

PROCEDURE

Closing of Council Public Roads



NARRANDERA SHIRE COUNCIL PROCEDURE

Narrandera Shire Council
141 East Street
NARRANDERA NSW 2700
Tel: 02 6959 5510 Fax: 02 6959 1884
Email: council@narrandera.nsw.gov.au

Application

The Applicant will make written application to council setting out the reason for the proposed road closure. The application must include a diagram showing the dimensions and area of the subject land.

Note this Road Closure process applies to the purchase of the full width and length of a road reserve or part thereof and also where a road reserve is to be narrowed and the closed portion disposed to another party.

The applicant will pay the application fee as set by Council in its Fees and Charges.

Initial assessment (Roads Act S38A)

Council's Roads Manager will prepare a written assessment that:-

- The subject land is a Council Public Road for which Narrandera Shire Council is the Road Authority (Should the road have been created by private subdivision prior to 1920 the Roads Manager must establish evidence of common law dedication)
- 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
- If the road provides a means of vehicular access to particular land, another public road provides lawful and reasonably practicable vehicular access to the land.

Existence of road Construction (Roads Act S38E(2))

Council's determination of 'construction' affects who the road vests with on closure.

Land under a public road that is vested in council where some 'construction' has ever taken place remains vested to council and title to the land passes to council upon closure of the road. If 'construction' has not taken place the land is vested with the Crown as Crown Land on closure of the road.

The dictionary of the Roads Act 1993 does not specifically define 'construction' in terms of section 38E(2) of the Act. The definitions of 'road work' and 'carry out road work' in the dictionary of the Roads Act appear to be related to 'construction'.

Examples of current or historical construction within road corridors may include:

- bitumen-sealed road formations
- gravel or other road-base material
- formed footpaths and/or kerb and guttering
- slashing or clearing of vegetation
- mowing.

Council's Roads Manager will prepare a written declaration as to the existence or not of 'construction' ever taken place on the road subject to the proposed closure. If 'construction' has taken place the declaration will include evidence to support this determination.

The road subject to the closure application will be identified in council's road register and the underlying assets identified in the assets register and asset maintenance system in preparation for the write-off of the assets should the road closure take place.

When looking to close an **unconstructed** council road, council should forward its road closure proposal to council.roadclosures@crowland.nsw.gov.au in the early stages to identify options to progress the outcome sought where possible.

When an unconstructed council public road is closed, it becomes vested in the Crown as Crown land. The department will object to the proposed closure if the consequential vesting in the Crown is considered unsuitable according to departmental policy.

Council Resolution to close the road

Upon the Roads Manger approving the proposed closure and in the case of an unconstructed road the Crown not objecting to the closed road vesting to it the Governance Manager will prepare a report for Council's determination.

A Council resolution to support the road closure and commence the notification process will include the following requirements:-

- the applicant to meet all legal, survey and valuation costs involved
- the provision of easements for any public utilities within the subject land if necessary
- the subject land to be consolidated with the applicant's adjacent land
- the purchase price of the subject land to be determined by a Registered Valuer as the current market value
- that all necessary documentation be executed under the Common Seal of Council.

Determination of 'current market value'

Council obtains a valuation, at the cost of the applicant, to determine the purchase price of the road closure parcel, prior to the notification process proceeding. This allows the applicant to more clearly ascertain the costs associated with the application.

Notification of proposal to close a Council Public Road (Roads Act S38B)

(1) A council that is proposing to close a council public road must cause notice of the proposal—

- (a) to be published in a local newspaper, and
- (b) to be given to—
 - (i) all owners of land adjoining the road, and
 - (ii) all notifiable authorities, and
 - (iii) any other person (or class of person) prescribed by the regulations.

(2) The notice—

- (a) must identify the road that is proposed to be closed, and
- (b) must state that any person is entitled to make submissions to the council with respect to the closing of the road, and
- (c) must indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.

To undertake the above notification you **MUST** utilise the following templates:-

- Road Closure – Adjoining Landholder Notification (Magiq 456103)
- Road Closure – Land and Water Notification (Magiq 456101)
- Road Closure – Authority Referencing Notification (Magiq 456099)
- Road Closure – Advertisement Newspaper (Magiq 456092)

Note failure to use the prescribed template has seen the Department require repetition the process utilising the prescribed template.

While not prescribed in the notification provisions of the Act the notice should also be posted to the exhibition and advertisements page on council's website.

Dealing with Submissions & Objections (Roads Act S38C)

If a Notifiable Authority formally objects Section 38 D2(a) provides *“a council public road may not be closed in the case where a notifiable authority has formally objected under section 38C to the closing of the road—until the objection is withdrawn by the authority or set aside by the Land and Environment Court under that section.”*

Council should negotiate with the Notifiable Authority to resolve the objection. The authority may withdraw the objection any time by written notice given to the council. S38C(2)

Should the objection not be resolved by negotiation council may utilise S38C(3) and appeal to the Land and Environment Court against the formal objection. The Court may affirm the objection ending the road closure process or set aside the objection allowing council to proceed with the proposed closure.

