

# AMENDED ITEM

14 August 2013  
To the Ordinary Council Meeting

Director's Report  
Development and Building Department

## 2.1 Consideration for Road Dedication at Little Brush Lane, Ourimbah

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TRIM REFERENCE: F2005/02636 - D03501557

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### SUMMARY

Authority is sought for the investigation of the dedication of Little Brush Lane, Ourimbah as Public Road, the potential lease of the road or the potential road closure and sale to the residents of Little Brush Lane, Ourimbah to facilitate legal and physical access to their residences.

### RECOMMENDATION

- 1 ***That Council dedicate Little Brush Lane, Ourimbah as Public Road.***
- 2 ***That Council, prior to the dedication of Little Brush Lane, Ourimbah enter into a deed of agreement with the property owners of the 3 lots, Lot 62 DP1081176, Lot 12 DP 4097 and lot 52 DP 1149472 for the closure and sale at market rate of Little Brush Lane, Ourimbah, at no cost to Council.***

### BACKGROUND

The owners of the properties in Little Brush Lane, Ourimbah have made representations to Council as the Roads Authority pursuant to Section 16 of the Roads Act 1993 to have Little Brush Lane, Ourimbah dedicated as public road.

The residents have previously enquired with Council about Council undertaking maintenance of the Lane. Council identified that Little Brush Lane, Ourimbah is a Private Road and not Council's responsibility for maintenance.

Council has also previously advised that they have no intention to dedicate Little Brush Lane, Ourimbah as public road and incur any further ongoing financial liability regarding maintenance of the lane.

The owners are hesitant to undertake their own maintenance of their access in the Private Road reserve due to the potential public Liability issues with works on private property.

## 2.1 Consideration for Road Dedication at Little Brush Lane, Ourimbah (contd)

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Little Brush Lane, Ourimbah currently provides physical access for 3 lots, Lot 62 DP1081176, Lot 12 DP 4097 and lot 52 DP 1149472. As no maintenance is occurring, the ability to gain access is diminishing. Due to the topography, there is no opportunity for the owners to provide alternative access to the dwellings.

Council has issued various development approvals over time all pertaining to access from Little Brush Lane, Ourimbah. Public utilities including Energy Australia and Telstra utilise the private road reserve for the provision of their service by pole and wires.

Little Brush Lane, Ourimbah was created with Deposited Plan 4097. The deposited plan was registered in 1902. This registration occurred prior to the creation of the Local Government Act 1919 and as such without a notice in the Government Gazette being published since 1920 the road exists as a Private Road.

The owners of the properties in Little Brush Lane, Ourimbah have made representations to Council as the Roads Authority pursuant to Section 16 of the Roads Act 1993 to have Little Brush Lane, Ourimbah dedicated as public road.

*"Section 16 - Council may dedicate certain land as a public road*

- (1) This section applies to land that is set aside for the purposes of a road left in a subdivision of land effected before 1 January 1907 (the date of commencement of the Local Government Act 1906 ) or in a plan of subdivision that was registered by the Registrar-General before 1 January 1920 (the date of commencement of the Local Government Act 1919 ).*
- (2) The council of the local government area within which such land is situated may, by notice published in the Gazette, dedicate the land as a public road.*
- (3) On the publication of the notice in the Gazette:*
  - (a) the land described in the declaration becomes free of all trusts, restrictions, dedications, reservations, obligations and interests, and*
  - (b) the land is dedicated as a public road."*

Council has recently undertaken a similar process with Oak Road at Ourimbah.

Further to the Lanes' state of disrepair, Council's Bush Fire Asset Management Plan Identifies these lots as extreme danger due to condition of Little Brush Lane, Ourimbah. This asset is assessed as having an **Extreme 1B risk**. Any future maintenance would require it to be upgraded in accordance with the requirements of Planning for Bushfires for lot access.

### THE PROPOSAL

Dedicate Little Brush Lane, Ourimbah as Public Road

### OPTIONS

There are 3 options available to Council, Option 1, a combination of 1 and 2 or a combination of 1 and 3.

## 2.1 Consideration for Road Dedication at Little Brush Lane, Ourimbah (contd)

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1 That Council dedicate Little Brush Lane, Ourimbah as Public Road.

**Consequences:** - Council has public road to maintain.

2 Council enter into a “deed of agreement” with the three (3) residents to purchase the land upon road closure.

**Consequences:** If for any reason, Council wishes to re-acquire the public road, it would need to purchase at current rate?

3 The residents of Little Brush Lane, Ourimbah enter into a “lease” for the area of the road reserve for purposes of maintaining suitable access to their residences.

**Consequences:**– At the expiration of the lease, that all or any party may not wish to re-enter the lease arrangements. Council is left with public road.

### STRATEGIC LINKS

All costs associated with the proposal is to be paid by the property owners of Little Brush Lane, Ourimbah.

### Wyong Shire Council Strategic/ Annual Plan

<i>Principal Activity</i>	<i>Service</i>	<i>Key Action and Objectives</i>	<i>Funding Source and Description</i>	<i>Impact on Key Performance Indicators/ Service Performance Indicators</i>
Nil Impact	Nil Impact	Nil Impact	Nil Impact	Nil Impact

### Contribution of Proposal to the Principal Activity

Nil Impact

### Long term Financial Strategy

Nil Impact

### Asset Management Strategy

The proposal will not increase any liability on asset management as the residents will be responsible for maintaining the access within Little Brush Lane, Ourimbah.

### Workforce Management Strategy

Nil Impact

**Link to Community Strategic Plan (2030)**

Council's Community Strategic Plan 2030 Identifies roads under the title of Essential Services.

**Budget Impact**

All costs associated with the proposal are to be paid by the property owners.

**CONSULTATION**

Council has received several representations from the residents of Little Brush Lane, Ourimbah and the Director, Development and Building has met on site with one resident.

**GOVERNANCE AND POLICY IMPLICATIONS**

Little Brush Lane, Ourimbah is shown as a road. The land is privately owned and therefore not classified under the Local government Act 1993.

**MATERIAL RISKS AND ISSUES**

Potentially lessen the bush fire risk to the lots due to improved access.

**CONCLUSION**

Council has no interest in the dedication of Little Brush Lane, Ourimbah as Public Road or the associated ongoing maintenance of the Lane. Council has over the years approved development that can only physically access the lots from Little Brush Lane, Ourimbah, however, no legal right of access exists. It is considered appropriate for Council to use its powers as a Roads Authority to dedicate the road as Public Road and to enter into the appropriate arrangement for the construction and maintenance of the access by the residents of Little Brush Lane, Ourimbah in order to gain legal and physical access to their lots.

Any deed of agreement needs to be signed by all parties and commercial arrangements to be agreed upon prior to Council closing the road.

**ATTACHMENTS**

- 1 Site Plan of Little Brush Lane, Ourimbah (colour) D03510097



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doylej