



SUPPLEMENTARY AGENDA

Ordinary Meeting of Council

11 April 2017

**ORDINARY MEETING OF COUNCIL
TO BE HELD IN THE COUNCIL CHAMBERS, MORUYA**

ON TUESDAY 11 APRIL 2017

COMMENCING AT 10.00AM

SUPPLEMENTARY AGENDA

(Proceedings of this meeting will be recorded as per Eurobodalla Shire Council's Code of Meeting Practice)

1. FINANCE AND BUSINESS DEVELOPMENT REPORTS

FBD17/025 Sale of Closed Road - Batemans Bay 2

**DR CATHERINE DALE
GENERAL MANAGER**

FBD17/025 SALE OF CLOSED ROAD - BATEMANS BAY

04.8630.E

Responsible Officer: Anthony O'Reilly - Director Finance and Business Development

Attachments: 1. Confidential - Original Applicant Company
2. Confidential - Sale Price
3. Confidential - Development Company
4. Council Report FBD 15/70 22 Sept 2015

Focus Area: Support Services

Delivery Program Link: SS3.3 Provide administrative, technical, professional and trade services

Operational Plan Link: SS3.3.4 Manage Council property to achieve best value to the community

EXECUTIVE SUMMARY

In 2015 a request was received from a company for Council to make an application to the Department of Primary Industry – Lands to close part of Miller Street, Batemans Bay and for Council to sell the company the land.

Council considered the request at its Ordinary Council meeting of 22 September 2015 and resolved to enter into a Deed of Agreement with the company to comply with the request, subject to a number of undertakings by the company. A Deed of Agreement was entered into, the road was closed and the land, now known as Lot 1 DP 1229620 is ready for sale.

The original company has requested Lot 1 be sold to a separate development company linked to the original company. Subject to the development company entering into a Deed of Agreement to undertake outstanding conditions of the first Deed, it is appropriate for Council to agree to this request.

The development company has also requested Council grant owner's consent to the lodgement of a Development Application (DA) over Lot 1 prior to the proposed transfer of Lot 1 which may take six weeks to register at the Land and Property Information Office.

This report recommends the first Deed of Agreement be rescinded, a new Deed of Agreement be entered into with the new development company and owner's consent be given to the lodgement of a DA over Lot 1.

RECOMMENDATION

THAT:

1. Council rescind the Deed of Agreement entered into with the original applicant to close and purchase part of Miller Street, Batemans Bay subject to Item 2 below.
2. A new Deed of Agreement be entered into with the development company named in the Confidential Attachment 3 to report FBD17/025 for the purchase of Lot 1 DP 1229620 requiring that company to pay an administrative fee, inclusive of GST of \$850.00 and to undertake the outstanding conditions of the original deed, namely:
 - i. Consolidate Lot 1 DP 1229620 with the adjoining Lot 1 DP 1178623; and
 - ii. Construct an access to a heavy vehicle standard approved by Council within the

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easement servicing Lots 14 and 15 DP31469 and Lot 1 DP 1036103.

And under the same Deed of Agreement for Council to undertake to:

- iii. Sell Lot 1 DP 1229620 to the applicant for an amount set out in the Confidential Attachment 2 to Report FBD17/025.
3. Owner's consent be given to the lodgement of a Development Application over Lot 1 DP 1229620.
4. Consent be given to affix the Common Seal of Council to:
 - (a) The Deed of Agreement
 - (b) The Transfer of Folio Identifier 1/1229620.

