9.5 Road Closure & Easement Creation Part Faucett Drive

RECOMMENDATION

That Council:

1. receive the report by the Revenue and Property Manager on the Road Closure & Easement Creation Part Faucett Drive;

2. agree to close that part of Faucett Drive as identified in Attachment 1 to this Report and create the required easements for Right of Carriageway benefitting the allotments having frontage to the proposed road closure land and the easement for services and; progress the road closure in accordance with Part 4 Division 3 Roads Act 1993 and Council’s Land Acquisition and Disposal Policy; and

3. authorise the General Manager to determine the terms and conditions in relation to the details of granting the required easement for Right of Carriageway benefitting the allotments having frontage to the proposed road closure land and the easement for services and;

4. authorise the General Manager to sign all documentation, where necessary, in relation to the processes involved in the proposed closure of that part of Faucett Drive and the creation of the easements as identified in Attachment 1 to this Report; and

5. authorise the Mayor to sign any documentation, where additionally required to do so, in relation to the processes involved in the proposed closure of that part of Faucett Drive and the creation of the easements as identified in Attachment 1 to this Report; and

6. authorise the Common Seal of Council to be affixed to all documentation, where necessary, in relation to the processes involved in the proposed closure of that part of Faucett Drive and the creation of the easements as identified in Attachment 1 to this Report.

7. direct that the proponent of the proposed subdivision on allotment 1 DP1046119 bear the cost for the physical construction of the driveway over the full length of the proposed Right of Carriageway as identified in Attachment 1 to this Report.

Executive summary

The purpose of this Report is to seek a resolution to progress the road closure and easement creation over that part of Faucett Drive, Mudgee as identified in Attachment 1 to this Report.

The proposed Road closure is to be progressed in accordance with Part 4 Division 3 Roads Act 1993 (the Act) and Council’s Land Acquisition and Disposal Policy (the Policy).
Disclosure of Interest

Nil

Detailed report

On 16 August 2017, Council resolved to close that part of Faucett Drive (the Road), as indicated in Attachment 1, and create the required easements for Right of Carriageway and services benefitting the allotments having frontage to the Road closure land.

The Road was proposed to be closed as the Rifle Range Road Detention Basin has been constructed on a significant portion of the Road reserve. Easements were to be created over the existing services as well as an easement for Right of Carriageway to facilitate access for those properties who would have benefitted from the Road. Council Minute No. 215/17 and report are appended as Attachments 2 and 3, respectively.

Resolution No 2 of the Minute required the proposed Road closure to be progressed through the authority at the time, being the Department of Industry – Crown Lands. However, when the Crown Land Management Act 2016 commenced in full on 1 July 2018, provisions relating to Crown roads and council public roads in the Act were amended.

As a result, the proposed Road closure must now be progressed and finalised under the new legislation.

Additionally, subsequent to the 16 August 2017 report to Council, the NSW Department of Industry – Crown Lands has advised that it has no objection to the land vesting in Council upon closure of the Road. As such there is no longer an obligation for Council to pay compensation to the Crown in order to acquire the land.

Road Closing Process

The preliminary actions and documentations required by the Act and the Policy prior to presenting this application to Council for consideration, have been completed. These actions and documentations comprise the Road status being the Plan which created the Road, advertisement of the intention to close the Road in the Mudgee Guardian 21/6/2019 and notification of the proposal to all affected parties and notifiable authorities.

The submission period to receive comments and objections closed on 19/7/2019.

Responses were received from all Notifiable Authorities with no objections. As there were no objections from the Notifiable Authorities, the Act allows the road closure process to proceed.

Responses were received from 2 of the 3 owners of land adjoining the Road. One of these owners objected to the proposed Road closure, concerned that closure of the Road would deny access to land proposed to be developed in the future. A response was forwarded to the owner advising easements for services and Right of Carriageway to facilitate access are to be created to benefit all allotments having frontage to the Road closure land.

No response was received from the owner of land within the immediate vicinity of the Road closure land.

Unlike an objection lodged by a Notifiable Authority, an objection made by an adjoining owner or other person, does not have to be withdrawn before a council is able to progress with the closure of a road. As a recourse, an adjoining owner does have the right to appeal to the Land and Environment Court under s38F of the Act against the closure of a public road by a council.
A record of the preliminary actions, documentation and subsequent responses is appended as Attachments 4 & 5 to this Report.

Should Council wish to consent to the Road closure application, the matter will be progressed through the further formal processes for road closure as stipulated by the Act and the Policy.

Community Plan implications

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<thead>
<tr>
<th>Theme</th>
<th>Good Governance</th>
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<tbody>
<tr>
<td>Goal</td>
<td>An effective and efficient organisation</td>
</tr>
<tr>
<td>Strategy</td>
<td>Prudently manage risks association with all Council activities</td>
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</tbody>
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Strategic implications

**Council Strategies**
Not Applicable

**Council Policies**
Land Acquisition and Disposal Policy - consideration of individual circumstances of a road proposed to be closed and easement creation.

**Legislation**
Roads Act 1993

Financial implications

Subsequent to the 16 August 2017 report to Council, the NSW Department of Industry – Crown Lands has advised that it has no objection to the land vesting in Council upon closure of the Road. As such there is no longer an obligation for Council to pay compensation to the Crown in order to own the land.

The proponent of the proposed subdivision on allotment 1 DP1046119 which adjoins the Road closure land, is to bear the cost for the physical construction of the driveway over the full length of the proposed Right of Carriageway. Council’s advice dated 9/5/2018 to the proponent regarding same is appended as attachment 6 to this Report.

Providing a Right of Carriageway will replace the outcome of a formed road, which will result in a reduced long term impact on Council as there will be no requirement to maintain the proposed road extension.

**Associated Risks**
Not Applicable

DIANE SAWYERS  
REVENUE AND PROPERTY MANAGER  
31 May 2020

LEONIE JOHNSON  
CHIEF FINANCIAL OFFICER
Attachments: 1. Plan of proposed Road closure & easement. (separately attached)  
2. Council Minute 215/17. (separately attached)  
5. Road Closure Process - Preliminary Actions & Documentation. (separately attached)  
6. Letter 9/5/2018 to proponent regarding costs. (separately attached)

APPROVED FOR SUBMISSION:

BRAD CAM  
GENERAL MANAGER