

9.3 RESPONSE TO NOTICE OF MOTION NO. 935 - FIRE ACCESS TRACKS

Author: James McNulty - Manager Development Approvals
Ricardo Ramos - Statutory Planning Coordinator

File No: FN16/3869

Attachments: 1. Sample Condition

SUMMARY

This report provides a response to Notice of Motion No. 935 relating to Fire Access Tracks being utilised as a sole or main access for residential properties in Mitchell Shire.

RECOMMENDATION

THAT Council receives and notes the information contained in this report.

BACKGROUND

At the Ordinary Council meeting of 19 March 2018, a Notice of Motion was moved and resolved as follows:

THAT officers prepare a brief report to Council regarding means available to Council to prevent residential premises from being constructed with their sole or main access via a fire access track.

Whilst it is acknowledged that the concerns and consequential intent of this Notice of Motion relate to private property access via Fire Access Tracks, this report also seeks to draw attention to the wider issue of private property access via roads or tracks that are not 'Public Roads' maintained by Council. In other words, properties that have access to a 'Road Reserve' that does not contain a physical road maintained by Council.

Concern was also expressed regarding the inherent risks to vulnerable people such as children and people with mobility issues, the frail and ill, in building homes in areas with limited vehicular accessibility.

ISSUES AND DISCUSSION

To gain a comprehensive understanding of the issues raised in the Notice of Motion it is important to first make a clear distinction between Council obligations towards 'Public Roads' and that of 'Unused Roads' and 'Fire Access Tracks'.

Public Roads

A 'road' is a Public Road by virtue of its inclusion in the Shire's Public Road register. A road authority (Council) has a statutory duty to inspect, maintain and repair a Public Road to the standards it has itself set in its Road Management Plan (RMP).

Any road or road segment that does not appear on the Shires Public Road Register is not a Public Road for the purposes of the *Road Management Act 2004*.

RESPONSE TO NOTICE OF MOTION NO. 935 - FIRE ACCESS TRACKS (CONT.)

In other words, for a road to be identified as a 'Public Road', Council must have made a commitment (via the Public Road Register) to maintain it in accordance with its RMP.

Unused Roads

The term 'Unused Road' can have many interpretations, however for the purposes of this report, an unused road is defined as any 'Road Reserve' (the corridor of land also known as a Government Road) that does not contain a 'Public Road'. i.e. a physical road that Council maintains.

There are many unused roads located across the Mitchell Shire that exist from the original subdivision of land. These 'roads' were created and 'reserved' for future road purposes.

Many of these unused roads contain (informal) tracks have been used for many years, typically by property owners, to access remote parts of their property that may not be accessible via internal farm tracks. Property owners / farmers may also use these tracks to move between different properties for their farming operations.

Some of these tracks may also serve as access to areas of Crown Land, State Forest or National Parks while others may also be identified as Fire Access Tracks as discussed below.

When these tracks are not identified on the Public Road register, they are not maintained by Council.

Many unused road reserves exist in their natural state. i.e. contain no form of track at all. These road reserves can exhibit significant environmental values due to their natural undisturbed state and in some instances can contain rare examples of native remnant vegetation not present elsewhere throughout the local area due to historical land clearing practices for farming purposes.

The creation of new roads or tracks in such road reserves for property access purposes requires careful consideration by Council as the Responsible Planning Authority due to these environmental values.

Fire Access Tracks

Fire Access Tracks are specifically identified for their strategic value in providing access to remote areas for the CFA for fire suppression purposes. A track has the 'status' of a Fire Access Track by virtue of its inclusion in the Municipal Fire Management Plan.

Fire Access Tracks are not Public Roads for the purposes of the Road Management Act, therefore they are not maintained in accordance with Councils Road Management Plan.

Rather, the maintenance of Fire Access Tracks is essentially an agreement between CFA and Council to ensure ongoing access for fire fighting vehicles during the declared fire season.

Requests for maintenance or vegetation clearance of Fire Access Tracks are required to be received from District 12 CFA via the Municipal Fire Management Planning Committee (MFMPC) in the lead up to the fire season.

