



AGENDA FOR THE ORDINARY MEETING OF COUNCIL

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 14 December 2011

REPORT OF DIRECTOR CORPORATE SERVICES

o-CS5 Proposed New Right of Access over Council Reserve (No Street Number) Lot 6 Deposited Plan 249793 Old Hume Highway Berrima

Leadership

Reference: PN 665400; PN1778770;

Responsible Officer: Manager Governance

PURPOSE

Reporting on a request for the granting of a new Right of Access over Council reserve (No Street Number) Lot 6 Deposited Plan 249793 Old Hume Highway Berrima ('the Council reserve').

SUMMARY

A representative of the owner of properties at 2828-2830 Old Hume Highway Berrima ('the owner's property') has been engaged in soil erosion control project works, with the Hawkesbury Nepean Catchment Management Authority (HNCMA).

The current legal access to the owner's property crosses through the fenced out area including crossing over a diversion bank. This access was granted by Council as part of Subdivision LUA1215/03 which was registered on 9 October 2007. From a water quality and erosion control perspective the HNCMA have requested another access point be approved further upstream to avoid the project works and to provide all weather access to the property.

DESCRIPTION OF ITEM

BACKGROUND

In 2003 Council granted development approval (LUA1215/03) for the subdivision of certain lands off Old Hume Highway Berrima by the current owner. It was a condition of development consent that a Right of Access be provided over the Council reserve and, as a consequence, when the subdivision was registered, a Right of Access 8 metres wide over the Council reserve was granted.

The granting of a Right of Access or any other estate in Community Land is not permissible unless a Plan of Management for the Community Land has been adopted, specifically authorising such use. There is no Plan of Management for the Council reserve and therefore there should have been no granting of any such Right over the Council reserve.

Be that as it may, the owner's property has a Right of Access granted by Council and is now seeking to obtain a new access over the Council reserve in accordance with recommendations and the support of HNCMA and the Roads and Traffic Authority.



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DETAILS OF PROPOSAL

Subject Site and Locality

The owner's property is approximately 83 hectares in total area. The current legal access is at the northern most point of the Council reserve, being 8 metres wide, and was granted vide Deposited Plan 1113793 in 2007.

The Council reserve is 1.79 hectares in total area. The requested Right of Access would be 8 metres wide over the width of the Council reserve.

STATUTORY ASSESSMENT

Wingecarribee LEP2010

The Council reserve was the subject of consideration in 2007 and 2008 for reclassification from "community" to "operational" land. Due to public consultation and submissions received, the Council reserve was removed from the list of properties reclassified to "operational" land in the Wingecarribee LEP2010.

Relevant State Legislation

Local Government Act 1993

Section 35 of the *Local Government Act 1993*:

What governs the use and management of community land?

Community land is required to be used and managed in accordance with the following:

- the plan of management applying to the land
- any law permitting the use of the land for a specified purpose or otherwise regulating the use of the land

Section 44:

Use of community land pending adoption of plan of management

Pending the adoption of a plan of management for community land, the nature and use of the land must not be changed.

Although the initial grant by Council of the Right of Access is questionable, the Right of Access has been in place for over four (4) years. The subject of this Report is the granting of a new Right of Access over the same Council reserve to the same owner's property. Therefore, from a technical perspective only, the use of the land is not changed if Council resolves to proceed with the granting of a new Right of Access over the Council reserve.

If Council resolves to grant a new Right of Access subsequent to the drafting and adoption of a Plan of Management authorising such use, this Plan of Management will form part of a group Plan, due to the size of the Council reserve. In other words it would be prohibitive to complete an individual Plan of Management for a small reserve which is essentially a vacant strip of community land adjacent to the Old Hume Highway.



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CONSULTATION

External Referrals

Referrals/Notice	Advice/Response/Conditions
HNCMA	See attachment
RTA	See attachment

SUSTAINABILITY ASSESSMENT

- **Environment**

The owner's property is the subject of a soil erosion control project by the HNCMA. The project is controlling active erosion, fencing out drainage lines and revegetating the area with local indigenous native species. Works have occurred upstream in a drainage line adjacent to the Old Hume Highway which protects a wetland above which holds water across a swampy plain almost year round. HNCMA recommend Council endorse a new Right of Access as the current Right of Access will cross through the fenced out project area including crossing over a diversion bank and negotiating a wetland area and drainage depression.

- **Social**

The proposal to consider a new Right of Access does not have any social impacts.

- **Culture**

The proposal to consider a new Right of Access does not have any positive or negative impacts on the Aboriginal or Non-Aboriginal Culture.

- **Broader Economic Implications**

There are no broader economic implications from the proposal to consider a new Right of Access over the Council reserve to the owner's property.

- **Governance**

Transparency in decision-making requires thorough reporting of all issues and consideration of those matters. Proper governance of Council's property portfolio is essential.

RELATIONSHIP TO CORPORATE PLANS

One of the Visions of Council (as set out in Council's Delivery Program 2011-2012 and Operational Program 2011-2013) is *"A community that values and protects the natural environment enhancing its health and diversity"*

BUDGET IMPLICATIONS

If Council resolves to grant a new Right of Access over the Council reserve to the owner's property then the owner must accept all the costs involved in doing so, including legal, surveying and registration fees.



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RELATED COUNCIL POLICY

1. Environment Policy (adopted by Council 31 January 2007).

OPTIONS

1. Grant a new 8 metre wide Right of Access over the Council reserve to the owner's property at the cost of the owner.
2. Refuse to grant a new Right of Access over the Council reserve to the owner's property until a Plan of Management is drafted and adopted authorising such use.

