

Ordinary Meeting

Meeting Date: Tuesday, 26 November, 2019
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.00pm

Membership (Quorum - 7)
All Councillors

Please note: The proceedings of this meeting (including presentations, deputations and debate) will be webcast and may be recorded and broadcast under the provisions of the Code of Meeting Practice. Your attendance at this meeting is taken as consent to the possibility that your image and/or voice may be recorded and broadcast to the public.

Agenda

- 1. Acknowledgement of Traditional Custodians**
- 2. Opening Prayer**
- 3. Australian National Anthem**
- 4. Apologies / Leave of Absence**
- 5. Confirmation of Minutes**
 - Ordinary Meeting - 29 October 2019
- 6. Declarations of Interest**
- 7. Call Over of the Business Paper**
- 8. Presentation of Petitions**
- 9. Mayoral Minute**

Mayoral Minute

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- 10. Deputations and Presentations**
- 11. Notices of Motion / Questions on Notice**

Notices of Motion / Questions on Notice

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Local Government Act - Section 10A(2)(c) - Information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.

There is a public interest consideration against disclosure of information as disclosure of the information could reasonably be expected to reveal commercial-in-confidence provisions of a contract, diminish the competitive commercial value of any information to any person and/or prejudice any person's legitimate business, commercial, professional or financial interests.

Reports

CCL19.20 Tenders – Confidential: Waste and Recycling Collection Services

Local Government Act - Section 10A(2)(d)(i) - Commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.

There is a public interest consideration against disclosure of information as disclosure of the information could reasonably be expected to reveal commercial-in-confidence provisions of a contract, diminish the competitive commercial value of any information to any person and/or prejudice any person's legitimate business, commercial, professional or financial interests.

MM19.19 Mayoral Minute - Catastrophic Tuesday - 12 November 2019

HPERM Ref: D19/409704

Recommendation

That Shoalhaven City Council commend all services that 'stood up' the Emergency Operations Centre on Tuesday 12 November 2019 in preparation for a Catastrophic Fire Danger day when NSW was also placed into a State of Emergency.

Details

As fires have raged across NSW during the last couple of months, conditions escalated to a Catastrophic Fire Danger rating that was applied to the Shoalhaven along with many other areas.

As a precautionary approach the Emergency Operations Centre was 'stood up' should the worst outcome arise. The Nowra Showground was also opened for large animal evacuation.

Fortunately for the Shoalhaven a number of small fires ignited but were quickly extinguished by local crews who were on a heightened alert. This heightened alert status very much meant that we didn't descend into an uncontrolled fire situation.

In attending the EOC, it was heartening to see that many services took the opportunity to mentor new personnel in the operation of an EOC, thus extended the capability and capacity of local services to endure long periods of EOC operation.

Shoalhaven's emergency planning focuses first and foremost on human safety and to that end vulnerable facilities such as schools, nursing homes and hospitals are a point of focus during these times dependent on their proximity to fire.

As the fire season progresses we must remain vigilant in keeping our own properties prepared. There is no doubt that the season ahead will be a tense one as there is little to no abatement in the long term forecast through rain.

In many ways we are fortunate to have a solid water supply for the city, even though it is recognised that many small dams are very low to empty. Shoalhaven City Council continues to maintain a collaborative and strong relationship with the following agencies:

- RFS
- Police
- SES
- Forestry NSW
- National parks and wildlife service
- Local Land services
- Ambulance NSW
- Welfare services

I encourage all Shoalhaven residents to prepare a Bush Fire Survival Plan available online at <https://www.rfs.nsw.gov.au/plan-and-prepare/bush-fire-survival-plan> or speak to your local Fire Control Centre to obtain a copy.

Understand the levels of alert and listen to any warnings issued should a fire occur, through the various means of communicating including Fires Near Me app and local radio stations.

Residents should also:

- Understand the levels of Alert – ADVICE – WATCH & ACT – EMERGENCY WARNING
- Listen to any warnings should a fire occur
- On days of Catastrophic Fire Danger refer to your Bush Fire Survival Plan
- If you choose to leave – leave early
- Listen to your local radio station for updates

MM19.20 Mayoral Minute - Request to waive tipping fees for house fire at Shoalhaven Heads

HPERM Ref: D19/410248

Recommendation

That Council waive waste fees for Mr Gary Davies after the recent house fire that destroyed the dwelling at 38 Ravenscliffe Rd Shoalhaven Heads.

Details

On Monday, 18 November, Mr and Mrs Davies & their three week old baby girl lost everything in a house fire that consumed their dwelling at 38 Ravenscliffe Rd, Shoalhaven Heads. The Shoalhaven Heads community have rallied behind the family by starting a “Go Fund Me” page and receiving goods for the family. It is uncertain at this point if the family had a current insurance policy and considering that they are going through stress and trauma, Council could assist them with the waiver of fees to remove the burnt remains of their home. This could be funded from the Mayoral Relief Fund or from unallocated donations. It is also expected that Mr and Mrs Davies will make a future application to the fund once it is clearer what their needs are. The immediate need is to clean up the site to allow the family to assess their options.

Estimated value of the tipping fee will be in the order of \$10,000.

MM19.20

MM19.21 Mayoral Minute - Country Universities Centre - Establishment of an Interim Board

HPERM Ref: D19/407758

Recommendation

That Council:

1. Undertake an election by secret ballot to select Council's representative to fulfil the position of Director on the interim Ulladulla CUC Board as follows:
 - a. Should more than one expression of interest be received conduct a secret ballot to determine the representative
 - b. Councillors shall e-mail the Public Officer with their nominations prior to 5pm on Thursday 28 November 2019
 - c. The Public Officer will conduct a ballot electronically to conclude at 5pm on Tuesday 3 December 2019
 - d. The CEO (Public Officer) will be delegated the authority by Council to declare the successful candidate and advise the interim Ulladulla CUC Board of the representative
2. Deem as Council Business attendance at the meetings and associated duties for the interim Ulladulla CUC Board.

MM19.21

Details

The Country Universities Centre (CUC) is a not-for-profit organisation, established to make higher education more accessible for communities in regional and remote areas. The model creates a physical presence in regional locations and facilitates delivery of supported learning from over 30 participating universities, providing students with access to campus level technology, facilities, tutors, supportive administrative and academic staff and a network of fellow students. The Central CUC entity has a funding agreement with the NSW State Government to support establishment and 2 years of operating costs for up to 5 new regional centres operated under an affiliate agreement.

A stakeholder Steering Committee comprising representatives from private sector and government employers; local and state government; community groups, tertiary education providers and the Local Aboriginal Land Council was established in early 2019 to assess the options for a Country Universities Centre based at Ulladulla. The Mayor and Acting Director Finance, Corporate and Community Services were on the stakeholder Steering Committee supported by relevant staff. In late October the Committee completed and submitted a business case to the central Country Universities Centre entity, recommending an affiliate centre be established at Ulladulla.

CUC Central have accepted the business case which confirms a CUC located at Ulladulla is supported by the community, financially viable and can be housed in suitable premises. Under a funding agreement between CUC Central and the NSW State Government there is in principle support for \$1.3 million of funding to fit out premises and support 2 years of operating costs for a CUC affiliate located at Ulladulla. The Steering Committee is also working with CUC Central to prepare a grant application to the Federal Government's 2019 Regional University Centres Program for additional funds to support the Ulladulla Centre.

To apply for the Federal grant and negotiate a Funding and Affiliate agreement with CUC Central requires the establishment of an incorporated not-for-profit company limited by guarantee. To incorporate the entity requires the appointment of an interim board of at least 4 people who can satisfy the necessary 'fit and proper person' requirements.

Once the entity is established the interim board will be tasked with leading the process to recruit and select a permanent, skills-based board. Establishing an interim board ASAP is necessary because of:

- a) Timing of the Federal grant, which closes in early December, and requires the applicant be a community owned incorporated entity,
- b) CUC Central can only enter into a Funding and Affiliate agreement with an incorporated not-for-profit entity.

This affiliate model provides a governance and legal structure to align with the Country Universities Centre's strategic purpose. Through this model the Ulladulla CUC can adopt consistent branding and business models and can utilise the Central Country Universities Centre's university and governmental partnerships and arrangements. The Ulladulla CUC affiliate will be autonomous and locally governed. The local Board will administer funds, including government grants, and run the local CUC as agents for the Central CUC which is responsible for strategy and operations.

The role of Interim Director is an unpaid position. It is anticipated that meetings will be held monthly, or more frequently if determined by the interim Board whilst in the establishment stage. The meetings will be held in Ulladulla with the option to participate via use of technology, hence face to face attendance is not always necessary. Meeting duration will be for approximately 2 hours. There are likely to be tasks that the Board Directors would do outside the meetings, including:

- Reviewing funding agreements
- Liaising with government and non-government entities to facilitate pro-bono support for key projects such as the design and implementation of the Board recruitment and selection process
- Liaising with government and non-government entities to progress key initiatives such as concept plans for the new centre
- Possibly also recruitment of the Centre Manager – a paid staff role

The Mayoral Minute recommendation sets out the election process to identify Council's representative on the interim Ulladulla CUC Board.

Attendance at the interim Ulladulla CUC Board meetings will be deemed business of Council in accordance with Council Member Payment of Expenses and Facilities Policy.

CL19.326 Notice of Motion - Proposed Dredging of Shoalhaven River at Shoalhaven Heads

HPERM Ref: D19/397033

Submitted by: Cllr John Wells

Purpose / Summary

The following Notice of Motion, of which due notice has been given, is submitted for Council's consideration.

Recommendation

That Council apply for a five (5) year licence from the Crown to dredge the navigation channel at Shoalhaven Heads and, further apply for grant funding from the NSW Government to undertake important navigational, recreational and sand nourishment works.

Background

In my report to Council on the 28th NSW Coastal Conference I refer to a question I asked of Coastal Council member Angus Gordon relating to using sand nourishment IN ADDITION to the construction of a rock wall at River Road, Shoalhaven Heads. In asking the question, I was seeking confirmation or otherwise that a rock wall with sand and vegetation covering would be more resilient than a rock-wall alone. The question was further prompted by a presentation Mr Gordon gave at the conference concerning the "enigmatic" Section 27 of the Coastal Management Act. S27 refers, among other things, to matters of redress and liability which might arise if works undertaken by a party result in injurious effects on adjacent properties. The construction of rock walls / structures over limited sections of a continuous shoreline have in numerous circumstances contributed to damage to adjacent properties by accelerating or deviating wave energy off the rock-wall onto the "soft" coastline – typically at the end of such hard engineering.

My view is that covering the rock wall with sand and revegetating would mitigate the effects which Section 27 seeks to redress, enhance resilience and prove a far better aesthetic outcome. As a recent front page headline of 'The Heads News' trumpeted about the rock wall – "ITS GOING TO BE UGLY"

Quite apart from improving the River Road foreshore, concerns have been expressed by the local community about the reducing of recreational and navigational amenity of the estuary at this location. The Shoalhaven Heads Estuary Taskforce has raised these and other (e.g. water quality) issues ad nauseum.

Council has substantial infrastructure investments along the River Road / Hay Avenue foreshore including the:

- Hay Avenue Boat ramp / Parking area
- Public wharf, parking area & amenities
- Access stairways
- River Road boat ramp, pontoon wharf & fish cleaning facilities
- Children's & adult play facilities
- A number of picnic shelters & attendant tables / seating

- Extensive parking areas
- River Road amenities
- Access ways to the beach & “bird airport”

This public investment would run to millions of dollars, however, its value is diminishing by evident shallowing of the navigation channel and need to nourish the beach. Council needs to restore the value of these assets by applying sand nourishment to the length of the foreshore (including the rock wall), revegetating where appropriate (unstable) and deepening/widening the navigation channel to at least the River Road boat ramp.

Let's restore Shoalhaven Heads' playground!

In my view the only way to economically source sand in the quantity required is to dredge.

I commend this proposal to my colleagues.

