

SY156-12/17 – Partial Road Closure – Murphy Street, Greenhills

FILE REFERENCE: MU1
APPLICANT OR PROPONENT(S): Daniella Mathews
AUTHORS NAME & POSITION: Carly Rundle, Senior Planner
RESPONSIBLE OFFICER: Bret Howson – Acting Executive Manager
Infrastructure and Development Services
PREVIOUSLY BEFORE COUNCIL: No
DISCLOSURE OF INTEREST: Nil
APPENDICES: A – Site Plan
B – Road Closure Plan

Nature of Council’s Role in the Matter:

- Legislative

Purpose of the Report:

The purpose of the report is to seek the approval of Council to progress a permanent partial road closure of Murphy Street, Greenhills.

Background:

A request for a partial road closure of Murphy Street has been received from the landowners of Lots 5, 6, 7 and 8 on Deposited Plan 2922 proposing a partial road closure of Murphy Street road between Lots 6 and 7 to enable all four lots, and the portion of closed road to be amalgamated into one lot. A site plan is provided in **Appendix A** and the area requested to be acquired and closed is in **Appendix B**.

Lots 5, 6, 7 and 8 are 575m², 1000m², 1033m² and 1009m² respectively in area, located within the Greenhills locality and currently undeveloped containing remnant vegetation. The requested portion of the road to be closed is approximately 955m² in area and is unconstructed.

Roads within this section of Greenhills are contained within Lot 107, which is a freehold lot in the ownership of the Shire of York. The Department of Planning, Lands and Heritage has advised that these are ‘private roads’ which requires the Crown to firstly acquire the land and then a road closure could be undertaken in accordance with Sections 52 and 58 of the *Land Administration Act 1997*, which requires approval by Council.

The partial road closure request (and associated acquisition by the Crown) is presented to Council to consider.

Comments and details:

Greenhills in this area is largely undeveloped and there is a number of known constraints to development occurring on individual lots including:

- An R2.5 coding is suited to properties with a minimum lot size of 4,000m². Most lots within this area of the Greenhills are on average 1,000m² in area, and construction of dwellings and outbuildings are unlikely to be achieved without requiring variation to the R-Codes.
- The properties have a lack of servicing, with only a few lots in this area having access to reticulated water and power supply.
- The majority of lots do not have access to a constructed road frontage;

- The Bally Bally Brook also runs through the part of this area north of Greenhills Road, which is a low-lying area. Preliminary flood modelling has been undertaken over this area indicating that a majority of lots north of Greenhills Road may become inundated during a 100-year flood event. It is noted that this mapping is only preliminary and to date is not referenced within any statutory documents.

The existing situation is historical, with records indicating that the subdivision of the area occurred prior to 1907 and Greenhills Road then being constructed through the middle. There has been a long history on the site of the Shire considering how to resolve the matters above dating back to 1997. Council had previously resolved at Ordinary Council Meetings 21 July 2008 and 20 July 2009 to endorse a draft Outline Development Plan (ODP) for consultation, which identified a number of road closures and amalgamation to resolve some of the issues above. Public consultation was undertaken and a number of matters were raised requiring further attention before it could be approved by the Shire and referred to the Western Australian Planning Commission.

At the Ordinary Council Meeting 19 April 2010, officers identified a number of issues with the draft ODP and Council resolved to undertake further discussion with statutory authorities to resolve these issues.

Further consultation has occurred since this time, and the draft ODP modified, although recent discussions with the WAPC have now suggested the draft ODP would need to be supported through the process of a scheme amendment. Notwithstanding this, to progress the project further is also likely to require a bushfire management plan and potentially a land capability study to be prepared which could cost in the vicinity of \$5,000 to \$20,000.

The Structure Plan and Scheme Amendment (if supported) would set the framework for subdivision and development, although this would be difficult to implement without landowners actually deciding to progress amalgamations at their own cost.

Recommended planning actions for the Greenhills area will be reviewed as part of the Local Planning Strategy and Scheme review currently being undertaken, although it is considered that without a high level of commitment from landowners within this area to implement the outcomes that a structure plan may not achieve the desired outcomes.

Notwithstanding the above, amalgamation of lots to achieve larger lot sizes, improved developable area and provide constructed road frontage which addresses the above constraints should be encouraged, and can be considered on a case by case basis.

The proposed partial road closure is consistent with resolving a number of the development constraints listed above and is generally consistent with draft ODP's prepared to date subject to the overall amalgamation occurring. It is therefore considered reasonable that the road closure be supported on the basis that the lots be amalgamated so that the current Lots 5, 6, 7 and 8 (as may be amended) are provided with a direct constructed road frontage.

The partial road closure requested will not impact on the ability of any adjoining lot to gain access to a constructed road frontage, or result in any properties becoming newly 'landlocked' and it is recommended that the partial road closure be supported.

Options:

The officer's recommendation is to approve the partial road closure subject to conditions, although the following options are also available to Council:

1. Refuse the partial road closure;
2. Approve the partial road closure, with modification to the officer's recommendation;

3. Defer the road closure pending preliminary consultation being undertaken with other landowners in the locality to determine if there are others who may also wish to amalgamate/pursue a road closure at this time.
4. Defer the partial road closure pending wider strategic planning being undertaken for this area.

Preliminary consultation with surrounding landowners is not proposed at this time, as inclusion of additional landowners/partial road closure requests is likely to require negotiation between a number of affected landowners introducing uncertainty and complexity which is likely to result in delays to the current partial road closure request being processed. However, it is noted that inclusion of additional requests at this time could result in reduced costs of the road closure through cost sharing.

