

Shoalhaven Natural Resource & Floodplain Management Committee

Meeting Date: Thursday, 07 September, 2017
Location: Sussex Inlet Community Centre, Thompson St, Sussex Inlet
Time: 4.00pm

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Agenda

1. **Apologies**
2. **Confirmation of Minutes**
 - Shoalhaven Natural Resource & Floodplain Management Committee - 6 June 2017..... 1
3. **Declarations of Interest**
4. **Presentations**
 - SN17.12 Coralie Bell - Tourism Manager - Sustainable Tourism Model
 - SN17.13 Jessica Rippon - Communications Executive Manager - Integrated Strategic Plan
5. **Reports**
 - SN17.14 Crown Land Management Act 2016 9
 - SN17.15 Consideration of a possible additional membership for an Oyster Farmer/Primary Industry Producer 23
 - SN17.16 Update on preparation of the Scoping Study for Council's Coastal Management Plan 25
6. **General Business**

Membership

Clr Findley – Chairperson
All Councillors
General Manager or nominee

Community representatives:-

David McCorkell
Duncan Marshall
Ian Stewart
Dr Michael Brungs
Dirk Treloar
Annie Boutland
Helen Moody
David Reynolds
Kaye Milsom
Brett Stevenson
Chris Grounds
Mike Clear
Paul Beckett
Robyn Flack
Peter Hanson

Government Agency representatives:-

Jerrinja LALC
Ulladulla LALC
NPWS
SRCMA
OEH
RMS
DPI Fisheries
Local Lands Service
Crown Lands
NSW Office of Water
Jervis Bay Marine Park Authority
SES

Quorum – Three (3) provided that a minimum of one Councillor and two community representatives are present.

Objective

To foster sustainable management of Shoalhaven's natural resources including floodplains, coast and estuaries.

Role of Committee

1. Provide overall guidance for the management of natural resource management including floodplain management, estuary management and coastal zone management in accordance with Federal, State and Local Government Policy and Legislative instruments;
2. Advise Council on natural resource management including floodplain management, estuary management and coastal zone management matters;
3. Formulate agreed vision, goals, objectives, and targets sought from the Natural Resource Management Plans;
4. Facilitate the preparation of Natural Resources Management Plans;

5. Provides input into the identification of management options for Natural Resources Management Plans;
6. Facilitate broad community consultation;
7. Monitor State and Federal Government natural resource management direction and advises Council on appropriate response;
8. Monitor advances in knowledge and science of natural resource management issues (such as sea level rise and climate change) and integrate this knowledge in new Natural Resource Management Plans as well as in the review of existing Plans; and
9. Make recommendations for Council consideration.

MINUTES OF THE SHOALHAVEN NATURAL RESOURCE & FLOODPLAIN MANAGEMENT COMMITTEE

Meeting Date: Tuesday, 6 June 2017
Location: Seven Mile Room, Nowra Administrative Centre
Time: 4.10 pm

The following members were present:

Clr Amanda Findley - Chairperson
Clr Nina Cheyne
Clr John Levett
Clr Patricia White
Mr David McCorkell
Mr Duncan Marshall
Mr Ian Stewart
Dr Michael Brungs
Mr David Reynolds
Mr Brett Stevenson
Mr Chris Grounds
Mr Mike Clear
Mr Matt Carr
Mr Jason Carson
Mr John Murtagh
Mr John Bucinskas
Mr Jillian Reynolds
Ms Kay Lenton
Mr Bill McInnes
Ms Helen Moody
Mr Russ Pigg – General Manager – arrived 4.20pm

Others present

Mr Warwick Papworth - Acting Director Planning Environment and Development
Ms Kelie Clarke - Environmental Services Manager
Mr Alasdair Stratton – Acting Natural Resources and Floodplain Unit Manager
Mr Ray Massie – Coast and Estuaries Officer
Mr Ali Sevenler – Senior Floodplain Engineer
Mr Mir Abdus Subhan – Floodplain and Stormwater Quality Engineer
Ms Robyn Flack

Note: Ms Robyn Flack was asked to leave the meeting until the Committee had voted on SN17.1 Vacant Community Member Position.

Apologies / Leave of Absence

Apologies were received from Dirk Treloar, Annie Boutland, Kaye Milsom, Paul Beckett, Allan Lugg and David Zerafa

Confirmation of the Minutes

RESOLVED (Clr White / Mike Clear)

That the Minutes of the Shoalhaven Natural Resource & Floodplain Management Committee held on Tuesday 29 November 2016 be confirmed.

CARRIED

Declarations of Interest

Nil

REPORTS**SN17.1 Vacant Community Member Position****HPERM Ref:**
D17/168184

Ms Kelie Clarke advised that Ms Jessica Zealand had resigned from the Shoalhaven Natural Resources and Floodplain Management Committee.

Clr Findley advised that there were now two community membership positions to fill. The Committee agreed that both vacancies could be filled by Peter Hanson and Robyn Flack.

Ms Kelie Clarke also advised that Ms Jessica Zealand had suggested that her position be filled by another Oyster Farmer.

Recommendation

That

1. Mr Peter Hanson be appointed as a Community Member on the Shoalhaven Natural Resources and Floodplain Management Committee, filling the current vacancy on the Committee.
2. Mr Hanson be notified of his appointment and be invited to all future meetings.
3. That the ten (10) other persons who applied for the position be thanked for their applications and interest in the Committee.

Recommendation (Clr White / Mike Clear)

That

1. Mr Peter Hanson and Ms Robyn Flack be appointed as a Community Members on the Shoalhaven Natural Resources and Floodplain Management Committee, filling the current vacancies on the Committee.
2. Mr Hanson and Ms Robyn Flack be notified of their appointment and be invited to all future meetings.
3. That the ten (10) other persons who applied for the position be thanked for their applications and interest in the Committee.

4. A further report be submitted to the SNRFMC to consider another Oyster Farmer / Primary Industry Producer representative.