Section 38C also provides that any person may make submissions to the council with respect to closing the road. Council should respond to the submissions and where appropriate negotiate with objectors. Objectors should receive procedural fairness.

Council is required to consider any submissions that have been duly made with respect to the road closure proposal. A report to the General Manager should include the outcome of any negotiations with objectors and responses to the issues raised in submissions. The General Manager may subsequently send the matter to Council for determination under Section 38(D). Following determination of submissions/objections council will advise all persons/authorities who made a submission of the decision.

Preparation and Registration of a Plan

Following a decision under S38(D) to proceed with closure the applicant will be advised to instruct a private surveyor to prepare the survey plan and associated documents of road closure. The unregistered plan is to be forwarded to council for assessment. The plan will require appropriate signatures and consents such as certification and Section 88(b) instrument.

Council will complete the required form:-

Application to Close Public Road form CL31-30 (see attachment 2)

The application must be supported by the following:-

The council must attach a diagram showing:-

- dimensions and area of road to be closed
- adjoining property information
- location of any existing public utilities
- location and type of any fences, buildings or structures on or near the road.

The survey plan is to be in accordance with the Surveyor General's Directions, *Surveying and Spatial Information Regulation 2012*, *Conveyancing (General) Regulation 2013* and the Registrar General's Direction of Plans.

A statement from council with the following information regarding road construction:-

- evidence of construction which has taken place
- the unnecessary nature of the road
- any alternate public access, if relevant
- any intentions regarding disposition of the land
- the name and phone number of a council contact officer

- any proposal for public display.

The council must provide written consents/agreements of:-

- all owners and holders of interests in lands adjoining the road(s)
- any affected public authorities
- NSW Fisheries (where the road adjoins or gives access to a river or lake)
- Roads and Maritime Services (where the closing affects or forms a junction with a State Highway, Trunk Road or Main Road)
- The Land Information Unit, RailCorp Property (where the road adjoins railway land).

Once council has assessed and approved the survey plan and documentation these can be returned to the applicant to allow lodgement and registration at Land Registry Services.

Issue of Certificate of Title

Upon registration of the plan of road closure and notification to council, council will publish a notice in the Government Gazette giving effect to the road closure.

Following the Gazettal council will wait for a period of 60 days to allow for potential appeals to the Land and Environment Court against the closure under Section 38(F). If there is no appeal or the court sets aside the appeal the process may continue. If an appeal is upheld the closure terminates.

For an unconstructed road title will be created in the name of the Crown and council notify the Department of Industry – Lands to proceed with the sale of the land under the Crown Lands Management Act.

Where construction has taken place on the road council will complete an 11R Form for lodgement with Land Registry Services. Land Registry Services will subsequently issue a certificate of title in council's name.

Council Land Register

Following the issue of a certificate of title in council's name the title details will be recorded in council's Land Register. Upon the sale of the land the transfer of title to the applicant will be reflected in the register and the sale recorded in council's financial records.

Sale of the new lot

When council receives title for the former council public road this title may be conveyed to the applicant for consolidation with the applicants adjoining land.

The applicant will be required to:-

- Prepare a plan of consolidation suitable for registration with the Land Registry Service.
- Make payment to council of the purchase price as assessed by the Registered Valuer and all other related costs.

Upon receipt of the above payment council will prepare and execute the transfer and forward to the applicant with the Certificate of Title and Valuation report (required for Stamp Duty purposes) to allow registration with the plan of consolidation at Land Registry Services.

