

17 Infrastructure and Assets Reports

17.2 Proposed Road Closure - Part of Joes Road, Gardners Bay

Report Number 17.003/25*

Strategic Plan

1. An empowered, healthy and connected community
4. Vibrant towns and villages
5. A transparent and trusted Council

File Reference 23/666

Responsible Officer Director Infrastructure and Assets

Reporting Brief Director Infrastructure and Assets presenting a report on the proposed closure of a portion of Joes Road, Gardners Bay

Conflict of Interest No officer declared an interest under the *Local Government Act* 1993 (LGA 1993) in the preparation of this report.

Attachments

1. Attachment 1 Joes Road Images of the Gate and the Location Plan [**17.003/25*.1** - 1 page]

Background

1. Section 21 of the *Local Government (Highways) Act 1982* (the Act) charges the Huon Valley Council with the duty of maintaining the local highways (Council Roads) that are maintainable by the Council as shown on its municipal map.
2. In any particular case, the Council shall discharge the duty in such a manner as, having regard to all the circumstances of the case, it considers practicable and appropriate.
3. Huon Valley Council manages an extensive road network, including 713 km of roads (both sealed and unsealed) and 212 bridges (inc. major culverts), which attracts an annual depreciation of approximately \$4m/year.
4. Meanwhile, with the developments and subdivisions happening in the Valley, Council takes on new roads, footpaths and bridges every year and adds them to the transport assets inventory.
5. To comply with the *Local Government Act 1993*, a Strategic Asset Management Plan has been developed to provide a framework for managing the Council's assets over their lifecycle. The plan outlines the long-term asset needs and requirements and informs the Council's long-term financial management.
6. This means every year, a significant amount of investment is required to replace and maintain the road network to ensure our road network is functional and fit for purpose.
7. Council reviewed and adopted its third revision of the Asset Management Policy in December 2024, which requires Council officers to ensure accountability and transparency in asset management and to optimise Council's asset base to better serve the evolving needs of the community.

8. A review of Council's transport asset inventory, also known as the Asset Register, has been performed by Council's Technical Services Unit. The review found that a series of roads and bridges currently included in the inventory may not meet the definition or perception of public infrastructure assets, given that they are only servicing one or two properties.
9. This determination is based on several key assessment criteria that help distinguish between public and private infrastructure.
10. The first consideration is public access and benefit. When an asset primarily serves private interests rather than the broader community, it generally falls outside the definition of public infrastructure. A road or bridge accessing just one or two properties has limited public use and, therefore, limited public benefit.
11. Service potential is another important factor. Public assets should provide services to the broader community. When infrastructure serves very limited users, it may be more appropriately classified as a private access way rather than public infrastructure.
12. Similar to private driveways and property accesses, assets that serve private interests are generally the responsibility of the property owners, irrespective of size or length. While the council has traditionally maintained these assets, this does not validate its authority to continue the action or justify the spending on them.
13. A portion of Joes Road at Gardners Bay has been identified as a Council Road that serves only two (2) properties. See the location map included in Attachment 1 to this Report.
14. The owner of the property through which Joes Road traverses has placed a gate over the road (refer to the red mark in Attachment 1) to restrict public access due to concerns about safety from anti-social behaviour, trespassing and littering activities observed by the property owner over the last couple of years.
15. Placement of the gate requires the permission of the Council and has led to discussions regarding the need for that portion of Joes Road to be accessible to the public and maintained by the Council.
16. The purpose of this Report is to initiate the closure of the portion of Joes Road beyond the gate, approximately 240 meters, and remove its public road status.

Council Policy

17. Council does not have a Policy regarding the closure of Council Roads.
18. Council Roads are otherwise maintained in accordance with the Council's Strategic Asset Management Plan.

Legislative Requirements

19. Section 14 of the Act provides for the process for the closure of a Council Road as follows:

14. Closure and diversion of highways

- (1) *If, in the opinion of the corporation, a local highway or part of a local highway should be diverted or closed for the public benefit, in the interests of public safety or because of lack of use, it may –*
- (a) *if it is satisfied, in the case of a diversion of a highway, that standard requirements, if applicable, have been complied with; and*
 - (b) *not less than 28 days after a written notice of its intention to do so –*
 - (i) *has been served on each of the owners and occupiers affected;*
 - (ii) *has been served on the Transport Commission;*
 - (iii) *has been displayed in a prominent position at each end of the highway; and*
 - (iv) *has been published twice in separate issues of a local newspaper circulating in the municipality in which the highway is situated –*
- close or divert the highway in respect of all traffic or particular types of traffic or subject to the reservation of a footpath or some other highway that may be used only for limited purposes.*
- (2) *A notice under [subsection \(1\)](#) may apply to 2 or more highways that are connected with one another.*
- (3) *Subject to [subsection \(4\)](#), a notice under [subsection \(1\)](#) shall contain a map or plan showing the proposed closure or diversion to which it relates.*
- (4) *A notice under [subsection \(1\)](#) that is required to be published in a newspaper may, instead of containing such a map or plan as is referred to in [subsection \(3\)](#), contain a statement of a place in the municipality in which the highway is situated where the plan may be inspected free of charge at all reasonable hours.*
- (5) *An interested person may, before the expiration of a notice under [subsection \(1\)](#), give written notice to the corporation of his objection to the proposed closure or diversion.*
- (6) *The corporation is to refer each objection that it is notified of under [subsection \(5\)](#) to the Magistrates Court (Administrative Appeals Division).*
- (7) *The Magistrates Court (Administrative Appeals Division) has power to receive and determine the objection as if it were an application to review the decision relating to the proposed closure or diversion and, in addition to its powers under the [Magistrates Court \(Administrative Appeals Division\) Act 2001](#), the Court may make a local highway order –*
- (a) *upholding the objection; or*
 - (b) *authorizing the proposed closure or diversion.*
- (8) *An order under [subsection \(7\)\(b\)](#) may prohibit, in whole or in part, the closure or diversion authorized by the order until such conditions as may be specified in the order have been fulfilled, being conditions that the Magistrates Court (Administrative Appeals Division) considers proper to impose for the provision or preservation of the means of communication by highway or the means of access to a highway.*
- (9) *Where the Magistrates Court (Administrative Appeals Division) makes an order under [subsection \(7\)\(b\)](#), the Minister shall, as soon as possible after the making of the order, cause a notice containing particulars of the order to be published in the Gazette.*
- (10) *A diversion of a highway that is opened under this section by a corporation is maintainable by the corporation.*