Note by the CEO

Any licence application to Crown Lands to dredge the navigation channel at Shoalhaven Heads would be subject to development consent (a development application approval) under the Environmental Planning & Assessment (EP&A) Act as this proposal is not included in Council's certified Coastal Zone Management Plan (CZMP). The activity may be 'designated development' under the EP&A Act and, if this was the case, an Environmental Impact Statement (EIS) would be required to be submitted with a development application. Other environmental and engineering studies would need to be completed to support a development application including coastal engineering and potentially flood assessment to assess and quantify the amount of material to be dredged as well as consider any potential flood impacts as well as impact on the environment.

Additional licences or permits from other government agencies including Fisheries would also be required.

Council has not provided a budget allocation for the necessary investigations and studies to take place or any works should all the necessary approvals, licences and permits be obtained.

It is recommended that Council receive a report outlining the legal process required, likely studies and assessments needed, estimated budget and likely approvals, permits and licences required to carry out the works outlined above.

CL19.326

CL19.327 Notice of Motion - Jerry Bailey Oval, Shoalhaven Heads - Provision of Amenities

HPERM Ref: D19/397307

Submitted by: Cllr John Wells

Purpose / Summary

The following Notice of Motion, of which due notice has been given, is submitted for Council's consideration.

Recommendation

That Council support and give high priority to the provision of a public toilet at Jerry Bailey Oval, Shoalhaven Heads.

Background

Fifteen years ago, Jerry Bailey Oval comprised a grassed open reserve on which the Shoalhaven Village pool was located.

Today, thanks to the initiative of the local community, and at peppercorn cost to Council, Jerry Bailey Oval has a substantial learn to ride facility, an enviable skate park, a magnificent pump track and a developing Lions Park. The community has an aspiration and is pursuing grant funding to develop an enclosed dog off-leash area.

The Oval is in perpetual use during daylight hours, an incredibly popular activity-based recreation space which attracts visitors from near and far.

Problem: having generated the foot and wheel traffic, the reserve doesn't have amenities to service them. Yes, there is a public toilet behind the Surf Club between 100 to 250 metres from Jerry Bailey Oval. However, there is a busy street to cross and the Surf Club area with its new playground, kiosk, café and beach is busy in its own right. Two hundred metres is a long way if you're very young, elderly or "caught short".

Yes, there are toilets in the swimming pool, however providing year round access by modifying access arrangements may subject the pool facilities to upgrading to current BCA standards and may pose management issues during pool season.

What Jerry Bailey Oval and the community need is a toilet – even if it's a single unisex/disability friendly "drop-in" unit. Concurrent with the provision of a water bubbler for hydration. Whilst this toilet is not on the current Asset Management Plan for toilets, I suggest that as with Clifton Gardens, the extent of recreational infrastructure warrants its inclusion.

I recommend accordingly and would ask in supporting the recommendation that my colleagues support the delivery of this essential infrastructure as 'high priority'.

Note by the CEO

The need for a toilet at Jerry Bailey Oval has been assessed in accordance with the Asset Management Plan (AMP) for Public Amenities. It has received a high enough index to be included in a revision of the Top 20 priority list. A revised Top 20 priority list will be reported to Council in February 2020.

CL19.327

CL19.328 Rescission Motion - CL19.310 Funding and Advertising in The Bush Telegraph

HPERM Ref: D19/397487

Submitted by: Clr John Levett
Clr Kaye Gartner
Clr Nina Digiglio

Purpose / Summary

The following Rescission Motion, of which due notice has been given, is submitted for Council's consideration.

Recommendation

That Council rescind the Motion relating to Item CL19.310 of the Council Meeting held on Tuesday 29 October 2019.

Background

The following resolution was adopted at the Ordinary Council Meeting held Tuesday 29 October 2019 (MIN19.759).

That Council immediately stop any funding or advertising in the New Bush Telegraph newspaper. (This includes all Departments of Council.)

CL19.328

CL19.329 Notice of Motion - CL19.310 Funding and Advertising in The Bush Telegraph

HPERM Ref: D19/397513

Submitted by: Clr John Levett
Clr Kaye Gartner
Clr Nina Digiglio

Purpose / Summary

The following Notice of Motion, of which due notice has been given, is submitted for Council's consideration.

Recommendation

That Council affirms support for a free press in the Shoalhaven and beyond and eschews any attempt at political interference with that principle. Further, that any decision by Shoalhaven City Council around placement of advertising is an operational one and should be made by appropriate staff after due consideration of cost effectiveness and potential message penetration to the target audience.

Note by the CEO

This Notice of Motion will be dealt with if the preceding Rescission Motion is carried.

CL19.329

CL19.330 Notice of Motion - Hazard Reduction - Council Managed and Other Lands

HPERM Ref: D19/403783

Submitted by: Cllr Greg Watson

Purpose / Summary

The following Notice of Motion, of which due notice has been given, is submitted for Council's consideration.

Recommendation

That

1. Council put in place an action plan to reduce the fuel load in all bush lands located on Council managed lands in the Shoalhaven City area to keep fuel loads at a safe level.
 - a. The fuel load reduction be undertaken by mechanical, chemical and controlled burning, whichever is determined to be the most appropriate.
 - b. The action plan be prepared in consultation with the NSW RFS, and other agencies when Council manages land under their control.
 - c. When controlled burning is undertaken it should as far as practical be timed to coincide with the late Autumn early Winter period to minimise the impact on native fauna.
2. Council Make representation to the NSW State Government to have the relevant Legislation amended to empower Councils to issue an order on the RFS to serve an order under their powers to have a property owner/manager to reduce a fire hazard where the fuel load is estimated to exceed a safe level. The authority of the RFS to impose a hazard reduction order be expanded to include land under the control or management of other NSW Government Agencies.

CL19.330

Note by the CEO

The [Shoalhaven district bushfire risk management plan](#) (BFRMP) is a strategic document that identifies community assets at risk from bushfire and sets out a program of coordinated, multi-agency treatments to reduce identified risks.

Treatments may include such things as fuel reduction burning, grazing, community education and fire trail maintenance. Annual programs to implement the treatments are undertaken by property owners, land managers and fire fighting authorities.

The Annual Bushfire Mitigation Program is Council's action plan to implement the above and takes guidance from the Rural Fires Act 1997 and the various duties imposed therein. This program is focussed on sites with High – extreme hazard categorisation and involves the management of Council owned land that interfaces with private infrastructure, via the provision of Asset Protection Zones (APZs).

These APZs provide defensible spaces for the protection of infrastructure, mainly dwellings, built prior to Planning For Bushfire Protection requirements being applied to residential development and subdivisions. The methodology for establishing the APZs does have regard to topography and vegetation type, which gives some consideration of the intensity or heat generated by a potential fire.

If Council is seeking to amend the above program it would be recommended that such amendments be clearly identified and a report be provided back to Council to both quantify and qualify proposed actions and consideration of resourcing.

CL19.330

CL19.331 Notice of Motion - Chinaman's Island Lake Conjola

HPERM Ref: D19/405775

Submitted by: Cllr Patricia White

Purpose / Summary

The following Notice of Motion, of which due notice has been given, is submitted for Council's consideration.

Recommendation

That Council:

1. Request the General Manager to report to Council the findings from Dept Crown Lands and the three permissive occupants on Chinaman's Island on the following issues:-
 - a. Audit of the current wastewater systems
 - b. An on-site wastewater report in accordance with Chapter G8 Shoalhaven DCP 2014; and
 - c. A structural engineering report for the cottages on Chinaman's Island.
2. Request the General Manager to investigate with Dept Crown Lands on all options available to retain the cottages and future occupancies of the cottages on the Island and report back to Council the options for further consideration.

Background

Over recent years, Council has received several reports relating to the cottages on Chinaman's Island Lake Conjola regarding the sewer issues, occupancies and heritage listing the cottages.

In April 2019 a presentation was given to the current permissive occupants and Crown Lands regarding the wastewater and structural concerns of the cottages. Council has issued letters to the occupants and Crown Lands requesting information in relation to wastewater and structural components of the cottages. They have requested the reports by the 6th December 2019. This recommendation is requesting the General Manager to report the findings to the full council.

Additionally, Cllr White met with the Minister for Crown Lands the Hon Melinda Pavey MP, Minister for Local Government the Hon Shelley Hancock MP, Director Crown Lands and the Milham Family in early November 2019. It was discussed that there are issues with cottages across the State that were part of old ballot systems in the 1950's and 60's. Both Melinda Pavey and Shelley Hancock are endeavouring to investigate ways to resolve the issues. Other areas of concern with similar cottages include Little Pelican Lake Macquarie, Dark Corner Central Coast and others on the North Coast.

The Milhams commenced actions to try and save the Chinaman's cottages in 2015 when their mother who held the occupancy license died. They have been garnering community support and approached Shoalhaven Council with the view to have them listed on the LEP as having Historical Significance. They undertook both a Change.org and paper petition and had over 780+ signatures and comments from both locals and tourists familiar with the area.

CL19.331

Everyone that was approached expressed great concern over the fact that such an important part of Lake Conjola history could be lost forever.

Cottages in the exact same situation as Chinaman's Island were able to be recognised for their uniqueness and have been successfully save by a join Plan of Management between Central Coast Council and the Dept of Crown Lands.

Following discussions with the Ministers and Crown Lands, it was suggested that all avenues be investiaged with Council on any options available for the cottages to be retained.

There is an understanding by all parties that Shoalhaven council has recently expressed concerns over the maintenance of the wastewater, septic systems and structural components on the Island. Some occupants on the Island have given assure to the immediate upkeep and maintenance (current & future) should they be allowed to keep these cottages, at no expense to Crown Lands or Council. Crown Lands also holds bonds for each of the remaining cottages.

I seek the support from Councillors to continue to investigate options to save these cottages.

Note by the CEO

Heritage Listing – heritage listing in the Shoalhaven LEP 2014 remains under consideration. Council resolved on 8 November 2019 to submit the 2019 Heritage Housekeeping Amendment Planning Proposal for Gateway determination. The PP contains the proposed local heritage listing of the "Chainman's Island cottage group" and also the "Chinaman's Island timber railway remains". Should the PP receive a favourable Gateway determination it will then proceed through the process.

CL19.331

CL19.332 Notice of Motion - Development Application Fees - 148 Island Point Road, St Georges Basin

HPERM Ref: D19/405957

Submitted by: Cllr Patricia White

Purpose / Summary

The following Notice of Motion, of which due notice has been given, is submitted for Council's consideration.

Recommendation

That Council:

1. Acknowledge that the property owner has lodged a further Development Application reflecting their revised development following Council's recent decision to delete the Service Lane requirements.
2. Consider Reimbursement to the applicant the development application fees (only) in relation to the revised development.
3. Request the Applicant to apply for a refund of any inspection fees under DA17/2435 that have not been expended at this time.

CL19.332

Background

The current development application was lodged with Council in 2017. This matter has been reported to Development Committee and Council on several occasions with the primary issue being the Service Lane and access at the rear of the property requirements under the DA.

Recently Council deleted the Service lane requirements. Advice from a recent meeting with the applicant and Director it has transpired that a new Development Application will be required. Advice was that a new application was the favoured option with new DA Lodgement fees.

When this matter was last debated at Council it was stated that "the collective are responsible for this" meaning the length of time and issues associated with the service lane, for the current DA.

Consideration of a waiver of development application fees is warranted in this matter.

I seek the support from Councillors to implement this important trial.

Note by the CEO

Council previously discussed the matter of fees for this Development at the Ordinary Meeting held on 28 May 2019 at which time Councillor White indicated that this request would be received.

The total amount paid for Development Application fees only was \$1,522.70.

The Waiving / Reimbursement of Development Application fees as proposed in the recommendation sits outside the Council's [Policy of Fee Waivers related to Development Applications](#).

