

ITEM 19 PROPOSED DEDICATION OF BALFOUR ROAD, AUSTINMER

Deposited Plan 9318 was drawn and registered in 1917, creating Balfour Road, Austinmer. Balfour Road was never formally dedicated as public road. In order to clarify its status, this report proposes to dedicate Balfour Road as public road.

RECOMMENDATION

In accordance with Section 16 of the Roads Act 1993, Council approve the dedication of Balfour Road, Austinmer as shown hatched on Attachment 1 as public road, and action be taken to dedicate the road by the placement of a notice in the NSW Government Gazette.

REPORT AUTHORISATIONS

Report of: Lucielle Power, Manager Property + Recreation
Authorised by: Kerry Hunt, Director Community Services - Creative and Innovative City

ATTACHMENTS

1 Balfour Road, Austinmer - Proposed to be Dedicated as Public Road Map

BACKGROUND

Council has obtained historical search information from SAI Global which concludes that Balfour Road, Austinmer was created upon registration of Deposited Plan 9318 in 1917 and that there is no evidence of any formal dedication of Balfour Road as public road.

Before 1 January 1920 any land set aside for the purposes of a road in a deposited plan remains as land and not public road if it was not dedicated as public road in the NSW Government Gazette.

Section 16 of the Roads Act 1993 applies to land that is set aside for the purposes of a road in a plan of subdivision that was registered before 1 January 1920. Section 16 provides that -

- Council may, by notice published in the Gazette, dedicate the land as a public road.
- On the publication of the notice in the Gazette the land described in the declaration becomes free of all trusts, restrictions, dedications, reservations, obligations and interests, and the land is dedicated as a public road.
- No compensation is payable to any person with respect to any loss or damage arising from the operation of Section 16.

Balfour Road may be deemed to be public road under Common Law principles because it satisfies the following criteria -

- There was an intention by the subdivider that it be public road.
- There is use and acceptance of the road by the public.
- Council has expended funds on the construction and maintenance of the road.

As there was clearly an intention for Balfour Road to be public road and Council has expended funds on the construction and maintenance of the road, the proposed dedication will formalise the ownership of the asset and allow Council to act in accordance with its powers as roads authority under the *Roads Act 1993*.

A notice of the proposed dedication was published in the Wollongong Advertiser on 1 April 2020 allowing 28 days for comments. No submissions were received.

PROPOSAL

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

CONSULTATION AND COMMUNICATION

A historical search report was obtained from SAI Global to determine the status of the road.

The relevant sections within Council, being Land Use Planning, Traffic and Transport, City Maintenance, Transport and Stormwater Services, and Civil Asset Management were consulted on the proposal and no objections were received. Comments were received supporting the action to formalise the ownership of the road.

A notice of the proposed dedication was published in the Wollongong Advertiser on 1 April 2020 allowing 28 days for comments. No submissions were received.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Wollongong 2028 goal “We are a healthy community in a liveable city”.

It specifically delivers on core business activities as detailed in the Property Services Service Plan 2019–20.

FINANCIAL IMPLICATIONS

Council will not incur any costs in this matter. Council is already responsible for maintenance of the road.

CONCLUSION

In order to clarify the status of Balfour Road and formalise its use by the public, it is recommended that the proposed dedication of the road be approved.

