

## Ordinary Meeting

**Meeting Date:** Tuesday, 27 March, 2018

**Location:** Council Chambers, City Administrative Building, Bridge Road, Nowra

**Time:** 5.00pm

**Membership** (Quorum - 7)

All Councillors

## Addendum Agenda

### Reports

CL18.74	Planning for current and future funding opportunities .....	1
CL18.76	Local Government Conference - 2018 National General Assembly of Local Government - Proposed Motions .....	13
CL18.75	Encroachment onto Public Reserve - 1 Walton Way Currarong .....	18

## CL18.74 Planning for current and future funding opportunities

**HPERM Ref:** D18/93253

**Group:** General Manager's Group  
**Section:** Economic Development

**Attachments:** 1. RCC - Stronger Country Communities Fund [↓](#)

### Purpose / Summary

1. To seek some direction from Council for projects to be submitted under several grant programs.
2. To alert Council to the pressing need to better resource the organisation, and budget, to be able to prepare projects to a “shovel ready” stage to enable a stronger case in the various grant programs at a Federal and State government level.

### Recommendation

1. That Council note the report for consideration during the budget discussions for 2018/19 especially related to funding projects to progress to “shovel ready” stage;
2. That the following projects be worked up for submission as an EoI under the specific programs as soon as possible:
  - a. Regional Growth Fund (Australia)
    - i. No Council project, but support be given to other organisations submitting projects for development within the Shoalhaven & wider region
  - b. Growing Local Economies (NSW)
    - i. Council's Industrial estate development program and ancillary works (eg NBN to AATP, Sth Nowra roads, )
    - ii. Nowra Key Road Projects
  - c. Stronger Country Communities Fund (NSW)
    - i. As listed in the attachment to the report
  - d. Heavy Vehicle Safety Productivity Program (Aust) & Fixing Country Roads (NSW)
    - i. Slaughterhouse Rd, Milton
    - ii. Yalwal Rd intersection with Albatross Rd and upgrade of Yalwal Rd to Flat Rock Dam.
    - iii. Projects within the Nowra Key Road Projects
  - e. Regional Sports Infrastructure Fund
    - i) No Council project, but support be given to any sporting association wishing to submit an application for a project on council sports fields or facilities;
3. Other projects to be added to the above list for future funding applications once worked up to a sufficient level to support an application.

CL18.74

## Options

1. As recommended
2. That council identify immediate needs and provide direction accordingly.

## Background

In many respects there is a “flood of money” becoming available through various grant programs from both the State and Federal Governments. Council needs to prepare a strategic response to identify priority projects and to have the documentation and approvals in place to ensure that the priority projects are shovel ready.

With regard to major applications, Council has the following still under consideration by Government:

- Building Better Regions 2:
  - Converting a decommissioned asset into employment land at Ulladulla
  - Nowra Revitalisation Project
- Restart NSW Regional Growth – Environment and Tourism Round 1
  - Shoalhaven Heads River Road Foreshore Precinct.

Recently two projects were approved under the South Coast Regional Jobs Initiative.

An overview of the major funding programs open to Council at this time is outlined below.

## Regional Growth Fund (Australia) – one round only

<http://regional.gov.au/regional/programs/regional-growth-fund.aspx>

- Closing date - 27/4/2018 – EoI due
- Total four year funding pool is \$272.2M
- Minimum grant funding request \$10M (\$20m project)
- 50% funding contribution required – cash
- This is a competitive funding program across Australia

Estimated time to prepare an EoI - 40 hours

## Criteria:

“for major transformational projects which support long-term economic growth and create jobs in regions undergoing structural adjustment”

- The Program will fund projects across a range of key economic categories including, but not limited to: transport and communications, tourism, manufacturing and primary industries.
- The Program will fund projects that are for ‘common-use’ infrastructure or private use infrastructure that will deliver significant and sustainable benefits to the region by creating jobs and flow-on benefits to the economy. E.g.
  - Freight hubs
  - Roads
  - Ports and terminals
  - Civil works for a new development
  - Sewerage system, dams, water reservoirs, pipelines
  - Gas pipelines
  - Communication infrastructure
  - Integrated tourism activities and assets that enhance and support Australia’s regional tourism experience

- The Program is open to state and territory governments, local governments, the private sector and not-for-profit organisations.
- **Must be ready to commence within 12 weeks of entering funding agreement** (need to assume mid-late 2018)

Merit criteria

- Create Jobs (20 points)
- Drive Economic Growth (20 points)
- Build Stronger Regional Communities (10 points)

Projects will need to be **investment ready** with all additional funding confirmed, required regulatory and/or development approvals identified, local, state or territory government support confirmed and will need to demonstrate robust planning, in order to commence following execution of a Grant Agreement.

Stage 2 application MUST include ALL regulatory approvals.

Estimated time to prepare EoI - 40 hours

To work up the final application after it has been accepted under the EoI stage will take approximately 50-75 hours for each project.

Examples of industry projects that council may support:

- Shaolin Temple – Grant guidelines have been forwarded to Shaolin project group
- A transport intermodal at Bomaderry – Manildra have the approval, Grant guidelines have been forwarded

### Growing Local Economies (NSW)

<https://www.nsw.gov.au/improving-nsw/regional-nsw/regional-growth-fund/growing-local-economies/>

This program was announced in late 2017 and a councillor/stakeholder workshop was held with consultants engaged by the State to prepare a Regional Economic Development Strategy. A draft Regional Economic Development Strategy has been received and a report is being prepared.

- The Shoalhaven has a substantial \$ allocation, not yet publicly announced.
- Minimum project size \$1M
- This funding program is not competitive outside Shoalhaven but criteria and BCR >1 must be met.
- Need to submit applications in as soon as possible

Criteria:

- Have the capacity to deliver jobs and economic growth
- help regional communities capitalise on their strengths or broaden and reposition their industry base
- demonstrate benefits beyond one organisation
- align with state and regional priorities and achieve Benefit to Cost Ratio greater than 1.0.
- Project applications eligible from local government; Aboriginal Land Councils and other Aboriginal and Torres Strait Islander groups; infrastructure providers, such as telecommunication firms; incorporated associations, including business, industry and community organisations; cooperatives; educational institutions and non-government organisations. Partnerships between groups are encouraged.
- Two step application process

- Infrastructure that will improve economic growth and productivity

Estimated time to prepare EoI – 25-30 hours

Suggested projects

Worked up and ready to go:

- Woollamia Stage 5 Industrial Estate – DA approved, lot layout complete, ready to commence work, meets objectives of grant
- Flinders Stage 10 – DA approved, in process of finalising lot layout, ready to commence work, meets objectives of grant.
- Decommissioning the Ulladulla STP & creating an industrial subdivision – business case worked up and ready to go, meets objectives of grant.
- South Nowra Rest Area (may be difficult to demonstrate BCR > 1.0) - business case worked up
- Rail upgrades – Bomaderry signals, Berry to Bomaderry upgrade, Passing loops on Moss Vale Line, Unanderra siding, Dunmore siding – all lodged by Manildra under Fixing Country Rail

Projects being worked up from concept phase but eligibility and CBA to be tested:

- Yalwal Road/Albatross Rd intersection upgrade & upgrade to Yalwal Rd.
- South Nowra Industrial Roads (may fit better under Fixing Country Roads) but designs, costings to be developed
- Utility upgrades to various commercial centres – Huskisson, Milton and new URAs
- Road upgrades – linkages to Hume Hwy; Nowra internal road network, first/last mile to industry;
- Health infrastructure – working with ISLAHS on Nowra campus
- NBN (fibre) to AATP
- Masterplan for Nowra waterfront
- Masterplan for Stewart Place, followed by business case for development
- Makeover of Vincentia Plaza
- Ulladulla CBD upgrade – finish boardwalk
- Construct a new 'Bay and Basin' civic centre and council service hub, Vincentia.
- ....

