

## REPLACEMENT REPORT

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### REPORTS FROM THE DIRECTOR ENGINEERING

**26 [E-CM] Extinguishment of Restriction on Use - Lot 3 DP 839517 - Hogans Road, Upper Duroby**

**SUBMITTED BY: Design**

**FILE REFERENCE: GS4/93/87**

Valid



### Supporting Community Life

#### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Supporting Community Life
  - 2.4 An integrated transport system that services local and regional needs
  - 2.4.3 Ensure local streets, footpaths and cycleways are provided, interconnected and maintained
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#### SUMMARY OF REPORT:

Council has received an application for the extinguishment on a Restriction of Use over Lot 3 DP 839517 which benefits Council.

The Restriction on Use, created in 1994 when DP 839517 was registered, restricted vehicle access to Lot 3 and 5 in DP 839517 to a Right of Carriageway created in the plan. The Right of Carriageway was later dedicated as a public road in 1996 by DP 864034 this land is now named Majestic Court.

It appears from Council records that a house was built on Lot 3 in 1994/95, with an unapproved driveway constructed coming directly off Hogans Road and not within the Right of Carriageway.

It is necessary for the current unlawful driveway to be approved by the submission of a S96 application, under the Environmental Planning & Assessment Act, 1979 (EPA) to amend the original condition of consent and the submission of a S138 application, under the Roads Act, 1993 for approval of the driveway in its current location.

A S96 application was lodged and approval issued on 18 May 2015, and a S138 application is currently being assessed.