Risk Implications

20. The key risk associated with this Report is to ensure that any proposed Council Road closure is for the public benefit, either in the interests of public safety or because of a lack of public use.
21. Property owners who are currently benefiting from accessing their properties from Council-owned and maintained roads and bridges may not support the removal of the Council Road status and subsequently object to the proposal.
22. This means that the council's decision to 'close' a Council Road may attract objections that are referred to the Magistrate's Court, and potential negative publicity.
23. Furthermore, there exists the possibility that the Magistrate's Court may refuse to close the Council Road, even if it is determined that such closure would benefit the public.
24. Consequently, the process does not guarantee a favourable outcome. Council officers must concentrate on gathering comprehensive information and conducting thorough assessments when formulating the initial decision and subsequently present these findings to the Council for approval.
25. It is essential for Council officers and Councillors to possess confidence in their decision-making processes that serve the public interest.
26. It is important that the Council considers these risks to meet the legislative requirements in addition to ensuring that the Council does not inadvertently cause a detriment to the members of the public who use the road.
27. The information required to support the Council decision will depend on the circumstances of the case for each proposed Council Road closure.

Financial and Budgetary Risks

28. There are no financial or budgetary risks associated with the proposed closure. Joes Road is a Minor Road under the Strategic Asset Management Plan and is only maintained on a biennial basis.

Environmental Risks

29. There are no Environmental Risks identified for this report.

Engagement

30. Seven (7) property owners within close proximity to the portion of Joes Road, which is proposed to be closed, were consulted regarding a proposed closure of the portion of the road.
31. The initial community engagement and consultation found that each owner consented to the closure and raised no issues with the Council regarding the proposal in writing.
32. Notification will be provided in accordance with section 14 of the Act.

33. Engagement associated with this decision will be undertaken at Inform Level by inclusion within the Council meeting Minutes that will be available to the public on the Council's website and at the Customer Service Centre.

Human Resource and Financial Implications

34. There are no significant human resource or financial implications for the Council arising out of this Report.
35. Given the short distance of the road, there will be minimal operational savings resulting in the closure of the road.
36. There will be costs to the Council should any person object to the closure of the Council Road, as the matter will then be referred to the Magistrates Court for a decision. This cost cannot be quantified at this time.

Discussion

37. The proposal is to close a portion of Joes Road, Gardners Bay (approximately 240 meters) passing the gate marked in red on the location plan included as Attachment 1 to this Report.
38. This portion of the Council Road is to the benefit of two properties only, that is, the property that it runs within and the property at the end of the road.
39. The property at the end of the road has a frontage directly onto Nichols Rivulet Road, and an alternate access can be obtained without the use of Joes Road.
40. There is no general public benefit from use of the road and recent traffic data suggests that it has not had any use or complaints about lack of access since a gate has been installed on it by the owner of the property that surrounds the road.

Conclusion and Recommendation

41. It is recommended to close the road and undertake the statutory notification process.
42. If any objections are received during the notification period, then this will be referred to the Magistrates Court for a decision to be made.

17.003/25***RESOLVED****MOVED: Cr Lukas Mrosek****SECONDED: Cr David O'Neill****That:**

- a) **The Report on the proposed closure of a portion of Joes Road, Nicholls Rivulet be received and noted.**
- b) **Pursuant to section 14 of the *Local Government (Highways) Act 1982* (the Act), the Council is of the opinion that the portion of Joes Road, Nicholls Rivulet as shown past the red line on the location plan included as Attachment 1 to this Report should be closed for the public benefit because of lack of use.**
- c) **The Chief Executive Officer (or his delegate) is authorised to issue a notice of intention to close the portion of Joes Road as required under section 14 of the Act.**
- d) **In the event that no objections are received during the notification period under section 14 of the Act then the portion of Joes Road is formally closed for the public benefit and is to be removed from the Council's municipal map maintained by the Council pursuant to section 208 of the *Local Government Act 1993*.**
- e) **In the event that an objection is received, the Chief Executive Officer (or his delegate) is to refer each objection to the Magistrates Court (Administrative Appeals Division) for a decision.**

Councillor Andrew Burgess left the meeting at 7.44pm and returned at 7.46pm.

Cr Sally Doyle, Cr Toby Thorpe, Cr Paul Gibson, Cr Debbie Armstrong, Cr David O'Neill, Cr Mark Jessop, Cr Andrew Burgess, Cr Amy Robertson and Cr Lukas Mrosek voted for the motion and Nil voted against the motion.

9 / 0 CARRIED UNANIMOUSLY