CARRIED

SN17.2 Update on the status of the Broughton Creek and Shoalhaven River water quality buoys**HPERM Ref:
D17/79973**

Ms Kelie Clarke provided an update regarding the water quality buoys that are being purchased from Parramatta Council for \$5,000 each. It was noted that these water quality buoys are an addition to those that were previously gifted.

Recommendation (Item to be determined under delegated authority)

1. That an update of the functions of remote sensor water quality buoys installed in the Shoalhaven River and Broughton Creek be received for information.
2. That Council consider allocating to Environmental Services budget for the ongoing maintenance and repairs of the two existing water quality buoys located at Shoalhaven Heads and Broughton Creek to allow the program to continue.

RESOLVED (By consent)

1. That an update of the functions of remote sensor water quality buoys installed in the Shoalhaven River and Broughton Creek be received for information.
2. That Council consider allocating to Environmental Services budget for the ongoing maintenance and repairs of the two existing water quality buoys located at Shoalhaven Heads and Broughton Creek to allow the program to continue.

CARRIED

Note: Allocation of funding was considered at the Extra Ordinary meeting of Council, Tuesday 13 June 2017 see CL17.154 - Chapter 5 Integrated Strategic Plan-Budget and Capital Works (MIN17.529).

SN17.3 Update on the certification process for the draft CZMP and update on the development of the new Coastal Management Plan**HPERM Ref:
D17/159762**

Note: Russ Pigg arrived, the time being 4.20pm.

Ms Kelie Clarke provided an overview of the report.

Recommendation

The Committee recommend to Council that:

1. Allocate \$40,000 from the 2018/19 coast and estuary budget, as its 50% contribution, towards the development of the Coastal Management Plan subject to the Coastal Management Act being enacted; and
2. Allocate \$30,000 from the 2018/19 coast and estuary budget to update three (3) estuary health report cards to inform the development of the Coastal Management Program.

Recommendation (By consent)

That The Committee recommend to Council that:

1. Allocate \$40,000 from the 2018/19 coast and estuary budget, as its 50% contribution, towards the development of the Coastal Management Plan subject to the Coastal Management Act

being enacted; and

2. Allocate \$30,000 from the 2018/19 coast and estuary budget to update three (3) estuary health report cards to inform the development of the Coastal Management Program.

CARRIED

SN17.4 Update on the Lower Shoalhaven River and St Georges Basin Flood Risk Management Study and Plan

**HPERM Ref:
D17/164327**

Ms Kelie Clarke provided an overview of the report.

Recommendation (Item to be determined under delegated authority)

That the Shoalhaven Natural Resources and Floodplain Management Committee receive the report for information regarding the status update of the review of the Flood Risk Management Study and Plan for the Lower Shoalhaven River and St Georges Basin.

RESOLVED (By consent)

That the Shoalhaven Natural Resources and Floodplain Management Committee receive the report for information regarding the status update of the review of the Flood Risk Management Study and Plan for the Lower Shoalhaven River and St Georges Basin.

CARRIED

SN17.5 Shoalhaven River Levee Repair Works Update

**HPERM Ref:
D17/164448**

Council invited tenders on 21 March 2017 to select a suitable contractor to conduct the restoration of Shoalhaven River levee damages that occurred during August 2015 and June 2016 floods including the high priority levee audit defects that were identified prior to August 2015 flood. The tender closing date was 18th April 2017.

The tender evaluation is underway and Council will receive a tender evaluation report from the NSW Public Works. The tender evaluation report will be submitted directly to the Ordinary Council Meeting pursuant to Clause 3 of Council's "Acceptance of Tenders – Reports to Council" Policy. It is anticipated that Council will be in a position to engage a contractor during July 2017.

Recommendation (Item to be determined under delegated authority)

That Committee receive the report on the Shoalhaven River Flood Levee Works Update for information.

RESOLVED (By consent)

That Committee receive the report on the Shoalhaven River Flood Levee Works Update for information.

CARRIED

SN17.6 Shoalhaven dredging monitoring update and Rescuing Our Waterways Program Funding update 2017

HPERM Ref: D17/165042

Note: This matter was dealt with in conjunction with Addendum Report - SN17.9 Shoalhaven Dredging.

Chris Grounds provided an overview of his report and the concerns outlined. Mr Chris Grounds also advised that lessons require documenting.

The Committee discussed the following points:

- There is no cost benefit analysis provided in the report in relation to the cost compared to the actual benefit of the dredging.
- The economic sustainability and false sense of safety after dredging in the community
- Council has not dredged in the last 25 years
- The cost of dredging is a reoccurring cost.
- The erosion restoration works on the foreshore near The Haven, and beach nourishment at Mollymook, were good outcomes of the programs as sand was used to undertake these works.
- The marine rescue at Sussex Inlet sometimes cannot get over the bar due to the tides if leaving from Sussex, therefore must leave from Ulladulla. The Committee discussed the time lag this causes.

The General Manager, Mr Russ Pigg advised the report states in relation to Sussex Inlet and Lake Conjola almost 50% of the sand is back in the channel. Dredging is of a temporary nature but at times is required to be done for means such as navigation purposes and funding is only available for navigation purposes.

Lessons were learnt from 25 years ago including:

- In relation to the flow study, locations moved with sand
- There were positive outcomes including Mollymook Beach Nourishment
- It was not a viable option to sell the sand as this was not support by Crown Land, and was not found to be viable for Commercial Operators due to the environmental impacts.

Clr White advised that Council receives expert consultant reports and staff reports. These can drive Council's decisions. Clr White would consider dredging again. Clr White agreed with some of the points made by Mr Chris Grounds and also added the danger at Lake Conjola where children were swimming in the Lake with motorised boats.

Please note if there is any other feedback to be included please email Ms Kelie Clarke.

It was noted that the feedback received should be weighted accordingly, quantified and be of a scientific basis.

Ms Kelie Clarke advised she would need the Shoalhaven Natural Resources and Floodplain Management Committee's assistance to engage with community and encourage further feedback.

Recommendation

The Committee receive the dredging monitoring report for Lake Conjola and Sussex Inlet and the Rescuing our Waterways Program funding program update for information and consideration.