**REPLACEMENT REPORT**

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**RECOMMENDATION:**

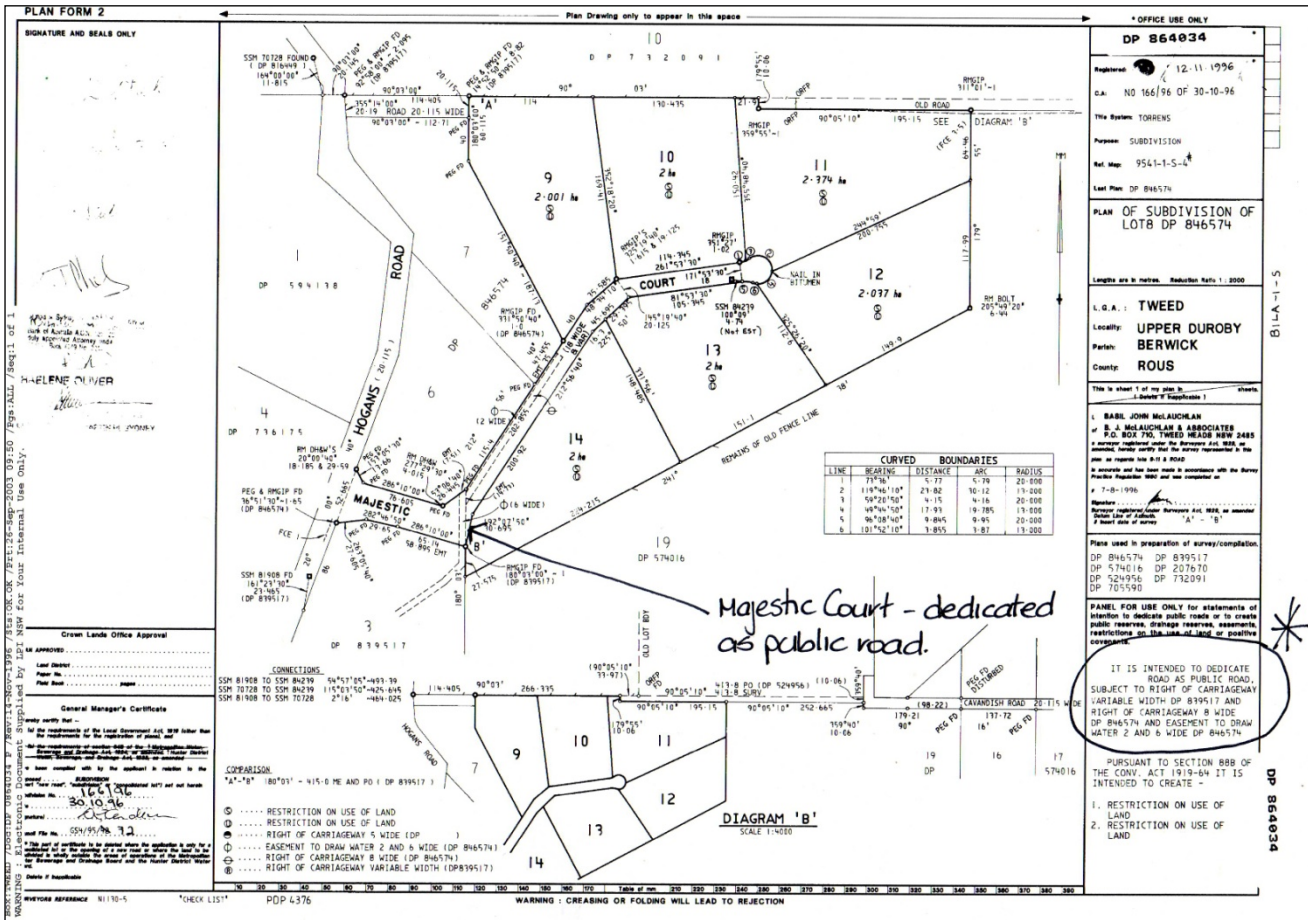
**That:**

- 1. Council approves the extinguishment of the Restriction on Use fourthly referred to in DP 839517.**
- 2. All documentation be executed under Common Seal of Council.**



REPLACEMENT REPORT

Diagram 2 - DP 864034 showing the dedication of the Right of Carriageway as public road.



Development consent was provided at the time of subdivision of the original parcels (Lot 5 DP 736175 and Lot 1 DP 207670) in December 1993 with interalia a condition (Clause 7(iv)) that the restriction be placed on title as Hogans Road is a designated road and Clause 15A of the Tweed LEP 1987 required that wherever practicable access to the land be provided by a road other than the designated road.

An application for amendment of the development consent under Section 102 of the EPA Act 1979 was received in August 1995 which sought modification to clause 7(iv) allowing vehicular access to Hogans Road directly from the natural ridge on Lot 3 to the crest of the hill. Council advised the applicant in September 1995 that a variation to the development standard could not be varied under an application to Section 102 and that a separate Development Application would be required accompanied by an objection to the development standard pursuant to the State Environmental Planning Policy No. 1. The correspondence to the applicant/land owner further noted the following statement;

