



Date: Tuesday, 22 November 2022
Time: 9.00am
Location: Council Chambers
Administration Office
10 Furneaux Street, Cooktown

AGENDA AND BUSINESS PAPERS

Late Reports

Ordinary Council Meeting

22 November 2022

Brian Joiner
Chief Executive Officer

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15.4 PROPOSED PERMANENT ROAD CLOSURE OF UNNAMED ROAD WITHIN LOT 4 ON SP266637 - LOCALLY KNOWN AS BERTIEHAUGH ROAD

File Number: D22/27781

Author: Property and Commercial Services Coordinator

Authoriser: Lawrence Booth, Director Community, Economy and Innovation

Attachments:

- 1 Bertiehaugh - Survey Plan 
- 2 Bertiehaugh - Aerial View 
- 3 Bertiehaugh - Department of Resources Notification 
- 4 Bertiehaugh - Notice of Road Closure 
- 5 Bertiehaugh - TCICA - Letter of Support 
- 6 Bertiehaugh - Hon Warren Entsch, MP - Response 
- 7 Bertiehaugh - Public Comments 

PRECIS

The Department of Resources (DOR) has advised that it has received an application for a permanent road closure of the unnamed road within Lot 4 SP266637, locally known as Bertiehaugh Road. The Applicant has advised the Department that, if the road closure is approved, the road would be amalgamated with the adjoining land and used for pastoral purposes.

DOR has noted that Council's initial views on this matter were received as legally required via the Part C-Form LA30 "Statement in relation to an application under the *Land Act 1994* over State land" dated 20 September 2022. Generally, when a council objects to a road closure, that advice is accepted by the applicant. However, on this occasion, the Applicant has decided to proceed with the application, which they have the right to do.

Council Officers were advised that comments on the proposed closure would close on 3 November 2022, however, Council has been granted an extension for comments until 23 November 2022, to enable the matter to be considered at the Ordinary Council Meeting scheduled for 22 November 2022.

HISTORY

Section 68 of the *Land Act 1994* sets out the procedure for opening or closing roads.

68. Notice to local government of opening or closing of roads

(1) This section applies if an application is made under the Land Act for the opening or closing of a road in a local government area by someone other than the local government.

(2) The Land Act Minister, or the applicant for the application, must give notice of the application to the local government.

(3) The Land Act Minister is the Minister administering the Land Act.

(4) The notice must specify a date (no earlier than 1 month or later than 2 months after the local government is given the notice) on or before which the local government may object to the opening or closing of the road.

(5) An objection must fully state the reasons for the objection.

(6) The Land Act Minister must have regard to any objections properly made by the local government.

(7) If the Land Act Minister decides the road should be opened or closed, the Land Act Minister must give notice to the local government—

(a) of the decision; and

(b) if the decision is contrary to the local government's objection, the reasons for the decision.

Council officers have presented two reports to Council recommending against closing Bertiehaugh Road. The first report was considered at the Ordinary Council Meeting on 24 May 2022, with the following resolutions being passed:

That Council resolves to:

- 1. Advise the Department of Resources and the Applicant that Council objects to the identified road known locally as Bertiehaugh Road being permanently or temporarily closed and provide this report as explanation for that objection;*
- 2. Delegate authority to the Chief Executive Officer pursuant to section 257 of the Local Government Act 2009 to progress the proceedings in Council's interest.*

Written correspondence was sent to the Applicant and DOR on 6 June 2022 advising of Council's decision. Due to administrative changes within DOR, a second report was considered at the Ordinary Council Meeting on 26 July 2022, with the following resolutions being passed:

That Council resolves to:

- 1. Delegate authority to the Chief Executive Officer in accordance with section 257 of the Local Government Act 2009, to execute a Form Part C as Road Manager, advising the Department of Resources that Council cannot authorise a proposed permanent road closure over Lot 4 SP266637, however it requests DOR to consider an application under the Land Act 1994 in relation to this matter.*
- 2. Advise the Department of Resources by way of the Part C Form LA30 that Council requires further contact from the Department before a decision is made on the application.*
- 3. Advise the Department of Resources that Council does not support the proposed road closure as this would disadvantage locals, Traditional Owners, tourists and the general public by increased travelling time and adding additional fuel costs.*
- 4. Delegates authority to the Chief Executive in accordance with Section 257 of the Local Government Act 2009, to finalise any and all matters associated with the application.*

Further written correspondence was sent to the applicant and DOR on 26 July 2022 advising of Council's decision.

BACKGROUND

The subject property, Lot 4 SP266637, is located North East of Mapoon and Bertiehaugh Road transverses the property between Stones Crossing and the Telegraph Track. The road – which can only be used in the drier months of the year – reduces travel time considerably between Weipa, Mapoon and the northern towns and communities of the Cape York Peninsula. It reduces a round trip between Old Mapoon and New Mapoon by approximately 300km.

The road was formally opened in 2014 following extensive consultation between the State, Council and Silverback Properties Pty Ltd. Written consent to the opening of the road was provided by Silverback Properties Pty Ltd and the relevant sub-lessees which operate a pastoral enterprise on part of the land.

The Bertiehaugh Road is now a well-defined, iconic 4WD drive track with guide posts at the bends and "No Entry" signage on the side tracks. Signage has been placed at both ends of the road advising travellers that the use of the road is for experienced 4x4 drivers only.