This maintenance is not carried out for the specific benefit of any other local property access function, although it is acknowledged that this intermittent maintenance carried

RESPONSE TO NOTICE OF MOTION NO. 935 - FIRE ACCESS TRACKS (CONT.)

out on these tracks will inadvertently serve to benefit local users of these tracks to some degree.

Upon review of Council's mapping system, it has been estimated that at present there are 74 Fire Access Tracks listed in the database across Mitchell Shire with a total length of 157.3 kilometers. It is estimated that approximately 50% of these tracks would be located within road reserves, and 50% are located on private property at the agreement of the land owners.

Private access via tracks and unused roads

Property owners who derive property access via a Fire Access Track or any other road or track that is not a 'Public Road', whether regular or occasional usage, are responsible for identifying and carrying out any additional discretionary maintenance of these tracks that is required to satisfy their own access needs.

A Road Opening Permit must be obtained from Council for any works undertaken in any road reserve and any works consistent with a general driveway / vehicle crossing maintenance is exempt for these requirements.

Access to Residential Properties

On occasion, rural properties within the Shire may have limited road access and this issue is accentuated when new dwellings are proposed to be constructed on such rural lots.

Where a property has direct abuttal to a 'road reserve', this property enjoys an 'as of right' privilege (legal right) to access to that road reserve, regardless of whether this road reserve contains a 'public road' (i.e. a road maintained by Council).

In such cases, Council cannot deny access to that road reserve. The question will inevitably become to what standard that access is maintained and who is responsible for the maintenance.

This issue is most prevalent where Planning Permit applicants propose use and development of rural properties for new dwellings.

Through such applications, if multiple points of access are available, officers will always seek to encourage the use of the best and most appropriate access i.e. to a 'Public Road' maintained by Council. However, this is not always possible as often rural properties will only have one possible or designated 'as of right' access.

Where a Planning Permit is supported and where access is only possible via a road reserve that contains a track or lower standard road (possibly identified as a Fire Access Track) or in some cases no track at all, officers will review the application on merit and seek to use appropriate conditions including Section 173 Agreements on title to alert current and future owners that their access is derived via a track (Unused Road) which is not a 'Public Road' maintained by Council.

The Section 173 Agreement registered on title, coupled with conditions on the permit itself, is intended to ensure the property owner acknowledges this fact and that any requirements for future access track maintenance will be borne by them. Sample wording of such a condition is included in the attached document.

Officers endeavor to alert and discourage applicants from inappropriately siting dwellings in areas with restricted access. However, it is difficult to refuse planning permits on this reason alone if access is available to a road reserve. i.e. 'as of right'.

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RESPONSE TO NOTICE OF MOTION NO. 935 - FIRE ACCESS TRACKS (CONT.)

Unfortunately the practice of applying a Section 173 Agreement to the Planning Permit is a relatively new practice and many approvals exist prior to this practice where land owners are potentially not aware of their responsibilities to maintain access to their properties.

Other Issues

The ability to apply such agreements as referenced in the foregoing is limited to circumstances where a planning permit is required for use of the land for a dwelling.

Properties within the Farming Zone that are greater than 40Ha (100 acres) enjoy an 'as of right' privilege to construct a new dwelling. Therefore, no planning permit is required and therefore there is no ability for to review any such proposal and apply appropriate conditions relating to any future property access to serve the new dwelling.

Further, a private building surveyor may issue the Building Permit, which will further diminish Council's visibility to such proposed development.

The opportunity exists to investigate, through the recently commenced 'Rural Land Use Strategy', the revision and implementation of appropriate land sizes triggers for Planning Permits where proposals for a new dwelling create a demand for new or additional access arrangements.

CONSULTATION

This matter was discussed internally with the Engineering and Major Projects Department, the Operations and Parks Department, Development Approvals Department and Strategic Planning Department.

FINANCIAL, RESOURCE AND ASSET MANAGEMENT IMPLICATIONS

There are significant possible costs for Council if they were required to upgrade tracks (including Fire Access tracks) across the Shire for regular ongoing residential access. Therefore, the approach of imposing agreements upon owners through planning permit conditions is deemed an appropriate response.