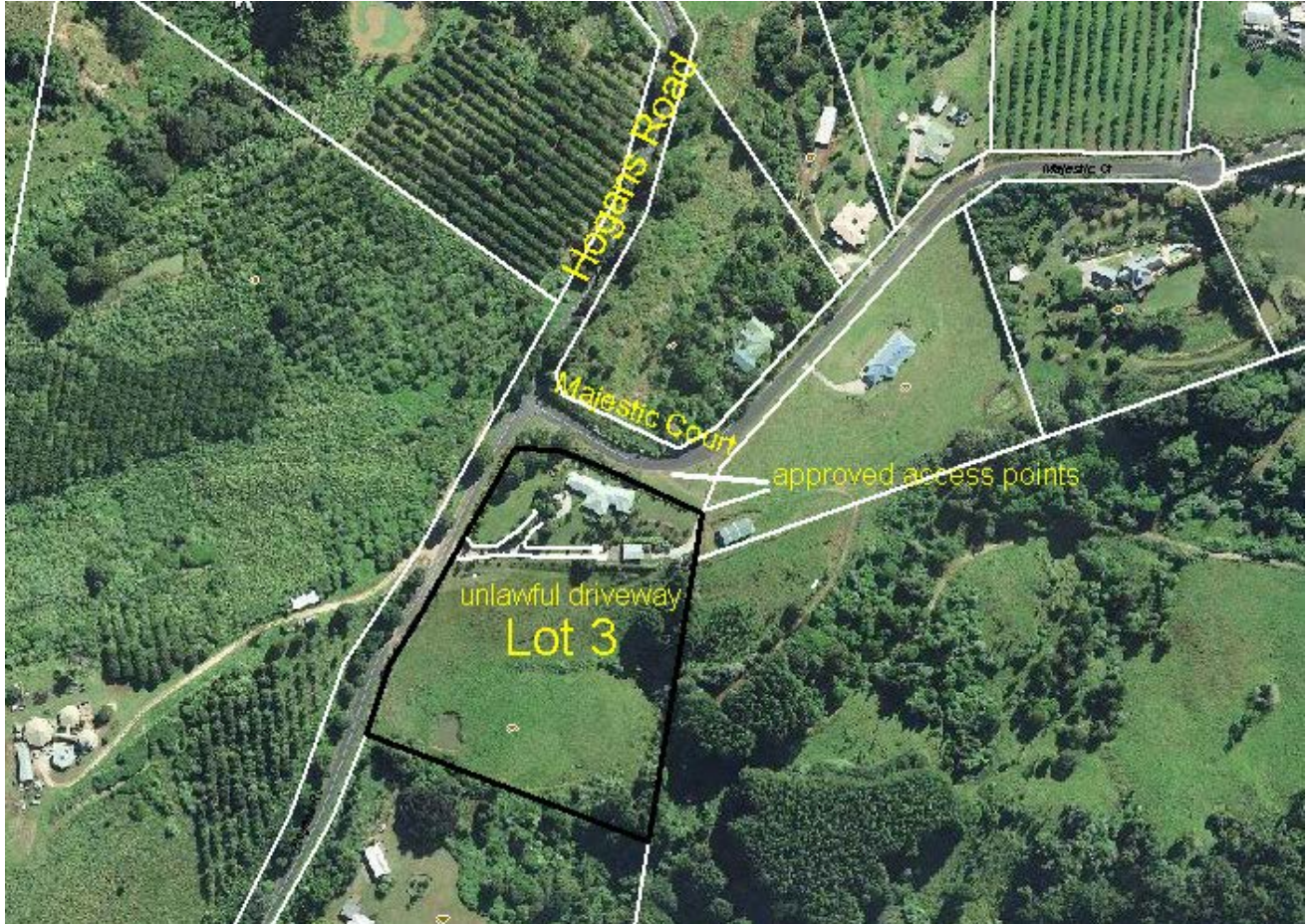
*"In any event, you are advised that it would be unlikely that Council would support any direct access to Hogans Road"*

No further correspondence or Development Applications were received by Council. The owner of the property however proceeded with construction of a full driveway access directly from Hogans road without the consent of Council as the Roads Authority (Refer to Diagram 3).



## REPLACEMENT REPORT

**Diagram 3** showing the aerial photo of the constructed driveway from Hogans Road and approved access points from Majestic Court:



The current owner has lodged a S96 application in relation to the Restriction on Use and approval was issued on 18 May 2015. A S138 application is currently being assessed, and when it is approved, it is recommended that Tweed Shire Council approve the release of the Restriction on Use as requested.

### OPTIONS:

1. As a Section 96 variation to the original development consent to permit the driveway from Hogans Road has been approved, and a Section 138 driveway application is being assessed, Council approve the extinguishment of the Restriction on User.
2. As the driveway has been unlawfully constructed in contravention of a condition of the original development consent, Council refuse the extinguishment of the Restriction on Use fourthly referred to in DP 839517.

### CONCLUSION:

As approval has been issued for a S96 amendment to permit the driveway from Hogans Road and Council is in a position to approve the removal of the Restriction on Use fourthly

## REPLACEMENT REPORT

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referred to in DP 839517. It should be noted that the S138 preliminary assessment has determined adequate sight distance is available along Hogans Road. It is recommended that Option 1 be adopted.

### **COUNCIL IMPLICATIONS:**

**a. Policy:**

No Corporate Policy.

**b. Budget/Long Term Financial Plan:**

No Future Budget Implications.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

**Inform** - We will keep you informed.

### **UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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