Council has received letters of support for keeping the road open from the Torres and Cape Indigenous Council Alliance (TCICA) and Federal Member for Leichhardt, Hon Warren Entsch copies of which are attached to this report.

In his letter, Mr Entsch notes that the road is a gazetted road that is very important for the Western Cape communities. The road is being used as an alternative route which is becoming even more important given the sealing of the Peninsula Developmental Road. Having access to an alternative ring road for local communities and visitors alike is of critical importance for those travelling to the Tip of Cape York. It gives locals and visitors another route and from an economic standpoint, it provides travellers with a reason to come into Weipa, rather than bypass it on their travels up to and back from the Tip.

Further, Mr Entsch notes that more importantly, it provides connectivity between Old Mapoon, New Mapoon and the NPA area. The community will be split by the permanent road closure of this road. It will also create a further impediment on access between families across the region. The proposed road closure will add additional travel distance of some extra 200 kilometres to the journey, whereas it would only be 63km journey if the road remains open.

TCICA, which consists of 13 Local Governments in the Cape and Torres region and of which Cook Shire is a member, has not changed its position in support for the road to remain open. TCICA has passed resolutions in November 2018, February 2020 and as recently as May 2022 to keep the road open. Correspondence, with details of the relevant resolutions, was sent to the Premier on each occasion that the resolution was passed.

Council has also received correspondence from the Mowkiri Aboriginal Corporation (MAC), indicating that the Directors had passed a resolution on 28 October 2022 supporting Australia Zoo's application to have the road permanently closed. MAC Directors stated they were concerned that Council had allowed a 4WD track to be created on the route of a gazetted road, ostensibly without any traditional owners being present and without any cultural surveys and inspections taking place. It should be noted that MAC has not provided approval for their letter to be made public.

The Mayor subsequently has had discussions with the Mayor of Mapoon, who indicated his surprise at the MAC decision and that he understood that the Corporation was only concerned about a small portion of the property that the road does not run through.

CONCLUSION

In conclusion, Bertiehaugh Road is considered to be a vital piece of infrastructure for the Cape York Peninsula, supporting the current and future potential value of this area to Weipa, the Western Cape, Northern Peninsula Area and the communities of Mapoon, Napranum and New Mapoon.

Closure of the road will undoubtedly result in a loss of tourism and income support to the local community and will likely hinder future tourism investment. The closure will increase travelling time

between communities, increase fuel costs associated with the extra kilometres travelled and reduce family and cultural connections between communities.

Bertiehaugh Road passes through a small portion of the Steve Irwin Wildlife Reserve in Cook Shire, is an important link for families travelling between Old Mapoon and New Mapoon and provides an iconic 4WD experience for travellers in Cape York. It is, therefore, the recommendation of Council officers that the road should not be closed.

LINK TO CORPORATE PLAN

Theme 3 Accessibility and Connectivity - A growing Shire that supports active, connected and mobile communities

ACC 1: Preserve access to the range of natural areas throughout our region and balance the conservation of natural values with our lifestyle expectations

CONSULTATION

Consultation has been undertaken with relevant Council staff, TCICA, neighbouring councils, the Western Cape Chamber of Commerce and the general public.

LEGAL IMPLICATIONS (STATUTORY, BASIS, LEGAL RISKS)

The permanent road closure would mean that the road would be amalgamated back into the surrounding parcel of land and there would be no further public access permitted.

POLICY IMPLICATIONS

There are no identified policy implications of this decision.

FINANCIAL AND RESOURCE IMPLICATIONS (BUDGETARY)

Legally, all costs associated with the application are borne by the applicant.

Council is not obligated to maintain the road to any particular standard and objecting to the closure does not obligate Council to maintain the road.

If the application is approved by DOR, Council does not receive any income in relation to the Applicant's obligation to purchase the road reserve area from the State.

RECOMMENDATION

That Council resolves to:

- 1) Advise the Department of Resources that Council does not support the road closure of the unnamed road within Lot 4 SP266637, locally known as Bertiehaugh Road, for the following reasons:
 - a) The road is considered to be a vital piece of infrastructure supporting the current and future potential value of this area to Weipa, the Western Cape, Northern Peninsula Area and the communities of Mapoon, Napranum and New Mapoon.
 - b) The loss of tourism and income support to the local community and which will likely hinder future tourism investment.
 - c) The closure will increase travelling time between communities, increase fuel costs associated with the extra kilometres travelled and reduce family and cultural connections between communities.
- 2) Provide the Department of Resources a copy of the report with all attachments.
- 3) Delegate authority to the Chief Executive Officer in accordance with Section 257 of the *Local Government Act 2009*, to finalise any and all matters associated with the proposed road closure.

18 CONFIDENTIAL SECTION**RECOMMENDATION**

That Council considers the confidential report(s) listed below in a meeting closed to the public in accordance with Section 275 of the Local Government Regulation 2012:

18.3 Proposed Sub Leases Within Lease D on Lot 1 Crown Plan 889652 Webber Esplanade, Cooktown - Request to Waive Fees

This matter is considered to be confidential under Section 254J(g) of the Local Government Regulation 2012, 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 negotiations relating to a commercial matter involving the local government for which a public discussion would be likely to prejudice the interests of the local government.