

## CL25.308 Proposed Road Closure - Illfracombe Avenue (Banksia Street), Vincentia

**HPERM Ref:** D25/341301

**Department:** Buildings & Property Services  
**Approver:** Kevin Norwood, Acting Director - City Services

**Attachments:** 1. Report to Ordinary Meeting 15 April 2025 - Proposed Road Closure - Illfracombe Avenue (Banksia Street), Vincentia [↓](#)

### Purpose:

The purpose of this report is to provide Council with a recommendation regarding the proposed road closure of Illfracombe Avenue (Banksia Street), Vincentia.

On 8 April 2024 [MIN24.179](#) Council resolved to:

*Close approximately 2,162sqm, subject to final survey, of unformed road reserve known as Banksia Street, Vincentia – Banksia Road Closure (D24/123291) by notice published in the Government Gazette;*

- a) *Create a right of carriageway over the closed road maintaining access for the adjacent neighbours of the closed road at Banksia Street, Vincentia.*
- b) *Sell the closed road at Banksia Street, Vincentia for not less than the market value as determined by an independent valuer through a competitive sales process.*

At the Ordinary Meeting of Council of 11 March 2025, Notice of Motion – Road Closure Banksia Street, Vincentia ([CL25.70](#)) requested an update on the progress of the road closure proposal.

A report was subsequently prepared for the Council Meeting of 15 April 2025 ([CL25.121](#)) recommending that Council receive the report for information and a future report be provided to Council at the completion of the road closure assessment.

### Summary and Key Points for Consideration:

- Pursuant to Section 38A of the *Roads Act 1993*, Council may propose the closure of a Council public road for which it is the Roads Authority.
- Submissions for Notifiable Authorities and the Public were received and have been reviewed.
- Council resolution is required for the closure of a public road by gazette notice under section 377 of the *Local Government Act 1993*, as well as for the sale of land. It is noted that Council has previously resolved to close the subject road reserve by gazette notice at the meeting of 8 April 2024 (MIN24.179).

### Recommendation

That Council;

1. Rescind resolution MIN24.179 - Part 7 of 8 April 2024.
2. Proceed to close part of the identified section of Banksia Street, Vincentia (approximately 1900m<sup>2</sup>) by notice in the Government Gazette, retaining an approximately 4m-wide public road reserve along the southern edge of the unformed

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road reserve.

3. Create a right of carriageway, subject to survey and final location, over the closed road for access to the constructed public road system benefitting Lot 15 DP 24997 and Lot 18 DP 522657.
4. Consent to the grant of easement(s) over the land as required and in accordance with Endeavour Energy requirements.
5. Classify the closed section of road as Operational land following public notice of the proposed classification under the Local Government Act 1993.
6. Fund utility infrastructure works from the Industrial Land reserve until the sale proceeds are received.
7. Sell the closed section of road at Banksia Street, Vincentia for not less than the market value as determined by an independent valuer through a competitive sales process.
8. Authorise the Common Seal of the Council of the City of Shoalhaven to be affixed to any document required to be sealed and delegate authority to the Chief Executive Officer (Director City Services) to sign any documentation necessary to give effect to this resolution.

### Options

1. Resolve as recommended.

**Implications:** The identified section of Illfracombe Avenue (Banksia Street) is closed by gazette notice and Council proceeds to sell the closed road. Public access from Elizabeth Drive to Illfracombe Ave is retained by the 4m-wide public road reserve along the southern edge of the unformed road reserve and a right of carriageway over the closed road (northern edge) maintains access for adjacent neighbours. An easement for overhead powerlines is granted as required by Endeavour Energy. Income received from the sale will contribute to Council's land sales strategy.

However, financial risks remain, including the need for upfront funding, potential costs due to latent site conditions, and the possibility of legal challenges in the Land & Environment Court, which could result in delays and additional expenses.

2. Not proceed as recommended.

**Implications:** If Council does not proceed as recommended and retains the land as public road reserve, the land remains in Council ownership and will not generate the anticipated revenue contribution to Council's land sales strategy. This option requires the formal rescission of MIN24.179 (Part 7) and may reduce reputational risk associated with community opposition to the road closure, which has attracted significant public interest.

Council would avoid financial risks associated with upfront funding, potential costs due to latent site conditions, and the possibility of legal challenges in the Land & Environment Court, which could result in delays and additional expenses.