RESOLVED (By consent)

That

1. The Committee receive the dredging monitoring report for Lake Conjola and Sussex Inlet and the Rescuing our Waterways Program funding program update for information and consideration.
2. A further report be provided to the Committee collating positive and negative feedback about the dredging program from the communities where the dredging took place.
3. Accept the feedback in SN17.9 and the email from Dirk Treloar regarding the Lake Conjola

experience and they be included in the report in 2. above as “community feedback”

4. All members of the Committee be invited to provide feedback

CARRIED

Note: Robyn Flack will provide a presentation to the next Shoalhaven Natural Resources and Floodplain Management Committee meeting representing the Shoalhaven Heads Estuary Taskforce.

SN17.9 Shoalhaven Dredging

**HPERM Ref:
D17/180864**

Recommendation (Item to be determined under delegated authority)

That this item be dealt with in conjunction with SN17.6 Shoalhaven dredging monitoring update and Rescuing Our Waterways Program Funding update 2017.

RESOLVED (Chris Grounds / Mike Clear)

That this item be dealt with in conjunction with SN17.6 Shoalhaven dredging monitoring update and Rescuing Our Waterways Program Funding update 2017.

CARRIED

**SN17.7 2016 East Coast Low Storm Damage Remediation review
May 2017**

**HPERM Ref:
D17/165314**

Note: Ms Kelie Clarke thanked Mr Ray Massie for his extensive work on this project. Council has now created a reserve fund therefore if there is an event, funding can be allocated from this reserve fund. The reserve fund can also be accessed to undertake coastal protection works at priority locations.

Recommendation

The Committee recommends that Council receive the report for information and make the following recommendations, subject to funding being allocated in the 2017/18 Budget to progress the coastal erosion remediation projects:

1. Council proceed with detailed design, Review of Environmental Factors, Aboriginal Heritage assessment for coastal erosion management works at Currarong including a trial geotextile sand groyne and sand nourishment and protection of the Beecroft Avenue precinct subject to undertaking the necessary consultation and obtaining the necessary permits and approvals. That further community consultation be undertaken as part of this process.
2. Council seek advice from NSW Office of Environment & Heritage about the potential development of an emergency action plan or interim management plan for the South Mollymook coastal protection structure as an interim measure until a long-term management strategy is developed as a result of the cost benefit analysis and impact assessment.

Recommendation (By consent)

That Committee recommends that Council receive the report for information and make the following recommendations, subject to funding being allocated in the 2017/18 Budget to progress the coastal erosion remediation projects:

1. Council proceed with detailed design, Review of Environmental Factors, Aboriginal Heritage assessment for coastal erosion management works at Currarong including a trial geotextile sand groyne and sand nourishment and protection of the Beecroft Avenue precinct subject to undertaking the necessary consultation and obtaining the necessary permits and approvals. That further community consultation be undertaken as part of this process.

2. Council seek advice from NSW Office of Environment & Heritage about the potential development of an emergency action plan or interim management plan for the South Mollymook coastal protection structure as an interim measure until a long-term management strategy is developed as a result of the cost benefit analysis and impact assessment.

CARRIED

SN17.8 Environmental Strategy and Planning**HPERM Ref:
D17/114940**

Ian Stewart advised that he believes there needs to be a review undertaken of what is being done and there is a need for a strategy. A strategy complete with principles that are clear to all, will help shape future decisions.

Staff advised that this is being done as part of the Community Strategic Plan. It is part of a four year plan. It attempts to balance the communities' wants and needs and protecting the environment. This feeds into this process, we are not there yet but on the way.

Clr White advised she voted against due to legislation reasons.

Recommendation

That Council review and develop its current approach to align vision, values, principles, priorities, guidelines, strategies and plans for strategically managing the natural environment.

Recommendation (By consent)

That Council review and develop its current approach to align vision, values, principles, priorities, guidelines, strategies and plans for strategically managing the natural environment.

Note: Clr White voted against the Motion

CARRIED

ADDENDUM REPORTS**SN17.9 SHOALHAVEN DREDGING****HPERM REF:
D17/180864**

Item dealt with earlier in the meeting.

ADDITIONAL ITEMS**SN17.10 Crookhaven Heads - Erosion Behind the Training Wall**

The Oyster Farmers recently met with Ms Kelie Clarke (Environmental Services Manager), and previously with Mr Ben Stewart (Director Assets and Works), Mr Russ Pigg (General Manager), Mr Jason Carson, Mr Allan Lugg and a member of Riverwatch. They raised concern over the erosion behind training wall at Crookhaven Heads. This is not a Council managed asset. The erosion may impact the integrity of the training wall.

Recommendation (By consent)

That Council write to Crown Land and request an investigation be undertaken in relation to the erosion behind the training wall and what restoration work is required.

CARRIED

SN17.11 Thank you to Tim Fletcher, Isabelle Ghetti and Ailsa Schofield

The Committee expressed its thanks to Tim Fletcher previous Director Planning Environment and Development Group, Ms Isabelle Ghetti previous Natural Resources and Floodplain Unit Manager and Ms Ailsa Schofield previous Senior Floodplain Engineer; for all their work with the Committee and efforts.

RESOLVED (By consent)

That the Committee write expressing its thanks and appreciation to:

1. Tim Fletcher previous Director Planning Environment and Development Group
2. Ms Isabelle Ghetti previous Natural Resources and Floodplain Unit Manager
3. Ms Ailsa Schofield previous Senior Floodplain Engineer

CARRIED

There being no further business, the meeting concluded, the time being 5.48pm.

Clr Amanda Findley
CHAIRPERSON

SN17.14 Crown Land Management Act 2016

HPERM Ref: D17/240505

Group: Assets & Works Group

Section: Business & Property

Attachments: 1. Impacts of Crown Land Management Act 2016 for Local Government [↓](#)
2. Fact Sheet - Crown Land for the Future - Fit for Purpose Legislation for Crown Land and Roads [↓](#)

Purpose / Summary

At the Strategy & Assets Committee meeting 13 June 2017 Council resolved to refer this report to the Shoalhaven Natural Resources & Floodplain Management Committee for information (MIN17.504).