Therefore, should Council wish to reimburse or refund the fee as proposed, Council will need to consider the requirements of Section 356 of the Local Government Act, 1993 which states as follows:

356 Can a council financially assist others?

(1) *A council may, in accordance with a resolution of the council, contribute money or otherwise grant financial assistance to persons for the purpose of exercising its functions.*

(2) *A proposed recipient who acts for private gain is not ineligible to be granted financial assistance but must not receive any benefit under this section until at least 28 days' public notice of the council's proposal to pass the necessary resolution has been given.*

(3) *However, public notice is not required if--*

(a) the financial assistance is part of a specific program, and

(b) the program's details have been included in the council's draft operational plan for the year in which the financial assistance is proposed to be given, and

(c) the program's proposed budget for that year does not exceed 5 per cent of the council's proposed income from the ordinary rates levied for that year, and

(d) the program applies uniformly to all persons within the council's area or to a significant group of persons within the area.

The issue in regard to the subject matter is that the owner has been required to submit 2 very similar development applications, and is now seeking reimbursement of development application fees paid on the original application. The issue of "private gain" should be considered by the Council in this circumstance.

If it is considered that the circumstances warrant that the reimbursement does not constitute "private gain" Council could resolve as proposed by the recommendation and if approved the reimbursement will noted in Council's annual report.

If the Council considers it to be private gain then the following alternative wording should be included in the resolution:

That Council

- 1. Undertake public exhibition for a period of 28 days its intention to refund \$1,522.70 to Mr Travis Harpley as a refund of Development Application Fees.*
- 2. Receive a further report following the public exhibition period should any submissions be received. In the case that no submissions are made, the CEO (Director – Planning, Environment and Development) shall be delegated to authorise the refunds.*

CL19.333 Notice of Motion - Solar Roof Panels - Efficiency Policy

HPERM Ref: D19/405994

Submitted by: Cllr Bob Proudfoot

Purpose / Summary

The following Notice of Motion, of which due notice has been given, is submitted for Council's consideration.

Recommendation

That Council staff prepare a draft policy aimed at ensuring that solar roof panels (both public and private) perform at their optimum level of efficiency. Particular emphasis in preparation of the policy would need to include innovative ways of dealing with overshadowing, especially in the foreseeable future.

Note by the CEO

Council staff responsible for the installation of solar PV panels on Council assets are aware of the negative effects of shading on solar power generation and solar panel performance. One of the main criteria considered in selecting suitable assets for rooftop or ground-mounted solar PV systems is minimal shading of the panels. For high rooftops like the Shoalhaven Entertainment Centre shading was not a concern. For some other potential sites like the Nowra Library and Shoalhaven Regional Gallery, shading of the rooftop by the large fig trees is likely to affect the efficiency of solar panels. For these sites, the solar PV systems can be enhanced with 'optimisers' or micro-inverter technology so that shading is less of a problem and the whole solar array can still function effectively.

Council staff also refer to policy POL15/28 – 'Renewable Energy Installations on Council Assets' which outlines criteria for solar suitability, including shading issues. One of the factors to consider in the policy is: 'Has an initial analysis/ investigation been undertaken to see what type of renewable solution would best fit the asset? e.g. wind monitoring, is roof north facing, shading such as trees.'

Council's policy position in regard to the provision of solar access to solar collectors on private property is contained in Council's DCP Chapter G12 which references the Land and Environment Court Planning Principle regarding solar access. This Planning Principle is not formula based, but allows performance solutions, which fits in with the format of Council's DCP.

CL19.333

CL19.334 Notice of Motion - Community Organisations - Council Directed Projects - Workshop

HPERM Ref: D19/406020

Submitted by: Cllr Bob Proudfoot

Purpose / Summary

The following Notice of Motion, of which due notice has been given, is submitted for Council's consideration.

Recommendation

That Council's communication and engagement staff facilitate a workshop aimed at improving the way that community based organisations are directed to undertake work at the direction of Council. The workshop would essentially recognise that community groups may or may not have sufficient expertise within their ranks to meet the requirements set by Council's professional staff, and perhaps that a more prescriptive approach could be of great benefit.

Note by the CEO

Determining how works are to be delivered should always sit with the party responsible for the delivery of those works. It is not possible for Council to be prescriptive in most cases as continual monitoring and review is required for environmental and other conditions in play and to ensure relevant standards of work are achieved and works are carried out safely.

It is important to note that a community/volunteer group can potentially become a PCBU (person conducting a business or undertaking) under the Work Health and Safety Act 2011 if they are employing any persons (via employment or contractor arrangements) and as a result will have a duty of care in their own right under the Act which cannot be transferred to other parties.

It is also important to keep in mind Council is insured through a local government insurance mutual and therefore Council's insurance cannot be extended to third parties that are not a local government authority. This is particularly important if a community group is the subject of a public liability claim as a result of works and therefore it is in their interest to have care and control of works.

CL19.334

CL19.335 Notice of Motion - Investment Policy Review

HPERM Ref: D19/406065

Submitted by: Cllr Andrew Guile

Attachments: 1. Investment Policy [↓](#)

Purpose / Summary

The following Notice of Motion, of which due notice has been given, is submitted for Council's consideration.

Recommendation

That Council

1. Removes the following section from the Investment Policy

15. APPLICATION OF ESD PRINCIPLES In keeping with ESD principles, Council will give preference to investing funds with financial institutions that do not invest in, or finance, the fossil fuel industry where the investment rate of interest is equivalent to other similar investments that may be on offer to Council at the time of investment. Council will inform affected institutions of the preference against fossil fuel lenders. However, unaffected by this section are assets that are not exposed to fossil fuels, such as: → Covered bonds, which securitise only residential mortgage loans → Green bonds, the proceeds of which are specifically quarantined for new lending for renewable energy or other similar environmentally-friendly uses as well as any other complying investments of comparable ESD credentials.

2. Inform its investment advisers of the changes and thank them for their advice and ongoing work in managing investment funds on behalf of the community.

Background

For quite some time, Council's investment advisers have been recommending a review of the policy with regard to Section 15. The range of essentially 'cash' investments that Council is permitted to hold under the State Government guidelines is already narrow and reflects the risk tolerance of Local Government after the Global Financial Crisis of 2008 onwards where several Councils saw significant capital losses on investments.

Section 15, which may legitimately have a place in an 'ethical' investment policy framework that would ordinarily apply to an equities portfolio, has the effect of significantly limiting diversification to spread risk by preferring sources other than those provided by institutions under the 'four pillars' banking policy.

Removal of Section 15 will not have a negative effect on Council's investment portfolio. Inclusion of cash investments that specifically meet ESD principles will also remain as options for the portfolio based on their relative merits.

A copy of the current policy is provided in the attachments.

Note by the CEO

A Councillor Briefing with Andrew Vallner, Managing Director CPG, was held on 20 June 2019 that identified options for Council to consider when it revises its Investment Policy. An

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evaluation of the options presented by Mr Vallner has been undertaken and it is proposed to have a follow-up Councillor Briefing with Mr Vallner prior to presenting a report to the December Strategy and Assets Committee on a revised Investment Policy.

It is suggested that the Policy amendments proposed on the NoM be referred for discussion at a briefing with Mr Vallner ahead of a revised Investment Policy being considered at the December Strategy & Assets Committee.

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City Administrative Centre
Bridge Road (PO Box 42), Nowra NSW Australia 2541 - DX 5323 Nowra
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For more information contact the Finance Corporate & Community Services Group

INVESTMENT POLICY

Policy Number: POL18/57 • **Adopted:** 19/06/2001 • **Reaffirmed:** 28/09/2004, 18/12/2018 • **Amended:** 26/09/2006, 7/10/2008, 1/02/2011, 23/04/2013, 14/10/2014, 24/05/2016, 15/08/2017, 23/02/2018 • **Minute Number:** MIN01.788, MIN04.1165, MIN06.1217, MIN08.1339, MIN11.55, MIN13.368, D14/268858, MIN16.380, MIN17.221, MIN17.701, MIN18.20, MIN18.1023 • **File:** 23767E • **Produced By:** Finance Corporate & Community Services Group • **Review Date:** 1/12/2019

1. OBJECTIVES

The purpose of this policy is to provide a framework for making decisions concerning the appropriate investment of Council's funds, at the most favourable rate of interest available to it at the time to maximise returns, whilst having due consideration of risk, liquidity and security for its investments.

The policy establishes a series of limits within which Council officers must operate in the planning and process of investing council monies. In setting these limits Council is determining the general level of risk that is acceptable for monies managed on trust for the community of Shoalhaven.

While exercising the power to invest, consideration is to be given to the preservation of capital, liquidity and the return of investment. Council, therefore, has several primary objectives for its investment portfolio:

- Compliance with legislation, regulations, the prudent person tests of the Trustee Act and best practice guidelines;
- Preservation of the amount invested;
- To ensure there is sufficient liquid funds to meet all reasonably anticipated cash flow requirements;
- To generate income from the investment that exceeds the performance benchmarks mentioned later in this document;
- To give preference to investing funds with financial institutions that do not invest in, or finance, the fossil fuel industry where the investment rate of interest is equivalent to other similar investments that may be on offer to Council at the time of investment.
- Where financial institutions are otherwise included on fossil fuel exposure lists, to exempt covered bonds and similar securitisations that specifically exclude any fossil fuel loans, and designated Green bonds.

2. LEGISLATIVE REQUIREMENTS

All investments are to comply with the following:

- Local Government Act 1993;

Shoalhaven City Council – Investment Policy

- Local Government (General) Regulation 2005;
- Ministerial Investment Order;
- The Trustee Amendment (Discretionary Investments) Act (1997) – Section 14;
- Local Government Code of Accounting Practice and Financial Reporting;
- Australian Accounting Standards;
- Office of Local Government Investment Policy Guidelines; and
- Office of Local Government Circulars.

3. AUTHORITY

Authority for implementation of the Investment Policy is delegated by Council to the General Manager in accordance with the Local Government Act 1993.

The General Manager may in turn delegate the day-to-day management of Council's investment portfolio to the Responsible Accounting Officer and/or other Finance staff who must ensure adequate skill, support and oversight is exercised in the investment of Council funds.

Officers' delegated authority to manage Council's investments shall be recorded and they will be required to acknowledge they have received a copy of this policy and understand their obligations in this role.

4. RISK MANAGEMENT

Investments obtained are to be considered in light of the following key criteria:

- Preservation of capital – the requirement for preventing losses in an investment portfolio's total value (considering the time value of money);
- Diversification – the requirement to place investments in a broad range of products so as not to be overexposed to a particular sector of the investment market;
- Credit risk – the risk that a party or guarantor to a transaction will fail to fulfil its obligations. In the context of this document it relates to the risk of loss due to the failure of an institution/entity with which an investment is held to pay the interest and/or repay the principal of an investment;
- Market risk – the risk that the fair value or future cash flows of an investment will fluctuate due to changes in market prices or benchmark returns will unexpectedly overtake the investment's return;
- Liquidity Risk – the risk an institution runs out of cash, is unable to redeem investments at a fair price within a timely period, and thereby Council incurs additional costs (or in the worst case is unable to execute its spending plans);
- Maturity Risk – the risk relating to the length of term to maturity of the investment. The larger the term, the greater the length of exposure and risk to market volatilities; and
- Rollover Risk - the risk that income will not meet expectations or budgeted requirement because interest rates are lower than expected in future

Shoalhaven City Council – Investment Policy

The following indicates the limitations to be applied so as to avoid these risks:

a) Authorised Investments

All investments must be denominated in Australian Dollars. Authorised Investments are limited to those allowed by the Ministerial Investment Order and include:

- Commonwealth / State / Territory Government securities, e.g. bonds;
- Interest bearing deposits / senior securities issued by an eligible authorised deposit-taking institution (ADI);
- Bills of Exchange (< 200 days duration) guaranteed by an ADI;
- Debentures issued by a NSW Council under Local Government Act 1993;
- Deposits with T-Corp &/or Investments in T-Corp Hour-Glass Facility; and
- Existing investments grandfathered under the Ministerial Investment Order.

b) Prohibited Investments

This investment policy prohibits the following types of new investment:

- Derivative based instruments¹;
- Principal only investments or securities that provide potentially nil or negative cash flow;
- Stand alone securities issued that have underlying futures, options, forwards contracts and swaps of any kind;
- Mortgage of land;
- Investment trusts, even where the trusts adhere to the Minister's Order fully with the exception of T-Corp Hourglass Facilities; and
- Any other investment written out of the Minister's Order.