POLICY AND LEGISLATIVE IMPLICATIONS

Relevant policy and legislation considered through the drafting of this report includes the following:

- *Road Management Act 2004*
- *Road Management Plan 2018*
- *Road Register*
- *Planning & Environment Act 1987*
- *Mitchell Planning Scheme*

SUSTAINABILITY IMPLICATIONS (SOCIAL AND ENVIRONMENTAL)

Often the upgrade or maintenance of such tracks can have implications or impacts on road side vegetation. This is another reason for officers to closely review any such applications for lots with limited or reduced access.

RESPONSE TO NOTICE OF MOTION NO. 935 - FIRE ACCESS TRACKS (CONT.)

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RESPONSE TO NOTICE OF MOTION NO. 935 - FIRE ACCESS TRACKS (CONT.)

CHARTER OF HUMAN RIGHTS IMPLICATIONS

The rights protected in the *Charter of Human Rights and Responsibilities Act 2006* were considered in preparing this report and it's determined that the subject matter does not raise any human rights issues.

OFFICER DECLARATION OF CONFLICT OF INTEREST

No officers involved in the preparation of this report have any direct or indirect interest in this matter.

CONCLUSION

Officers will continue to review applications, as and when they are triggered to firstly ensure they have appropriate access and if multiple access points are available to a site, encourage the use of most appropriate access. In the event that access is only possible via an 'Unused Road', use shall be made of appropriate permit conditions and by placement of agreements on title, that acknowledges the standard of access being utilised (from a practicable and safety point of view) and with whom future maintenance responsibilities lie.

RESPONSE TO NOTICE OF MOTION NO. 935 - FIRE ACCESS TRACKS (CONT.)

MITCHELL SHIRE COUNCIL

Council Meeting Attachment

DEVELOPMENT AND INFRASTRUCTURE

19 NOVEMBER 2018

9.3

**RESPONSE TO NOTICE OF MOTION NO. 935 -
FIRE ACCESS TRACKS**

**Attachment No: 1
Sample Condition**

Sample Section 173 Agreement to be applied through condition

[Before the development starts / Before the use starts], the owner must enter into an agreement with the Responsible Authority made pursuant to Section 173 of the *Planning and Environment Act 1987* and the agreement must be registered on the title/s to the land under Section 181 of the Act. The agreement must provide that:

- (a) The land owner agrees to maintain the property access from the end of the Council maintained public road on Street Name through to the property access point or points as approved by Council. This access must be maintained to the following minimum conditions by the property owner to the satisfaction of the Responsible Authority:
 - i. Carriageway generally to be provided at a width of 3.0m;
 - ii. Pavement generally be of a depth of 100mm compacted crush rock/gravel;
 - iii. Suitable and effective road culverts or pavement scour protection to provide the appropriate level of property access required;
 - iv. Ensure stormwater is captured, contained and discharged via appropriate stormwater drainage infrastructure that eliminates scour and erosion of the road reserve and that concentrated stormwater flows are discharged in a manner consistent with (all relevant legislation / the requirements of the Water Act 1989).
 - v. Support property access by the CFA, including provision of constructed passing areas every 400m if not available within the constructed carriageway;
 - vi. If access is to a dwelling on the land the access must support appropriate all-weather emergency service access.
 - vii. No native vegetation is to be removed, damaged or detrimentally impacted through the use, maintenance or construction of the access except through approval or consent of the Responsible Authority;
 - viii. Any works on the access, other than minor maintenance works require Council consent and approval via a works in the road reserve consent application;
- (b) The Council reserves the right to carry out any road maintenance works along this access as deemed appropriate or to direct the property owner to carry out appropriate works to maintain suitable access through the road reserve in line with this agreement and Local Government Act 1989 Schedule 10, Clause 11(d) and 12(d).
- (c) The land owner acknowledges the use of the access is not exclusive and the rights of the public to utilise the road reserve remain at all times.

The owner must pay the reasonable costs for the preparation, execution and registration of the Section 173 Agreement.

[Before the development starts / Before the use starts], a copy of the Titles Office registration number (dealing number) for the Section 173 Agreement must be provided to Council as proof of registration.