To work up the final application after it has been accepted under the EoI stage will take approximately 50-75 hours for each project.

### **Stronger Country Communities Fund (NSW)**

<https://www.nsw.gov.au/improving-nsw/regional-nsw/regional-growth-fund/stronger-country-communities/>

- Opened 12 March 2018
- Close 4 May 2018
- \$937,691 was made available in Round 1 for Chris Creek;
- \$2,729,422 is available to SCC for Round 2; This fund is not competitive within Shoalhaven, but project criteria must be met.
- Councils are expected to work with sporting and other community groups to identify priority projects and submit applications on behalf of these organisations;
- Applications seeking between \$50,000 and \$1 million can be for the entire project cost as a grant. Projects requiring grant funding of over \$1 million will only be considered where there is a minimum financial co-contribution towards the project of 25 per cent of the total grant amount. The financial co-contribution to the project can be from council or other funding sources, but must be confirmed.
- For general community amenity and local sporting infrastructure Projects;
- Projects must be for:

CL18.74

- construction of new or refurbishment/upgrade of existing community infrastructure
- construction of new or refurbishment/upgrade of existing local sporting infrastructure
- capital works related to street beautification and public 'place making'.
- Councils are required to submit sport-related projects that total at least 50 per cent of their total Round Two allocation.
- Project examples include:
  - Community halls
  - Indoor sports facilities
  - Town and tourism signage
  - Aquatic facilities and pools
  - Accessibility upgrades
  - Playgrounds and parks
  - Memorials or statues

Attached to this report is a list of projects to be submitted by Council under this program.

### **Heavy Vehicle Safety Productivity Program (Australia)**

The Heavy Vehicle Safety and Productivity Program (HVSPP) is an Australian Government initiative to fund infrastructure projects that improve productivity and safety outcomes of heavy vehicle operations across Australia.

- HVSPP funds are being used to upgrade the Sth Nowra Freight Corridor – Flinders Rd
- Round 6 closes - 30 March 2018
- \$40M per year committed
- Max \$5M per project
- 50% funding contribution required
- This is a competitive funding program across Australia
- Construction must commence by the 1<sup>st</sup> July 2019. Construction means on ground works at project site
- The following types of projects are eligible for funding:
  - rest areas
  - parking/decoupling bays
  - technology trials o road enhancements
  - demonstration projects
  - livestock vehicle effluent collection and treatment facilities (provided such a facility is associated with a road and access is similar to that of a traditional rest area)
- Evidence required includes (independent evidence is highly regarded):
  - Annual average daily traffic (AADT) readings.
  - Executive summary page of Quantity Surveyor costing.
  - Letters from local business providing data on current and future usage, or restrictions in increasing usage.
  - Geo-spatial maps of agricultural usage surrounding the area.
  - Executive summary or selected pages of regional strategic plans referencing the route.
  - Maps showing alternative routes if the road is not available.

Estimated time to prepare application – 30-50 hours

Suggested project:

- Yalwal Road intersection & Yalwal Rd upgrade to Flat Rock Dam

### Fixing Country Roads (NSW)

Fixing Country Roads is a key NSW Government program for unlocking the economic potential of regional NSW by building efficient freight transport networks to reduce costs for businesses.

Fixing Country Roads provides targeted funding to local councils to better connect Local and Regional roads to key freight hubs and State Roads. These hubs might include silos, saleyards, rail heads, supermarket distribution centres, industrial parks and depots.

- FCR funds are being used to upgrade the Sth Nowra Freight Corridor – Flinders Rd
- Can apply for funding at any time (new initiative)
- Guidelines are currently being reviewed. Previously required a 50% contribution.
- Can be matched with federal government HVSPF funding
- Will need traffic unit information and industry support
- Applications will be assessed for eligibility against the following four program criteria:
  - Access, Productivity and Safety Benefits
  - Growth and Economic Benefits
  - Strategic Alignment
  - Deliverability and Affordability
- This is a competitive funding program across NSW

Suggested projects:

- Project identified in the Nowra Key Road Projects
  - Moss Vale Rd duplication
  - PH Upgrade – Cambewarra Rd to Warra Warra Rd
  - ENSA
  - Kalandar ST intersection
  - Yalwal Rd Upgrade
  - ...
- Sth Nowra Industrial links – Bellevue, Central to Sextant
- Slaughterhouse Rd, Milton

Other funding programs include:

- Coastal & Estuary grants
- Public Reserves fund
- Better Boating
- Various community type grants
- And many more

### Regional Sports infrastructure Fund

**Timeframe:**

- Expression of Interest due 4 May 2018
- Shortlisted projects notified in June 2018
- Detailed application or business case due end of August 2018

<https://sport.nsw.gov.au/clubs/grants/regional-sports-infrastructure>

**Funding provided in 2 categories:**

- Regional Sports Hubs
- Regionally Significant Sports Facilities

**Funding Purpose:**

- The fund will increase the number and type of regional sporting facilities
- Improve the standard of existing regional sporting facilities
- Increase participation in sport

**Funding Criteria:**

- Provides funding for projects between \$1 million - \$10 million
- A minimum co-contribution towards the project of 25% (unless financial hardship can be demonstrated)
- Funding spent within 3 years of approval being granted
- Projects involving partnerships between groups are encouraged

**Eligibility:**

- LGA's
- NSW state sporting organisations
- Incorporated, community based, not for profit sporting organisations (clubs and associations) and organisation providing programs that benefit the community – e.g. PCYC's, YMCA's etc
- TAFE / Universities
- Private enterprise

**Land – Eligibility**

- Projects must be on land (and clubs / organisations must have evidence of tenure) that is:
  - Crown Reserve land
  - LGA owned
  - Land held for public purposes
  - Land vested in ALC's
  - Private land that benefits the community's interests in sport and recreation

**Priority for funding:**

- To establish regional sporting hubs
- To enhance or establish regionally significant sporting facilities
- To enable multi-use – used by more than one sporting code
- Alignment with facility plans of State and / or National sporting organisations
- Financially sustainable and provide infrastructure that enables economic growth
- Increasing participation opportunities in sport

Council currently does not have any projects that meet the requirements of this funding program, however, Council staff have held discussions with representatives from the Office of Sport of two (2) potential projects that are led by the relevant sports organisations in the Shoalhaven who have approached Council, that could be submitted as Expression of Interests.