This policy also prohibits the use of leveraging (borrowing to invest) an investment. However, nothing in the policy shall prohibit the short-term investment of loan proceeds where the loan is raised for non-investment purposes and there is a delay prior to the expenditure of loan funds.

c) Liquidity and Maturity

Investments should be allocated to ensure there is sufficient liquidity to meet all reasonably anticipated cash flow requirements, as and when they fall due, without incurring the risk of significant costs due to the unanticipated sale of an investment. Therefore, the maturity dates of each investment must be carefully chosen and reviewed to ensure that cash levels are sufficient to fulfil these estimated requirements.

d) Credit Quality Limits

The portfolio credit guidelines to be adopted will reference the Standard & Poor's (S&P) ratings system criteria and format - however, references to the Minister's Order also

¹ Prohibited investments are not limited to the list above and extend to any investment carried out for speculative purposes.

Shoalhaven City Council – Investment Policy

recognises Moody's and Fitch Ratings and any of the three ratings may be used where available.

In the event of disagreement between agencies as to the rating band ("split ratings"), the consensus rating will be considered the overall credit rating. Where there is not a consensus, Council shall use the higher rating in assessing compliance with portfolio policy limits, but for conservatism shall apply the lower in assessing new purchases.

However, the primary control of credit quality is the prudential supervision and government support and explicit guarantees of the ADI sector, not ratings.

Where interest rates are comparable between similar potential eligible investments, preference shall be made toward the institution or investment with the higher credit quality and/or the ADI that does not invest in, or finance, the fossil fuel industry. Council must also ensure that the relevant counterparty limits are not exceeded.

The maximum holding limit in each rating category for Council's portfolio shall be:

Long-Term Rating Range	Maximum % of Portfolio from 1 July 2017	Maximum % of Portfolio from 1 July 2018
AAA category	100%	100%
AA category or highly rated banks*	100%	100%
A category	60%	60%
BBB category	40%	30%
Unrated category**	10%	2%

* For the purpose of this Policy, "highly rated banks" are currently defined as the ADI deposits or senior guaranteed principal and interest ADI securities issued by the major Australian banking groups:

- Australia and New Zealand Banking Group Limited;
- Commonwealth Bank of Australia;
- National Australia Bank Limited; and
- Westpac Banking Corporation (including ADI subsidiaries, such as Bankwest, whether or not explicitly guaranteed, and brands, such as St George).

Similarly, with other ADI groups (such as Bendigo & Adelaide Bank) own multiple banking licences, rating categories are based on the parent bank even if the subsidiary is not explicitly rated.

Council may ratify an alternative definition from time to time.

** No further investment will be made with Unrated institutions, the maximum of 2% from 1 July 2018 is in place for our current investments until they mature, after which the maximum allocation will be 0%.

e) Counterparty Limits

Exposure to individual counterparties/financial institutions will be restricted by their rating so that single entity exposure is limited, as detailed in the table below. No further

Shoalhaven City Council – Investment Policy

investment will be made with Unrated institutions. The table excludes any government guaranteed investments.

Limits do not apply to Federal or NSW-guaranteed investments, which are uncapped. It should be noted that the NSW government does not guarantee the capital value or unit price of the TCorp Hour-Glass Facilities. This table also does not apply to any grandfathered managed fund where it is not possible to identify a single counterparty exposure.

Individual Institution or Counterparty Limits		
Long-Term Rating Range	Not exceed the smaller of:	
	Maximum % of Portfolio	% of institution or counterparty's net assets
AAA category*	40%	n/a
AA category of highly rated banks**	30%	n/a
A category	15%	n/a
BBB category***	10%	2%
Unrated category****	5%	2%

* 100% Commonwealth Government and Government-guaranteed deposits are included in this category, but without any upper limit applying to the government as counterparty.

** For the purpose of this Policy, "highly rated banks" are currently defined as the ADI deposits or senior guaranteed principal and interest ADI securities issued by the major Australian banking groups: See list above.

*** It should be noted that some existing BBB investments do not meet the new limit; invested funds in these institutions will be brought into compliance with this policy as the instruments mature.

**** This category includes unrated ADIs such as some Credit Unions and Building Societies to the extent not Commonwealth-guaranteed. No further investment will be made with Unrated institutions.

f) Term to Maturity Limits

Council's investment portfolio shall be structured around the time horizon of investment to ensure that liquidity and income requirements are met.

Once the primary aim of liquidity is met, Council will ordinarily diversify its maturity profile as this will ordinarily be a low-risk method of obtaining additional return as well as reducing the risks to Council's income. However, Council always retains the flexibility to invest as short as required by internal requirements or the economic outlook. Judgment of the state of domestic and global economic circumstances should also be carefully taken into account when making decisions on the terms of an investment.

The factors and/or information used by Council to determine minimum allocations to the shorter durations include:

- Council's liquidity requirements to cover both regular payments as well as sufficient buffer to cover reasonably foreseeable contingencies;
- Medium term financial plans and major capital expenditure forecasts;
- Known grants, asset sales or similar one-off inflows; and
- Seasonal patterns to Council's investment balances.

Shoalhaven City Council – Investment Policy

Investment Horizon Description	Maturity Date	Maximum % of Portfolio
Working Capital Funds	0-3 months	100%
Short-Term Funds	3-12 months	100%
Short-Medium Term Funds	1-2 years	70%
Medium-Term Funds	2-5 years	50%
Long-Term Funds	5-10 years	25%

Within these broad ranges, Council relies upon assumptions of expected investment returns and market conditions that have been examined with its investment advisor.

5. THIRD PARTY SUPPLIERS AND DEALERS

Council will structure its affairs in order to be economical in its investment management costs, favouring dealing direct in its fixed interest, where possible (or, where intermediated, arrangements that result in a rebate of brokerage).

At times, it will be advantageous to deal with third parties that are remunerated on a transaction rather than retainer basis. Council will use such suppliers where to its advantage, and have regard to the “best execution” test in its Investment Policy. Specifically, Council will have regard to:

- Administrative cost savings;
- Ability to access higher (retail) rates where exceeding the direct transaction costs;
- Access to ADIs that would not normally have an institutional direct channel;
- Limited access or initial offering deals, or other secondary market opportunities that are only available from specific sources; and
- The costs of other distribution channels that do not involve transaction remuneration.

Council will take steps to ensure that:

- Any suppliers used are appropriately licensed, reputable and capable;
- Funds and identification data are sufficiently secured;
- Third party arrangements do not materially worsen Council’s credit risks by creating exposure to the dealer as counterparty; and
- Council maintains ownership of investments facilitated by a third party at all times; and
- Remuneration arrangements are reasonable and transparent, whether paid by Council or by the issuer directly.

6. INVESTMENT ADVISOR

Council’s investment advisor is appointed by the Council and must be licensed by the Australian Securities and Investment Commission (ASIC). The advisor must be independent and must confirm in writing that they have no actual or potential conflict of interest in relation to investment products being recommended and is free to choose the most appropriate product within the terms and conditions of investment policy. This includes receiving no commissions or other benefits in relation to the investments being recommended or reviewed, unless such remuneration is rebated 100% to Council.

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7. ACCOUNTING

Council will comply with appropriate accounting standards in valuing its investments and quantifying its investment returns.

In addition to recording investment income according to accounting standards, published reports may show a break-down of its duly calculated investment returns into realised and unrealised capital gains and losses, and interest.

Other relevant issues will be considered in line with relevant Australian Accounting Standards, such as discount or premium, designation as held-to-maturity or on a fair value basis and impairment.

8. SAFE CUSTODY ARRANGEMENTS

Where necessary, investments may be held in safe custody on Council's behalf, as long as the following criteria are met:

- Council must retain beneficial ownership of all investments;
- Adequate documentation is provided, verifying the existence of the investments at inception, in regular statements and for audit;
- The Custodian conducts regular reconciliation of records with relevant registries and/or clearing systems; and
- The Institution or Custodian recording and holding the assets will be:
 - The Custodian nominated by T-Corp for Hour-Glass facilities;
 - Austraclear;
 - An institution with an investment grade Standard and Poor's, Moody's or Fitch rating; or
 - An institution with adequate insurance, including professional indemnity insurance and other insurances considered prudent and appropriate to cover its liabilities under any agreement.

9. PERFORMANCE BENCHMARK

The performance of each investment will be assessed against the benchmarks listed in the table below.

It is Council's expectation that the performance of each investment will be greater than or equal to the applicable benchmark by sufficient margin to justify the investment taking into account its risks, liquidity and other benefits of the investment.

It is also expected that Council will take due steps to ensure that any investment is executed at the best pricing reasonably possible.

Investment	Performance Benchmark	Time Horizon
11am accounts, short dated bills, deposits issued by financial institutions of appropriate term.	Official RBA Cash Rate (Net of Fees and Expenses)	3 months or less
Term Deposits of appropriate remaining term, FRNs nearing maturity.	AusBond Bank Bill Index (Net of Fees and Expenses)	3 months to 12 months
Term Deposits with a maturity date between 1 and 2 Years, FRNs.	AusBond Bank Bill Index (Net of Fees and Expenses)	1 to 2 yrs

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FRNs, Bonds, Term deposits with a maturity date between 2 and 5 Years. Grandfathered Income Funds.	Bloomberg AusBond Composite 2-5 Year Bank Bill Index (Net of Fees and Expenses)	2 to 5 yrs
TCorplM Managed Funds	Fund's Internal Benchmark (Net of Fees and Expenses)	3 yrs (M/T Growth and unlisted growth sector funds) 5+ yrs (L/T Growth and listed growth sector funds)

Grandfathered investments (i.e. managed funds and securities) are allocated to the appropriate horizon based on expected or average maturity date and should be taken into account when allocating the rest of the portfolio.

The decision on when to exit such investments are based on a range of criteria specific to the investments – including but not limited to factors such as:

- Returns expected over the remaining term
- Fair values
- Competing investment opportunities
- Costs of holding
- Liquidity and transaction costs
- Outlook for future investment values

In general, it is expected that professional advice will be sought before transacting in “grandfathered” investments. This policy does not presume disposal; however, the removal of an asset from the Minister’s Order would warrant a review of its suitability for retention.

10. REPORTING AND REVIEWING OF INVESTMENTS

Documentary evidence must be held for each investment and details thereof maintained in an investment register.

The documentary evidence must provide Council legal title to the investment.

For audit purposes, certificates must be obtained from the banks/fund managers/custodian confirming the amounts of investment held on Council’s behalf at 30 June each year and reconciled to the investment register.

All investments are to be appropriately recorded in Council’s financial records and reconciled at least on a monthly basis. The report will detail the investment portfolio in terms of holdings and impact of changes in market value since the previous report and the investment performance against the applicable benchmark. Council may also nominate additional content for reporting.

A monthly report will be provided to Council detailing the money invested as required by clause 212 of the Local Government (General) Regulations 2005.

11. DUTIES AND RESPONSIBILITIES OF COUNCIL OFFICERS

The Trustee Act 1925 requires councils to “exercise the care, diligence and skill that a prudent person would exercise in investing council funds. A prudent person is expected to

Shoalhaven City Council – Investment Policy

act with considerable duty of care, not as an average person would act, but as a wise, cautious and judicious person would."

As trustees of public monies, officers are to manage Council's investment portfolios to safeguard the portfolio in accordance with the spirit of this Investment Policy and not for speculative purposes.

