

Legal Conundrums

A Rough Road

A New Grader

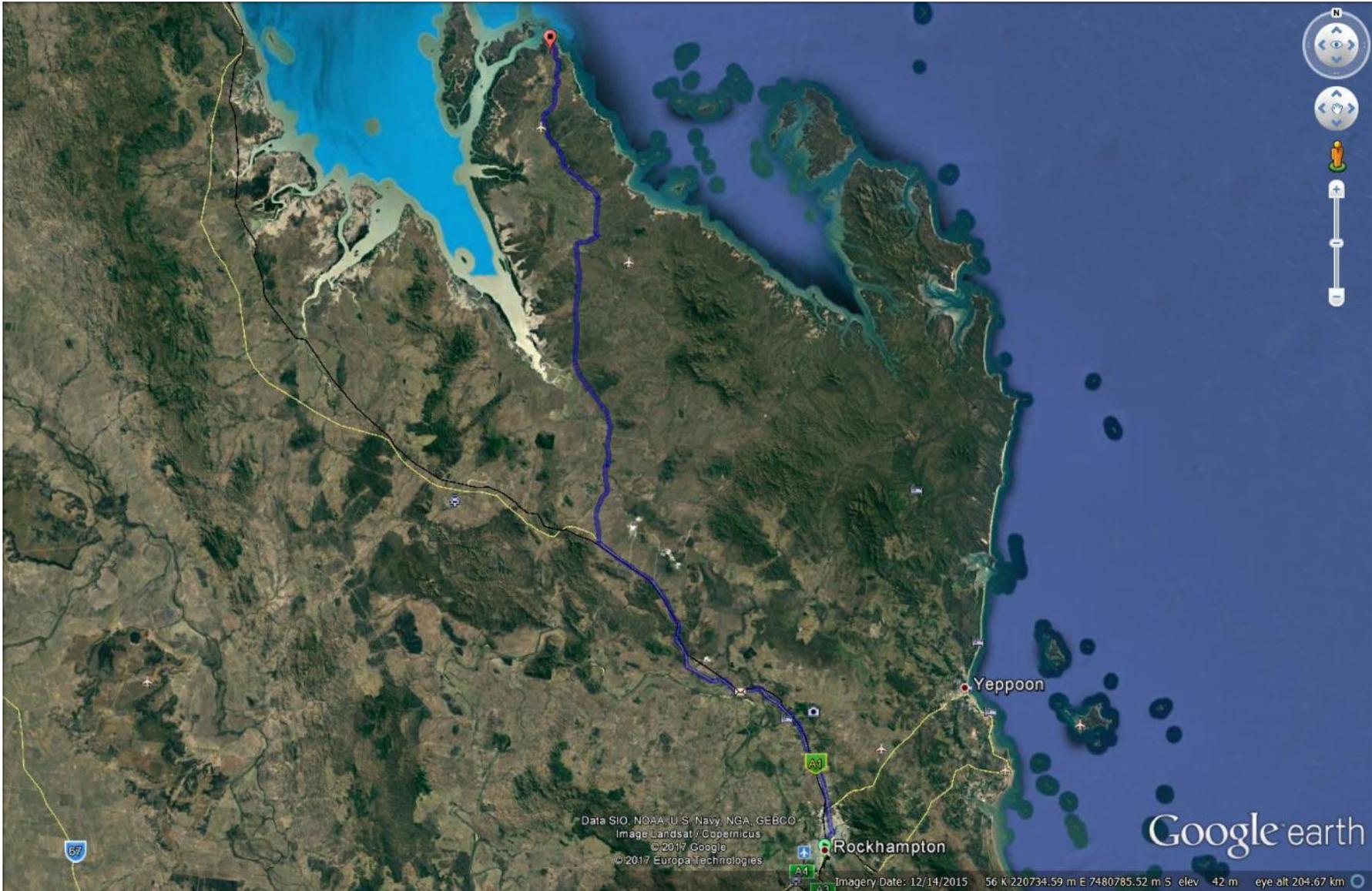
Unauthorised Works to 17kms Rd

This lead to

A Song

No Mowing of Nature Strips

And a Small Legal Matter



What The?