Implications to Consider:

- **Consultative:**

Consultation with the community and relevant authorities is required under the provisions of the *Land Administration Act 1997*. Subject to Council providing support for the partial road closure, public advertising of the proposal will be undertaken. In the event of any objections being received from community consultation, the matter will be referred to Council for further consideration.

- **Policy Implication:**

Nil.

- **Financial Implications:**

The road closure will incur administration costs including advertising, statutory charges, legal fees, surveying and any other costs. The road once closed becomes unallocated land at the discretion of Department of Lands as to its use/sale, and any sale proceeds will go to State Revenue. It is generally a requirement of the Department of Lands that when a road closure occurs at the request of an adjoining landowner that the land be amalgamated into the adjoining lot.

It is officers' recommendation that the Shire supports the road closure, subject to the parties benefitting from the proposal, meeting all costs associated with this process (including advertising). The proponent has indicated that they would be prepared to cover these costs.

The road is not currently constructed and is likely to have minimal maintenance costs for the Shire. The road closure will reduce the area of land the Shire is required to maintain.

- **Strategic Implications:**

The Local Planning Strategy identifies a number of strategies and actions for the Greenhills Locality, which refers to development being adequately serviced, not impacting waterways or the wider environment, and provision of access to constructed roads. The partial road closure and amalgamation will assist in providing a lot of a size with an appropriate developable area, and access to a constructed road which is consistent with the Strategy objectives.

- **Legal and Statutory**

- *Land Administration Act 1997 (LAA)*

Section 52 of the LAA provides the ability to the Shire to request the Minister to acquire the private road as Crown land. Section 58 of the LAA outlines the process for closing roads, which requires the local government to advertise a proposed road closure for a period of 35 days before it can request the Minister for Lands to close a road, or portion thereof.

Land Administration Regulations 1998

Regulations 5 and 9 of the *Land Administration Regulations 1998* outline the processes and information that a local government is required to provide to request the Minister acquire the private road as crown land and road closure permanently under Section 52 and 58 of the LAA. The regulations require the local government to provide:

- a) A written description of the proposed future disposition of the subject land after it has been acquired;
 - b) written confirmation that the local government has resolved to make the request, details of the date when the relevant resolution was passed and any other information relating to that resolution that the Minister may require; and
 - c) written reasons as to why the local government proposes to request the Minister to acquire the subject land;
 - d) sketch plans showing the location of the road and the proposed future disposition of the land comprising the road after it has been acquired/closed, which has been approved by the Planning Commission;
 - e) written advice that the local government has taken all reasonable steps to identify the persons who are required to be given notice under Section 52 of the Act;
 - f) a written statement that the local government indemnify the State and Minister for Lands against any claims for compensation and costs that may arise from the development;
 - g) copies of any submissions relating to the request that, after complying with the requirement to publish the relevant notice of motion under section 52 and 58 of the Act, the local government has received, and the local government's comments on those submissions; and
 - h) a copy of the relevant Council resolution; and
 - i) any other information the local government considers relevant to the Minister's consideration of the request; and
 - j) written confirmation that the local government has complied with relevant sections 52 and 58 of the Act.
- **Risk related**

A risk assessment of the proposal has been undertaken, and there were no medium to high risks identified with the proposal for the Shire that warrant further discussion.

It should be noted that the existing lots do not currently have access to reticulated sewer, water or power which would now normally be required for lots of this size. A condition of Council to amalgamate, would occur through the process of a subdivision application, where it is at the discretion of the Western Australian Planning Commission (on recommendation of servicing authorities) as to any conditions that may be imposed. Whilst a reticulated sewer service is not available and not likely to be required, there is a reticulated water service approximately 85m from the site and power is approximately 70m from the site where connection could be a condition of amalgamation. Preliminary discussions with the WAPC has advised that if connection is cost-prohibitive the conditions may not be imposed, although the onus would be on the applicant to demonstrate why connection should not be required within the subdivision application for consideration. Therefore, there is a risk to the landowner that requiring amalgamation may render the road closure unviable to complete and some expenditure towards the road closure would have already occurred. Although if amalgamation does not occur, the current road closure does not provide constructed road frontage to all lots and should be referred back to Council for further consideration by Council.

- **Workforce Implications**

Officer time is required to co-ordinate the advertising, and submission to Department of Lands which would be minimal and is not anticipated to have any greater workforce implications.

Voting Requirements

Absolute Majority Required: No

**RESOLUTION
041217**

Moved: Cr Ferro

Seconded: Cr Smythe

“That Council, in accordance with the Plan in Appendix B:

- 1. Requests the Minister to acquire a portion of Murphy Street as Crown Land in accordance with Section 52 of the Land Administration Act 1997 for the purposes of facilitating a road closure;*
- 2. Closes a portion of Murphy Street in accordance with Section 58 of the Land Administration Act 1997 for disposition to adjoining landowners;*
- 3. Indemnifies the State and Minister for Lands against any claims for compensation and costs that may arise from the development;*
- 4. Notes that 1, 2 and 3 above, are subject to the following:*
 - (a) Lots 5, 6, 7 and 8 on Deposited Plan 2922 being amalgamated or reconfigured so that each lot has direct frontage to a constructed road.*
 - (b) The proposal being publicly advertised for a period of no less than 35 days; and*
 - (c) The proponent meeting costs associated with the acquisition and road closure including advertising.*
- 5. Subject to no objections being received during the consultation period, authorises the CEO to provide written confirmation that the Shire has complied with section 52 and 58 of the Land Administration Act 1997 and execute documents required to support the submission to Department of Planning, Lands and Heritage; and in the event of objections being received from the consultation period, refer the matter back to Council for further consideration.”*

CARRIED: 7/0

SY156-12/17
APPENDIX A

Legend

- Lot 107 - Private Road
- Partial Road Closure - Murphy Street
- Bally Bally Brook