### Background and Supplementary information

The subject area of road proposed for closure is shown in Figure 1 being Council public road reserve by way of Government Gazette No.81 of 20 July 1923.

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**Figure 1** – Proposed road closure area



The *Roads Act 1993* (section 38A) states;

*Council may propose the closure of a Council public road for which it is the roads authority if:*

- a) *the road is not reasonably required as a road for public use (whether for present or future needs), and*
- b) *the road is not required to provide continuity for an existing road network, and*
- c) *if the road provides a means of vehicular access to particular land, another public road provides lawful and reasonably practicable vehicular access to that land.*

Preliminary details about notifiable authority requirements were presented in the 15 April 2025 Council report on the proposed road closure (Attachment 1). Feedback from these authorities has since been received and is included in the External Consultations section. A summary of the public notification process was also provided at the meeting, and public submissions are now detailed in the Community Consultation section of the report.

### Internal Consultations

Internal stakeholder consultation has been undertaken with respect to the proposed road closure.

Advice received has indicated the need to manage current road stormwater drainage flows off Elizabeth Drive onto the unformed road reserve proposed for closure. Stormwater design solutions have been undertaken, and it is proposed to construct new underground stormwater connection to convey flows to the western side of Elizabeth Drive and integrate with existing stormwater infrastructure. The drainage infrastructure works will be required to be undertaken and funded by Council with the current road closure process.

Advice from Shoalhaven Water regarding utilities requirements (water and sewer) is included in the External Consultations section of the report.

### External Consultations

The requirements of notifiable authorities to the proposed road closure have been obtained as required under section 38B of the *Roads Act 1993*.

The unformed road reserve proposed for closure contains overhead powerlines and a pole-mounted substation. To protect this infrastructure, Endeavour Energy has requested the creation of a 9-metre-wide easement. Alternatively, retaining a portion of the road reserve to



safeguard the overhead powerline asset may be considered instead of establishing an easement.

The road reserve proposed for closure contains a sewer rising main and a manhole (see Figure 2). Shoalhaven Water has advised that this sewer infrastructure must be relocated and retained within publicly owned land. Additionally, the removal of the redundant asbestos main located adjacent to the sewer rising main is required (refer to Figure 2).

**Figure 2 – Existing sewer rising main (red) and redundant asbestos cement main (pink)**



The sewer rising main can potentially be relocated along the southern boundary of the unformed road reserve proposed for closure directly adjoining No.20 Elizabeth Drive and then continuing north along Elizabeth Drive joining the existing sewer main within the road reserve (refer Figure 3). As proponent of the road closure proposal, Council will be required to fund these works.

**Figure 3 – Indicative location of relocated sewer rising main (blue)**



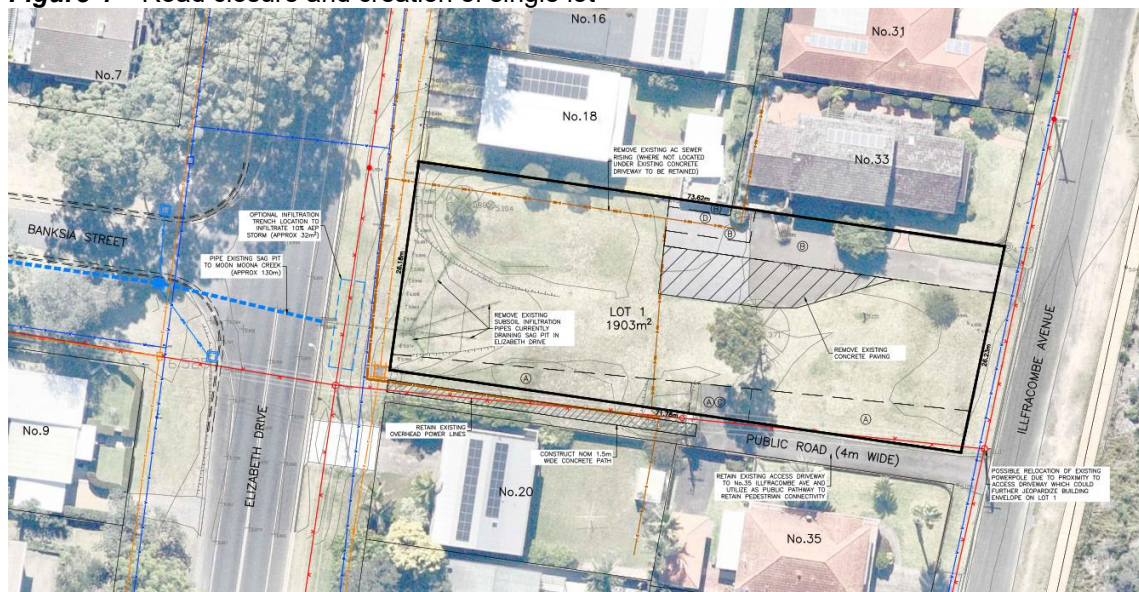
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## Site Appraisal