To advise of the current status of the Crown Land Management Act 2016.

Recommendation (Item to be determined under delegated authority)

That the Shoalhaven Natural Resource and Floodplain Management Committee receive the report for information.

Options

1. Resolve as recommended.

Implications: The Crown Land Management Act 2016 came about as a result of the first comprehensive review of Crown lands legislation in twenty four (24) years and this report provides Council with an overview of the legislation and aspects of it which are of importance to local government.

2. Propose an alternative and provide further direction to staff.

Background

The review of Crown Lands and the management of the Crown estate has been undertaken as a result of the Crown Lands Legislation White Paper which was published in 2014 and culminated in the passing into legislation of the Crown Lands Management Act 2016 on 9 November 2016 (assented to 14 November 2016).

The aim of the review was "...improving the management of Crown land and increasing the benefits and returns from Crown land to the community".

The principal reforms of the 2016 Act are:

- Dedicated or reserved Crown land will no longer be vested in reserve trusts;
- The Minister will, instead, be able to appoint Crown land managers for dedicated or reserved Crown land;

- The Minister will be able to create statutory land managers for appointment as Crown land managers (with board members of reserve trusts being automatically appointed by the proposed Bill to statutory land managers for former reserve trust lands);
- Better governance structures and conduct requirements will be introduced for Crown land managers and their boards (where applicable);
- The Minister will be able to issue Crown land management rules for the management of dedicated or reserved Crown land;
- The Minister will be required to approve community engagement strategies for certain dealings or other action affecting Crown land;
- Terms and conditions of certain holdings will be permitted to deal with particular matters (eg determination and redetermination of rent);
- Rent determinations and redeterminations in relation to Crown land holdings will be rationalised and simplified;
- The holder of a holding or permit will be required to pay rent due to the Crown before the holder can effect a transfer of the holding or permit;
- A local Council appointed as a Crown land manager of dedicated or reserved Crown land will be able to manage the land in accordance with the provisions of the *Local Government Act 1993* applicable to community land;
- The Minister will be able to transfer Crown land to local councils if the land is of local (and not State) significance;
- Special provisions will be introduced to protect native title rights and interests;
- The current land assessment programme will be discontinued;
- More flexible arrangements will be introduced for the sale, use and leasing of Crown land in the Western Division;
- Modern and robust provisions will be introduced for investigating compliance with, and enforcing, the proposed Bill and holdings granted under it; and
- The Minister will be required to approve 10 year State strategic plans for Crown land.

The Act delivers on the promise of reforms identified through the comprehensive review of land management (the 2014 Crown Lands White Paper) by providing for:

a) ***Stronger and more effective community engagement in decisions about Crown land***

Comment: The government has prepared a position paper which sets out its expectations for a community engagement strategy. Shoalhaven City Council already has a Community Engagement Strategy which needs to be assessed against the government's model to ensure consistency.

In addition to the requirement that Councils follow community engagement provisions under the *Local Government Act 1993*, the Minister will be able to require Crown land managers to establish community advisory groups. Shoalhaven City Council has established a commitment to community consultation through the formation of community consultative bodies which are based on defined geographic areas.

b) ***Continuing community involvement in the management of Crown land reserves***

Comment: It appears that there is an intent to further encourage community involvement in Crown land management. At the same time, the legislation takes a risk based approach to the level of Ministerial oversight by providing incentives for managers of Crown reserves to develop enhanced capacity and governance abilities.

Notwithstanding the intent, there are some anomalies which have been identified eg under the *Local Government Act 1993*, a lease can be granted for 5 years or less without approval from the Minister. Under the *Crown Land Management Act 2016*, a lease for 10 years or less can be granted without the Minister's consent.

c) ***Local management for the benefit of local communities***

Comment: Shoalhaven City Council strongly supports the principle of managing local lands at a local level and acknowledges the finding in the Crown Lands review that "...the NSW Government added marginal value by continuing to own locally significant Crown land."

The supporting documentation on the DPI Lands website suggests that the 2015 Local Land Pilot was conducted to explore the concept that local land should be transferred to local councils.

The pilot tested the draft criteria for identifying local land as recommended by the review, negotiated hypothetical outcomes and identified implementation issues and it has been publically acknowledged that the "...pilot found that there was support for the implementation of the local land transfer concept."

Whilst there is no reason to doubt this assertion, it will be reassuring to understand a detail account of the pilot and the conclusions arising from it.

Questions about resourcing continue to dominate discussion about this reform but unfortunately there is no information which has been made available to inform a debate about the merits of this concept.

Employees of the test pilot Councils were required to sign confidentiality agreements.

It is noted that implementation of the framework for the transfer of local land to local councils commenced in the pilot by local government areas in 2017 with further rollout to other areas across the state to be negotiated.

It is also noted that there will be no forced transfers and that any Crown land identified as local land will generally be transferred to local councils as "community land".

d) ***Local interests to be managed locally***

Comment: The underlying principle of the legislation is to manage Crown land in such a way that it continues to provide significant benefits to the people of NSW. In some cases these benefits are realised at a local level and in other cases the benefits are broader.

A key objective of the review was to identify who is best placed to manage Crown land and identify and protect Crown land that is important to the state and local communities. In 2015 the Local Land Pilot was conducted to explore the concept that

local land should be transferred to local councils to enable better decisions about the land to be made by local communities.

The NSW Government will retain land that is of state significance i.e. land that:

- Currently provides, or is required for, planned core government services and infrastructure;
- Is part of a state or regionally significant system or network;
- Is of high environmental value at a state or regional scale and is required for addition to the conservation network, including land identified for future reservation;
- Is iconic or contains an iconic asset;
- Has or contains an item of state or heritage importance;
- Includes beaches, coasts, estuaries and adjoining, contiguous foreshore lands; and
- Produces or has the identified and earmarked potential to produce significant income for the state.

This definition of state significant land is wide ranging and suggests that there is a very real possibility that land of extreme importance to Council may be taken back by the State.