- Number of requests of Stanage Bay Rd being in poor condition
- Maintenance carried out June to August 2009
- Road inspected generally okay
- 7 January 2010 complaint about the condition of Stanage Bay Rd. Contact with some residents whom frequently used the road and they stated the terrible condition is exaggerated
- 18 January 2010 a Councillor advised that 10 to 15km of the road had been graded by a local resident
- 20 January 2010 was inspected and found that 17.2km the following condition:
 - Loose surface indicative of having been cut with a grader with no incorporation of moisture or use of specialised road compaction equipment;
 - Road cross falls well below current standards of 4% to 6%;
 - Road crown either completely removed or shifted from centre of carriageway;
 - Gravel windrows on road shoulders ranging from 50mm to 300mm in height;
 - Loose gravel deposited in table drains and on road side batters;
 - Loose gravel deposited in drainage structure inlets and outlets; and
 - Road edge guide posts removed or disturbed.
- \$70,000 to fix the above damages
- 22 February 2010 Mr Alan Rae contacted council stating that he graded the road and would now like payment

My New Grader



I was doing them (the Council) a favour!!!!!!

The Dance

- 22 January 2010 – The Deputy Chief Executive Officer sought initial legal advice regarding the nature of the offence and possibility of successfully pursuing prosecution to provide a competent deterrent to future similar unauthorised actions.
- 29 January 2010 – Comprehensive legal advice received including options to pursue with the first recommendation being to issue a letter to Mr Rea to seek his response to the allegations and allow him an opportunity to respond. The letter was sent to Mr Rea on the 17 February 2010. No response, verbal or written, was received to this letter.
- 10 March 2010 – Subsequent to Mr Rea not responding to the letter of demand, further legal advice was received regarding best option to pursue.
- 15 March 2010 – Legal Reps were instructed to proceed with providing a detailed Legal Opinion for the option to commence proceedings on a complaint to prosecute Mr Rea
- 14 April 2010 – Legal Opinion received from Legal reps setting out the prosecution process, an analysis of the prosecution, likely fees and detailing the information required to support the prosecution.
- 19 July 2010 – Advice received from Legal Reps regarding engagement of Legal Counsel and inclusion of prosecution for committing a trespass related act in contravention of section 404 of the Land Act 1994 Qld, to facilitate seeking reimbursement for the cost of rectification work.
- 22 November 2010 – Complaint and Summons received from Legal reps for checking and execution by the Chief Executive Officer prior to filing with the Rockhampton Magistrates Court.

Where things ended up

- Tried to settle
- Magistrate - \$1,000 fine for trespass
- Mr Rae provided 1000m³ of gravel
- Council adamant on pursuing
- Public opinion 76% Council should apologise to Mr Rae, 16% he should get a warning and 8% said he should be prosecuted.

Discussion

- Should Council have prosecuted?
- The CEO had delegation but should the CEO have made a decision in hindsight?
- Did Mr Rae think he was doing the right thing?

The Song

The Cursed 14ks

I bought the morning paper yeah, I get one every day,
To read about the saga on the road to Stanage Bay.
The council they are up in arms, about a bloke called Allen Rea,
Who thought that he would help them out, so he graded 14k.
No, you can't fill in big pot holes, it's against the council rules,
And corrugation should be rough, it's not meant to be smooth.
I'll slip in and help 'em out, yeah, that's what he thought,
But instead of a pat on the back, they're taking him to court.
You'd think they'd chase a loan shark, not a poor old Stinger Rea.
It's costin' him a fortune and his hair goin' grey.
We're sorry about the tyres, you've blown a fair few,
But we'll be back and fix things up, in a year or two.
Now the money they are spendin', on them there legal fees,
Should be fixing up the road for the community.
Maybe he did break the rules just a little bit,
But all of us who use that road, really don't give a a[degrees] damn.
You'd think they'd chase a loan shark, not a poor old Stinger Rea
He only thought he was helpin' out, when he graded 14ks.
No, you can't fill in big pot holes, it's against the council rules,
And corrugation should be rough, it's not meant to be smooth.
There's a moral to this story, just ask old Stinger Rea,
About the time he graded that cursed 14k.
Yeah, he'll tell you the story I'm sure he won't forget,
But the fightin' it ain't over yet for this old Vietnam Vet.
Yeah he's sure to go down fightin', this old Vietnam Vet.