When exercising the power of investment the council officer should consider the following issues:

- The risk of capital or income loss;
- The likely income return and the timing of income return;
- The length of term of the proposed investment;
- The liquidity and marketability of the proposed investment;
- The likelihood of inflation affecting the value of the proposed investment; and
- The costs (such as commissions, fees, charges and duties) of making the proposed investment.

12. ETHICS AND CONFLICTS OF INTEREST

Officers shall refrain from personal activities that would conflict with the proper execution and management of Council's investment portfolio. This policy requires officers to disclose any conflict of interest to the General Manager.

Independent advisors are also to declare that they have no actual or perceived conflicts of interest and receive no inducements in relation to Council's investments, as outlined more fully in the Investment Advisor section.

13. IMPLEMENTATION

The Finance Section within the Finance Corporate & Community Services Group has responsibility for implementation of this policy.

14. REVIEW

This policy shall be reviewed annually and as required in the event of legislative change or as a result of significantly changed economic/market conditions. Any proposed amendments to the Investment Policy must be approved by a resolution of Council.

15. APPLICATION OF ESD PRINCIPLES

In keeping with ESD principles, Council will give preference to investing funds with financial institutions that do not invest in, or finance, the fossil fuel industry where the investment rate of interest is equivalent to other similar investments that may be on offer to Council at the time of investment.

Council will inform affected institutions of the preference against fossil fuel lenders.

However, unaffected by this section are assets that are not exposed to fossil fuels, such as:

- **Covered bonds**, which securitise only residential mortgage loans
- **Green bonds**, the proceeds of which are specifically quarantined for new lending for renewable energy or other similar environmentally-friendly uses

as well as any other complying investments of comparable ESD credentials.

CL19.336 Notice of Motion - Congratulations Bronte Trew

HPERM Ref: D19/406829

Submitted by: Cllr Mitchell Pakes

Attachments: 1. Tour Budget & Schedule [↓](#)

Purpose / Summary

The following Notice of Motion, of which due notice has been given, is submitted for Council's consideration.

Recommendation

That Council

1. Acknowledge Bronte Trew on being selected in the Australian School Girls 2020 USA football team.
2. Allocate \$2000.00 from the unallocated donations budget to ensure she is able to represent not only Shoalhaven but also Australia.

Background

Bronte Trew, a 17-year-old Vincentia High School Student, has recently been named in the Australian Schoolgirls football side.

Bronte started her football career at age 8 with St Georges Basin before playing for the Southern Branch and the Illawarra Stingrays. She has played football for the Vincentia High School Team during each year of High School and has represented the region in the South Coast Schools Team and NSW in the Combined High Schools NSW Team. That team won the National title this year and Bronte's efforts, skills and success as a goal scorer was recognised by her selection to the Australian Schoolgirls team.

The team will travel to the United States in March 2020 to participate in the Dallas Cup.

A recent South Coast Register article highlighted the achievements of Bronte and her brother Jake who also represented in the Australian Schoolboys team and now plays for the Western Sydney Wanderers.

Note by the CEO

Council's [Donations Policy](#) outlines that a payment is not permitted under that policy 'where benefit is primarily to an individual'.

Therefore, should Council wish to make a financial contribution to Ms Trew, it will need meet the requirements of Section 356 of the Local Government Act, 1993 which states as follows:

" 356 Can a council financially assist others?"

(1) A council may, in accordance with a resolution of the council, contribute money or otherwise grant financial assistance to persons for the purpose of exercising its functions.

(2) A proposed recipient who acts for private gain is not ineligible to be granted financial assistance but must not receive any benefit under this section until at least

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28 days' public notice of the council's proposal to pass the necessary resolution has been given."

Alternate Resolution:

That Council

1. Acknowledge Bronte Trew on being selected in the Australian School Girls 2020 USA football team.
2. Undertake public exhibition for a period of 28 days its intention to allocate funding of \$2000.00 from the unallocated donations budget to Bronte Trew to ensure she is able to represent not only Shoalhaven but also Australia.
3. Receive a further report following the public exhibition period should any submissions be received. In the case that no submissions are made, the CEO shall be delegated to authorise the payment of the funds to Ms Trew.

The current available Unallocated Donations Budget for the 2019/2020 Financial Year is \$5,312.15.

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TOUR BUDGET

**\$6,595.00 per person **

Schedule of payments:

initial deposit of \$1,500 by 1st October
second payment of \$2,000 by 1st December
third payment of \$2,000 by 1st February
Final payment balance by 18th February

PAYMENT to
FFI SPORTS TOURS
BSB 062150
Acc 1043 7490

PLEASE USE REF AUSUS18 and your last name for identification purposes

Australian School Girls
USA 2020



2. Tour Destination and Schedule – More details to follow

Destination: USA – Orlando and Dallas

Dates: 30th March – 14th April

30th March - Depart Sydney for the USA – United Airlines UA100 @ 10:30am

30th March - Arrive Orlando @ 15:20

30th March - Check in to Hotel in Orlando (Hotel name TBC)

3 Games to be played between the 31st March and 6th April. Opponents TBC.

Organised activities including Disney World and Kennedy Space Centre (TBC).

6th April - Depart Orlando for Dallas UA2152 @15:30

6th April - Meet and greet billets at Airport

Dallas International Cup

12th April - Depart Dallas for Sydney @19:00

14th April - Arrive Sydney @07:00

CL19.337 Question on Notice - New Bush Telegraph - Advertising

HPERM Ref: D19/405964

Submitted by: Cllr John Levett

Question

On Monday 11 November 2019, Cllr Pakes was interviewed on ABC Local Radio by journalist Ainslie Drewitt-Smith during the Nick Rheinberger Morning Program. Ainslie asked Cllr Pakes twice if there was a cost benefit analysis of Council advertising in the New Bush Telegraph. In his first response Cllr Pakes avoided the question. When asked again Cllr Pakes indicated that he had asked about such a study but Council Staff couldn't give him an answer.

Is the CEO aware of any such interaction between Staff and Cllr Pakes in relation to the cost benefit to Council of advertising in the New Bush Telegraph?

Response

Councillor Pakes has had interactions with staff regarding advertising within the Bush Telegraph, including a discussion with the CEO. These discussions also included conversations around advertising in other publications and the overall Council spend for advertising on an annual basis.

Councillor Pakes was also advised that currently Council staff track all advertising costs for specific media outlets, when these costs are allocated via a central booking system. Some advertising however is booked separately by individual business units and may not proceed via the corporate account.

In this case a full cost benefit was not conducted by staff. This was due to the information that would be required to conduct such an analysis not currently being internally available for the Bush Telegraph and for the specific projects that utilise this publication. This was advised to Cllr Pakes.

Decisions around which publications should be utilised by Council for advertising purposes can often be governed by specific legislation, such as exhibition requirements. Advertising for specific projects can be more flexible and selection of publications are generally determined by staff after a consideration of the target audience, reach of the paper, cost of alternative options, budget and the timing of the campaign.

Many Council projects and programs do not undertake formal advertising in publications, as Facebook, radio and other advertising forms can provide cheaper alternatives. This is determined as part of the scoping of the project and the development of the Communications Plan, if coordinated through the Corporate Communications Team.

CL19.337

CL19.338 Question on Notice - Review of Tabourie Lake Entrance Management Plan – DE19.122 (5 November 2019)

HPERM Ref: D19/408911

Submitted by: Clr Amanda Findley

Question

At the Development Committee meeting 5 November 2019, Council adopted to not support the recommendation from the recent review to increase the trigger level for mechanical opening of Lake Tabourie from 1.17m AHD to 1.3m AHD. A number of residents have approached me in respect to this decision with concern.

1. Has the CEO sought legal advice in respect to Council's risk in not adopting the recommended 1.3m and if not;
2. Will the CEO confirm that Councillors individual indemnity under the Local Government Act remains considering the information that was supplied to Council through the comprehensive and community consulted report?

As decision makers it behoves us to remain abreast of our legal obligations and understanding of risk and legal advice in this instance would be helpful.

DE19.122 Review of Tabourie Lake Entrance Management Policy

HPERM Ref:
D19/345193

Recommendation (Item to be determined under delegated authority)

That Council adopt the Tabourie Lake Entrance Management Policy (June 2019), with the policy recommendation to increase the trigger level, for mechanical opening, from 1.17m AHD to 1.3m AHD.

RESOLVED (Clr White / Clr Proudfoot)

MIN19.809

That Council adopt the Tabourie Lake Entrance Management Policy (June 2019), with the policy recommendation to retain the trigger level, for mechanical opening, of 1.17m AHD.

FOR: Clr Gash, Clr White, Clr Wells, Clr Aldrick, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Clr Levett and Clr Digiglio

CARRIED

CL19.338

CEO's Note:

1. No legal advice has been sought in terms of question 1.
2. Indemnity under the provisions of the Local Government Act is principally focused in Section 733 which is more commonly referred to as the "in good faith" clause. In basic terms, if Council in making a decision, avails itself of and considers all relevant, available information and then proceeds to make a decision "in good faith", there would be an expectation that the exemption from liability would exist . There is no objective test for determining the requirements for "in good faith" and this issue would only arise if legal proceedings were raised in regard to a particular matter, wherein the court would be the determinant of "in good faith" having regard to the individual circumstances of the case.

CL19.339 Question on Notice - Climate Change Risk to Australia's Built Environment Report

HPERM Ref: D19/408974

Submitted by: Cllr Amanda Findley

Question

1. The Climate Change Risk to Australia's Built Environment (the report) has now been released - the report identifies that the Shoalhaven in 2020 (next year) has 641 properties and an insurable value of \$60 million at risk and climbing to 3129 properties and a value of \$112 million by 2100.
2. In considering this report can the CEO comment if Shoalhaven City Council is exposed to any liability considering this is a presentation of new data.
3. In reviewing this report can the CEO comment on any policy deficiencies that Shoalhaven has when managing risk and will the Coastal Management Plan take this data into consideration?
4. The Shoalhaven has adopted a sea level rise policy that bases its 2050 and 2100 projections on a global reduction in carbon concentrations or Representative Concentration Scenarios that are not reflective of current global trends. Considering the data presented in the report would it be prudent and protect Council from liability to review the policy?
5. The report identifies the Shoalhaven as the seventh highest ranking council in Australia for Forest Fire exposure.
6. Can the CEO provide information to reassure the public that Council has a collaborative strategic framework on how to manage current fire risk and what existing mechanisms review the strategic framework to deal with the impact from increased forest fire exposure.
7. The CEO identify any other issues that the report raises for the Shoalhaven and suggest how Council can manage the issues and expectations.

Links to associated reports.

<https://xdi.systems/wp-content/uploads/2019/10/Climate-Change-Risk-to-Australia%E2%80%99s-Built-Environment-V4-final-reduced-2.pdf>

<https://www.abc.net.au/news/2019-10-23/the-suburbs-facing-rising-insurance-costs-from-climate-risk/11624108>

Response

The above questions are taken on notice and will be responded to in a report back to Council.

CL19.339

CL19.340 Report of the Strategy & Assets Committee - 12 November 2019

HPERM Ref: D19/401611

SA19.176 Ulladulla Boat Launching Ramp – Urgent Maintenance Funding

HPERM Ref:
D19/299788

Recommendation

That Council

1. Note that in relation to the Ulladulla Boat Launching Ramp:
 - a. There are large voids under the existing concrete slabs. The slabs have been designed as “slab on ground” structures and not suspended structures;
 - b. The toe of the eastern ramp has completely failed resulting in large sections of concrete dislodging and becoming a potential navigation/boating hazard for users. Failure of the ramp toe also makes it more restrictive for use at lower tides.
 - c. The estimated cost to reconstruct the ramp is approximately \$200,000 (exc GST)
2. Allocate \$10,000 in the next quarterly review to allow the CEO (Director Assets and Works) to undertake the necessary designs and approvals to allow an accurate cost estimate and project plan to be produced, and that a reconstruction allocation to be considered in the 2020-2021 budget deliberations.

