

## Procedure 4.04.4 Road closure and private sale

<b>Department</b>	Transport and Utilities Group
<b>Responsible Officer</b>	Director   Transport and Utilities

### Introduction

This procedure has been prepared to assist applicants proposing to apply to close and purchase all or part of a Council public road.

Council will give consideration to the closing of a section of road and sale to the adjacent owner/s if it is established the road is no longer required for any public purpose. Applications for the closure of a public road may only be received from owners of land which adjoin the road.

This procedure applies to road closure applications for public roads made under the provisions of the *Roads Act 1993*. It also applies to road closures initiated by Council for Council purposes such as road widening and/or realignment of existing road reserves, through negotiation with private property owners.

This procedure does not apply to road closure actions under the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* for the purposes of the *Roads Act 1993* wherein roads are closed and granted as compensation for acquisition.

### Objective

The objectives of this procedure are to:

- Provide guidelines on assessing road closure applications for public roads within the Bega Valley Shire,
- Ensure road reserves are managed so that community access and use of these road reserves is preserved where required.

The information, fees and estimated costs contained herein are intended as a guide only as policies, legislation and fees are subject to change

### Definitions

**Road closure** – refers to the change in title of land currently designated as “public road” (as distinct from the exclusion of vehicles from a public road under the Traffic Act). Closure may be full or partial width. Public roads are closed under the provisions of the *Roads Act 1993*.

**Public Road** – roads that are vested in the Council of the relevant Local Government area. Council is the roads authority for public roads even if the roads were constructed and dedicated by Authorities such as Department of Housing, Public Works, Forestry and National Parks and Wildlife.

**Classified Roads** – the proclaimed regional networks, which are vested in Council, requires Council and NSW Government Roads and Maritime Services’ approval for closure.

**Crown Public Roads** – roads vested in the Crown, with the Crown Lands Division being the statutory body granting approval for closures. Applications for the closure of Crown Public Roads are to be lodged directly with Crown Lands Division, who will notify Council of any application and may uphold any valid objection by Council to its closure. Should a valid objection by Council be upheld by Crown Lands Division, Council will apply to transfer the road to Council’s care and control.

**Applicant** – a third party (adjacent property owner to the proposed road to be closed) who is initiating a road closure application.

**Temporary Roads** – may be closed provided the action will not isolate another road or property.

## Initial assessment of applications

When assessing the merit of a road closure application, the following factors need to be considered:

- Whether the land is required for current or future use as pedestrian or vehicular access to public or private land.
- Have all adjoining property owners been consulted regarding the road closure and have they provided written consent?
- Whether the land is required for operational purposes e.g. provide access for infrastructure provision, pipes, stormwater drainage etc.
- Has the section of road been formed or improved in any way, including the provision of underground pipes or services?
- Does the road reserve provide a wildlife corridor?
- Would the newly created parcel infer an extra building entitlement under the current Local Environmental Plan?
- Is a re-zoning application required?
- Cost of maintaining the site versus the benefits gained from selling the land.
- The location and topography of the site may also influence the decision to support or reject an application.

If the above investigations indicate the land is not required, Council may dispose of the land at market value.

## Roads not eligible for closure

1. Roads providing (or capable of providing) physical access to rivers, creeks, lakes, beaches and their foreshores;
2. Roads capable of providing physical access to other roads, public and private properties, public and Crown reserves and public utility installations. In the case of access to private properties, closure will be considered if a suitable alternative road is dedicated as public road or if a right of carriageway is created over an existing road/track or new road/track to be created;
3. Road reserves containing wildlife corridors, significant flora, marketable timber and scenic escarpments, or is potentially useful for vehicle turning, public utilities, extractive industries or public open space;
4. Road reserves containing public authority reticulation services unless the relevant authority agree to their relocation or creation of formal easements.
5. Road reserves that have the potential to provide corridors for future Council water, sewer or stormwater infrastructure.
6. Roads whose future highest and best use for Council purposes is judged to be of more economic worth than the current land value.
7. Roads that could potentially be developed for vehicle, cycle, pedestrian or equestrian use as the Shire grows.
8. Roads used for the movement of stock.
9. Topographically difficult road reserve which might potentially be exchanged for a more negotiable corridor serving any of the above mentioned purposes.

10. Roads where a proposed closure would interrupt or cause a step in the continuous boundary line of private frontages abutting the road (relates to consistent building setbacks, boundary fencing, utility offsets and cumulative impact of successive closures);
11. Roads that could potentially be developed for the purposes of fire buffers or fire trails as the Shire grows.

