

Subject: ES - LATE REPORT - Dedication of Crown Public Road to Council as Public Road - Kinka Road, Seal Rocks
Index: Crown Roads - Transfer to Council Control
Author: Senior Engineering Development Officer - Dean Hartmann

SUMMARY OF REPORT:

The Department of Lands has advised Council that Kinka Road is a crown public road (see Annexure A).

Council requests dedication of Kinka Road from its intersection with Thomas Road to the boundary of Lot 3 DP 847752 (lighthouse site), as shown hatched in the plan attached as Annexure B. Also included is the triangular parcel of land fronting Lot 4 Sec 2 as shown on Crown plan G6460-1497 as being required for road widening (see Annexure C).

SUMMARY OF RECOMMENDATION:

It is recommended that:

1. Council accept dedication of Kinka Road, between Thomas Road and Lot 3 DP 847752, including the triangular parcel of land fronting Lot 4 Section 2, as shown on Crown plan G6460-1497 as being "required for road widening"; and
2. The Department of Lands be requested to transfer the subject road to Council under Section 151 of the Roads Act 1993.

FINANCIAL/RESOURCE IMPLICATION:

Nil

POLICY IMPLICATIONS:

Nil

LEGAL IMPLICATIONS:

Nil

LIST OF ANNEXURES:

- A: Letter from Department of Lands dated 19 May 2009 (DW Doc 1694706).
- B: Map of Road Proposed to be transferred to Council.
- C: Crown plan G6460-1497.

ATTACHMENTS

Nil

REPORT

Council undertook road upgrading and bitumen sealing of part of Kinka Road in 2007.

Council recently granted development consent (DA37/09) for construction of a retaining wall and associated driveway to service the existing dwelling on Lot 5 Sec 2 DP 114001, Kinka Road.

Proceedings have been instigated in the Land and Environment Court by the adjoining owners (Lot 4 Sec 2 Kinka Road), alleging that consent to the development application is invalid on the basis that the applicant did not gain owners consent, that is, the Department of Lands being the owners of Kinka Road and the triangular parcel of land fronting Lot 4 Sec 2 identified by Crown plan G6460-1497.

It is noted that the triangular parcel of land referred to in Crown plan G6460-1497 as being "required for road widening" holds status as Crown land, being residue of Reserve 82316. It appears that the land at the date of survey (being 19 September 1967 with plan approval on 28 March 1968) was intended to be created as road at a later date, but such administrative action was never undertaken. The triangular parcel provides the only direct public road access to the owners of Lot 5 Sec 2 Kinka Road (the applicant in DA37/09).

The Department of Lands has advised Council that the owner of Lot 4 Sec 2 has made application to lease the Crown land fronting his freehold lot. Council staff have requested that the lease application be held in abeyance pending a further determination of the Court.

Accordingly Council requests dedication of Kinka Road, including the triangular parcel referred to above.

RECOMMENDATION:

It is recommended that:

1. Council accept dedication of Kinka Road, between Thomas Road and Lot 3 DP 847752, including the triangular parcel of land fronting Lot 4 Section 2, as shown on Crown plan G6460-1497 as being "required for road widening"; and
2. The Department of Lands be requested to transfer the subject road to Council under Section 151 of the Roads Act 1993.

ANNEXURES

A: Letter from Department of Lands dated 19 May 2009 (DW Doc 1694706).



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19th May 2009

Ref: 09/04372

Attention: Mr Dean Hartmann, Senior Engineering Development Officer

Dear Sir,

I refer to your email and telephone discussions of 1st May 2009 with Mr Gary Dowse from this Office concerning the status of Kinka Road, Seal Rocks and the proposed construction of a retaining wall and driveway fronting Lot 4 Section 2 to service Lot 5 Section 2 under approved (24th March 2009) Development Application 37/09.

As advised by Mr Dowse's email dated 4th May 2009, the Kinka Road formation comprises Crown Public Road. It is noted that Council has requested dedication of Kinka Road in this locality but to date transfer to Council's responsibility has not been effected.

The triangular parcel of land fronting Lot 4 Section 2 being lands subject to DA 37/09 and shown on Crown plan G6460-1497 (copy attached) as being "*required for road widening*" holds status as Crown land being residue of Reserve 82316 for Village Purposes Notified 29th January 1960. It appears that the land at the date of survey (being 19th September 1967 with plan approval on 28th March 1968) was intended to be created as road at a later date but such administrative action was never undertaken.


It is noted that Lot 4 Section 2 formerly included the triangular parcel (refer attached copy of survey plan G6304-1497) within its total area until it was excised from the allotment upon approval of survey plan G6460-1497 on 28th March 1969.



Original Lot 4 Section 2 (as shown on plan G6304-1497 approved 17th November 1960 was granted as Special Lease 1962/8 Gloucester for Residence for the period 19th November 1962 to 31st December 1989 by Government Gazette of 7th December 1962. On 31st March 1964, the holder of the lease applied to convert the land to freehold by way of Conditional Purchase 1964/5 Gloucester. The Conditional Purchase was approved on 30th December 1966 for the area now comprised in plan G6460-1497, that is the triangular parcel was not included and on Departmental papers LB 64/564 the Special lease was "treated as being wholly absorbed by the conversion". It is also noted from these papers that it was also proposed to exclude a triangular parcel from Lot 5 Section 2 for road widening "*in connection with the relocation of Kinka Road following erosion*". This action also did not eventuate and the whole of Lot 5 was converted to Conditional Purchase 1969/9 on 24th March 1970 (as shown on plan G6304-1497).

The Department has now received an application from Peter Wesley Adams to lease the Crown land fronting his freehold Lot 4 Section 2. As investigation of status indicates that the subject land is Crown land and not Council public road, the matter is now referred to Council for comment particularly in relation to approved Development Application 37/09.

Yours sincerely



Gary Dobinson
Senior Land Development Officer
Crown Lands Division, Taree

B: Map of Road Proposed to be transferred to Council.