CL19.340

SA19.179 Local Government Road Safety Program 2019/2020 - Approved Projects - Thank RMS for Funding Assistance.

HPERM Ref:
D19/352942

Recommendation

That Council writes to NSW Roads and Maritime Services (RMS) and the local State Members, thanking them for funding towards the 2019/20 Road Safety Program and accept and vote the grant funding offer of \$12,850(Ex GST) from RMS as follows:

1. \$2,200 for Motorcycle Safety – Motorcycle Accident Management Training.
2. \$9,150 for Share the Track – the path is ours to share pedestrian and cycling safety.
3. \$600 for Helping learner drivers become safer drivers – GLS workshops.
4. \$900 for Look out before you step out pedestrian safety.
5. \$5000 for Bike Week (directly paid by RMS).
6. Slow Down Hold my Hand – Holiday time pedestrian Little Blue Dinosaur campaign (no funds required).
7. Speed Monitoring on Local Roads (paid directly by RMS).
8. Breath Testing at Local Events (paid directly by RMS).
9. 65 + Older Drivers Presentations (paid directly by RMS).
10. U turn the Wheel youth program (paid directly by Rotary).

SA19.183 Classification of Land - Lot 86 DP 29970 - Unnamed Road Nowra Hill**HPERM Ref:
D19/339200****Recommendation**

That Council classify the land described as Lot 86 DP 29970 Unnamed Road Nowra Hill as Operational Land.

SA19.184 Classification of Land - Lot 21 DP 2886 Sec 25 - 48 Coomea St Bomaderry**HPERM Ref:
D19/369673****Recommendation**

That Council resolve to classify the land described as Lot 21 DP 2886 Sec 25, 48 Coomea Street, Bomaderry as Operational Land.

SA19.194 Acquisition of Easement for Water Supply - Commonwealth land at Nowra Hill**HPERM Ref:
D19/358572****Recommendation**

That Council:

1. Acquire an Easement for Water Supply 10m & 15m wide and variable width over part of Lot 1 DP385671 at Albatross Road Nowra Hill, as marked (A) and highlighted on attached easement plan DP1257513.
2. Pay compensation of \$13,000, plus GST and reasonable legal and property consultancy costs, associated with the acquisition in accordance with the provisions of the Land Acquisition (Just Terms Compensation) Act 1991, from Shoalhaven Water's Water Fund.
3. Authorise the Common Seal of the Council of the City of Shoalhaven be affixed to any documentation requiring to be sealed and delegate to the Chief Executive Officer authority to sign any documentation necessary to give effect to this resolution.

CL19.340

CL19.341 Report of the Inclusion & Access Advisory Group - 4 November 2019

HPERM Ref: D19/407923

IA19.42 Membership Application - Inclusion and Access Advisory Group

HPERM Ref:
D19/319735

Recommendation

That Penelope Espinoza Hallett be appointed as a member of the Inclusion and Access Advisory Group.

IA19.52 Additional Item - Noah's Challenge - Support

Recommendation

That:

1. Staff investigate and provide a report on how the Inclusion and Access Advisory Group can hold a stall at the next Noah's Challenge;
2. The report also include ways that the IAAG can promote their purpose and engage more effectively within the community.

IA19.53 Additional item - Investigate Improving Beach Access at Tilbury Cove and Ocean Street, Culburra

Recommendation

That Staff investigate and provide a report on the accessibility of beaches at Tilbury Cove and Ocean Street, Culburra.

IA19.54 Additional item - Plantation Point Playground Proposal

Recommendation

That Staff provide a report with updates on potential upgrades at Plantation Point Reserve, including a summary of the Community Consultation outcome.

IA19.55 Additional Item - (IA19.33) - Disabled car space at the Mollymook Cemetery

Recommendation

That Staff investigate and report back on the feasibility of providing two (2) disabled car spaces at the Mollymook Cemetery and a path to the lots or a footpath access off Ocean Street, Mollymook.

CL19.341

CL19.342 Report of the Nowra CBD Revitalisation Strategy Committee - 6 November 2019

HPERM Ref: D19/408701

CBD19.43 Appointment of Members

**HPERM Ref:
D19/378089**

Recommendation

That

1. Alison Henry be appointed as the Nowra CBD Retail/Business operators (Non-CBD property owner) member on the Nowra CBD Revitalisation Strategy Committee.
2. Christopher Williamson be appointed as a Community member on the Nowra CBD Revitalisation Strategy Committee.
3. Alison Henry and Christopher Williamson be notified of their appointments and be invited to all future meetings.
4. The other two (2) persons who applied for the Community member position be thanked for their applications and interest in the Committee.

CL19.342

CL19.343 Report of the Aboriginal Advisory Committee - 11 November 2019

HPERM Ref: D19/403748

**AA19.20 Membership Resignation - Janaya Hennessey and
Membership Application - Kyle Lachlan**

**HPERM Ref:
D19/300756**

Recommendation

That Council:

1. Accept the resignation notice from Janaya Hennessey; and
2. Council call for an Expression of Interest for a Youth member position and any other positions that arise from membership audit.

**AA19.22 Notification - Council Resolution - Re-establishment
of Aboriginal Advisory Committee**

**HPERM Ref:
D19/355580**

Recommendation

That:

1. The Committee receive the report on the Council Resolution – Re-establishment of Aboriginal Advisory Committee for information;
2. Council amend the Terms of Reference:
 - a. In relation to Quorum to be amended to five (5) local Aboriginal community members; and
 - b. The amount of meetings be changed to a minimum of 4 (and others as required)

**AA19.25 Additional Item - Cullunghutti Plan of Management - Damage to the track -
Bigfoot Compliance**

Recommendation

That:

1. Staff from Natural Resources, Planning and Compliance and NPWS be invited to the next meeting to provide information on the maintenance of the land, and clarification on Bigfoot and its approval to operate on the whole track to the summit;
2. Staff investigate and provide information on the clearing that has been done and if its on private land
3. Council acknowledge the cultural significance of Cullunghutti and make funding available for the Plan of Management of Cullunghutti in the 2020/2021 budget bid process.

CL19.343

AA19.27 Additional Item - Huskisson Church Site - Development

Recommendation

That:

1. Council acknowledges that the Aboriginal Advisory Committee believes that the proposed development at the Huskisson Church site is a threat to local Aboriginal heritage; and
2. The Aboriginal Advisory Committee believes that the Committee should have been consulted and requests that Council do so for all future planning and developments with a potential Aboriginal Cultural impact.

CL19.343

CL19.344 Report of the Shoalhaven Traffic Committee - 12 November 2019

HPERM Ref: D19/404173

Attachments: 1. Plans - PN 3562 [↓](#)
2. Plan - PN 3567 [↓](#)
3. Plan - PN 3568 [↓](#)

The Shoalhaven Traffic Committee is a technical review committee not a committee of Council under the Local Government Act, 1993.

The Roads and Maritime Services has delegated certain powers to Council under the Transport Administration Act 1988 (Section 50). A condition of this delegation is that Council must take into account the Traffic Committee recommendations.

IMPORTANT NOTE:

Council cannot amend a Traffic Committee recommendation. The Council can only:

- 1. Adopt the Traffic Committee recommendation;*
- 2. Not Adopt the Traffic Committee recommendation; or*
- 3. Request the Traffic Committee reconsider the issue.*

Other issues can be raised as Additional Business at the Ordinary Meeting.

The full guide to the delegation to Council's for the regulation of traffic can be viewed at: [RMS Website](#)

TC19.57 Corks Lane, MILTON - Lot 35 - DP 262647 - Residential Subdivision (PN 3562)

**HPERM Ref:
D19/387945**

Recommendation

That the Chief Executive Officer (Director Assets & Works) be advised that the Shoalhaven Traffic Committee has no objection to the proposed raised thresholds and pedestrian refuge on Corks Lane and Myrtle Forest Road, Milton as detailed in plan No (D19/380605), subject to:

1. Changing Give Way Hold Line Marking TB to TB / TB1
2. Indicating the sign code for the Give Way signage
3. Providing C3 yellow line marking in addition to No Stopping Signage at locations indicated along Myrtle Forest Drive
4. Providing a revised design of the kerb ramp in accordance with Council's Engineering Design Specifications, as it currently shows it extending into the lip of the gutter, when it should finish at the face of the kerb
5. Provision of a larger scale in the mountable concrete apron detail
6. Submission of the revised plans to Council's Engineering Design Unit.

CL19.344

**TC19.58 30 Degree On Street Parking Formalisation -
McIntosh St, SHOALHAVEN HEADS (PN 3567)**

**HPERM Ref:
D19/387857**

Recommendation

That the CEO (Director Assets & Works) be advised that the Shoalhaven Traffic Committee has no objection to the proposed signage and line marking along McIntosh Street; this will formalise the on-street parking along McIntosh Street, Shoalhaven Heads, as per plan No (D19/388714).

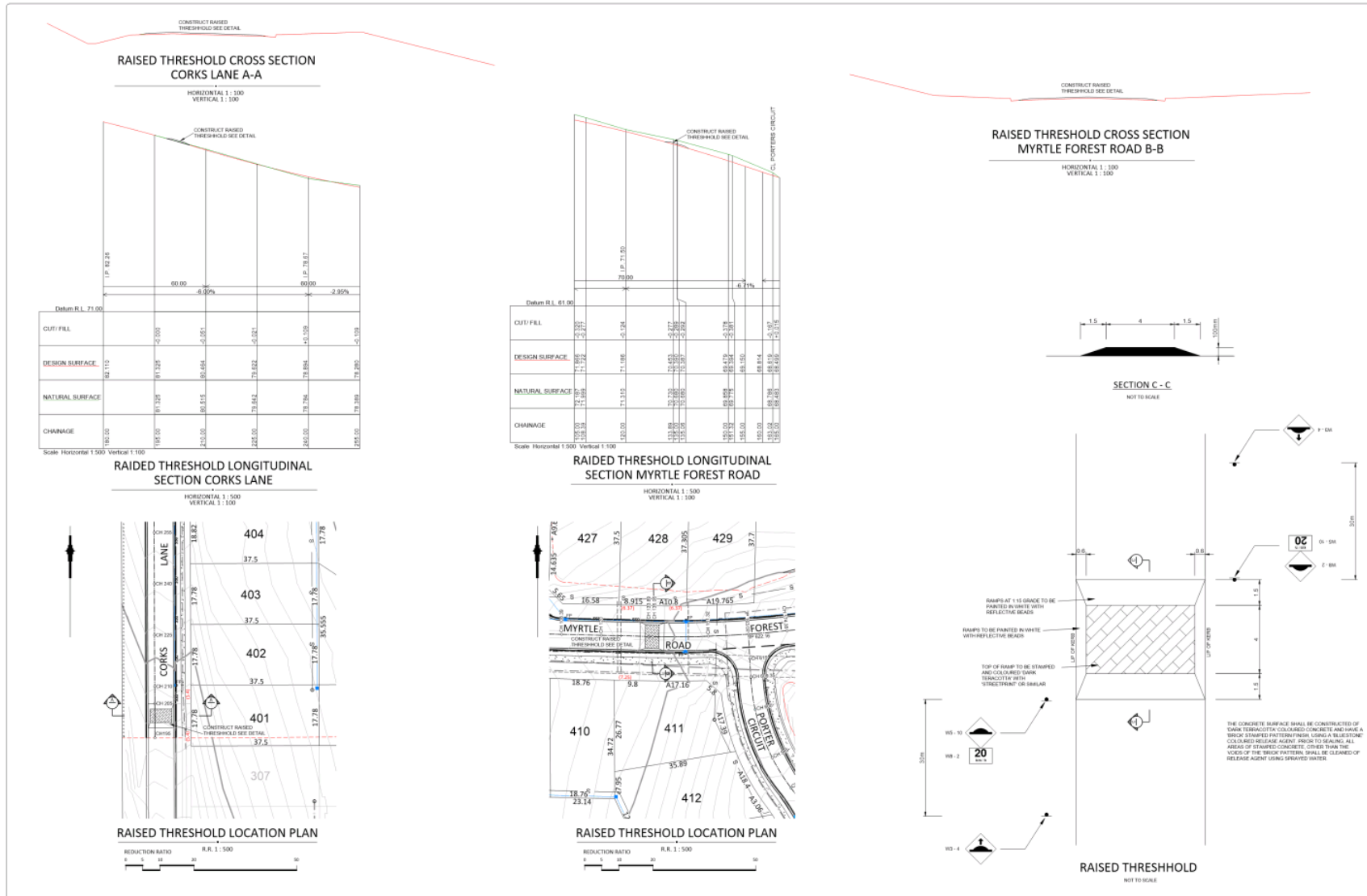
**TC19.59 Modifications to Seamans Beach Carpark - Cyrus St
- Hyams Beach (PN 3568)**

**HPERM Ref:
D19/387929**

Recommendation

That the CEO (Director Assets & Works) be advised that the Shoalhaven Traffic Committee has no objection to the proposed signage and time restrictions to the Seamans Beach Carpark on Cyrus Street, Hyams Beach as detailed in plan No 2676.07 (D19/358695). These plans have been developed in consultation with the council and the Hyams Beach Village Association.