BACKGROUND

At its Ordinary meeting held on 22 September 2015 council resolved in relation to an application by a company for the closure and purchase of part of Miller Street, Batemans Bay:

THAT:

1. *Subject to a Deed of Agreement being entered into with the applicant for the closure of part of Miller Street, Batemans Bay requiring the applicant to undertake to:*
 - (i) *Pay all costs associated with the closure of part of Miller Street;*
 - (ii) *Consolidate the area of closed road with the adjoining Lot 1 DP 1178623; and*
 - (iii) *Construct an access to a heavy vehicle standard approved by Council within the easement servicing Lots 14 and 15 DP31469 and Lot 1 DP 1036103.*

And under the same Deed of Agreement for Council to undertake to:

 - (i) *Make application to the Crown Lands Division of the Department of Primary Industries to close that part of Miller Street, Batemans Bay south of Golf Links Drive subject to the creation of an easement for access 6 metres wide in favour of Lots 14 and 15 DP 31469 and Lot 1 DP 1036103 with the burdened property to be responsible for the construction and maintenance of the access; and*
 - (ii) *Sell the road, if closed, to the applicant for an amount set out in the Confidential Attachment to Report FBD15/070.*
2. *Application be made to the Crown Lands Division of the Department of Primary Industries to close that part of Miller Street, Batemans Bay south of Golf Links Drive subject to the creation of:*
 - (a) *An easement for access 6 metres wide in favour of Lots 14 and 15 DP 31469 and Lot 1 DP 1036103 with the burdened property to be responsible for the construction and maintenance of the access to a heavy vehicle standard; and*
 - (b) *An easement for water supply 6 metres wide.*
3. *All costs associated with the closure application including Crown Lands' fee, survey and plan registration fees and Council's stage 2 processing fee of \$1,160 be borne by the applicant.*

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5. *If closed, the land be sold to the applicant for the amount set out in the Confidential Attachment to Report FBD15/070.*
6. *Consent be given to affix the Common Seal of Council to:*
 - (a) *The Deed of Agreement*
 - (b) *The Contract for Sale*
 - (c) *The Transfer for the closed road.*

A copy of the report is Attachment 4 to this report.

The name of the company who made the original application and members thereof are set out in the Confidential Attachment 1.

All Council's actions in relation to the above Council resolution have been undertaken with the exception of the sale of the closed road now known as Lot 1 DP 1229620 to the applicant company.

The original applicant company has advised that a development company has been formed to carry out the development on the closed road and adjoining Lot 1 DP 1178623 and has requested the sale of Lot 1 DP 1229620 be made to that new company. The name of the new development company and the members thereof are set out in the Confidential Attachment 3.

The development company wishes to lodge a DA over Lot 1 DP 1229620 and Lot 1 DP 1178623 before the registration of the proposed transfer of Lot 1 at the Land and Property Information Office which may take six weeks, and accordingly has requested Council give owner's consent to the lodgement of such DA.

CONSIDERATIONS

Legal

Council entered into a Deed of Agreement to sell the closed road to the original applicant company subject to a number of undertakings by that company.

If Council is agreeable to acceding to the company's request for the land to be sold to a different company it will require the rescinding of the Deed of Agreement and entering into another Deed of Agreement with the new company requiring that company to undertake the outstanding matters in the original Deed, namely:

- (i) Consolidate the area of closed road with the adjoining Lot 1 DP 1178623; and
- (ii) Construct an access to a heavy vehicle standard approved by Council within the easement servicing Lots 14 and 15 DP31469 and Lot 1 DP 1036103.

For its part Council will undertake to sell the closed road to the new company for the amount previously negotiated with the original applicant company.

The Common Seal of Council will be required to be affixed to the new Deed of Agreement and the Transfer of Lot 1 DP 1229620 (Folio Identifier 1/1229620).

In order for a DA to be lodged prior to the registration of the Transfer of Lot 1 DP 1229620 it will require owner's consent to be given by Council.

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Financial

Given the additional administrative work associated with the request to change the purchaser of the closed road, it is considered appropriate that an administrative fee of \$850 including GST be payable by the applicant.

The sale price previously agreed to by Council is set out in the Confidential Attachment 2.

CONCLUSION

The original applicant company has requested the land be sold to an associated development company.

Subject to the development company entering into a Deed of Agreement to undertake outstanding conditions of the first Deed, it is appropriate for Council to agree to this request.

Granting owner's consent to the new development company's DA will allow lodgement prior to the registration of the Transfer.