Staff will hold further discussions with Shoalhaven District Football Association and Shoalhaven Mariners Baseball for developments at Ison Park to include:

- Replacement amenities block,
- Upgrade of floodlighting to LED - this will floodlighting to enable a higher standard of competition to be held at the venue



- Installation of floodlighting – baseball field
- Installation of batting cages – baseball field

Additionally Council has received representation for four (4) Tennis Clubs who currently lease facilities from Council to develop their sites and enhance their facilities further for the benefit of their members. The Office of Sport indicated that potentially this could be a partnership application by Tennis in the Shoalhaven to develop and improve facilities for tennis across the Shoalhaven. Council staff will hold further discussion with Shoalhaven District Tennis Association Incorporated - Narang Road Tennis Complex, Kangaroo Valley Tennis Club Inc, One Door Mental Health - West Street Nowra Milton-Ulladulla District Tennis Association Incorporated.

The developments sought include:

Narang Road:

- Club House Improvement
- Seating & Shade

Kangaroo Valley:

- Floodlighting

West Street:

- Accessibility upgrade to amenities

Milton Ulladulla:

- Fencing
- Lighting
- Landscaping
- Seating
- Outdoor Fitness equipment

Council has also been approached by the Dunn Lewis Centre in Ulladulla; their application under Round 1 of the Regional Sporting Infrastructure Program has passed to the next stage of this funding program and they are seeking a letter of support from Council. A letter will be provided.

Conclusion:

Many of these grant opportunities are highly competitive and Council needs to ensure that we are ready to take advantage of strategic opportunities as they arise. The selection of projects that are “best fit” against criteria is also important.

Council may support some projects that are reasonably advanced in planning stages and also consider funding in the 2018/19 budget to enable other projects to proceed to detailed design and ‘shovel ready’ stages.

### **Community Engagement**

No community engagement has occurred specifically to this report however the individual projects mentioned have had varying degrees of community engagement in recent years.

### **Financial Implications**

This will be dependent on the projects selected. Proposed to use existing program budgets wherever possible as council’s co-contribution.

### **Risk Implications**

Without adequate forward planning and budgeting to progress key strategic projects to a ‘shovel ready’ stage the risk is council not being able to attract grant funds.

Project	Total	SCC contribution \$	Grant Funding \$	Comment
<b>Sports Infrastructure – Option 1 (Min \$1,360,000)</b>				
<b>Floodlighting controllers x 17 sites:</b> <ul style="list-style-type: none"> <li>Berry S G</li> <li>Frogs Holla</li> <li>Bill Andriske Oval</li> <li>Kangaroo Valley S G</li> <li>Milton S G</li> <li>Yulunga Reserve</li> <li>Artie Smith Oval</li> <li>Bomaderry Oval</li> <li>West St Oval</li> <li>Wool Lane S C</li> <li>Bernie Regan S C</li> <li>Callala Sports field</li> <li>Drexel Park</li> <li>Finkernagel Oval</li> <li>Gordon Ravel Oval</li> <li>Sharman Park</li> <li>Park Rd Netball Courts</li> </ul>	<b>\$213,000</b>	\$70,000 from draft 18/19 Active Recreation Minor Improvements	<b>\$143,000</b>	
<b>Drainage, Irrigation &amp; Top Dressing:</b> <b>Irrigation x 3 sites:</b> <ul style="list-style-type: none"> <li>Bomaderry Oval x 2</li> <li>Bernie Regan x 2</li> <li>Sanctuary Point Oval x 2 fields</li> </ul> <b>Drainage x 2 sites:</b> <ul style="list-style-type: none"> <li>Ulladulla Sports Parks x 2 fields</li> <li>Sanctuary Point Oval x 2 fields</li> </ul> <b>Top Dressing x 10 fields:</b> <ul style="list-style-type: none"> <li>Berry SC - 2 fields</li> <li>Rugby Park - 2 fields</li> <li>Bomaderry SC - 2 fields</li> <li>Ulladulla SP - 2 fields</li> <li>Vincentia - 2 fields</li> </ul>	<b>\$600,000</b>  <b>\$192,000</b>  <b>\$130,000</b>  <b>\$1,113,000</b>	Special Rate Variation* \$500,000	<b>\$613,000</b>	SRV subject to approval
<b>Floodlighting – Nowra Showground Added Area</b>	<b>\$150,000</b>	Nil*	<b>\$150,000</b>	*Grant application to PRMF program – outcome unknown
<b>Tennis Court Fence – Public Facilities x 6 sites:</b> <ul style="list-style-type: none"> <li>Greenwell Point</li> </ul>	<b>\$165,000</b>	\$30,000 from draft 18/19 Active	<b>\$135,000</b>	

[illegible]

Project	Total	SCC contribution \$	Grant Funding Sought \$	Comment
<b>General Amenities – Option 1</b>				
<b>Shade Installations</b> x 3 at high use play spaces: <ul style="list-style-type: none"> <li>Twin Waters Park</li> <li>Wool Lane Sporting Complex</li> <li>Pacific City Park</li> </ul>	\$180,000		\$205,000	
<b>Pergola / Wooden Shade Structures / Picnic Table</b> x 4: <ul style="list-style-type: none"> <li>Elmoos Reserve</li> <li>Wool Lane Sporting complex,</li> <li>Dolphin Pt Reserve</li> <li>Crookhaven Park (up top at picnic tables)</li> </ul>	\$125,000	\$100,000 funded from draft 2018/19 Parks Enhancement Program		
	<b>\$305,000</b>			
<b>Playground Replacement</b> x 3: <ul style="list-style-type: none"> <li>T.H Gumley Reserve, Shoalhaven Heads (Surf Club)</li> <li>Plantation Point</li> <li>Yulunga Reserve</li> </ul>	<b>\$480,000</b>	\$100,000 funded from draft 2018/19 Parks Enhancement Program	\$380,000	
<b>Community Centre</b> Install Air-conditioning Units x 3: <ul style="list-style-type: none"> <li>Bomaderry</li> <li>Callala</li> <li>Culburra Beach</li> </ul>	<b>\$90,000</b>	\$12,000 draft 18/19 Community Building Equipment Renewal	\$78,000	
<b>BBQ's</b> x 5: <ul style="list-style-type: none"> <li>Dolphin Pt Reserve</li> <li>Cunjurong Reserve</li> <li>Huskisson Beach Reserve (between caravan parks)</li> <li>Dolphin Reserve Currarong</li> <li>Greys Beach Nowra</li> </ul>	<b>\$125,000</b>	\$50,000 funded from draft 2018/19 Parks Enhancement Program	\$75,000	Investigate CCB contributions
<b>Archer Memorial</b> - Nowra	<b>\$157,000</b>	SCC – Nil  Community Donations to date \$15,000	\$142,000	
<b>Nowra Beautification</b> Planting in the CBD (planter boxes & trees)	<b>\$68,000</b>	\$18,000	\$50,000	

Project	Total	SCC contribution \$	Grant Funding Sought \$	Comment
<b>Amenities / Toilets</b>	\$100,000	Nil	\$280,000	
Hyams Beach - Seamans Beach - Extension				
Vincentia – Plantation Point – Replacement	\$180,000			
	<b>\$280,000</b>			
<b>TOTAL</b>	<b>\$1,505,000</b>	<b>\$295,000</b>	<b>\$1,210,000</b>	

## CL18.76 Local Government Conference - 2018 National General Assembly of Local Government - Proposed Motions

**HPERM Ref:** D18/98970

**Group:** Finance Corporate & Community Services Group  
**Section:** Human Resources, Governance & Customer Service

### Purpose / Summary

This report details Council's proposed Motions to be submitted to the Australian Local Government Association – 2018 National General Assembly scheduled for 17 to 20 June 2018 in the National Convention Centre Canberra, ACT. Motions are required to be submitted by 30 March 2018.