ATTACHMENTS

There are four (4) attachments to this report being:

1. Aerial photograph showing the Council reserve and adjoining owner's property.
2. Draft Plan showing proposed new access.
3. Letter from HNCMA dated 16 September 2011.
4. Letter from RTA dated 5 August 2011.

RECOMMENDATION

THAT Council grant a new Right of Access eight (8) metres wide over Council reserve being Lot 6 Deposited Plan 249793 Old Hume Highway Berrima to 2828-2830 Old Hume Highway Berrima, being Lot 5 Deposited Plan 1113793.

ATTACHMENT 1

**Site of proposed right of access over Council reserve
Lot 6 Deposited Plan 249793 Old Hume Highway Berrima**





PROPOSED NEW ACCESS LOCATION PLAN
Scale: 1:2000

PLAN OF PROPOSED ACCESS
Scale: 1:200

CATCHMENT AREA
Est Peak m3/s - ARI 5years = 0.7
Est Peak m3/s - ARI 100years = 2.2

LONG SECTION OF PROPOSED NEW ACCESS

ISTHMIUS HOLDINGS Pty Ltd
100 West Street, Suite 101
Sydney, NSW 2000
Tel: (02) 9212 1234
Fax: (02) 9212 1235
Email: info@isthmus.com.au

16360 DA1



Hawkesbury-Nepean
Catchment Management Authority

Wingecarribee Shire Council
Geoffrey Wood – Development Engineer
Civic Centre Elizabeth Street, Moss Vale 2577
PO Box 141
NSW Moss Vale 2577
16 September 2011

Our Reference: HN16724
Contact: Lauren Wilson
HNCMA – 4828 6749
Level G 159 Auburn Street Goulburn 2580
Locked Bag 2048 Goulburn 2580
lauren.wilson@cma.nsw.gov.au

Dear Mr Wood

Subject: Erosion control works at Lot 5 Old Hume Hwy, Berrima.

The Hawkesbury Nepean Catchment Management Authority (HNCMA) is currently implementing a soil erosion control project on Bill Watson's property, Lot 5 DP 1113793. The project aims to improve water quality and reduce downstream sediment movement by controlling active erosion, fencing out drainage lines and revegetating the area with local indigenous native species.

The project involves work on an active headcut in a drainage line adjacent to Old Hume Hwy. A concrete flume structure and two diversion banks have been constructed at this location to safely enable water to enter the drainage line. These works occur upstream from a proposed access point to the lot, protecting a wetland above which holds water across a swampy plain almost all year round. The project will fence out and revegetate our works, both drainage lines and the wetland above the works. Please refer to the attached map detailing project works.

The current access point to Lot 5 off the Old Hume Hwy would cross through the fenced out project area detailed above, including crossing over a diversion bank, and then negotiate through the wetland area and across a major drainage depression. Even in dryer periods this access track would be difficult to cross and in wetter times would be inundated with water from the drainage lines above. The track would be difficult to construct and maintain and would most likely not provide an all weather access to the property.

From a water quality and erosion control perspective the HNCMA would prefer that the proposed access for Lot 5 did not traverse our earthworks and cross in front of our works. Bill Watson has indicated to us that he has submitted an application to Council for another access point further upstream. This point enters on a hill and would only need to cross a 3m drainage line before a track could be built on the contour of a hill on the other side, well out of the drainage line. We would recommend relocating the track to this point as it is well away from our project works and has the potential to provide all weather access to the property

I am happy to arrange for Lauren Wilson, the Catchment Officer in charge of the project, to meet you onsite to explain or discuss HNCMA works if necessary.

Yours sincerely



Bernie Bugden
General Manager – Hawkesbury Nepean Catchment Management Authority



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ATTACHMENT 4



Transport
Roads & Traffic
Authority

5th August 2011

Your Reference: File No 6831
NSI 1/248-1

Mr Geoffrey Wood
Wingecarribee Shire Council
PO Box 141
Moss Vale NSW 2577

COPY SENT

WINGECARRIBEE SHIRE COUNCIL		
Classification	MAIL IN	
Doc. No.	1926376	
File No.	6831	
16 AUG 2011		
OFFICER	ACTION	INFO
G. Wood	☒	☐

Dear Mr Wood

Re: The Berrima Remembrance Driveway – Access to property in the vicinity of Centennial Road

As RTA member on the Remembrance Driveway Committee I have been forwarded your letter dated 22nd June 2011 to Mrs Judy Keast requesting whether there is any objection to allowing access to Lot 5 DP 1113793 across the reserve adjacent to the Old Hume Highway (Lot 6 DP 249793).

Although your letter states the subject land is dedicated to the Remembrance Driveway, neither the Remembrance Driveway Committee nor RTA records indicate that this is so. Regardless, in 1993 the Committee accepted the Remembrance Driveway should move away from the old Hume Highway route to the new highway between Liverpool and Goulburn. It agreed that responsibility for the sections of the Driveway which were being bypassed would pass back to local authorities and/or community groups. These sections of the old Driveway could be referred to as Remembrance Drives or Remembrance Groves if that was the local wish but no longer would they be a part of the Remembrance Driveway.

As such, on behalf of the Remembrance Driveway Committee, I can advise that neither the Remembrance Driveway Committee nor the RTA have objection to the Council granting access across the land. Should you wish to discuss this matter further, please call me on 02 8588 5767.

Yours sincerely

Greg Jackson
Urban Designer RTA

Roads and Traffic Authority of New South Wales

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