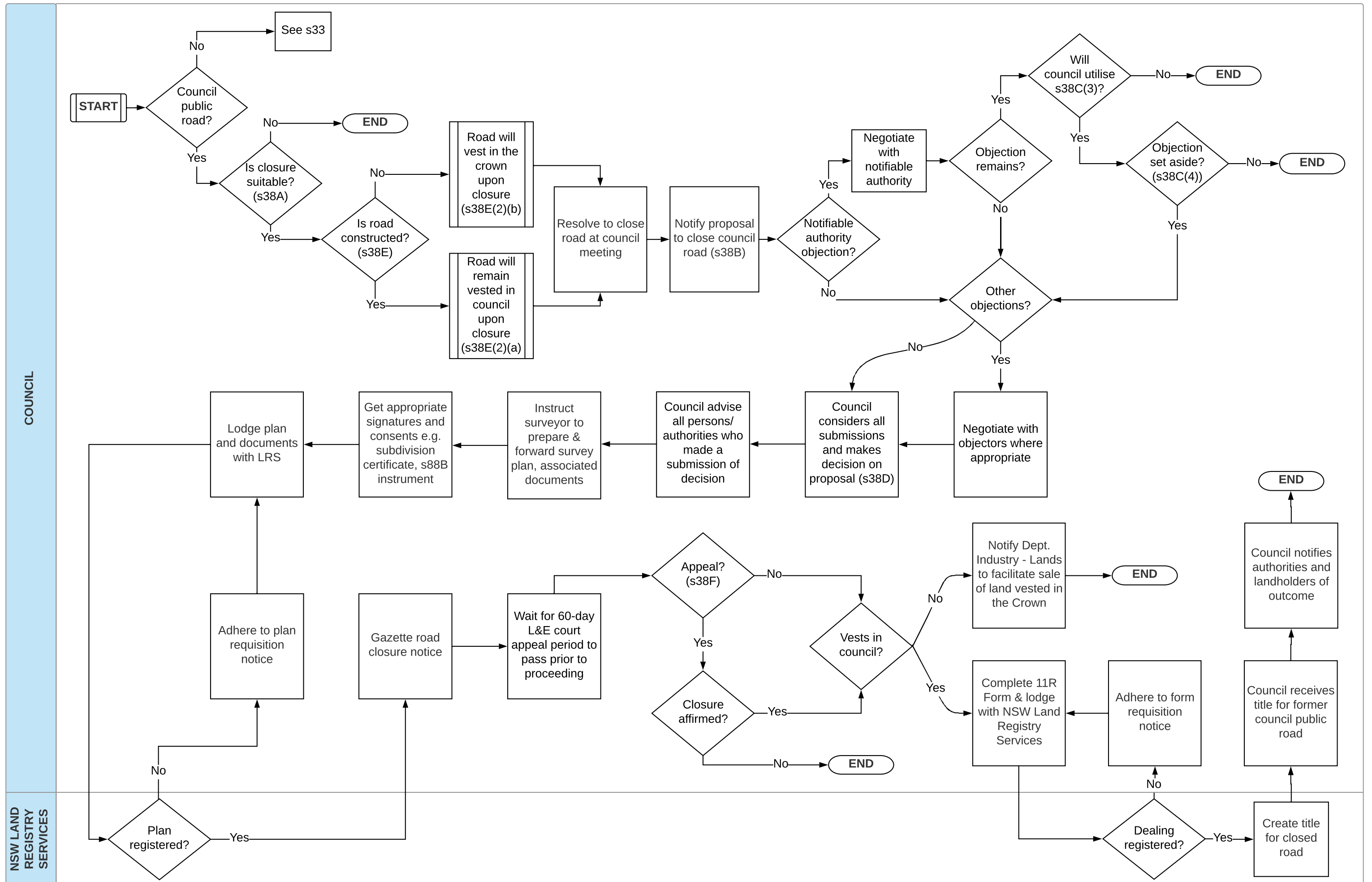
Council's Road Manager will confirm that the closed road and any associated assets have been processed as a disposal in council's road register, assets management system and financials.

Appendix 1 Flow Chart

Appendix 2 Application to Close Public Road CL30-31

CLOSING OF COUNCIL PUBLIC ROADS BY COUNCILS - PART 4 DIVISION 3 ROADS ACT 1993

This chart provides a possible method for councils to utilise when closing council public roads under Part 4 Division 3 of the *Roads Act 1993*.





Road Closure: Public Road Closure application (Council)

Description of Form

This form is used by Councils applying to close a public road.

Fee

\$476.90 – This fee covers administration costs where Council has carried out preliminary investigation and statutory advertising.

Contact Us

NSW Trade and Investment Crown Lands
PO Box 2155
DANGAR NSW 2309

T: 1300 886 235 (option 2 then option 1)

F: 02 4925 3517

E: roads@crowmland.nsw.gov.au

W: www.crowmland.nsw.gov.au

Privacy statement

The personal information you provide on this form is subject to the Privacy & Personal Information Protection Act 1989. It is being collected by NSW Trade & Investment and will be used for purposes related to this application. NSW Trade & Investment will not disclose your personal information to anybody else unless authorised by law. The provision of this information is voluntary or required to be supplied. If you choose not to provide the requested information we may not be able to process this application. You have the right to request access to, and correct details of, your personal information held by the department. Further information regarding privacy can be obtained from the NSW Trade & Investment website at www.trade.nsw.gov.au/legal/privacy

Council details

Council name			
Council contact officer name			
Postal address			
Phone		Ref	
Email			

Hereby apply for the closing of the public road described in Section 1 below

Section 1: Description of public road to be closed

Town / Locality		LGA	
Parish		County	
General text description of road			
Supply Diagram - Road proposed to be closed shown by		colour on attached diagram.	
Area		(sq m/ha)	

Include a copy of any relevant map or sketch to show clearly the locality, the boundaries & dimensions of the road proposed to be closed plus the land title boundaries of adjoining properties. Also show the position and type of any fencing and buildings / structures adjoining the road and any reticulation services (eg. power or telephone lines, water, sewer or gas pipes, drains) within the road boundaries.