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FBD15/070 ROAD CLOSURE - MILLER STREET, BATEMANS BAY

04.8630.E

Responsible Officer: Anthony O'Reilly - Director Finance and Business Development

Attachments: 1. Confidential - Valuation
2. Confidential - Applicant
3. Confidential - Recommended Sale Price

Focus Area: Support Services

Delivery Program Link: SS3.3 Provide administrative, technical, professional and trade services

Operational Plan Link: SS3.3.4 Manage Council property to achieve best value to the community

EXECUTIVE SUMMARY

Miller Street south of Golf Links Drive Batemans Bay is a gravel road that currently provides access to 6 Miller Street, 28 Golf Links Drive, 30 Golf Links Drive and is a legal access to the adjoining golf course.

An application has been received for the closure and purchase of that part of Miller Street providing for the creation of an easement for access in favour of the properties with direct access off that part of Miller Street.

The applicant is a development company of which the registered proprietor of 30 Golf Links Drive is a director. If the road is closed and purchased by the company it is understood that the intention is to lodge a DA for a multi-storey residential complex over the combined site.

In accordance with Council's procedure for road closure applications, the proposal has been referred to relevant Council staff and notification given to appropriate authorities, neighbouring property owners and the general public, giving 42 days for submissions.

An objection has been received from Catalina Country Club, however it is considered the basis for the objection is insufficient to warrant not supporting the application.

RECOMMENDATION

THAT subject to a Deed of Agreement being entered into with the applicant for the closure of part of Miller Street, Batemans Bay requiring the applicant to:

- i. Undertake to pay all costs associated with the closure of part of Miller Street;
- ii. Construct an access to a heavy vehicle standard regardless of development approval for a multi-storey residential complex;

and for Council to:

- i. Make application to the Crown Lands Division of the Department of Primary Industries to close that part of Miller Street, Batemans Bay south of Golf Links Drive subject to the creation of an easement for access 6 metres wide in favour of Lots 14 and 15 DP 31469 and Lot 1 DP 1036103 with the burdened property to be responsible for the construction and maintenance of the access.

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- ii. sell the road, if closed, to the applicant for an amount set out in the Confidential Attachment to Report FBD15/070
- 1. Application be made to the Crown Lands Division of the Department of Primary Industries to close that part of Miller Street, Batemans Bay south of Golf Links Drive subject to the creation of:
 - (a) An easement for access 6 metres wide in favour of Lots 14 and 15 DP 31469 and Lot 1 DP 1036103 with the burdened property to be responsible for the construction and maintenance of the access; and
 - (b) An easement for water supply 6 metres wide.
- 2. All costs associated with the closure application including Crown Lands' fee, survey and plan registration fees and Council's stage 2 processing fee of \$1,160 be borne by the applicant.
- 3. If closed the land be sold to the applicant for the amount set out in the Confidential Attachment to Report FBD15/070
- 4. Consent be given to affix the Common Seal of Council to:
 - (a) The Deed of Agreement
 - (b) The Contract for Sale
 - (c) The Transfer for the closed road.

BACKGROUND

Miller Street south of Golf Links Drive, Batemans Bay is a gravel road that currently provides access to 6 Miller Street (Lot 15 DP 31469), 28 Golf Links Drive (Lot 14 DP 31469), 30 Golf Links Drive (Lot 1 DP 1178623) and is a legal access to the adjoining golf course (Lot 1 DP 1036103).

An application has been received for the closure and purchase of that part of Miller Street providing for the creation of an easement for access in favour of the properties with direct access to that part of Miller Street.

The applicant is a development company of which the registered proprietor of 30 Golf Links Drive is a director. If the road is closed and purchased by the company, it intends to lodge a DA for a multi-storey residential complex over the combined site.

The name of the applicant and company members is set out in the Confidential Attachment.

In accordance with Council's procedure for road closure applications, the proposal has been referred to relevant Council staff and notification given to appropriate authorities, neighbouring property owners and the general public allowing 42 days for submissions.

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A plan showing the proposal is below.



CONSIDERATIONS

Asset

The closure of part of Miller Street and creation of an easement for access 6 metres wide in favour of the properties currently fronting Miller Street, will release Council from future maintenance obligations in that part of Miller Street.