The government will involve Aboriginal Land Councils in voluntary negotiations using the new Aboriginal Land Agreement (ALA) provisions of the Aboriginal Land Rights Act 1983 to encourage the settlement of multiple land claims, enable opportunities for sustainable social, cultural and economic benefits for Aboriginal people and greater certainty for all parties over Crown land. Council is actively working with a number of the Land Councils in our area and the timely resolution of land claims is considered to be in everyone's interests. As such it hoped that this process may assist in this regard, however the NSW Government need to ensure that the resolution of land claims is appropriately resourced.

Any Crown land identified as local land will generally be transferred to local councils as "community land".

e) ***Protecting our environment, social and cultural heritage***

Comment: The intent of the legislation is to explicitly require environmental, social, cultural heritage and economic considerations to be taken into account in decision making about Crown land. This is to be achieved through the community consultation process and/or by Ministerial direction.

To deliver a consistent whole-of-state approach, land use on Crown land will be governed by a combination of the environmental and planning framework and the reserve purpose including but not limited to Local Environmental Plans, regional plans, environmental and other land management legislation.

The proposed legislation is silent on the issue of climate change and sea level rise although it is acknowledged that references to "environmental considerations" might be expected to cover these issues.

Crown land that is retained by the Crown should be adequately resourced to ensure the appropriate and timely management of weeds, pests, feral animals, anti-social behaviour and degraded access to mitigate the adverse impacts on adjacent lands and communities.

f) ***Meaningful involvement for Aboriginal communities in Crown land***

Comment: The existing Crown land legislation has supported involvement of Aboriginal communities to use and co-manage Crown land. However, the legislation has not referenced Aboriginal involvement or acknowledged their traditional connection to the land and their rights under land claim and native title legislation.

The positive objectives of the legislation include consideration of Aboriginal land rights and continuing to involve Aboriginal groups in discussions about the transfer of local lands to councils.

The legislation requires each local council in NSW to have a native title manager to oversee and approve specific dealings and actions that may affect native title. The Minister for Lands will be able to determine the relevant training and/or qualification for the native title manager to ensure that local councils managing Crown land under the LGA comply with native title legislation.

Native Title is not referred to in the current Crown lands legislation which commenced prior to the commencement of the commonwealth Native Title Act 1993. The new legislation references the Native Title Act 1993 and acknowledges the spiritual, social, cultural and economic importance of land to the Aboriginal people of NSW.

g) ***Effectively managing Crown land with native title rights and interests***

Comment: See (f)

h) ***A fairer and more consistent approach to Crown land tenures***

Comment: Whilst it is unclear, it does appear that tenures will continue to be managed by the NSW Government and will not impact on Shoalhaven City Council.

i) ***Facilitating a sustainable and prosperous Western Division***

Comment: Not applicable to Shoalhaven City Council.

j) ***Greater powers to stop illegal activity on Crown land.***

Comment: The Crown Lands review found that there was broad support for a stronger compliance and enforcement regime to help protect Crown land against illegal activity that threatens environmental values and/or public use and enjoyment of Crown lands.

The legislation contains updated and expanded enforcement and compliance provisions for Crown land ensuring that Crown land is appropriately used and managed.

CURRENT ADVICE FROM CROWN LAND

The most recent correspondence (refer Attachment 1) from Department of Industry – Lands explains the various aspects of the new legislation. Whilst it is acknowledged that most

issues relating to the new legislation are covered in this correspondence, the key omission is any reference to what is to be defined as “State” lands, or alternatively land of primarily local significance that could be vested in Council and it is intended that further clarification be sought on this issue as a matter of critical importance to Council.

The following commentary relates to issues identified in the most recent advice:

- Commencement of the Act in early 2018 will provide time to “...prepare the required policies and systems to support the implementation of the Act” is a concern. Presumably the experiences of the Councils involved in the pilot study will be used to inform the composition of policies, regulations and systems but my understanding is that the details of the pilot study are generally not available (participants were required to sign confidentiality agreements).
- “The Department has initially written to all local Councils about the key impacts of the new legislation” –what has been sent out is of little value.
- Under the new legislation, Councils will move from being “Crown reserve trust manager” to “Crown land manager”. Councils will be required to manage Crown reserves as if they are community land and will have to prepare plans of management for each. Concessions offered include the phasing in over three years of the requirement to have plans of management prepared and the offer of some funding.
- The Minister for Lands is to retain a level of oversight:
 - Consent requirements for the categorisation of Crown reserves transferred to Council as community land;
 - Appointment instruments that may apply certain restrictions or requirements for reserve management; and
 - Publication of “ministerial” rules that may apply to some or all Crown land managers (a recent example of this is the rules written for management of surf clubs on Crown land – onerous, restrictive and difficult to enforce).
- “Local lands” may be vested in Councils and “State” lands will be retained by the State. There are many concerns including but not limited to:
 - Definitions?
 - Dispute resolution?
 - Is there a default position? Status quo?
 - It is envisaged that negotiations will be three cornered between State, Councils and local Aboriginal Land Councils and they are to be referred to as the Land Negotiation Programmes.
 - The first of these negotiations will happen during 2017 and will involve local land pilot participants – Tweed, Tamworth, Federation and Northern Beaches LGAs.
 - EOI process to be employed to determine subsequent participants 2017 – 2020.
- Any transfer of land will be entirely voluntary and by agreement – the interesting time will come when there is no agreement and conflict resolution becomes important.
- Under the legislation, Councils will be required to employ/engage a qualified native title manager “...to ensure compliance with obligations under native title legislation.” Council staff had been under the impression that this person was to be the link between Councils and the aboriginal land claims unit and more broadly, the aboriginal community and would assist Councils and the community in dealing with land claims. It is noted that Lands has offered to pay for the training of a suitable candidate for the position. Given the explanation of this person’s role, a reasonable argument can be put

forward in support of Shoalhaven Council appointing a native title manager and contracting that person to Wollongong, Shellharbour and Kiama to assist those Councils in dealing with native title matters.

- There is still no conversation about Crown roads?
- What additional resources does Council have to commit to the management of the Crown estate because of this legislation?