In consultation with Council's Asset Program Planning Team, consultants Footprint Sustainable Engineering were engaged to assess design options and review utility service/infrastructure requirements of notifiable authorities, in relation to the road closure gazettal. Road closure and creation of a single lot (refer Figure 4) will require the following infrastructure works:

- Retain an approximately 4m-wide public road reserve along the southern edge of the unformed road reserve to provide a pedestrian link between Elizabeth Drive and Illfracombe Avenue and maintain access to No. 35 Illfracombe Avenue.
- Relocate the sewer rising main within the retained 4m-wide public road reserve.
- Establish new water and sewer network connections.
- Retain existing access driveway infrastructure on the northern side of the unformed road reserve, servicing No. 18 Elizabeth Drive and No. 33 Illfracombe Avenue, within a 6m-wide right of way. Any driveway construction outside this 6m corridor is to be removed as part of the road closure works.
- Create a new easement over the southern portion of the unformed road reserve to protect Endeavour Energy's overhead electricity infrastructure.
- Resulting in the creation of one residential lot with an area of 1,903m<sup>2</sup>.

**Figure 4 – Road closure and creation of single lot**



The road closure outcome illustrated reflects the scope of works Council, as the proponent under the Roads Act 1993, is required to undertake following consultation and notification.

Footprint Sustainable Engineering prepared three additional future subdivision and development scenarios, proposing two, three and six-lot configurations. However, these options involved significantly higher utility infrastructure costs and, as such, have not been included for further consideration in this report.

## Community Consultations

A total of 25 public submissions were received in response to the public notification of the proposed road closure, conducted under the Roads Act 1993 during December 2024 and January 2025. A summary of the submissions from public notification process was included

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in the report to Council on this matter dated 15 April 2025. The April 15 Council report is included as an attachment to this report.

<b>Concern / Issue raised</b>
<b>Public access removed</b> Unformed road serves as public access route for pedestrians
<b>Loss of green / open space and recreation</b> Unformed road serves as open space perceived to be public reserve for purpose of recreation
<b>Impact on broader public use and enjoyment (e.g. Husky Triathlon)</b> Unformed road reserve used for various events including Husky Triathlon as first aid and water station
<b>Utilities / infrastructure on land including stormwater drainage</b> Critical water, sewer and electricity infrastructure on land and drainage issues
<b>Collateral impact on traffic and parking congestion on Illfracombe Ave</b> Unformed road serves as public access route for pedestrians. Closing this space will result in greater parking congestion on Illfracombe Avenue
<b>Emergency services access / evacuation route</b> Unformed road serves as access route emergency vehicles and evacuation point
<b>Access for adjoining residence</b> Unformed road currently used by adjoining residences for private property access and road required for their access
<b>Environmental / wildlife concerns</b> Unformed road serves as wildlife corridor and supports vegetation
<b>Loss of view corridor</b> Unformed road provides open space and beach / ocean views for surrounding properties
<b>Other comments</b> The following individual comments were raised in submissions and are individually listed below as they were one-off or infrequently raised matters: <ul style="list-style-type: none"> <li>- Insufficient notification</li> <li>- Impact on streetscape</li> <li>- Use of funds for closed road</li> <li>- Lack of community consultation</li> <li>- Climate change and coastal erosion risk</li> <li>- Future development height limitation</li> <li>- Part of suburb masterplan</li> <li>- Infrastructure inadequate to support new development</li> </ul>

### Comments

#### *Public pedestrian access removed*

The most frequently raised concern in the public submissions was the potential loss of public access between Illfracombe Avenue and Elizabeth Drive. Should Council resolve to proceed with the road closure and gazettal, public pedestrian access between Illfracombe Avenue and Elizabeth Drive will be retained, as outlined in the External Consultations section of this report.