CL19.344



REDUCTION RATIO 1:500 AT A1			
DATUM : AUSTRALIAN HEIGHT DATUM			
CONTOUR INTERVAL : 2 m			
ORIGIN OF LEVELS : SGA 3 2004			
RL 66.499			
DATE OF PLAN : APRIL 2018			

	BY	DATE
SURVEYED	B.B.	23.07.18
DESIGNED	G.B.	24.10.18
DRAWN	M.V.	30.09.19
CHECKED	G.B.	14.08.19
	M.V.	28.10.19

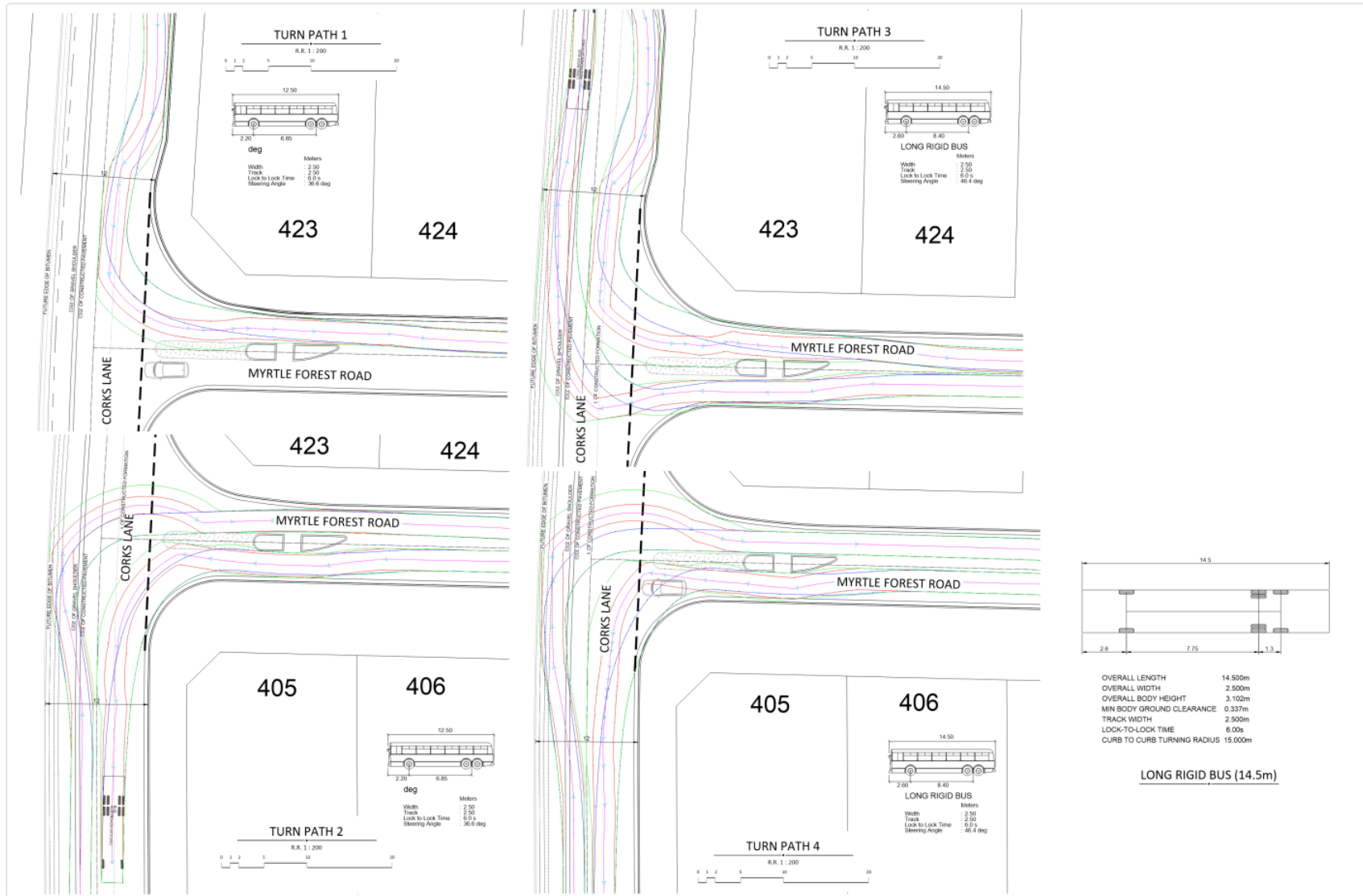
RYGATE & WEST
(ULLADULLA) ASN 56 056 675 355
CONSULTING SURVEYORS, PLANNERS,
ROAD & DRAINAGE ENGINEERS
P.O. BOX 107, 441 ARDLA RD, 2528
300 GREEN STREET PH:02 48467137 FAX:02 44052916
rwa@rygateandwest.com.au

**ASHLEIGH DEVELOPMENTS
PTY LIMITED**

RAISED THRESHOLD DETAILS

MILTON CITY OF SHOALHAVEN

REFERENCE No. U12814
DRAWING No. U12814_STA_ENG.dwg
ISSUE F
SHEET 27 OF 29 SHEETS
COUNCIL REF. No.



REDUCTION RATIO 1: 500 AT A1	AMENDMENTS		BY	DATE
DATUM : AUSTRALIAN HEIGHT DATUM	SURVEYED	B.B.	MV	2.17.19
CONTOUR INTERVAL : 2 m	DESIGNED	G.A.	MV	24.10.18
ORIGIN OF LEVELS : SGA 72041	DRAWN	M.V.	MV	30.09.19
RL 66.499	CHECKED	G.B.	MV	14.08.19
DATE OF PLAN : APRIL 2018				28.10.19

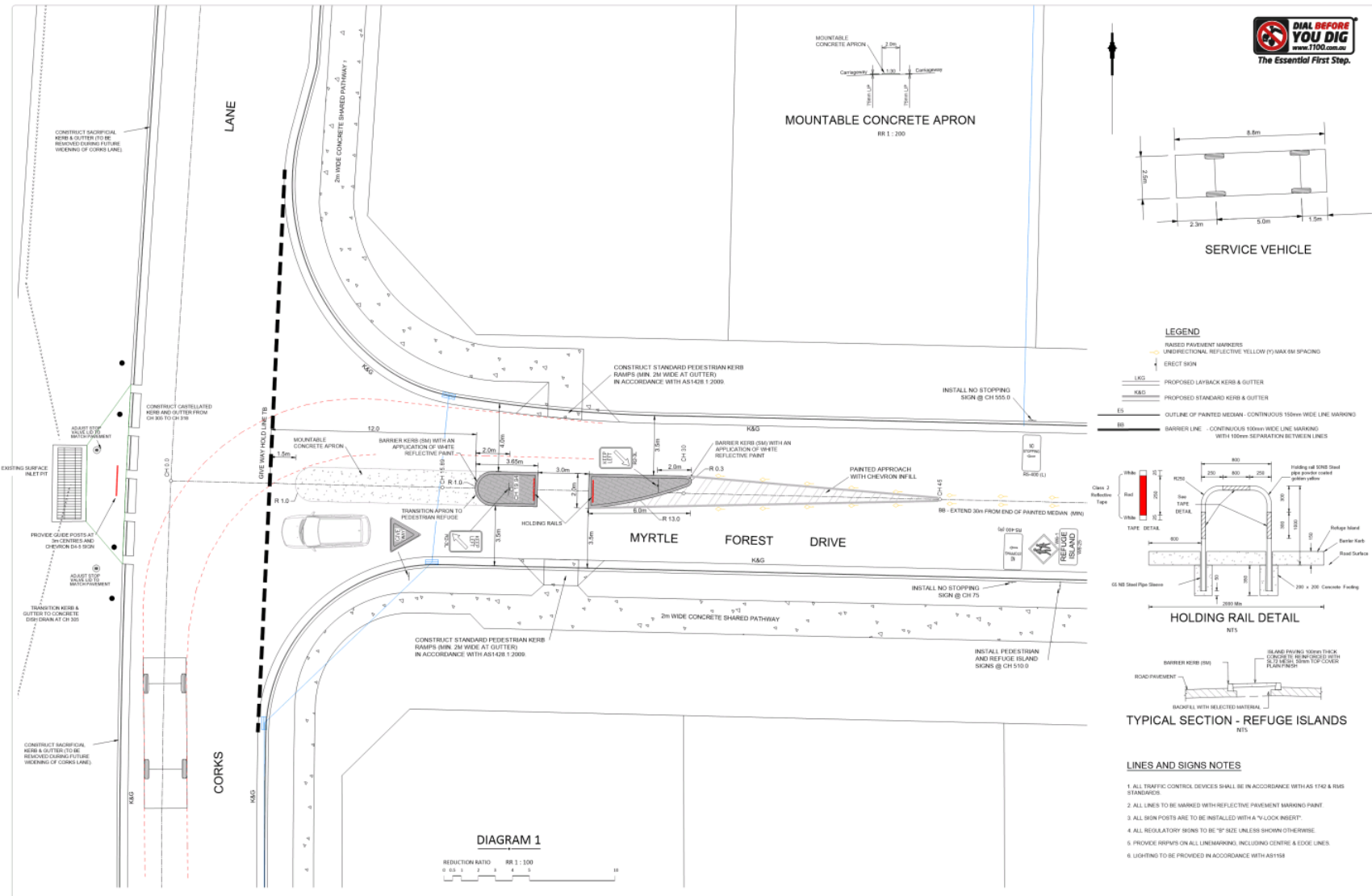
RYGATE & WEST
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P.O. BOX 107, ULLADULLA NSW 2556
300 GREEN STREET PH 02 4842137 FAX 02 4452916
mail@rygateandwest.com.au