A water main on the western side of the road will require an easement for water supply but will be contained within the site of the proposed easement for access.

No objections were received from other statutory authorities to the proposed closure.

Legal

In accordance with the Roads Act 1993, Council is the Roads Authority for public roads and whilst Council can recommend the closure of a road, it must be approved by the responsible Minister, currently the Minister for Lands and Water.

Before an application is made to Crown Lands for a road closure the proposal must be advertised in a local paper and notification given to all affected landowners and authorities giving a minimum 28 day submission period.

Submissions are to be considered and objections resolved, or if Council forms the opinion that no further progress can be made, a report with a summary and assessment of the submissions/objections with a recommendation sent to Crown Lands for determination.

As that part of Miller Street is formed and public money has been expended on it, upon closure the land will be vested in Council and able to be sold to the applicant.

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An 88B Instrument will be required to create the easement for access and the easement for water supply.

To safeguard the interest of the landowners who will be benefitted by the easement for access, the registered proprietor of the former road will be responsible for the construction and maintenance costs of the access. This has been agreed to by the applicant.

To ensure the access is constructed in the event the proposed development does not proceed, Council should enter into a Deed of Agreement with the applicant prior to the road closure application being made to Crown Lands providing for the Council to make the application subject to the applicants undertaking to construct the access to a heavy vehicle standard whether or not the proposed multi-storey residential development proceeds.

Policy

In accordance with Council's Land Acquisition and Disposal Policy the public road must be closed under the Roads Act 1993 to enable the sale of the land to proceed.

Community Engagement

Public notice of the proposal was published in the local print media and the landowners adjoining that part of Miller Street were contacted directly with a period of 42 days given for the receipt of submissions.

Objections were received from the registered proprietors of 6 Miller Street and 28 Golf Links Drive, however after discussions between the landowners and the applicants the objections were withdrawn.

An objection was also received from the Catalina Country Club Limited and despite discussions with the Club's President and CEO, it maintains its objections, namely:

"Miller Street is the only Emergency vehicle and Heavy vehicle access to the Clubs land. The Club requires a minimum of 99ft wide access for Heavy vehicle floating of earth works machinery to gain access to the golf course."

In accordance with the proposal, the easement for access will maintain access to the golf course at this point. As a fully constructed and maintained driveway it will provide improved emergency access than currently exists and will be constructed to a standard to accommodate heavy vehicles. The proposed 6 metre wide easement would be sufficient to accommodate heavy vehicles, "99ft" (30 metres) is not required and is not currently available. Miller Street is only 20 metres wide and contains a number of trees which currently restrict access.

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There are also existing and potential alternate accesses available for heavy vehicles. These are shown on the plan below.



The aerial photo and terrestrial photos below show the impediments to the current access in Miller Street to the golf course.



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Photo taken from Golf Links Drive.



Photo looking up Miller Street from the golf course.

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Financial

In accordance with Council's Land Acquisition and Disposal Policy all costs associated with the closure and purchase including Crown Lands' fee, survey and plan registration fees and Council's stage 2 processing fee of \$1,160 should be borne by the applicant together with payment of fair sale price determined by a registered valuer.

At the request of the applicant and at the applicants cost, a registered valuer was commissioned to determine fair sale value prior to the lodgement of the closure application.

A copy of the valuation is set out in the Confidential Attachment.

The valuer has verbally advised that there has been no significant increase in vacant land value and therefore it is considered reasonable to rely on that determination.

The recommended sale price is set out in the Confidential Attachment.

CONCLUSION

The proposal to close and sell part of Miller Street south of Golf Links Drive subject to the creation of an easement for access in favour of properties fronting that part of Miller Street is considered acceptable despite the objection from Catalina Country Club Limited.

It is considered there is no sound basis for the objection as access will be maintained, indeed improved access will be provided as a result of the proposed road closure.

The closure and sale of part of Miller Street is considered beneficial as it will devolve Council of future maintenance responsibilities and facilitate quality development in this area.