

cw-CS2 Right of Access over Council Reserve (no Street Number) Lot 6 DP 249793, Old Hume Highway, Berrima

Reference: PN665400; PN1778770
Responsible Officer: Property Officer

PURPOSE

Reporting on a request for the process to be followed in relation to the granting of a new Right of Access over Council Reserve (no street number) Lot 6 DP 249793 Old Hume Highway, Berrima (the Council Reserve).

In order for Council to comply with its legislative requirements, it is recommended that Council takes up such action as necessary to legitimately grant the Right of Access over the Reserve as outlined in this Report.

REPORT

BACKGROUND

In 2003 Council granted development approval (LUA1215/03) for the subdivision of lands off Old Hume Highway Berrima made by the current owner. One of the conditions of the Development Consent was that a Right of Access would be provided by Council over the Council Reserve.

When the plan of subdivision was registered, a Right of Access 8 metres wide over the Council Reserve was granted.

The granting of the Right of Access or any other estate or dealing in Community Land is not permissible under the *Local Government Act 1993* unless a Plan of Management for the land has been adopted specifically authorising such use.

There was not at the time of approval by Council of the plan of subdivision, and to date there still is, no Plan of Management which specifically authorises the Right of Access granted by Council in 2003.

In 2011, the same owner, with recommendations by the Roads & Maritime Services (formally Roads & Traffic Authority) and the Hawkesbury Nepean Catchment Management Authority, made application for a new Right of Access over the Council Reserve.

This additional access was considered by Council on Wednesday 14 December 2011 and despite disclosure of the non compliance with Section 47 of the *Local Government Act 1993*, Council resolved as follows:

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

OC 268/11

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 27 March 2013

REPORT DEPUTY GENERAL MANAGER CORPORATE & STRATEGY



REPORT

Following the Resolution made by Council on Wednesday 14 December 2011, Council's Property Officer prepared the necessary Real Property Dealing to grant the new Right of Access over the Council Reserve for the benefit of 2828-2830 Old Hume Highway Berrima, being the address of the affected owners property.

The Transfer Granting Easement was executed by Council's General Manager and the owner and lodged with the Registrar General for registration.

Registered against the Title to the Council Reserve is caveat K2000000P which forbids the registration of any further dealing (Public Reserve). On behalf of Council, an application was made to have the caveat withdrawn to enable the Transfer Granting Easement to be registered.

In response to that application, the Registrar General advised that caveat K2000000P *will* be removed on registration on the next dealing affecting the subject land, upon provision by Council of a letter that confirms the proposed Right of Access is not prohibited by Sections 47-46A, 47 or 47A of the *Local Government Act 1993*.

As outlined in previous reports to Council the registration of any dealing affecting Community Land must be expressly authorised in a Plan of Management. The registration therefore of a Transfer Granting Easement is prohibited unless it is expressly authorised in a Plan of Management for the land.

It is therefore necessary for a Plan of Management to be adopted specifically authorising that use before the easement can be granted.

Advice was sought from Council's former Legal Officer who supported the writing of this Report and who has made the following recommendations (see below).

LEGISLATIVE REQUIREMENTS

Section 36 Local Government Act 1993

Pursuant to Section 36 of this Act, Council must prepare a Draft Plan of Management for Community Land which must, among other things, categorise the land, the use of the land and specify the purposes for which the land will be permitted to be used.

Section 47 Local Government Act 1993

This Section of the Act relates to estates granted in respect of Community Land for terms greater than five (5) years.

Given that the issue at consideration is a Right of Access, it would be intended that this right would be in place for a term greater than five (5) years.

Not only must Council have expressly authorised the proposed use or estate in the Plan of Management for the Community Land it also must follow the processes outlined in Section 47 of the Local Government Act to give and exhibit Public Notice of the proposal and to receive submissions in relation to that proposal.

Council must not grant the estate except with the Ministers consent if any person makes a submission by way of objection to the proposal.

