.

Question 11.

*Community representative groups are requesting an extension for submissions on this matter to 30 days after the date of the St Georges Basin Country Club AGM. Does Council regard this as a reasonable request?*

A one (1) week extension was granted to the Vincentia Residents and Ratepayers Association (VRRRA) to allow them time to compile submissions from their members, on top of the 28 day legislated time for submissions. Any future development plans would be assessed as part of a planning proposal or development application. The community has opportunities during a planning proposal or development application to make comment and submissions, with clarity around the developer/landowners' intentions.

**Community Engagement**

In accordance with the Roads Act 1993, Sec 38B, Council notified adjoining landowners, Notifiable Authorities, Vincentia Matters Group and the Vincentia Residents and Ratepayers Association (VRRRA).

An advertisement was placed at the Bay and Basin Leisure Centre and in the South Coast Register on 11 August 2021 allowing 28 days for submissions.

Council received numerous individual submissions concerning the future use of the land. These concerns largely noted the following preferences:

- Roads closed to be used for Recreational purposes only.
- Oppose any redevelopment or rezoning to Commercial or Residential
- Protect the wildlife and current native vegetation which is habitat for threatened species
- Defer until further information has been supplied to Council and the Community from the St Georges Basin Country Club regarding the future use of the land.

The Vincentia Matters Group submitted a response on behalf of their members.

The below table summarises the number of submissions received and areas of concern:

Submissions	Concern	Number
Environmental Services (SCC)	Protection of flora & fauna	(1)
Endeavour Energy	Easements to be over infrastructure	(1)



Shoal Water	Easements to be over all Council infrastructure including swale drains	(1)
Vincentia Matters on behalf of members	- Land to remain for recreational use	(1)
General Community Individual Submissions	- Land to remain as recreational use - Protection of Wildlife and native vegetation	(125)

A request for Easements/covenants were received from Council’s Environmental Section, Shoalhaven Water and Endeavour Energy.

**Policy Implications**

This matter has been considered in accordance with Council Procedure *Dealing with Requests for the Closure, Sale, Transfer of Council and Crown Roads*.

**Financial Implications**

Council will receive compensation as determined by way of a valuation prepared by Walsh & Monaghan Valuers which is yet to be received.

All costs associated with the Road Closure process and sale are payable by the applicant and at no cost to Council.

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## ROAD CLOSURE CHECKLIST



### 1. Initial Enquiry

Date:	<input type="checkbox"/> Initial enquiry received
Date:	<input type="checkbox"/> Template response letter sent enclosing <ul style="list-style-type: none"> <li>• Application form</li> <li>• Schedule of Fees</li> <li>• Process</li> </ul>
Date:	<input type="checkbox"/> Signed Application Form Received
Date:	Invoice requested from Accounts Receivable for Road Closure Application Fee. Natural Acc: 41327    Finance Project No: 102365    Activity: 1001
Date:	<input type="checkbox"/> Invoice sent to Applicant
Date:	<input type="checkbox"/> Road Closure Application Fee Paid
Trim Container Number:	Finance Number: Work Order Number:

### 2. Applicant Details

Name:	
Company Name (If Applicable):	
Address:	
Postal Address:	
Title Reference: Lot	DP
Phone: Home:	Mobile:
Email:	

### 3. Road Details

General Text Description of Road:			
Town/Locality:		LGA:	
Parish:		County:	
Approximate Area of Proposed Road Closure:		m <sup>2</sup>	
Date:	<input type="checkbox"/> Site Inspection Completed		

**4. Status Check – See Crown road status investigation guide**

Status investigation Result – Eg: Gazettal, Subdivision plan, dedication, parish map etc	
<input type="checkbox"/> Council Road – Vesting in Council <input type="checkbox"/> Council Road – Vesting in Crown <input type="checkbox"/> Crown Road – <b>No further action – Provide response to applicant to go directly to Crown lands.</b>	
Will the Road Closure land be required to be consolidated with the adjoining land?	
<input type="checkbox"/> Yes <input type="checkbox"/> No	