#### *Loss of green/open space and recreation*

The subject land is currently dedicated as road reserve. If the road is formally closed via gazette notice, the visual continuity of the land as part of an open space corridor will be

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lost. However, it is important to note that the designated purpose of a road reserve is to support the movement of people—whether on foot or by vehicle—and not to function as open space or recreational land.

*Impact on broader public use and enjoyment (e.g. Huskisson Triathlon)*

Should Council resolve to proceed with the road closure via gazette notice, the land will no longer be available for use in connection with events such as the Huskisson Triathlon. This change may affect event logistics and community engagement associated with such activities.

*Utilities/infrastructure on land including stormwater drainage*

The assessment undertaken as part of this road closure proposal has appropriately addressed stormwater drainage, services, and utility requirements. These matters have been considered in consultation with relevant authorities and stakeholders. Further details are provided in the External Consultations section of this report.

*Collateral impact on traffic and parking congestion on Illfracombe Avenue*

Concerns raised in public submissions regarding potential collateral impacts on traffic and parking along Illfracombe Avenue—should the public no longer have the option to park along Elizabeth Drive and access the beachfront via the unformed road reserve—have been appropriately considered. These matters are addressed in the response provided under the section titled Public Pedestrian Access Removed.

*Emergency services access/evacuation route*

No objections to the proposed road closure were received during the internal or external consultation period. As such, this matter is not considered a relevant issue impacting the progression of the proposal.

*Access for adjoining residences*

If Council resolves to proceed with the road closure via gazette notice, formal rights of way will be established to ensure continued access for the adjoining private properties at No. 18 Elizabeth Drive and Nos. 33 & 35 Illfracombe Avenue. While Council is not obligated to preserve access rights over unformed road reserve following closure, a review of the access arrangements for these properties supports the formalisation of rights of carriageway to maintain ongoing access. Details regarding the proposed right of carriageway provisions under the various options are outlined in the External Consultations section of this report.

*Environmental/wildlife concerns*

No objections were received from internal or external referrals during the notification period in relation to this specific concern. Accordingly, it is not considered a substantive reason, in isolation, to retain the unformed road reserve.

*Loss of view corridor*

Concerns regarding potential loss of views resulting from future development on the land have been considered. Under Section 38A of the Roads Act 1993, Council may proceed with the closure of a public road where it is determined that the road is not reasonably required for public use—either now or in the future—not essential for continuity of the existing road network, and where alternative public roads can provide lawful and reasonably practicable vehicular access to affected land.

As outlined in the External Consultations section of this report, potential development outcomes have been explored. Should Council resolve to close the road, a partial view corridor would be retained through the preservation of public access along the southern side of the road reserve, as well as the adjoining area required to be retained as an easement for overhead electricity infrastructure.

*Lack of community consultation (Council resolution to close the road)*

On 8 April 2024, Council resolved ([MIN24.179](#)) to close the section of road by gazette notice and proceed with the sale of the land through a competitive sale process. In accordance with the Roads Act 1993, public notification is required prior to completing a road closure by gazette notice. This notification was undertaken following Council's 2024 resolution. However, due to other organisational priorities, commencement of the formal statutory road closure process was deferred until later in 2024.

*Public notification inadequate*

The public notification process for the proposed road closure was conducted in accordance with Section 38B of the Roads Act 1993. To allow for broader community input, the notification period was extended to 31 January 2025, resulting in a total duration of 44 days—exceeding the statutory minimum requirement of 28 days. During this period, Council received 25 individual public submissions. Responses were also received from Notifiable Authorities, with a summary provided in the External Consultations section of this report. The notification process is considered satisfactory and compliant with all statutory requirements.

*Impact on streetscape*

If the road is closed via gazette notice, the existing streetscape will be altered through the introduction of new development and built form, changing the visual character of the area.

*Use of funds for closed road*

Any financial return generated from the closure and sale of the road, in accordance with Council's current land sales strategy, will contribute to Council's broader financial sustainability objectives. Further detail on the anticipated financial outcomes and their alignment with Council's strategic goals is provided in the Financial Implications section of this report.