CONSULTATION

Community Engagement

As this matter was previously considered by Council not only in terms of the original LUA (1215/03) in 2003 but also in December 2011 when Council considered a Report to grant a new Right of Access over Council Reserve, no further community engagement has been undertaken since that time.

If Council resolves that it is necessary to prepare a Plan of Management to comply with the *Local Government Act*, it will be necessary to prepare, give and exhibit public notice of the proposal and give the public opportunity to make submissions in respect of the proposal.

Internal Consultation

Council's Manager Government and Legal (in his former capacity as Legal Officer) and the current, and Legal Officer have both been consulted and agree with the content and recommendations of the report.

External Consultation

Council has not consulted its legal representatives in relation to this matter as the relevant Council Officers do not deem this necessary.

SUSTAINABILITY ASSESSMENT

ENVIRONMENT

There are no environmental issues in relation to this report. These have been previously addressed when this matter was considered by Council on 14 December 2011.

SOCIAL

There are no social issues in relation to this report.

BROADER ECONOMIC IMPLICATIONS

There are no broader economic implications in relation to this report.

CULTURE

There are no cultural issues in relation to this report.

GOVERNANCE

Transparency and probity in dealing with matters in Council ensures proper administration and governance. In accordance with the recommendation made, it is essential that a Plan

of Management be prepared for the site as a matter of urgency to enable Council to satisfy the Registrar General that the Local Government Act 1993 has not been contravened.

RELATIONSHIP TO CORPORATE PLANS

None identified.

COUNCIL BUDGET IMPLICATIONS

If Council resolves to prepare a Plan of Management this will have a obvious impact on Council's budget. There are a number of site specific Plans of Management currently underway with Council's Recreation Planner overseeing their preparation and managing the process and adoption of those Plans. If the Plan of Management for this specific Council Reserve (being Road Reserve) is made a priority this will impact the priority and order of other Plans.

RELATED COUNCIL POLICY

None identified.

OPTIONS

The options available to Council are:

Option 1

It is recommended that Council prepare and adopt a Plan of Management for the Community Land known as Lot 6 DP249793, Old Hume Highway Berrima, as a matter of priority. The Plan of Management is to expressly authorise the existing Right of Access and the new Right of Access to the adjoining property being 2828-2830 Old Hume Highway Berrima (Lot 5 DP1113793).

Council could then provide evidence by way of a letter addressed to the Registrar General confirming the Transfer Granting Easement complies with the *Local Government Act 1993*.

Option 2

There are no other feasible options that will not adversely affect the owner, i.e. leave it with no legal access to the property given that the previous access is now redundant due to works by the HPCMA.

CONCLUSION

It is recommended that Council prepare and adopt a Plan of Management for the Community Land known as Lot 6 DP249793, Old Hume Highway Berrima, as a matter of priority.

The Plan of Management is to expressly authorise the existing Right of Access and the new Right of Access to the adjoining property being 2828-2830 Old Hume Highway Berrima (Lot 5 DP1113793).

ATTACHMENTS

There is one attachment to this report (as follows):

1. Site map showing location of new right of access.

RECOMMENDATION

1. THAT Council prepare and adopt a Plan of Management for the Community Land known as Lot 6 DP 249793, Old Hume Highway Berrima, as a matter of high priority.
 2. THAT it be noted that the Plan of Management is to expressly authorise the existing Right of Access and the new Right of Access to the adjoining property being 2828-2830 Old Hume Highway Berrima (Lot 5 DP 1113793).
 3. THAT upon the adoption of the Plan of Management, the General Manager be authorised to provide the Registrar General with a letter confirming the Transfer Granting Easement is in compliance with the Local Government Act 1993 thereby enabling registration of the Transfer Granting Easement for access to 2828-2830 Old Hume Highway Berrima over the Council Reserve.
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ATTACHMENT

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