**5. Internal Notifications**

Date:	<input type="checkbox"/> Request for Comments Memo Sent to Internal Stakeholders Submissions Close: Date:
Proceed:	
<input type="checkbox"/> Yes – Vesting in Council. <b>Go to Step 6</b> <input type="checkbox"/> Yes – Vesting in Crown lands <b>Go to Step 5.1</b> <input type="checkbox"/> No – <b>No further action - Advise Applicant Council not proceeding.</b>	

**5.1 Crown Road – Vesting in Crown**

Send "Enquiry to purchase unformed council roads" form to Crown lands.	
Date:	<input type="checkbox"/> Crown Land Acceptance Received. <b>Go to Step 6</b> <input type="checkbox"/> Crown Land Objection Received – <b>No Further action – Provide response to Applicant.</b>

**6. Step 2 Fee Payment**

Date:	<input type="checkbox"/> Request invoice from Accounts Receivable for Step 2 Processing Amount \$
Date:	Receive Invoice from Accounts Receivable
Date:	Send letter to Applicant advising outcome of initial inquiry and tax invoice for Step 2.
Date:	<input type="checkbox"/> Payment for Step 2 processing received

**7. External Notifications**

Date:	Arrange Advertisement for Local Media
Date:	Submissions Close
Date:	Notification to Adjoining landowners:
Date:	Notification to Crown Lands
Date:	Notification to Notifiable authorities
Number of Submissions Received:	
Proceed:	
<input type="checkbox"/> Yes – <b>Go to Step 8</b> <input type="checkbox"/> No – Consider submissions	

**8. Valuation (Only if land is vesting in Council)**

Date:	<input type="checkbox"/> Request Valuation
Date:	<input type="checkbox"/> Valuation Received Determined Amount \$ + GST (If applicable)
Date:	Letter of Offer sent to Applicant
Date:	<input type="checkbox"/> Offer Accepted – <b>Go to Step 9</b> <input type="checkbox"/> Offer rejected/Counteroffer – Continue negotiations
Date:	Agreed Compensation: \$ + GST (If applicable)

**9. Reporting to Council**

<input type="checkbox"/> Council Report Drafted	S & A Meeting Date: MIN No.	Ordinary Date: MIN No.
Date:	<input type="checkbox"/> Advise applicant of Council Resolution	

**10. Plan Preparation**

Date:	<input type="checkbox"/> Request applicant to engage surveyor to prepare survey plan and associated documents.
Date:	<input type="checkbox"/> Plan received
Date:	<input type="checkbox"/> Arrange for appropriate signatures & consents e.g. subdivision certificate, S88B instrument.
Date:	<input type="checkbox"/> Arrange for registration of executed plan/docs at LRS by surveyor
Date:	<input type="checkbox"/> Confirmation received – Plan registered

**11. Gazettal Notice**

Date:	<input type="checkbox"/> Arranged Gazettal of road closure
Date:	<input type="checkbox"/> Copy of Gazette provided to Council
Date:	<input type="checkbox"/> Advise Applicant of Gazettal & obtain solicitor details
Wait 60 Days for L & E court appeal period to pass	
Date:	
Where is the land vesting? <input type="checkbox"/> Council – <b>Continue with Step 11</b> <input type="checkbox"/> Crown – <b>No Further Action - Notify Crown lands Strategic Sales &amp; Disposals Unit + Applicant to deal with Crown directly from this point onwards</b>	
Date:	<input type="checkbox"/> Engage Solicitor to Complete 11R Form and Lodge with LRS (include copy of Gazette Notice).
Date:	<input type="checkbox"/> Receive notification of Registration and new Certificate of Title