### Recommendation (Item to be determined under delegated authority)

That Council endorse the nine (9) motions as detailed in this report for submission to the Australian Local Government Association – 2018 National Assembly.

### Options

1. As per the recommendation

Implications: The Motions and supporting text are finalised and ready for submission prior to the deadline.

2. That alternate Motions be presented for consideration.

Implications: Motions are required to be submitted by 30 March 2017. In order for the deadline to be reached both the motion and supporting text will be required.

### Background

A Councillor Briefing was held Thursday 8 March 2018 to discuss draft Motions for submission.

Further, at the Strategy and Assets Meeting of the Council held on 20 March 2018, Council resolved in relation to Report SA.65 National General Assembly (MIN18.178) as follows:

*"That Council:*

- 1. Notes the details of the National General Assembly of Local Government scheduled for 17-20 June 2018 in Canberra.*
- 2. Authorises available Councillors to attend the conference and such attendance be deemed Council Business.*
- 3. Travel, registration fees, accommodation and all reasonable out-of-pocket expenses be met in accordance with its adopted policy.*
- 4. That Councillor Findley be determined as the Council voting delegate for the conference and Councillor Gash as alternate delegate."*

The Nine (9) motions proposed for submission arising from the briefing and the Council Resolution are as follows:

## 1. NATIONAL POLICY - COASTAL HAZARDS

### **Motion:**

That the Australian Government establish a consistent national policy for the management of risks posed by coastal hazards, including sea level rise.

### **National Objective:**

This impacts upon all Coastal Councils in Australia

### **Summary of Key Arguments:**

The Australian Coastal Councils Association have recently (February 2018 newsletter) called on the Australian Government to 'play a leadership role' to protect the coastal zone from the imminent threat of a changing climate', arguing that, now more than ever, a national, coordinated approach with national funding is needed.

In 2009, a bi-partisan House of Representative Committee recommended that the Australian Government develop an Intergovernmental Agreement on the Coast Zone with state and local government and that it form the basis for a National Coastal Zone Policy.

On the south coast of NSW we are now seeing the anomalous outcome of the absence of a coordinated climate change/ sea level rise policy. For example:

- Wollongong City Council recently had their Coastal Zone Management Plan certified using sea level rise figures of 0.4m by 2050 and 0.9m by 2100. These are the same figures provided by the NSW Government in 2009 and withdrawn in 2012.
- Shoalhaven City Council has adopted sea level rise figures of 0.23m by 2050 and 0.36m by 2100.
- Eurobodalla Council has adopted sea level rise figures of 0.23m by 2050 and 0.72m by 2100.

	2050	2100
Wollongong City Council	0.4m	0.9m
Shoalhaven City Council	0.23m	0.36m
Eurobodalla Shire Council	0.23m	0.72m

Coastal Councils cannot coherently and safely manage the risks posed by coastal hazards, including sea level rise, with such a variance of sea level rise figures along one relatively short stretch of coastline. A national, cohesive policy is needed.

## 2. FIRST AND LAST MILE PROJECTS

### **Motion:**

That Federal Funding be provided on first and last mile projects.

### **National Objective:**

Freight movement is key to the economic performance in all areas. Transport technologies are advancing. Local government road assets form the last/first mile and are not at a level of service to suit the heavier weights, truck configurations and other technologies that industry logistic chains are adopting to meet advances in national heavy vehicle standards.

### **Summary of Key Arguments:**

As heavy vehicle technologies improve, the road assets need to improve to accommodate these new configurations that deliver productivity gains to industry. Intersections, roundabouts, pavements designed and built decades ago do not meet the needs of the modern truck fleet.

Widening of pavements, providing slip lanes at intersections, strengthening culverts and

CL18.76

bridges are essential on the local government network used by heavy vehicles. Higher Mass limited vehicles bring safety and productivity improvements to industry, the road network needs to be compliant with this standard where necessary. All State and National road networks need to meet this Higher Mass Limit (HML) standard. Funding to improve the local government network should be provided on a project by project basis under programs such as the Heavy Vehicle Safety Productivity Program.

### 3. PRINCES HIGHWAY

**Motion:**

That the Federal Government be called upon to officially recognise the Princes Highway as a Highway of National Importance as a major freight and tourist route

**National Objective:**

The roadway is of significant importance to the nation.

**Summary of Key Arguments:**

The Princes Highway is the longest national highway in the world at a total length of approximately 14,500 km. It carries freight, holds large international economic significance and is a major tourism route.

This motion supports the South East Australia Transport Strategy Inc (SEATS), petition for the recognition of the Princes Highway and urgent funding required for the development and upkeep of this vital transport network. The petition calls on the Federal Government to officially recognise the importance of the Princes Highway between East Sale and Wollongong as a major freight and tourist route, and to commit additional and ongoing funding to address the condition of this vital transport network, which covers over 739 kms.

There has been a significant increase in traffic using the Princes Highway and upgrades are the key to the development, growth, sustainability and improved safety for the region. This is a region of approximately 2 million people, a key tourism destination and one of the fastest growing regions in Australia. Recognition of the importance of the Princes Highway as a main arterial roadway will provide the same resourcing that other national road networks have received for many decades.

CL18.76

### 4. MOBILE PHONE NETWORK COVERAGE

**Motion:**

That the Federal Government facilitate and provide incentives to improve Mobile Phone Network coverage and reliability to cover all areas of infrastructure.

**National Objective:**

Mobile phone voice and data services are now fundamental to support businesses and the welfare of the population of the Nation in general. The availability of coverage improves efficiency, the ability to undertake business, provides security and safety for residents and visitors to all local government areas.

**Summary of Key Arguments:**

Mobile Phone Networks are increasingly important facilities for our communities, we rely upon them for a variety of services, including:

- Security and monitoring of Council infrastructure;
- An Increasing reliance on Internet of Things (IOT) for operational and business purposes for remote sites;
- Emergency events, as the general public are reliant on mobile networks, particularly when they are not at home or work;
- Equity issues and the ability of all people to access communications, including access to the internet; and
- Ability for travellers to have access to communications for safety and remaining



connected.