There is no question that Council has to deal with the new legislation but surely the major concern has to be with a lack of detail in the information intended to inform Councils on a way forward. This has been a major concern all the way through the entire process of legislative review.

NOTE: 7% of the Shoalhaven LGA or 33,000ha is Crown land and that there are about 600 parcels of Crown land and about 800km of Crown roads within the LGA.

SHOALHAVEN CITY COUNCIL - CURRENT POSITION

Shoalhaven City Council has been, and continues to be, supportive of the recommendations in the 2014 Crown Lands White Paper and the legislative reforms in the Crown Lands Management Act 2016.

However, Council is concerned that apart from (a) the information of a general nature contained in the explanatory notes, (b) the most recent correspondence from the Department and (c) information on the Department of Industry, Lands website, there is very little detail available which can be taken into account when considering the effect on Council of the legislation especially in terms of gaining an understanding of all/or any cost and resourcing implications.

It is not anticipated that Councils generally will have a clear understanding around these issues until the pilot study has been completed and the regulations have been written and formally adopted by government.

CROWN LAND LEGISLATION AMENDMENT ACT 2017

On 10 May 2017 the NSW Parliament passed the *Crown Land Legislation Amendment Act 2017*.

The Act makes changes required to certain legislation that deals with Crown land as a consequence of the *Crown Land Management Act 2016*. The changes do not alter the intent of the *Crown Land Management Act* but will ensure all legislation is consistent and correctly references the new Crown land legislation (refer Attachment 2).

This Act completes the consolidation process that began with the *Crown Land Management Act* by incorporating relevant provisions of the *Public Reserves Management Fund Act 1987* into the *Crown Land Management Act*. Financial support for improving Crown reserves across NSW will continue under the newly named and more flexible “Crown Reserves Improvement Fund”.

The Act also updates the provisions for Crown roads in the *Roads Act 1993* in accordance with the recommendations of the Crown Lands Management Review and subsequent community consultation. Key changes include simplifying the process for closing and selling

Crown roads and more flexible payment options for land owners wanting to buy Crown roads on their properties.

The Act removes the requirement for the Minister for Lands to approve the closure of council roads. This is a positive outcome for local council, as it will remove inefficiencies and double handling. Stringent safeguards are in place to ensure a closure of a council road is appropriate and does not deny access to a property, including thorough consultation and notification requirements.”

Michael Harben

From: Michael Harben
Sent: Friday, 10 February 2017 5:44 PM
To: Records
Cc: Russ Pigg; Benjamin Stewart; Gordon Clark
Subject: Fwd: Crown Lands Review

From: Jeremy Corke <jeremy.corke@crowland.nsw.gov.au>
Date: 10 February 2017 at 4:25:01 pm AEDT
To: Michael Harben <Michael.Harben@shoalhaven.nsw.gov.au>
Cc: Kate Iffland <kate.iffland@industry.nsw.gov.au>, Marwan El-Chamy <marwan.el-chamy@dpi.nsw.gov.au>, Grant Merinuk <grant.merinuk@crowland.nsw.gov.au>, Mark Edwards <mark.edwards@crowland.nsw.gov.au>, Peter Ragen <peter.ragen@crowland.nsw.gov.au>, Paul Layt <paul.layt@crowland.nsw.gov.au>, Peter Richmond <peter.richmond@crowland.nsw.gov.au>
Subject: Re: Crown Lands Review

Hi Mike

RE your request and further to my last email, please see below some initial information re impacts of the new Act for local government, which I hope you may find useful.

On 9 November 2016 the NSW Parliament passed the Crown Land Management Bill 2016 which will deliver modern, streamlined and transparent management of the State's vast Crown lands.

It is anticipated that the majority of the new legislation will commence in early 2018. This will enable sufficient time to inform and engage with stakeholders and customers with an interest in Crown land, as well as prepare the required policies and systems to support the implementation of the Act. In the meantime, all current legislation remains in place.

The Department has initially written to all local councils about the key impacts of the new legislation on local government and the Department will continue to provide information and engage with key stakeholders including councils as it moves towards the commencement of the Act.

It is important to note that until the new Act commences, Crown land and all Crown reserves will continue to be administered in accordance with the existing legislation. There are no immediate changes for existing reserve trusts, lessees, licence holders or others with an interest in Crown land.

Key Impacts on Local Government

- Crown Reserve Management

The new Act continues to recognise the important role local councils play in managing Crown reserves.

Councils will continue to manage all the reserves that they are currently managing, although the terminology will change as the 'trust' layer is removed under the Act. This means that any council currently appointed as 'Crown reserve trust manager' will automatically be appointed as 'Crown land manager' for the reserve under the new Act.

Fundamentally, the Act enables local councils to manage Crown reserves under the provisions of the *Local Government Act 1993* (LGA) for public land. Councils will not generally be required to seek the Minister for Lands' approval for dealings. Instead, in most cases councils will manage these reserves as if they were community land. There will be the ability to manage land as operational land in appropriate circumstances subject to the Minister's consent. In accordance with the LGA requirements, councils will be required to prepare Plans of Management for all Crown reserves managed as community land. This requirement will be phased in over a period of three years and some funding will be available for Councils to assist with the associated costs.

These initiatives will bring council management of Crown land in line with that of 'public land' under the LGA and will reduce the red tape, duplication and administrative burden on councils. The Lands Minister will retain a level of oversight through consent requirements for categorisation of community land, appointment instruments that may apply certain restrictions or requirements for reserve management, and the publication of Ministerial 'rules' that may apply to some or all Crown land managers.

Councils will continue to be eligible to apply for grants from the Public Reserve Management Fund Program to support their management and up-keep of Crown reserves.

- Vesting of Crown land in councils

Delivering on the Crown land management review recommendation about transferring land to the most appropriate owner and manager, the new Act provides that land of primarily local significance, as guided by local land criteria, may be vested in local councils.