**12. Plan of Consolidation (If applicable)**

Date:	<input type="checkbox"/> Request Applicant to engage surveyor to draft consolidation plan
Date:	<input type="checkbox"/> Draft Plan Received
Date:	<input type="checkbox"/> Arrange Council to execute Deposited Plan Administration Sheet
Date:	<input type="checkbox"/> Consolidation Plan lodged with LRS for Registration
Date:	<input type="checkbox"/> Consolidation Plan registered

**13. Sale**

Date:	Instruct Solicitor to prepare Contract for Sale of Land - Conditional upon consolidation (if applicable) - Costs to be recovered from process (legal, advert, survey, val)
Date:	<input type="checkbox"/> Contract Received
Date:	<input type="checkbox"/> Arrange for Council to execute contract
Date:	Exchange of Contracts
Date:	Settlement
Date:	Advise internal stakeholders of completion of sale
Comments:	
Completing Officer Initials	

**Costs - Job Number:**

Invoice Date	Company	Description	Amount	Purchase Order
	Internal	Advertising	\$	N/A
		Valuation	\$	
		Surveying	\$	
		Legal	\$	
			\$	
			\$	
<b>Total Costs</b>			<b>\$</b>	



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**Southern District Office**  
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Website: [www.shoalhaven.nsw.gov.au](http://www.shoalhaven.nsw.gov.au)

For more information contact the Assets and Works Group

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## Dealing with Requests for the Closure, Sale or Transfer of Council and Crown Roads

*Procedure Number: PRD16/283 • Adopted: 23/04/2013 • Amended: 20/12/2016 • Minute Number: MIN13.414, MIN16.1011 • File: 2895E, 29219E • Produced By: Assets and Works Group • Review Date: 1/12/2020*

### 1. PURPOSE

To provide clear direction to the public and staff on the management of requests to Council for the closure and sale of Council and/or Crown Roads and the transfer of Crown Roads to Council.

### 2. STATEMENT

Requests for the closure, sale or transfer of Council or Crown Roads may be initiated by the Crown Lands Division, a member of the public or by Council.

There are a number of categories of roads which are impacted by this procedure including:

- a) Council formed public road;
- b) Council unformed public road; and
- c) Crown public road

Each category of road is dealt with differently however the guiding principles associated with the closure, sale or transfer consider the reasons for supporting or rejecting requests of this nature.

### 3. RELEVANT LEGISLATION

The relevant legislation pertaining to this procedure are:

- a) Roads Act 1993;
- b) Crown Lands Act 1989; and
- c) Local Government Act 1993.

### 4. PROVISIONS

The following issues are to be considered when determining whether a request to close, sell or accept transfer of a Council or Crown Road should be supported:

- a) Access to adjoining properties;
- b) Operational issues:

Shoalhaven City Council -

- Emergency services
  - Utility services
  - Walking tracks/trails
  - Recreational purposes
  - Bush fire breaks/Asset Protection Zones
  - Buffers;
- c) Planning issues;
- d) Value:
- Heritage;
  - Community;
  - Scenic;
  - Environmental e.g. open space corridor;
  - Financial/Economic;
- e) Asset Management:
- Standard of formation
  - Future maintenance costs
  - Benefit to Council's existing road network
- f) The Council needs to consider the following when accepting or requesting the transfer of a Crown Road;
- The upgrading of the road to acceptable Council standard as part of a Development Consent
  - Grant of DA Consent and payment of fee and "bonding" is held by Council
  - Long term liability which may necessitate a report to Council

## 5. IMPLEMENTATION

Requests relevant to this procedure will be dealt with by the Property Unit of the Business and Property Section.

The Implementation of the request will be undertaken using the processes detailed in Council's Intranet site.

The process requires that the sale of Council road be on the basis of market value at highest and best use.

## 6. REVIEW

This Procedure will be reviewed within one year of the election of every new Council.

## 7. APPLICATION OF ESD PRINCIPLES

ESD Principles are considered through the provisions of the procedure as outlined in Clause 4.