Section 2: Details of 3rd party applicant and property ownership in vicinity of road

Name	
Address	
Title reference	

Section 3 Affected Adjoining Owners/Public Utilities

Details of Ownership of Land Adjoining the Road

1 - Portion/ Lot		DP		2 - Portion/ Lot		DP	
Owner(s)				Owner(s)			
Address				Address			
Please attach documentation from the landowner to your application indicating their agreement to the road closure proposal.				Please attach documentation from the landowner to your application indicating their agreement to the road closure proposal.			
3 - Portion/ Lot		DP		4 - Portion/ Lot		DP	
Owner(s)				Owner(s)			
Address				Address			
Please attach documentation from the landowner to your application indicating their agreement to the road closure proposal.				Please attach documentation from the landowner to your application indicating their agreement to the road closure proposal.			
5 - Portion/ Lot		DP		6 - Portion/ Lot		DP	
Owner(s)				Owner(s)			
Address				Address			
Please attach documentation from the landowner to your application indicating their agreement to the road closure proposal.				Please attach documentation from the landowner to your application indicating their agreement to the road closure proposal.			

Public Authorities with Affected Public Utilities

(e.g. power lines, water pipes, gas pipes, drainage pipes, telephone lines)

Utility type		Utility type	
Public Authority		Public Authority	
The proposed road closing has been discussed with the authority who has indicated the following views: <input type="checkbox"/> No objections to closing of road <input type="checkbox"/> Written agreement to creation of easement attached		The proposed road closing has been discussed with the authority who has indicated the following views; <input type="checkbox"/> No objections to closing of road <input type="checkbox"/> Written agreement to creation of easement attached	
Utility type		Utility type	
Public Authority		Public Authority	
The proposed road closing has been discussed with the authority who has indicated the following views: <input type="checkbox"/> No objections to closing of road <input type="checkbox"/> Written agreement to creation of easement attached		The proposed road closing has been discussed with the authority who has indicated the following views; <input type="checkbox"/> No objections to closing of road <input type="checkbox"/> Written agreement to creation of easement attached	

Section 4: Council Proposal for Closed Road

COUNCIL ROAD

(land will remain vested in Council if road is closed – s.38(2)(b) *Roads Act* as evidenced by prior construction, maintenance or use of the road by the public)

Please tick the appropriate boxes to indicate the manner of intended disposal, which may arise from the closure of the public road. Where the land is to remain vested in Council on closure, Council should indicate below whether the land is to be vested as operational land or community land, see sec.43

- Operational Land:
 sale to adjoining land owners*
 sale by public auction or tender

 sale by private treaty
 retention of land for Council operations

 other (provide details below)

- Community Land (if so please indicate the intended use)

General statement outlining intended disposal/land use

JOINT ROAD OPENING/ROAD CLOSING

Proposal to close road in conjunction with a Council road opening Council road

- Comment regarding need to synchronise timing of road closing to coincide with Council acquisition of other land for road or construction and opening of new road

- Request for land in closed road to be given in compensation (For other land acquired by Council for the purposes of the *Roads Act 1993*, eg. a road opening associated with this road closing to improve the public road network for the benefit of the public – see section 44. Please provide details.)

Section 5 : Council Statement

The department gives authorisation under s.35 of the *Roads Act 1993* for all Councils in NSW to carry out advertising of a proposed Council road closure where it would vest in the Council on closing.

Council acknowledges and confirms that all statutory requirements under s. 35 and s. 36 of the *Roads Act 1993* including advertising, consideration of submissions and resolution/outcome have been undertaken. Council also confirms that the following is attached:

- The Council Road checklist fully completed.
- All correspondence including submissions and resolutions relating to the road closing.
- All required status documents, plans, titles and gazette notices confirming public dedication of the road.
- Evidence of current and/or prior construction and maintenance.
- A survey plan or diagram of the proposal.
- Council report and approval.
- The required fee of \$476.90

General Manager (or Delegates name)			
Title (if not GM)			
Signature		Date	

For more information go to http://www.lpma.nsw.gov.au/crown_land/roads

Fee

Tick appropriate:

- \$476.90** Pay by cheque. Enclose a cheque payable to Crown Lands or
- \$476.90** Pay by money order. Enclose a money order payable to Crown Lands

Lodgement

→ Mail to NSW Trade and Investment Crown Lands, PO Box 2155 DANGAR NSW 2309

Office use only – Refer to the Receipting and Referrals Codes Document							
Business Unit: <input type="checkbox"/> BCN	Referral Code	BCNRD	Receipting Code	RD/RC	TRIM DOC		
Fee Paid		Receipt Number		Account number			
Date							