
REPORT OF GENERAL MANAGER
STRATEGY AND ASSETS COMMITTEE

TUESDAY, 12 APRIL 2016

PLANNING AND DEVELOPMENT

ITEM TO BE REFERRED TO ORDINARY MEETING

1. Heritage Estates - Proposed Gates/Barriers – Traffic Committee Referral

File 1446E/4

SECTION MANAGER: Gordon Clark.

PURPOSE:

Present the Shoalhaven Traffic Committee's recommendation and seek Council's direction to proceed.

RECOMMENDED that Council:

- a) Grant consent to install the proposed gates and barriers in accordance with section 118 of the Roads Act 1993 (the Act) and the Shoalhaven Traffic Committee's recommendation;
- b) Undertake a risk assessment and determine if it is appropriate to allow vehicles into the area given their current condition of the tracks;
- c) Investigate whether appropriate control measures can be put in place to mitigate risk;
- d) Subject to the outcomes of b) and c), develop a protocol for providing vehicular access to landowners and the general public which minimises Council's exposure to public liability claims, noting that if keys are provided, either a deposit system will be used, or keys will be made available to purchase based on full cost recovery.

OPTIONS

1. Proceed with the installation of the gates/barriers as recommended.
2. Not proceed – this approach is not favoured as the tracks will continue to deteriorate to the detriment of the environments, and public risk will increase.

DETAILS

Background

Ongoing use of tracks and land in the Heritage Estates (HE) by vehicles and trail bikes has resulted in illegal dumping, severe erosion, and an increased risk to public safety and downstream water quality. The erosion has increased dramatically in recent years.

The installation of a series of gates/barriers under section 116 of the NSW Roads Act (the Act) is proposed to control/prevent vehicle and trail bike access. Other measures such as signage, monitoring/enforcement and education have already been tried with limited success.

The following steps have been taken in accordance with section 116 of the Act:

- Initial report to Council's Policy and Resources Committee, 8 September 2015 - resolution to publicly exhibit.
- Public exhibition (7 October to 6 November 2015).
- Report to Council's Strategy and Assets Committee, 19 January 2016 - outcomes of the exhibition and to clarify certain aspects. This was not a statutory requirement.
- Referral to Shoalhaven Traffic Committee (STC) on 9 February 2016.

On 19 January 2016 Council resolved that:

- a) The proposal be referred to the Shoalhaven Traffic Committee in accordance with Section 116 of the NSW Roads Act 1993 subject to removing the reference to the installation of boulders and/or steel cabling along Naval College Road;*
- b) Council prepare and exhibit a separate Section 116 notice in relation to the proposed erection of a gate/barrier on Birriga Avenue to the west of the Greek Orthodox Church complex and the erection of a barrier on the western side of Naval College Road adjoining the Heritage Estates;*
- c) The Shoalhaven Traffic Committee recommendation be reported back to Council before proceeding in accordance with the requirements of Section 116 of the Act.*
- d) A Report be brought back to Council on any proposed locking mechanisms.*

Parts a) and b) have now been undertaken. This report addresses parts c) and d).

Shoalhaven Traffic Committee's Recommendation

The proposal was considered by the STC on 16 February 2016. The STC recommendation was adopted by Council on 16 February 2016, as follows:

That the General Manager (Director Assets and Works) be advised that Shoalhaven Traffic Committee has no objection to the proposed vehicle control measures (gates and barriers) as detailed in the attached plan TRAF 2016/03, which include:

- a) Installation of three (3) gates at;*
 - *the entry to Birriga Avenue on the eastern side of its intersection with The Wool Road*
 - *the entry to Wanawong Boulevard / Birriga Avenue on the western side of its intersection with Naval College Road*

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- *the entry to Wanawong Boulevard on the northern side of its intersection with Erowal Bay Road*
 - b) *Placement of boulders, mounding and/or steel cable fencing on either side of each gate as appropriate to prevent vehicles by-passing the gates*
 - c) *Placement of boulders, mounding and/or steel cable fencing as appropriate at the other entry points along Erowal Bay Road.*
 - d) *Consideration to maintain 5 m clear zone to barriers for an 80 km/h zone.*

This report now recommends that the gates/barriers be installed in accordance with the STC recommendation.

Locking mechanisms

When this matter was considered by Council's Strategy and Assets Committee on 19 January 2016, Councillors requested information on locking mechanisms to inform discussion on the option of making keys available to landowners. The following information is provided in response.

Council currently utilises a master key system. Master keys to fire trails and reserves are held by Council and provided to firefighting authorities including the Rural Fire Service (RFS) and National Parks & Wildlife Service (NPWS). Keys can be created that only allow access to a subset of locks. In other words, the system enables a key for the HE gates to be provided to landowners without allowing access to other fire trails and reserves.

Keys for Council's master key system can only be made by Council's locksmith and only if authorised by a Council officer. Note that the integrity of Council's master key system is potentially compromised by its age. (The patent has expired because it is more than 20 years old.)

Public liability considerations

Section 45 of the Civil Liability Act provides a non-feasance protection for road authorities as follows:

45 Special non-feasance protection for roads authorities

(1) A [roads authority](#) is not liable in proceedings for civil liability to which this Part applies for [harm](#) arising from a failure of the authority to [carry out road work](#), or to consider carrying out road [work](#), unless at the time of the alleged failure the authority had actual knowledge of the particular risk the materialisation of which resulted in the [harm](#).

The key issue for Council if a claim is made against Council in the future is whether Council "had actual knowledge of the particular risk the materialisation of which resulted in the harm".

Previous reports to Council on this matter have clearly indicated that there has been extensive degradation and increased public safety risk. Therefore Council needs to assess whether it is appropriate for vehicular access or if the roads in their current state present an unacceptable level of risk to users (whether landowners or not). Note that as

previously stated, Council is not legally required to ensure the land can be accessed by vehicle.

It is thus recommended that the risk and public liability issues are more thoroughly investigated prior to any protocol being developed that would potentially allow vehicular access to the Heritage Estates land by landowners and the general public. Should Council wish to make keys available to landowners, the following matters should be considered:

- There are more than 600 landowners. Anecdotally only a small proportion of owners visit their land. Hence, should Council wish to provide keys, this should only be upon request.
- If keys are to be provided, either a deposit system be used, or keys be made available for purchase, based on full cost recovery.
- If Council wishes to make keys available for purchase, a key register would need to be maintained.
- The purchase fee should include the cost of purchasing the key (currently \$16.50) plus administration. The fee would need to be added to Council's fees and charges.
- Keys should not be provided for the purpose of entering the land by motor vehicle unless Council is satisfied that the condition of the roads is fit for vehicular use.

FINANCIAL IMPLICATIONS:

The actual installation of the gates/barriers is reliant on contributions from:

- Council's existing fire trail budget;
- The Bay and Basin Illegal Dumping Prevention project (recently funded by the State Government); and
- NPWS

COMMUNITY ENGAGEMENT:

The proposal was publicly exhibited in accordance with section 116 of the Act. Council also wrote to the directly affected landowners. A separate section 116 notice was publicly exhibited for the western end of Birriga Avenue (to the west of the Baptist Church complex) and the barrier between the Heritage Estates and Naval College Road, as resolved by Council on 19 January 2016. The outcomes of that exhibition will be reported to Council separately.

Tim Fletcher
DIRECTOR PLANNING & DEVELOPMENT SERVICES

B Stewart
ACTING GENERAL MANAGER