### Procedure for Council initiated road closures

1. Determine whether the section of road is Council Public Road or Crown Road. If it is a Council Public Road, Council can commence the pre lodgement actions required prior to submitting to Crown Lands for final approval. Those actions are:
  - a. Carry out a full status check of the road to confirm dedication as a Council public road and its public use and construction in order to verify its status as vesting in Council upon closure,
  - b. Investigate if any underground or overhead services (water, sewer, power, telephone or data) are located within the section of road reserve,
  - c. Prepare a report to Council seeking approval to publicly advertise the proposal to close the section of road,
  - d. Place a Public Notice advertisement in a local paper circulating in the same area as the intended road closing, giving 28 days for receipt of any submissions,
  - e. Send a letter of notification of the proposal to all affected parties (including adjoining and adjacent neighbours) and public authorities, noting the 28 day submission period,
  - f. Council staff will consider all submissions received and take appropriate action to resolve any objections. If there is any concern to the validity of any objections, advice should be sought from the Business Centre at Crown Lands,
  - g. Once all submissions/objections have been resolved or Council staff form the opinion that no further progress can be made, a further Council report is prepared with a summary and assessment of the submissions/objections with a recommendation and options. Council approval should also be sought to lodge the road closure application with Crown Lands and prepare and execute any necessary documents.
2. Council to enter into a Deed of Agreement with the affected landowner outlining the responsibilities of both parties, including that Council will meet all legal, survey and valuation costs involved in the road closure process. The resolution should also note any provision of easements for public utilities within the subject land (if necessary), that the subject land is to be consolidated with the applicants adjacent land upon transfer and the agreed purchase price of the subject land (if not given in compensation).
3. Road closure application is completed by Council staff and sent to Crown Lands with all supporting documentation (preliminary plans, Council reports, all submission and/or objections received and a copy of Council resolutions etc.). Application fee, as prescribed by Crown Lands, must be lodged with the application.
4. Crown Lands assess the application and approval in principle to the road closure is granted.
5. A solicitor is appointed by Council to progress the matter.
6. A registered surveyor should now be instructed to prepare the plan of road closure and first title creation. The unregistered plan is endorsed by Council and Crown Lands and then lodged with Land and Property Information (LPI) for registration.
7. Upon registration of the plan, LPI provide a copy to Crown Lands who publish a notice in the Government Gazette giving effect to the road closure.
8. The LPI subsequently issue a Certificate of Title for the land. The Certificate of Title is issued in Council's name if the section of road was partly formed or constructed, or if completely unformed and/or unimproved, it would vest in the Crown.
9. The Council would then have a plan of consolidation prepared by a registered surveyor, in order to consolidate the new Lot with the affected parties existing landholding upon transfer.
10. Council execute the transfer and arrange payment of the transfer and lodgement fees and any applicable stamp duty.

11. The above documents and fees are then provided to Council's solicitor, along with the Certificate of Title and valuation report for lodgement with the plan of consolidation at LPI.

### Procedure for third party initiated road closures

Applicants should be aware Council does not guarantee the success of an application at any stage.

1. Council staff to determine whether the section of road is Council Public Road or Crown Road.
2. If Council Public Road, the applicant is required to pay the Bega Valley Shire Council road closure application fee as noted in Council's Fees and Charges.
3. Council staff commence the pre-lodgement actions required prior to submitting to Crown Lands for final approval.

Those actions are:

- Carry out a full status check of the road to confirm dedication as a Council public road and its public use and construction in order to verify its status as vesting in Council upon closure;
  - Investigate if any underground or overhead services (water, sewer, power, telephone or data) are located within the section of road reserve;
  - Prepare a report to Council seeking approval to publicly advertise the proposal to close the section of road;
  - Place a Public Notice advertisement in a local paper circulating in the same area as the intended road closing, giving 28 days for receipt of any submissions;
  - Send a letter of notification of the proposal to all affected parties (including adjoining and adjacent neighbours) and public authorities, noting the 28 day submission period;
  - Council staff to consider all submissions received and takes action to resolve any objections. If there is any concern to the validity of any objections, advice should be sought from the Business Centre at Crown Lands;
  - Once all submissions and/or objections have been resolved or Council staff form the opinion that no further progress can be made, a further Council report is prepared with a summary and assessment of the submissions/objections with a recommendation and options. Council approval should also be sought to enter into a Deed of Agreement with the applicant outlining the responsibilities of both parties, including that the applicant will meet all legal, survey and valuation costs involved in the road closure process and to lodge the road closure application with Crown Lands;
4. The Council resolution should also note the provision of easements for any public utilities within the subject land (if necessary), that the subject land is to be consolidated with the applicants adjacent land upon transfer, the agreed purchase price of the subject land (as determined by a registered Valuer) and that the Mayor and General Manager have authority to execute all necessary documents.
  5. If approved by Council, a solicitor is now appointed to prepare a Deed of Agreement to be executed by the applicant and Council. A road closure application is completed by Council staff and sent to Crown Lands with any supporting documentation (preliminary plans, Council reports and a copy of all resolutions etc.). The applicant is to provide Council with a cheque for the road closure application fee as prescribed by Crown Lands. Cheques are to be made payable to Crown Lands and must be submitted with the road closure application.
  6. The applicant is advised to appoint their own solicitor to act on their behalf in the matter.
  7. Crown Lands assess the application and either approve in principle or not approve the road closure.