The guideline criteria are:

- land that provides, or has the demonstrated potential to provide, consistent with local planning instruments, a public good predominantly for people in the local government area or in adjacent local government areas
- land that is used consistent with the functions of local government, or that has identified potential to be used for activities consistent with local government functions
- land that is managed, or has the potential to be managed, as a community asset by a local government or some other body.

A fact sheet regarding State and Local Land is available on the [Lands website](#)

Any transfer will be entirely voluntary and by agreement – the Act explicitly requires council consent to any transfer of land. Any land subject to an undetermined Aboriginal land claim will also require the agreement of the local Aboriginal Land Council before any vesting can occur.

Land will generally be transferred as community land and once land is vested in a council it becomes public land under council ownership. Any proceeds from the leasing or licencing of the public land are then retained by council for use in accordance with the *Local Government Act 1993*.

Councils will have the opportunity to consider the values of the land, including any resourcing implications, before agreeing to any voluntary land transfers.

In practice, vesting will happen in a staged manner, through three way negotiations between the State, councils and Local Aboriginal Land Councils that cover whole LGAs. We are calling this the Land Negotiation Program.

The negotiations will commence this year in the council areas that participated in the Local Land Pilot - Tweed, Tamworth, Federation, Northern Beaches LGAs. It is intended that further negotiations will occur in 2017-2020, however the areas where negotiations will occur are not yet finalised. An EOI process will be held to determine which councils and LALCs are next involved in the Program.

- Native Title Compliance

The Act includes provisions to facilitate compliance by councils and other Crown land managers with the *Native Title Act 1993* (Cth), including a requirement for the engagement of qualified native title managers to ensure compliance with obligations under native title legislation. The NSW Government will pay for initial training for native title managers for all councils.

More Information

The Department will continue to provide information and engage with key stakeholders including councils as it moves towards the commencement of the Act.

Further information about the Act, including fact sheets, is provided on the Crown Lands website: http://www.crownland.nsw.gov.au/crown_lands/comprehensive_review_of_nsw_crown_land_management

Also, please note that next Friday 16th February, DoI Lands Senior Policy Officer Kate Iffland and I will be attending a session (between 11.30am and 12.30pm) of the General Managers Illawarra Pilot Joint Organisation (GMs of Shoalhaven, Wollongong, Shellharbour and Kiama), which I understand will be held in Kiama. Kate will

be giving a presentation to the group re the new Act and implications for Local Government and it is also an opportunity for me to meet the GMs and for us to get a better idea of the thoughts and issues of Councils.

Implementation of the new Act is a huge undertaking and we are very keen to keep Councils informed and to work together to get the best outcomes for all concerned. I hope this information is useful. Feel free to contact me any time to discuss further.

Regards

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Department
of Industry
Lands

COMPREHENSIVE REVIEW OF NSW CROWN LAND MANAGEMENT

Crown land for the future—fit for purpose legislation for Crown land and roads

MAY 2017

To deliver modern, streamlined and transparent management of the state's vast Crown land the NSW Parliament has passed the Crown Land Management Act 2016 and the Crown Land Legislation Amendment Act 2017. This implements the reforms identified in the Crown Land Management Review. It is anticipated the majority of the legislative changes will commence in early 2018. This fact sheet describes some of the issues found during the review and how the legislation addresses them.

The second and final step in the Crown land legislation reform process

Management of the state's vast Crown land estate has been an important responsibility of the NSW Government since the earliest days of the colony. Across NSW, there are 580,000 individual Crown land parcels, covering some 33.5 million hectares.

It became clear several years ago that there needed to be a substantial rethink of the way the government oversaw the management of Crown land. For this reason, the NSW Government in 2012 initiated a comprehensive review of Crown land management—the first such review in 25 years. The review included extensive consultation with the community and key stakeholders over a number of years.

The *Crown Land Management Act 2016* (CLMA) was a key outcome of the review process—new and comprehensive Crown land legislation, consolidating and updating six different pieces of legislation, some of which date back to the late 19th century.

When the Act passed through Parliament in November 2016, the NSW Government made it clear that it was the first step in a two-stage process to reform the legislation governing Crown land. The second stage is now complete, with the passing of the *Crown Land Legislation Amendment Act 2017*. For the first time in more than a century NSW now has a consolidated piece of legislation to manage our vast Crown land estate.

The Crown Land Legislation Amendment Act 2017

- The *Crown Land Legislation Amendment Act 2017* (the Act) was passed by NSW Parliament on 10 May 2017.
- The Act completes the consolidation process initiated by the CLMA by incorporating the provisions of the *Public Reserves Management Fund Act 1987* (the PRMF Act), and allow its repeal.
- Funding for Crown Land managers to improve Crown reserves across the state will continue through a new, more appropriate Crown Reserves Improvement Fund. Grants and loans to Crown reserves across the state are now even more flexible, providing grants and loans for the wide range of activities undertaken by reserve managers to improve and develop their land.
- The Act makes flow-on changes to all other acts that are a necessary outcome of amending the Crown land legislation. This will ensure that all legislation is consistent and correctly references the new Crown land legislation.
- The Act does not change the *Aboriginal Land Rights Act 1983* or the application of the *Commonwealth Native Title Act 1993* to state laws.



Crown land for the future— fit for purpose legislation for Crown land and roads

- The Act does not fundamentally change the CLMA or any other legislation, with the exception of the repeal of the PRMF Act.
- It The Act does not affect the existing arrangements for reserve managers or Crown reserves that are primarily governed under other acts (such as cemeteries on Crown land, Luna Park and the Sydney Cricket Ground), but will streamline and update them in line with the CLMA.

A more efficient approach to Crown roads

Crown roads are generally unconstructed and unformed roads. They represent land that was historically set aside in anticipations of the state's future road needs. Crown roads provide lawful access to many privately owned and leasehold lands, where little or no subdivision has occurred since the early nineteenth century. They are part of the state's public road network.

Crown roads are regulated under the *Roads Act 1993* and associated regulations. This means the framework governing Crown roads was not changed by the Act. As recognised in the Crown Lands Management Review, the time has come to review and modernise the framework.