Federal facilitation and incentivisation of mobile phone networks is required to achieve quality service and coverage across the nation.

#### **5. CODE OF ACCOUNTING - Infrastructure Asset Indicators**

##### **Motion:**

That the Federal Government set National Codes of Accounting Practice for Councils and set standards to achieve auditable information as indicators for Infrastructure Assets.

##### **National Objective:**

To ensure that grant funding allocated to Councils to address Infrastructure renewal and maintenance is based on auditable and national standardised indicators.

##### **Summary of Key Arguments:**

Councils in each state of Australia apply a state based Code of Accounting Practice in the preparation of Financial Statements. The Statements include indicators of Infrastructure Renewal (in New South Wales, this is outlined in Special Schedule 7). There are differences in the methodology of indicators across the Standards and not all of the information provided is auditable, in that some indicators relating to Assets are based on estimates. The support of Councils in the renewal and maintenance of assets is of great importance and the information used to determine funding levels and financial prosperity of Councils needs to be both comparative and auditable to ensure federal funds are allocated effectively.

#### **6. RESILIENT INFORMATION TECHNOLOGY**

##### **Motion:**

That the Federal Government be called upon to provide funding to ensure that Local Government information technology is strong, secure and resilient.

##### **National Objective:**

Efficient councils are essential to provide services to the community. Councils rely on information technology (IT) to improve efficiency and deliver many services, therefore having effective, secure and resilient IT is essential to support these services.

##### **Summary of Key Arguments:**

Councils provide IT services in a demanding environment with very limited resources. With constant demand and an ever changing IT environment, delivering services securely and reliably is a significant and costly outlay on council budgets. Federal funding will directly provide improved services for the community.

#### **7. USE OF RECYCLABLES**

##### **Motion:**

That in view of the collapse of the market for recyclables, the Federal Government develop industries to utilise those recyclables.

##### **National Objective:**

Every Local Government area in Australia collects large quantities of mixed recyclable materials from their residents every week. China's crackdown on accepting recyclables that are not 99.5% pure has halted exports of these materials to China. Within Australia there is very little capacity to process recyclable materials into higher order products, so the recyclables industry is in crisis with materials being collected every week with nowhere to take them. It is critical for Australia to start developing its own recyclables processing industry to reduce our reliance on external countries.

##### **Summary of Key Arguments:**

For at least the past decade the Chinese market for mixed recyclables has been a ready acceptance path for these materials. The prices paid were high. It became more cost effective to do a low level sort, bale the material to a level where 10% contamination is

CL18.76

acceptable and ship these bales to China for processing, than to sort into nearly pure products. So every Materials Recovery Facility (MRF) in Australia was set up to cater for a low quality sort, and most of the higher end processors in Australia closed businesses which couldn't compete in such a market. This all changed in March 2018. The Chinese government has declared a crackdown on "importing other countries waste" and have legislated that recyclable materials need to be 99.5% pure before they are accepted in China (known as the Chinese Sword or alternatively as Blue Sky 2018). In the meantime the capacity for processing recyclables in Australia has been lost.

## 8. REGIONAL DEVELOPMENT ASSOCIATIONS

### **Motion:**

That Regional Development Associations be reviewed to ensure geographical alignment with Local Government Joint Association or Regional Organisation boundaries.

### **National Objective:**

Regional boundaries, as applying to Regional Development Australia differ at times with boundaries for planning regions, government administrative regions, regional local government collectives and the like.

There needs to be some alignment of boundaries to achieve consensus of position on matters of vital interest to the regional communities.

### **Summary of Key Arguments:**

A Regional Development Association can be placed in different regions with regard to different state and federal administrative functions. This misalignment can have a local Council having to take a differing consensus positions depending on the adopted position of the Regional body. "Better" alignment would assist in agencies and Councils working more collaboratively to gain support for projects.

Differing boundaries and consensus positions allows the higher levels of government to use the lack of consensus to break down and weaken what otherwise may be a strong lobbying position.

## 9. GROSS POLLUTANT TRAPS

### **Motion:**

That the Federal Government develop a scheme and overall Gross Pollutant Trap Strategy for the Nation

### **National Objective:**

Federal direction is required to develop and implement standard and innovative approaches to stormwater management across the nation.

### **Summary of Key Arguments:**

The water quality of groundwater, streams, rivers, and marine environments is dramatically affected by human activities. Marine plastic pollution is a huge problem affecting all of the world's oceans.

A key part of addressing these problems and maintaining water quality is the removal of gross pollutants from storm runoff before they enter waterways. Once gross pollutants, such as litter, debris, and food matter, have been washed into the waterway, they pose a serious threat to the ecosystem.

A national scheme to support Councils in the consistent implementation of Gross Pollutant Traps and other stormwater treatment devices is imperative to manage the quality and quantity of stormwater at the source.

CL18.76

## CL18.75 Encroachment onto Public Reserve - 1 Walton Way Currarong

**HPERM Ref:** D18/96988

**Group:** Assets & Works Group

**Section:** Business & Property

**Attachments:** 1. Report - Encroachment onto Public Reserve - 1 Walton Way, Currarong - Strategy & Assets Committee - 20 March 2018 [↓](#)  
2. Letter from PDC Lawyers [↓](#)

### Purpose / Summary

A report on the encroachment onto community land described as Dolphin Reserve at Currarong was submitted to the Strategy & Assets Committee for consideration at its meeting on 20 March 2018 (Attachment 1).

The Committee resolved that the item be deferred to the next Ordinary meeting (of Council) "...pending further legal advice on the transfer of the title."

Advice has now been received from Mr Paul Magagnino, Managing Partner at Kells.

This report builds on the report presented to the Strategy & Assets Committee for consideration at its meeting on 20 March 2018.

### Recommendation

That Council resolves to:

1. Support an application by the owner of Lot 220 DP 16854 at 1 Walton Way Currarong, Robin Nicholas Graham, to the Land and Environment Court of New South Wales for an order under the Encroachment of Buildings Act 1922 that an easement right be created in relation to the encroachment onto Council owned land known as Dolphin Reserve at Currarong comprised in Lot 222 DP 16584 and shown by hatching on Attachment "A" provided that compensation in the form of the market value of the easement right is payable to Council, all costs are met by the applicant and that the easement is to be extinguished upon demolition of the building which forms the encroachment;
2. Take no action in relation to the other encroachments onto Dolphin Reserve in the form of fencing adjacent to the western boundaries of properties at 3 to 9 Walton Way inclusive other than to acknowledge the encroachments and to inform the registered proprietors of those properties that Council requires that fencing be relocated to the surveyed boundaries whenever the properties are redeveloped for any reason; and
3. Grant authority to affix the Common Seal of the Council of the City of Shoalhaven to any document required to be sealed and to delegate to the General Manager the authority required to finalise this matter including, if required, any submission to the Land and Environment Court of New South Wales in relation to an application for orders under the Encroachment of Buildings Act 1922 in (1) above.