8. If approved in-principle, the applicant should now instruct a private surveyor to prepare the plan of road closure and first title creation. The unregistered plan is forwarded to Council for endorsement and to gain the endorsement of Crown Lands. The plan is then lodged with the Land Titles Office (LTO) for registration.
9. The unregistered plan is endorsed by Council and Crown Lands and then lodged with Land and Property Information (LPI) for registration.
10. The LPI subsequently issue a Certificate of Title for the land. The Certificate of Title is issued in Council's name if the section of road was party formed or constructed, or if completely unformed and/or unimproved, it would vest in the Crown.
11. The applicant would then be required to have a plan of consolidation prepared by a registered surveyor, in order to consolidate the new Lot with their existing landholding upon transfer.
12. The applicant pays to Council the agreed purchase price, the transfer and lodgement fees and applicable stamp duty.
13. Upon receipt of the above payments, Council execute the transfer which is then provided to the applicant's solicitor along with the Certificate of Title and valuation report for lodgement with the plan of consolidation at LPI.

### Classification of land upon road closure and acquisition by Council

Council is not required to classify land forming part of a former public road as 'operational land' under the *Local Government Act 1993* before it can be sold.

Public roads are not 'public land' within the meaning of the *Local Government Act 1993*, and are therefore not classified when they are roads. It is only on their closure and vesting in Council they become public land and the issue of their classification as community or operational land becomes relevant.

Section 43(2) of the *Roads Act 1993* applies to land vested in a council and forming part of a former public road and provides that:

*"Land to which this section applies is operational land for the purposes of the Local Government Act 1993 unless, before the land becomes vested in the Council, the Council resolves that it is to be community land, in which case the land is community land."*

Local roads within Council's local government area are already vested in Council before their closure (Section 145(3) and Section 7 of the *Roads Act 1993*). Those roads would therefore be operational land on their closure as the closure of the roads would not result in the land becoming vested in Council – it is already vested in Council. There is no opportunity for the Council to resolve before acquisition of that land that it will be community land.

However, if the road is first vested in Council as a result of the closure (which is possible) then the land will be operational land by virtue of Section 43(2) of the *Roads Act 1993*, unless before the closure (and vesting) Council resolves that it will be community land.

If there is no resolution to classify the land as community land on road closure and vesting, then it is operational land and there is no need to reclassify the land before selling it.

### Estimate of costs

The following estimate of costs is based on a standard road closure and is subject to change from time to time. GST is payable in addition to the figures quoted. All fees received for applications which do not proceed to closure are non-refundable.

Bega Valley Shire Council road closure fee .....	\$1,580.00
Crown Lands road closure application fee .....	\$476.90
Council's legal costs .....	\$3,500.00
Independent valuation of the land .....	\$1,500.00

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Preparation of road closure survey plan .....	\$3,000.00
LPI plan registration fees .....	\$1,800.00
Purchase price of the land .....	\$as per valuation
LPI Transfer fees .....	\$300.00

### Likely timeframes

As suggested by the steps involved above, the process of closing a public road is costly and time consuming and may take anything from 6 months to 2 years to complete.

Crown Lands have a service level agreement with all Councils throughout NSW to determine a road closure application within a period of 60 days from the date of lodgement of the application. In extenuating circumstances (pending DA approval etc.) a request can be made to Crown Lands for consideration to urgently assess an application; however this is at the discretion of Crown Lands and based on their assessment of merit.

### Compensation

Compensation received from the closure of a constructed public road is payable to Council and can only be used by the Council for acquiring land for the purpose of providing a public road or carrying out works on existing public roads.

Compensation for the section of closed road will be at current market value as assessed by a registered Valuer and determined at the commencement of a road closure application.

Compensation from the closure of an unconstructed public road or Crown Public road is payable to the Department of Primary Industries, Crown Lands.