*Climate change and coastal erosion risk*

No comments were received from internal stakeholder consultation in relation to this matter, and it is therefore not considered a substantive reason to retain the unformed road reserve. Should the road closure be gazetted, any future development of the land will be consistent with the existing pattern and location of development within the surrounding locality.

*Future development height limitation*

If Council supports the road closure by gazette notice, future development will be required to comply with Shoalhaven LEP2014 and DCP2014.

*Part of suburb masterplan*

Notwithstanding the original subdivision layout, Council is able to consider the closure of any public road under the Roads Act where the road is not reasonably required as a road for public use (whether for present or future needs), the road is not required to provide continuity for an existing road network, and if the road provides a means of vehicular access to particular land, another public road provides lawful and reasonably practicable vehicular access to that land.

*Infrastructure inadequate to support new development*

If the road closure is completed and Council proceeds with the sale of the land, future development may result in the construction of up to six dwellings on a land parcel of approximately 1,900 m<sup>2</sup>. This scale of development is considered appropriate and consistent with the capacity of existing infrastructure in the area.



## Policy and Statutory Implications

Council is assessing the proposed road closure under the *Roads Act 1993*. Council [Policy 22/47](#) (Development and/or Disposal of Council Lands) is relevant for the sale of the land, following gazettal of the road closure.

## Financial Implications

Footprint Sustainable Engineering undertook a preliminary feasibility assessment of subdivision and development options associated with the proposed road closure. As outlined in the External Consultations section of this report, the estimated infrastructure and utility/service costs—subject to final design and tendering—are in the range of \$375,000 (excl. GST) to \$410,000 (excl. GST).

Council will be required to undertake these infrastructure and utility works to enable completion of the road closure. A new budget allocation will be necessary to fund the works, which will also catalyse the future sale of the land. The costs incurred for infrastructure and utility installations are expected to be recouped through proceeds from land sales.

The sale of this land is included as part of the land sale program in the 2025/26 DPOP and budget. If Council decides not to close this road and therefore chooses not to prepare the land for sale, a negative budget adjustment at the September Quarterly Budget Review will be required to the value of approximately \$2.1M.

If Council decides to close this road, and prepare the land for sale, a negative budget adjustment of \$375k-410k will be required for the utility/service costs. These costs will ultimately be met from the sale of proceeds, however, can be, in the interim, borrowed from the Industrial Land reserve until the sale proceeds are received.

Council has an obligation to the principal of no cash deficit budgeting. Given the proceeds of sale of land in Council's 2025/26 budget are planned to either increase unrestricted cash, or increase a specific internal restriction, and no specific expenditure in 2025/26 is contingent on the sale of this parcel of land, the decision taken by Council on this matter will impact the 2025/26 budget position as indicated above, but will not impact our obligation to the principal of no cash deficit budgeting.

A competitive open sale process will be used to establish the final price. Preliminary advice suggests the land could be worth approximately \$2.5 million following road closure.

The anticipated net return to Council from road closure and sale of land (subject to final design and tendering and formal valuation advice at the time of open market sale process) is anticipated to be in the order of \$2.1M.

## Risk Implications

Council's interests have been considered through the process. If Council resolves to adopt the recommendation of this report, an identified potential future land sale will remain in Council's Land Sales Strategy.

The report outlines an alternative option to complete the road closure and gazettal, as previously resolved by Council on 8 April 2024 (MIN24.179). If finalised, the closure may be subject to appeal in the Land and Environment Court. The Court can either affirm or set aside the closure. If set aside, the road will remain in use for public road purposes.

The recommendation to close the unformed road reserve by gazette notice carries some risk to Council, including costs associated with necessary infrastructure and utility works. The final sale price of the land will depend on market conditions at the time of sale, which may affect Council's financial return, as outlined in the Financial Implications section of the report.

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Risk Implications associated with this decision are as follows.

Reputational Considerations

Community Sentiment:	The proposed road closure has attracted significant public interest. Not proceeding may reduce reputational risk associated with community opposition.
Governance Transparency:	Reversal of a prior resolution may raise concerns about Council's consistency in decision-making and strategic planning.

Financial and Legal Risks

Upfront Funding:	Proceeding with the closure would require initial funding without guaranteed returns.
Site Latent Conditions:	Potential for unforeseen site conditions that could increase project costs.
Legal Exposure:	If the closure is challenged in the Land & Environment Court, Council may face delays, legal costs, and reputational scrutiny.

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