### Options

1. Proceed in accordance with the recommendation.

Implications. This will deliver a compromise solution to the problem of an encroachment onto public land which does not adversely impact the long term public interest and which provides certainty that the encroachment will be removed when the building is

demolished because it has reached the end of its useful life and/or is to be redeveloped.

2. That Council support an application to the Land and Environment Court for an order that the land affected by the encroachment of Lot 220 DP 16854 at 1 Walton Way Currarong be sold to the owner of that Lot.

Implications. Community land will become privately owned if the order is issued by the court. The issue of compensation would be determined by the court.

3. That Council order the removal of all encroachments onto Dolphin Reserve, Currarong without delay and authorise the General Manager to negotiate the cost of new fencing with the owners of the land that encroach onto the reserve.

Implications. The owners of the properties at 1 to 9 Walton Way inclusive will be required to pay for the cost of the removal of fencing and other structures AND to install new fencing on the correct alignment as confirmed by survey (Council may have to pay half the cost of the new fencing estimated at \$4,000).

Should the owners of the land that encroaches onto Dolphin Reserve seek legal action to prevent this, specific advice would be sought in relation to that action and this could be considered at a future Council meeting.

4. That Council take no action in relation to the encroachments onto public land comprising part of Dolphin Reserve at Currarong, as the encroachments are generally accepted by the local community.

Implications. This would create a precedent that could impact on Council's dealings with other encroachments as they are identified.

Dolphin Reserve is community land categorised under the Local Government Act 1993 as "Park". The adopted generic plan of management for parks is opposed to alienation of public land and promotes the removal of existing encroachments. This resolution if adopted would require a review of the generic plan of management and the fundamental objectives of the plan which is currently that public land is to remain public.

5. That the land affected by the encroachments by the properties at 1 to 9 Walton Way (inclusive) be sold to the adjoining owners. Council will have to reclassify the land affected by the encroachments to "operational" land pursuant to a planning proposal under the Environmental Planning and Assessment Act 1979 and authorise the General Manager to take the necessary actions to facilitate this process.

Implications. Community land will become privately owned and this would create a precedent that could impact on Council's dealings with other encroachments as they are identified.

## Background

A report on the encroachment onto community land described as Dolphin Reserve at Currarong was submitted to the Strategy & Assets Committee for consideration at its meeting on 20 March 2018 (Attachment 1).

The Committee resolved that the item be deferred to the next Ordinary meeting (of Council) "...pending further legal advice on the transfer of the title."

Advice has now been received from Mr Paul Magagnino, Managing Partner at Kells as follows:

*"Councils only real option to sell part of the land is to consider reclassification of that part of the land with an encroachment. That process is of course time consuming and probably not in the public interest."*

*The easement option is a valid option for Council as it at least formalises the rights for the owner of the adjoining property and it also closes the matter for Council, at least for now. The beauty is that there is no reclassification, no sale and an ability for the easement to one day be extinguished.*

*So Council could consent to the easement order with conditions including:*

- 1. Compensation*
- 2. Costs and*
- 3. A condition that the easement is not granted in perpetuity but instead the land rights revert to Council without easement when and if the encroaching improvements are ever demolished.”*

Having considered this advice, the recommendation to Strategy & Assets Committee is recommitted for consideration by Council.

If Council resolves to adopt the recommendation, any submission to the Land and Environment Court including letters of support, will make clear representations in terms of compensation, costs and extinguishment of the easement whenever the encroaching improvements are removed and/or demolished.

## **SA18.57 Encroachment onto Public Reserve - 1 Walton Way, Currarong**

**HPERM Ref:** D18/24295

**Group:** Assets & Works Group  
**Section:** Business & Property

**Attachments:**

1. Plan - Encroachment onto Dolphin Reserve
2. Building at 1 Walton Way which encroaches onto Dolphin Reserve
3. Fencing Encroachment onto Dolphin Reserve
4. Fencing Encroachment onto Dolphin Reserve
5. Submission by PDC Lawyers

### **Purpose / Summary**

To consider a request from the owner of a property adjoining Dolphin Reserve at Currarong that Council support an application to the Land and Environment Court for orders under the Encroachment of Buildings Act 1922 which will have the effect of authorising an encroachment onto public land.

### **Recommendation**

That Council resolves to:

1. Support an application by the owner of Lot 220 DP 16854 at 1 Walton Way Currarong, Robin Nicholas Graham, to the Land and Environment Court of New South Wales for an order under the Encroachment of Buildings Act 1922 that an easement right be created in relation to the encroachment onto Council owned land known as Dolphin Reserve at Currarong comprised in Lot 222 DP 16584 and shown by hatching on Attachment "A" provided that the easement is extinguished upon demolition of the building which forms the encroachment;
2. Take no action in relation to the other encroachments onto Dolphin Reserve in the form of fencing adjacent to the western boundaries of properties at 3 to 9 Walton Way inclusive other than to acknowledge the encroachments and to inform the registered proprietors of those properties that Council requires that fencing be relocated to the surveyed boundaries whenever the properties are redeveloped for any reason; and
3. Grant authority to affix the Common Seal of the Council of the City of Shoalhaven to any document required to be sealed and to delegate to the General Manager the authority required to finalise this matter including, if required, any submission to the Land and Environment Court of New South Wales in relation to an application for orders under the Encroachment of Buildings Act 1922 in (1) above.

### **Options**

1. Proceed in accordance with the recommendation.

Implications. This will deliver a compromise solution to the problem of an encroachment onto public land which does not adversely impact the long term public interest and which provides certainty that the encroachment will be removed when the building is demolished because it has reached the end of its useful life and/or is to be redeveloped.

2. Adopt a resolution which supports a Land and Environment Court order that the land be sold to the adjoining owner.  
Implications. The alienation of this parcel of public land comprising part of Dolphin Reserve at Currarong is not recommended.
3. Resolve that all encroachments onto Dolphin Reserve, Currarong are to be removed immediately.  
Implications. The owners of the properties at 1 to 9 Walton Way inclusive will be required to pay for the cost of the removal of fencing and other structures AND to instal new fencing on the correct alignment as confirmed by survey (Council may have to pay half the cost of the new fencing estimated at \$4,000).
4. Allow the encroachments to remain.  
Implications. Dolphin Reserve is community land categorised under the Local Government Act 1993 as "Park". The adopted generic plan of management for parks is opposed to alienation of public land and promotes the removal of existing encroachments.
5. Propose an alternative and provide further direction to staff.

#### **Background**

Dolphin Reserve at Currarong is comprised in Lot 222 DP 16854 located at the western end of Piscator Avenue fronting Currarong Creek at the point where the creek discharges into the Pacific Ocean. The land is classified "community" land and categorised as a "park" under the Local Government Act having been acquired by Council from Princelands Limited (Halloran) in 1955.

The transaction involving the transfer of a number of lots within the village of Currarong from Princelands to Council was finalised in 1956 when a transfer was executed by both parties and registered as Dealing G449155 by the Registrar General. It is noted that the land was acquired for public recreation purposes even though Princelands transferred the land as an estate in fee simple ie it had not been set aside as public garden and recreation space or as a public reserve in a private subdivision.

