

ITEM NO: 14

SUBJECT: DEDICATION OF LAND IN DEPOSITED PLAN 1711 AS PUBLIC ROAD - BURRAWANG STREET, KATOOMBA

FILE NO: F00550

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**Recommendations:**

1. That pursuant to the provisions of Sections 16 and 17 of the Roads Act, 1993, the Council give 28 days notice of its intention to dedicate an 80 metre long portion of Burrawang Street, Katoomba, identified as Road in Deposited Plan 1711, for road purposes.
  2. That following the period of notification for 28 days, if no objections are received, the Council publish a notice in the Government Gazette of NSW dedicating the 80 metre portion of Burrawang Street as a public road.
  3. That the Council's Common Seal be affixed to any necessary documents relating to this matter.
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**Report by Group Manager, Community & Corporate**

The purpose of this report is to seek the Council's approval to formalise the legal status of an 80 metre portion of Burrawang Street as public road.

**Background**

During the DA process of a one into seven lot subdivision on Lot 3 DP 593545, Nos. 85-99 Burrawang St Katoomba, it was discovered that the road known as Burrawang Street, Katoomba has never been formally dedicated to the public. The owner of the title of the "road", as shown in Land and Property Information (LPI) records, is now effectively untraceable as the original land was granted and registered in or around 1886 and was subsequently sold by the London Chartered Bank of Australia Ltd in 1890 to a Mr John Britty North, and no transactions or dealings for this land have occurred since this time.

At the Ordinary Council Meeting of 30 October 2007 (Minute No. 312) the Council resolved to grant consent to the subdivision. Part of the development consent consisted of deferred commencement conditions, the relevant part concerning Burrawang Street, is as follows:

***"Attachment 1—Conditions of development consent  
Part A—Deferred Commencement Conditions***

*The development consent shall not become operational until the following deferred commencement conditions imposed in accordance with Section 80 (3) of the Environmental Planning and Assessment Act 1979 are met to the satisfaction of the consent authority:*

***Dedication of and renaming of Burrawang Street***

*To ensure legal access is available to the site, Burrawang Street is to be dedicated as a council public road from Wellington Road, south to encompass the proposed Burrawang Street carriageway and drainage construction associated with the subject development.*

*To clearly differentiate this portion of road from existing unconnected portions of Burrawang Street, this portion of road is to be renamed. The applicant may suggest alternatives for the renaming of this portion of road.*

*The applicant is to provide proof to the Council of the renaming and gazettal as a council public road, of this part of Burrawang Street.....”*

To dedicate Burrawang Street as a Public Road it has been determined that only an 80 metre portion of Burrawang Street is required to achieve the development consent conditions as other portions of Burrawang Street have significant environmental constraints.

Attached is a map of the area and of the “road portion” in question (see Attachment 1).

Although this road is considered by many as a public road reserve by virtue of its use by the general public for many years, the LPI requires the Council to formalise the dedication of the land as per Section 16 of the *Roads Act 1993*. These provisions require the Council to notify the owner of its intention to dedicate the land as public road and provide a period of 28 days for that owner to apply to the Land and Environment Court for a declaration that the land should not be so dedicated if appropriate.

In order to formalise the legal status of Burrawang Street, Katoomba as public road, it is proposed, in accordance with Section 17 of the *Roads Act 1993*, (given that the owner is untraceable), that notices notifying the Council’s intention to dedicate the land as a public road be erected at various points along Burrawang Street and that a notice be published in the public notices section of the *Blue Mountains Gazette*. The owner/s, or their successors, may then be alerted to Council’s intentions.

Following the period of notification for 28 days, if no objections are received, the Council publishes a notice in the *Government Gazette of NSW* dedicating the land as a public road

**Sustainability Assessment (Triple Bottom Line Reporting):**

<b>Effects</b>	<b>Positive</b>	<b>Negative</b>
<a href="#"><u>Environmental</u></a>	Does not affect environmental portion of road and DA covers environmental issues & conditions	Nil
<a href="#"><u>Social</u></a>	Allows access to proposed new development	Nil
<a href="#"><u>Economic</u></a>	Allows seven new lots and residences	Nil

**Financial implications for the Council**

The costs involved with the dedication of the road are minimal and will be met by the Council. The subdivision developer will meet all costs associated with the construction of road works, gutters, drainage and driveways for the new subdivision.

**Legal and risk management issues for the Council**

If the Burrawang Street portion is not made a public road then the developer may have recourse to apply to the Land and Environment court for a ruling concerning access to the new subdivision.

**External consultation**

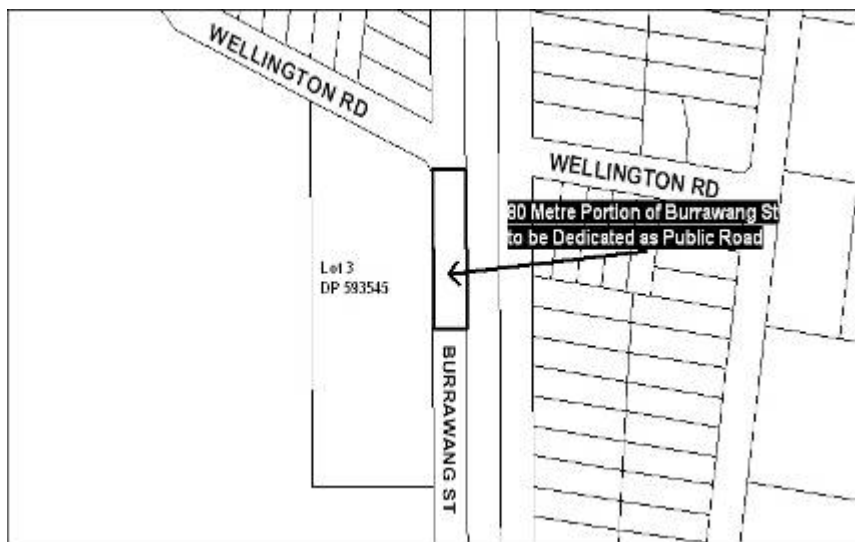
The Council’s Solicitors and the Department of Lands have been consulted to determine the status of the roadway and the current owner of the land.

**Conclusion**

Compliance with the conditions of consent for the subject development requires dedication as a Public Road of an 80 metre long portion of Burrawang Street as shown on Attachment 1. The recommendations have been proposed supporting the dedication.

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**Attachment (1)**



**ROAD TO BE DEDICATED – PORTION OF BURRAWANG STREET KATOOMBA**