In addition to overseeing Crown roads, the Minister for Lands and Forestry is also responsible for the opening and closing of most roads, even where council is the relevant authority for the road. This has created inefficiencies that have been problematic for local councils.

How the Act deals with this issue

- Crown roads will remain the responsibility of the Minister for Lands and Forestry.
- Local councils will be given the power to close those public roads for which they are the roads authority in their local area, without requiring the Minister for Land and Forestry's approval. This will reduce red tape and double handling by government agencies. Stringent safeguards are included in the Act to ensure a closure is appropriate and does not deny access to a property.
- The process for selling Crown roads under the *Roads Act 1993* has been simplified. This could speed up the time taken to process road closure applications and allow for more strategic Crown road closures.
- Where a Crown road is not accessible to the general public, for example if it only provides access and is of benefit to a single private property, the Minister will be able to direct the users of the road to repair and maintain the road, or pay the NSW Department of Industry's costs to do this. This helps prioritise public funds for roads that benefit the general public.
- More details can be found in the *A more efficient approach to Crown roads* fact sheet available on the Lands website (crownland.nsw.gov.au).

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SN17.15 Consideration of a possible additional membership for an Oyster Farmer/Primary Industry Producer

HPERM Ref: D17/216648

Group: Planning Environment & Development Group
Section: Environmental Services

Purpose / Summary

The Shoalhaven Natural Resources and Floodplain Management Committee recommended to Council that a further report be submitted to the Shoalhaven Natural Resources and Floodplain Management Committee to consider another Oyster Farmer / Primary Industry Producer Representative. This was resolved at the Council Ordinary Meeting, Tuesday 27 June 2017.

Recommendation

That the Committee adopt the report for information and not recommend to Council an increase in membership.

Options

1. Adopt the recommendation.

Implications: This would support Council's previous resolution that Committee members demonstrate a broad interest in natural resource management.

2. The Committee consider an alternative recommendation.

Implications: Unknown.

Background

At its last meeting, the Committee recommended to Council that a further report be submitted to consider increasing the Committee membership to allow for Oyster Farmer / Primary Industry Producer representation. This was resolved at the Council Ordinary Meeting, Tuesday 27 June 2017.

Council previously resolved to combine the three (3) Natural Resources & Floodplain Committees into one Committee and that members of the Committee should demonstrate a 'broad interest in natural resource management'.

The current Committee community members have all demonstrated a broad interest in natural resource management. Members also live in a number of different areas across the City and there is good representation from the northern, central and southern towns and villages.

Council's Shoalhaven Water Group and Environmental Services Section also meet with Oyster Industry representatives and the Food Authority to discuss water quality management in the Shoalhaven River. Council has built up a good working relationship with oyster farmers and these forums provide an opportunity to discuss issues relevant to the industry.

Council also regularly works the South East Local Land Services who work with local primary producers and other land managers. Local Land Services are also one of the government agency representatives on the Committee.

Therefore, it is considered unnecessary to increase the membership at the stage.

Community Engagement

There is no community engagement required in relation to this report.

Policy Implications

This recommendation meets Council's previous resolution that Committee members should demonstrate a broad interest in natural resource management not represent a particular location, industry or community group.

Financial Implications

There are no financial implications.

SN17.16 Update on preparation of the Scoping Study for Council's Coastal Management Plan

HPERM Ref: D17/248599

Group: Planning Environment & Development Group
Section: Environmental Services

Purpose / Summary

Council is required to prepare a Coastal Management Plan, under the NSW Coastal Management Act 2016. This report is to provide the Committee with an update on the Scoping Study for the Coastal Management Plan (CMP) and to directly involve members of the Committee in the preparation of the Scoping Study of the Coastal Management Plan.

Recommendation

The Committee nominate three (3) community members to participate in a working group with staff to assist in the development and preparation of Scoping Study for Council's Coastal Management Plan as required by the NSW Government's Stage 2 Coastal Reforms.

Options

1. As recommended.

Implications: This will assist staff in preparation of the scoping study.

2. There are no nominations

Implications: The Scoping Study will be completed by staff in consultation with Government agencies, with little input from the Committee.

3. Three nominations are received

Implications: The working party will be formed and the Scoping Study will be completed with meaningful input from the Committee.

4. Only one or two nominations are received.

Implications: The working party will still be formed.

Background

The Stage 2 NSW Coastal Reforms requires coastal Councils to prepare a Coastal Management Program that will provide the strategic direction for how the coast and coastal assets will be managed. Council has applied to NSW Office of Environmental and Heritage (OEH) for funds to prepare the Coastal Management Program (CMP), over three (3) years.

The first step in the preparation of a CMP is to develop a Scoping Study, which will set the parameters for the development of the CMP.

Preparation of the Scoping Study began in October 2016 and is ongoing in accordance with guidelines provided by the NSW Government.

A workshop of relevant Council officers was held in May 2017 to review the gaps and opportunities tables for each management area.

Council officers met with OEH representatives on two occasions in June 2017 to discuss several issues relating to the Stage 2 Reforms, including the Scoping Study.

The first draft of the Scoping Study was provided to OEH for comment in June 2017.

A workshop was held in June 2017 with Council officers and an OEH representative to discuss the Stage 2 Reforms and the Scoping Study comments provided by the OEH representative.

A staff workshop was held in September 2017 to continue reviewing the gaps and opportunities tables for the remaining management areas.

Community Engagement

Establish a Natural Resource Management & Floodplain Committee Scoping Study working party to assist in the completion of the Scoping Study.

Policy Implications

The final Scoping Study will inform the consultants' brief for the CMP tendering process. It is therefore an important foundation document, guiding coastal management in the Shoalhaven for the next 5 years.

Financial Implications

A high quality Scoping Study (comprehensive, thorough, detailed, clear) is more likely to produce a high quality and best value for money CMP. Utilising the intellect, knowledge and experience of members of the NRFMC will produce a higher quality Scoping Study.

Risk Implications

Involving members of the Committee in the preparation of the Scoping Study will ensure a higher quality document and reduce the risk of over sights and omissions. This will in turn provide a solid foundation for the development of the CMP.