There are five (5) residential lots in Walton Way which have boundaries contiguous with the eastern boundary of Dolphin Reserve and survey confirms that all five (5) properties encroach onto the reserve. The property at 1 Walton Way is developed as a residential property with a stand-alone holiday rental which encroaches onto Dolphin Reserve by as much as 2.69 metres whereas the other four (4) properties have enclosed part of Dolphin Reserve without authority. All five properties have encroached onto the reserve by between 3 and 3.29 metres – Attachments "2", "3" and "4" show fencing which encroaches onto the reserve.

#### **Survey History**

The Currarong Estate was developed in the late 1920s early 1930s by Henry Halloran as the "Governing Director" of the company which owned the land at the time (prior to Princelands becoming owner) - the Council of Clyde Shire approved the subdivision in July 1927, survey was carried out in June 1928 and the Council Clerk's Certificate was issued in July 1929.

#### **Current Request**

PDC Lawyers act for Robin Nicholas Graham, the owner of the property at 1 Walton Way Currarong, and have made a submission to Council with the objective of securing Council's support for an application to the Land and Environment Court for orders which will effectively

authorise the occupation of public land. The submission by PDC Lawyers is set out on Attachment "E" and is summarised as follows:

- As a result of an historical error in approximately 1932, the fencing on the boundary of Dolphin Reserve is actually 3 metres inside the boundary of the reserve.

**STAFF NOTE:** the assertion of an historical error (ie a survey error) implies an error by the original surveyor and this is not endorsed by Council staff. It is acknowledged however, that fencing had been erected on an incorrect alignment and over the years subsequent development did not address the problem of fencing not being on the correct boundary.

- A cottage was built on the property at 1 Walton Way in 1938 and part of that building encroaches onto Dolphin Reserve.

**STAFF NOTE:** The building which encroaches onto the reserve is a stand alone building which is a holiday letting. It is not clear that this building was constructed at the same time as the main building was erected on the land.

- The client has previously corresponded with Council with a view to ascertaining a means of remedying the encroachment.

**STAFF NOTE:** Council advised Mr Graham (and Ms Shields) in August 2013 that Council would not be taking action to rectify the encroachment and that the resolution of Council dated 20 August 2013 inviting a planning proposal to reclassify the part of the reserve enclosed with private property remained Council's current position.

Furthermore, it is noted that the owner of the property has a current development consent to remove the encroachment and it would appear that he is reluctant to act on that consent.

- As a consequence of having been made aware of the Encroachment of Buildings Act 1922, Mr Graham consulted PDC Lawyers who have now taken instructions to the effect that orders of the Land and Environment Court are to be sought to have transferred to Mr Graham the part of Dolphin Reserve occupied by Mr Graham as a result of the encroachment.

#### ***Encroachment of Buildings Act 1922***

An adjacent owner or an encroaching owner may apply to the Court for relief under this Act in respect of any encroachment.

On application, the Court may make such orders as it may deem just with respect to:

- the payment of compensation to the adjacent owner;
- the conveyance, transfer or lease of the subject land to the encroaching owner, or the grant to the encroaching owner of any estate or interest therein or any easement right or privilege in relation thereto; and
- the removal of the encroachment.

PDC Lawyers propose the making of an application to the Court for orders that the part of the common boundary between Lot 222 DP 16854 and Lot 220 DP 16854 is to be adjusted westwards, to correspond to the existing alignment of the fence on the basis of the following commitments:

- the applicant will prepare any necessary applications and plans to give effect to the boundary adjustment referred to above;
- the applicant will pay the costs and expenses for the preparation of such applications and plans, and for their lodgement with the appropriate authorities; and



- Council is to sign all necessary documents to enable such application and plans referred to above to be lodged with appropriate authorities.

### **Consultation**

The submission by PDC Lawyers has been circulated internally for comment and only the Recreation, Community and Culture Manager and Strategic Planning Manager have raised concerns about agreeing to any proposition by which part of Dolphin Reserve is alienated.

The Strategic Planning Manager's comments are discerning and serve to inform Council that discussions with the landowner on matters relating to Dolphin Reserve and the encroachment date back to 2006:

*"Strategic Planning have been involved in discussions with Council's Property Unit and the landowners of 1 Walton Way, Currarong as early as the Citywide LEP process which commenced in 2006. More recently, we met with the landowners on 16 June 2016 and subsequently wrote to them on 8 July 2016. The meeting and written advice provided options in terms of proceeding with rectifying the encroachment, these included:*

- *Claim of adverse or possessory title – it was noted that this would not be an eligible claim as adverse or possessory title can only be applied for over the whole title of land.*
- *Proceedings with the Land and Environment Court under Section 3 of the Encroachment of Buildings Act 1922 – it was recommended that the landowner obtain their own legal advice with respect to pursuing this option.*
- *Sale of part of the land (i.e. Dolphin Reserve) containing the encroachment – this was not a possible option due to the classification of the land as 'Community', and such sale of the land is prohibited under the Local Government Act 1993. Sale of the land could only be considered if the land was classified 'Operational', a Planning Proposal would be required to do so.*
- *Removal of the encroachment by way of a DA for partial demolition of the structure. It was also noted that an active Development Consent exists of the site that involves the partial demolition of the structure to rectify the encroachment. The landowner advised that this was not a viable option as it would involve partial demolition of the existing dwelling.*

*A meeting was held on 6 November 2017 with the landowner, his surveyor and legal representative, Mike Harben and myself following receipt of correspondence that the landowner wished to proceed to make an application to the Land and Environment Court under Section 3 of the Encroachment of Buildings Act 1922. The intention of the application was explained to be for the transfer of land. During the meeting it was advised that the landowner or his representatives should prepare a response to Council which included a report from the registered surveyor to explain the history of the site and the encroachment.*

*I have reviewed the documentation provided by PDC. Information contained within the letter indicates that they wish to make an application for land transfer rather than an easement. Compensation is also raised as an item of consideration.*

*Despite the occurrence of the error in survey or error in erection of the rear boundary fence on public land, the fact is that the land in which the encroachment exists is public land. A precedent should not be set by this particular situation whereby Council agrees to sell land reserved for community purposes.*

*In considering the options available, Strategic Planning agree to support an application for an easement for the life of the structure. The easement is considered to be a fair*

*balance between enabling the existing dwelling to remain for the remainder of its life and also preserving the land for its eventual use by the public as it was originally intended for.*

*However this proceeds, Strategic Planning will need to be advised of the eventual outcome to ensure that any necessary housekeeping amendments are made to the LEP. It may be necessary that we seek our own legal advice in respect to the issue of the zoning and classification of the land to determine what requirements Council will need to fulfil in the instance that the application to the Land and Environment Court is grant by a land transfer."*

### **Encroachments**

It appears likely that the encroachments date back to the time when the land was first surveyed and the boundaries of Lot 222 DP 16854 were not properly identified when the first fencing was erected. It is also likely that a series of events ie construction of housing, took place without the problem of fencing on the incorrect alignment being recognised.

