

REF: CM173/09

**PROPOSED DEDICATION OF LANES IN DAPTO AS PUBLIC ROAD**

**Report of Manager Property and Recreation (RMC) 27/08/09**

**28.01.009**

**PRECIS**

Council has been approached by the owner of the former Dapto Public School to formalise the dedication of a lane that adjoins their land in order to facilitate a development for low cost housing.

There are a number of lanes in Dapto to the east of the Princes Highway between Werowi and Byamee Streets which have never been formally dedicated as public roads under the Roads Act 1993.

This report seeks approval to dedicate these lanes as public road.

**RECOMMENDATION**

**In accordance with Section 16 of the Roads Act 1993, Council approve the dedication as public road of the lanes in Dapto, as shown on Attachment 1, by the placement of a notice in the NSW Government Gazette.**

**BACKGROUND**

Council has been approached by the owners of the former Dapto Public School who wish to construct a low cost housing development on the site. They require public road access from the lane adjoining Lot 12 and upon learning that this lane has not been formally dedicated as public road, requested Council dedicate it.

This lane and the other lanes between Werowi Street and Byamee Street, as shown on Attachment 1, were created by the registration of DP 3436 in 1898 and DP 3773 in 1901. In accordance with the Roads Act 1993, the status of land can be uncertain where it was 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). As the lanes were created in 1898 and 1901 respectively, whilst there is no formal title, the ownership remains vested in the original developer [estate of Mr G Brown of Dapto] who cannot be located. As there is no current title for these lanes, in terms of the Roads Act 1993 a notice seeking submission within 28 days was placed in the local press on 15 July 2009 regarding the proposed dedication. One submission was received congratulating Council on the asphaltting of the lanes and requesting that two of them be named. There were no objections received to the proposed dedication.

These lanes may be deemed public road under Common Law by virtue of three criteria:

1. there was an intention by the subdivider that they be public road;
2. there is use and acceptance of the lanes by the public; and
3. Council has expended monies on their construction and maintenance.

However, as this has not been tested and they have never been formally dedicated as public road, their status is uncertain.

In order to clarify the status of the lanes and formalise their use by the public, it is proposed that a notice be placed in the NSW Government Gazette, in accordance with Section 16 of the Roads Act 1993, to dedicate the land as public road.

The portion of the lane between Moombara Street and Mulda Street which has not been included in this proposal has already been closed and is in private ownership.

In accordance with advice received from Council's solicitors, land proposed to be dedicated as public road under Section 16 of the Roads Act 1993, which is a transfer of land from uncertain ownership to Council ownership, can only be undertaken with a Council resolution.

**PROPOSAL**

A notice be placed in the NSW Government Gazette in accordance with Section 16 of the Roads Act 1993 to dedicate the subject lanes as public road.

**CONSULTATION AND COMMUNICATION**

A public notice was placed in the Wollongong Advertiser on 15 July 2009 giving 28 days' notice of the proposal. No objections were received.

**CONCLUSION**

As the lanes are currently used for public access and following advertisement ownership is still uncertain it is proposed to dedicate them as public road in order to formalise that public use.

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**ATTACHMENTS**

1. Plan showing lanes in Dapto proposed to be dedicated as public road



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