It is important that the owners of the properties which have encroached onto Dolphin Reserve be put on notice that Council is aware of the encroachments and requires that when the properties are redeveloped, the encroachments are to be removed at that time.

### **Compensation**

The PDC Lawyers' submission discusses the issue of compensation in a way that suggests that it is unlikely that a Court will issue orders as to compensation. This may well be the case but that is a matter for the Court.

In all other property dealings, if Council is to consider the granting of an easement for any purpose, compensation is an issue to take into consideration. It follows then that in this case Council can elect to support an application for a Court order but it should do so on the basis of compensation being payable.

If the Court is to consider the grant of an easement in accordance with the provisions of the Encroachment of Buildings Act 1922, it has to consider all aspects of the case including any submissions made to it and therefore compensation for the loss of public land, even if only temporary, is going to be a very important consideration.

If this matter proceeds to the making of an application to the Land and Environment Court, Council will have an opportunity to make a submission to the Court and that submission will address the issue of compensation.

### **Method of Disposal**

The submission by PDC Lawyers is predicated on seeking orders from the Court with respect to disposal of the land rather than lease or a grant to their client of an estate or interest or easement right or privilege.

The justification put forward relies on the view that nothing changes for Council and that Council has never been cognisant of the encroachment nor has it ever used the land which is the subject of the encroachment.

The argument put forward by the Strategic Planning Manager in support of the retention of public land unless there is compelling reason to do otherwise has merit as does the need to seek to avoid an unwanted precedent.

A compromise position which protects the interests of all parties involved by the creation of an easement would appear to be a sensible outcome and worthy of support in this case.

## Community Engagement

### **Currarong Community Association (Currarong CCB)**

This matter was discussed at a meeting of the Currarong CCB on 17 February 2018. The following is an extract from the minutes of that meeting:

*“Attended by Council's Mike Harbin and the owners of 1,3 & 5 Walton Way, who all spoke on the issue of the encroachment onto Dolphin Reserve. Several members also spoke and asked questions. The following is a summary of the key points:*

- a. It was a unanimous view that the land affected by the encroachment should not go back to public land. This was based on the fact that the fence line of 1 to 9 Walton Way has historically always been where it is today and the community does not see that this should change.*
- b. The meeting does not have a preferred position on what remedy to the encroachment should take place. It was the view that this should be left to the landowners, Council and Courts to decide, in the event legal action takes place.*
- c. The owners of 1 Walton Way stated that their intention (notwithstanding the ultimate determination on the encroachment), is to keep the historical cottages which they describe as "vitally important in maintaining the quaint character of the village". This is also supported by the community who value the historical context of the cottages.”*

Whilst the CCB is of the view that the area encroached upon should not go back to public land, the CCB does concede that the remedy to the encroachment should be left to the landowners, Council and the Courts to determine.

The recommended course of action which supports an application to the Land and Environment Court for orders requiring the creation of an easement right to protect the interest of a private landowner for the life of the encroaching building does not adversely impact the public interest nor is it opposed to the view of the CCB.



26 March 2018

Your Ref: Mike Harben  
Our Ref: ADK:17/0166

The General Manager  
Shoalhaven City Council  
PO Box 42  
NOWRA NSW 2541

By email: [michael.harben@shoalhaven.nsw.gov.au](mailto:michael.harben@shoalhaven.nsw.gov.au)

Dear General Manager

RE: ENCROACHMENT ONTO PUBLIC RESERVE | 1 WALTON WAY, CURRARONG |  
REQUEST FOR COUNCIL ACQUIESCENCE TO COURT APPLICATION

1. I refer to my letter to Council dated 6 December 2017, and to my deputation before Council on Tuesday 20 March 2018, both relating to the above matter.
2. When this matter was last before Council, the motion was deferred to obtain legal advice on how Council is capable of disposing the issue.
3. I have now been provided a copy of the draft supplementary report to Council which includes an excerpt of that advice. The advice appears to be to the effect that Council's only option is to proceed with an easement.
4. Although I have not been made privy to the terms of the advice in its entirety, I must respectfully point out that this is simply not the case.
5. It is true that Council does not have the unilateral power to transfer to my clients the land which is the subject of the encroachment. However, my clients are not asking Council to do this.
6. My clients are asking Council to support an application to the Court to transfer the land the subject of the encroachment. This was also recommended as 'Option 2', of the five (5) legally viable options, in the original report to Council, tabled on 20 March 2018.
7. The Court is not limited by the provisions of the *Local Government Act 1993* in the same way that the Council is. The Court, pursuant to the powers it enjoys under the *Encroachment of Buildings Act 1922*, may make 'such orders as it may deem just', including 'the conveyance transfer ... of the subject land' (see section 3(2) of the Act).



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8. Accordingly, the Court can transfer the land to my client, notwithstanding Council's own limitations in this regard.
9. Upon transfer of title, the classification of the land as community will be dissolved. This happens automatically by virtue of the fact that that land held in private ownership cannot, by definition, be community land.
10. This also avoids the need for a planning proposal.
11. With respect, the option put by my client to Council is the most commercially feasible and equitable outcome for both parties.
12. Regardless of the outcome of Council's decision on this matter, I anticipate receiving instructions to commence proceedings before the Land and Environment Court of NSW, pursuant to the *Encroachment of Building Act 1922*, seeking orders for the transfer of land.
13. If Council opposes (or does not support) this application, the matter will need to be litigated, causing both parties to incur significant cost.
14. However, if Council supports the application, which is within Council's power to do, the matter is likely to proceed more efficiently and without the cost associated with an adversarial litigation.
15. My clients respectfully request that Council make the following resolution:
  - i. Support an application by the owner of Lot 220 DP 16854 at 1 Walton Way Currarong, Robin Nicholas Graham, to the Land and Environment Court of New South Wales for an order under the *Encroachment of Buildings Act 1922* for the transfer of land, shown by hatching on Attachment "A", which was created as a consequence of an encroachment onto Council owned land known as Dolphin Reserve at Currarong comprised in Lot 222 DP 16584 and seek no order as to the payment of compensation for that transfer;
  - ii. Take no action in relation to the other encroachments onto Dolphin Reserve in the form of fencing adjacent to the western boundaries of properties at 3 to 9 Walton Way inclusive other than to acknowledge the encroachments and to inform the registered proprietors of those properties that Council requires that fencing be relocated to the surveyed boundaries whenever the properties are redeveloped for any reason; and
  - iii. Grant authority to affix the Common Seal of the Council of the City of Shoalhaven to any document required to be sealed and to delegate to the General Manager the authority required to finalise this matter including, if required, any submission to the Land and Environment Court of New South Wales in relation to an application for orders under the *Encroachment of Buildings Act 1922* in (1) above.
16. If I may be of any further assistance, I invite you to contact me. Your consideration is appreciated.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Melly'.



Alex Kelly  
**Director and Lawyer**

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CL18.75 - Attachment 2