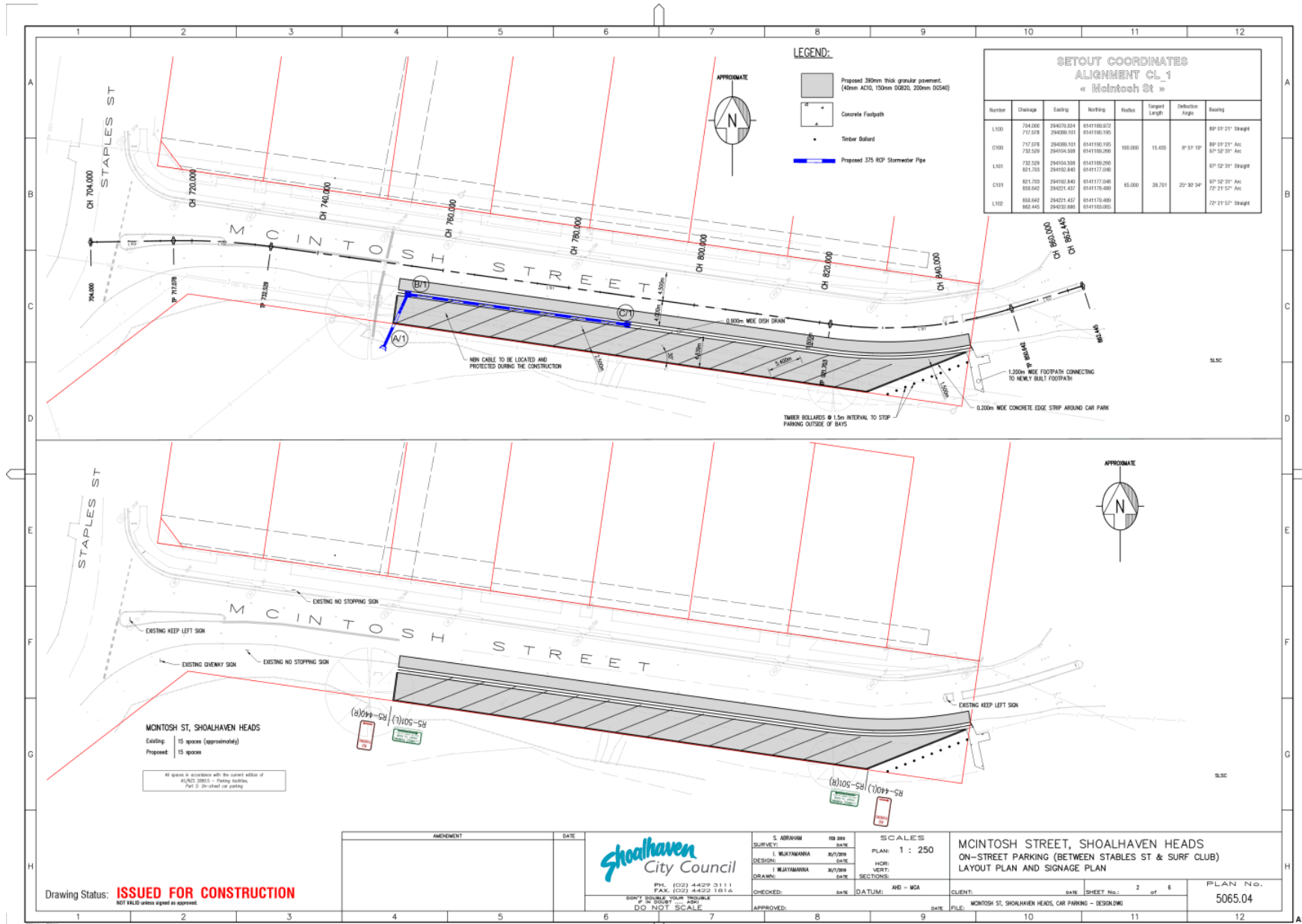
ASHLEIGH DEVELOPMENTS
PTY LIMITED

TURNING PATHS	
MILTON	CITY OF SHOALHAVEN

REFERENCE No. U12814
DRAWING No. U12814_STA_ENG.dwg
ISSUE F
SHEET 28 OF 29 SHEETS
COUNCIL REF No.

CL19.344 - Attachment 1





CL19.345 Code of Conduct Complaints - Annual Statistics Report - 1 September 2018 to 31 August 2019

HPERM Ref: D19/378462

Approver: Stephen Dunshea, Chief Executive Officer

Attachments: 1. Code of Conduct Complaint Statistics - 1 September 2018 to 31 August 2019 [↓](#)

Reason for Report

This report is submitted in accordance with Clause 11.1 of the *Procedures for the Administration of the Code of Conduct* which requires that statistics concerning complaints made about Councillors and the CEO be reported to Council within 3 months of the end of September each year.

Recommendation (Item to be determined under delegated authority)

That the Report of the Chief Executive Officer concerning complaints under the Code of Conduct for the period 1 September 2018 to 31 August 2019 be received for information

Options

1. That the report be received for information as recommended

Implications: This would meet the requirements under the *Local Government Act* and the *Procedures*.

2. That the report be accepted in accordance with the Code of Conduct Procedures and additional recommendations made.

Implications: Further recommendations would need to be in accordance with the provisions of the *Local Government Act* and the *Procedures for the Administration of Code of Conduct Complaints*.

Background

Statistics of the Code of Conduct complaints received by Council are provided as **Attachment 1** to this report.

Council is required to provide the statistics to the Office of Local Government in accordance with Clause 11.2 of the *Procedures for the Administration of the Code of Conduct*.

In summary, five (5) complaints about Councillors under the Code of Conduct were received in the reporting period. One (1) of those complaints was dealt with by alternative strategies by the previous General Manager, three (3) were referred to a Conduct Reviewer and one (1) was referred to the Office of Local Government as required by the *Procedures*.

Of the three (3) Code of Conduct complaints referred to a Conduct Reviewer, one (1) was resolved by the Conduct Reviewer by alternative strategies. The remaining two (2) complaints (related) proceeded to investigation and were resolved by the Council. The Council did not adopt the Conduct Reviewer's recommendation.

All Code of Conduct complaints recorded in these statistics were dealt with according to the Council's previous Code of Conduct (POL16/221) and *Procedures* (POL13/30). Council

adopted a revised Code of Conduct and Code of Conduct Procedures based on the Model Code and Procedures on 28 May 2019.

Community Engagement

No specific community engagement is required other than advising the public of Code of Conduct complaints via this annual reporting requirement of the Code of Conduct Procedures. The Office of Local Government publishes the statistics once collated.

Financial Implications

As a general rule, the costs involved with handling complaints involving Councillors which are resolved by the General Manager/Chief Executive Officer by alternative means are estimated at approximately \$900 each, but that can increase if the resolution involves greater complexity or multiple Councillors or if the matter is referred to a Conduct Reviewer.

The total cost of dealing with Code of Conduct complaints received in the reporting period, including staff costs, was approximately \$12,804.

Model Code of Conduct Complaints Statistics Shoalhaven City Council		
Number of Complaints		
1 a	The total number of complaints received in the period about councillors and the General Manager (GM) under the code of conduct	5
b	The total number of complaints finalised in the period about councillors and the GM under the code of conduct	5
Overview of Complaints and Cost		
2 a	The number of complaints finalised at the outset by alternative means by the GM or Mayor	1
b	The number of complaints referred to the Office of Local Government under a special complaints management arrangement	0
c	The number of code of conduct complaints referred to a conduct reviewer	3
d	The number of code of conduct complaints finalised at preliminary assessment by conduct reviewer	1
e	The number of code of conduct complaints referred back to GM or Mayor for resolution after preliminary assessment by conduct reviewer	0
f	The number of finalised code of conduct complaints investigated by a conduct reviewer	2
g	The number of finalised code of conduct complaints investigated by a conduct review committee	0
h	The number of finalised complaints investigated where there was found to be no breach	0
i	The number of finalised complaints investigated where there was found to be a breach	2
j	The number of complaints referred by the GM or Mayor to another agency or body such as the ICAC, the NSW Ombudsman, the Office or the Police	1
k	The number of complaints being investigated that are not yet finalised	0
l	The total cost of dealing with code of conduct complaints within the period made about councillors and the GM including staff costs	12,804

Preliminary Assessment Statistics	
3	The number of complaints determined by the conduct reviewer at the preliminary assessment stage by each of the following actions:
a	To take no action <input type="text" value="0"/>
b	To resolve the complaint by alternative and appropriate strategies <input type="text" value="1"/>
c	To refer the matter back to the GM or the Mayor, for resolution by alternative and appropriate strategies <input type="text" value="0"/>
d	To refer the matter to another agency or body such as the ICAC, the NSW Ombudsman, the Office or the Police <input type="text" value="0"/>
e	To investigate the matter <input type="text" value="2"/>
f	To recommend that the complaints coordinator convene a conduct review committee to investigate the matter <input type="text" value="0"/>
Investigation Statistics	
4	The number of investigated complaints resulting in a determination that there was no breach , in which the following recommendations were made:
a	That the council revise its policies or procedures <input type="text" value="0"/>
b	That a person or persons undertake training or other education <input type="text" value="0"/>
5	The number of investigated complaints resulting in a determination that there was a breach in which the following recommendations were made:
a	That the council revise any of its policies or procedures <input type="text" value="0"/>
b	That the subject person undertake any training or other education relevant to the conduct giving rise to the breach <input type="text" value="2"/>
c	That the subject person be counselled for their conduct <input type="text" value="2"/>
d	That the subject person apologise to any person or organisation affected by the breach <input type="text" value="2"/>
e	That findings of inappropriate conduct be made public <input type="text" value="0"/>
f	In the case of a breach by the GM, that action be taken under the GM's contract for the breach <input type="text" value="0"/>
g	In the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the Local Government Act 1993 <input type="text" value="0"/>
h	In the case of a breach by a councillor, that the matter be referred to the Office for further action <input type="text" value="0"/>

6	Matter referred or resolved after commencement of an investigation under clause 8.20 of the Procedures and clause 7.20 of the new Procedures	0
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Categories of misconduct	
7	The number of investigated complaints resulting in a determination that there was a breach with respect to each of the following categories of conduct:
a	General conduct (Part 3) 2
b	Conflict of interest (FMCC Part 4) and Non-pecuniary conflict of interest (NMCC Part 5) 0
c	Personal benefit (FMCC Part 5 / NMCC Part 6) 0
d	Relationship between council officials (FMCC Part 6 / NMCC Part 7) 0
e	Access to information and resources (FMCC Part 7 / NMCC Part 8) 0
Outcome of determinations	
8	The number of investigated complaints resulting in a determination that there was a breach in which the council failed to adopt the conduct reviewers recommendation 2
9	The number of investigated complaints resulting in a determination that there was a breach in which the council's decision was overturned following a review by the Office 0

CL19.346 Update - Code of Conduct - Penalties available to Councils for Breaches by Councillors

HPERM Ref: D19/390012

Approver: Stephen Dunshea, Chief Executive Officer

Attachments: 1. Circular 19-25 [↓](#)

Reason for Report

To inform Council of advice from the Office of Local Government with respect to the current penalties available to Council for breaches by Councillors as outlined in Circular 19-25.

Recommendation

That Council:

1. Note the report on Code of Conduct - Penalties for information
2. Receive a further report outlining any further guidance from the Office of Local Government on this matter.

Options

1. As recommended

Implications: The Council is to receive the information at this time and await further guidance. Should Council be required to deal with a Code of Conduct Investigation Report prior to further guidance being received, further advice will be obtained and provided to Council when dealing with that matter.

2. Alternate recommendation

Implications: Not Known

Background

The Office of Local Government released *Circular 19-25 – Penalties available to councils for code of conduct breaches by Councillors* on 2 October 2019.

The Circular is provided as **Attachment 1** to this report.

In summary, the Circular advises the Council of the result of a recent decision by the Supreme Court in the matter of [Cornish v Secretary, Department of Planning, Industry and Environment \[2019\] NSWSC 1134](#), where it held that the only disciplinary power available to councils under the *Local Government Act 1993* for code of conduct breaches by councillors is the power to formally censure conferred under section 440G. This decision impacts on the validity of some of the penalties made available under the Model Code of Conduct Procedures and thereby the Council's adopted [Code of Conduct Procedures](#).

The Office of Local Government is considering the implications of the decision and will provide further advice. In the meantime, it is discouraging Councils from imposing penalties on councillors other than:

- Formal censures under Section 440G of the Local Government Act (Cl 7.59(h) and (i) of the Procedures); and/or

- Making findings of inappropriate conduct by councillors public by publishing the investigator's findings and determination in the minutes of the meeting (CI 7.59((f) of the Procedures).

The implications are limited to the conclusion of an investigation of a Code of Conduct complaint at the stage when a report on an Investigation is presented to the Council. Should Council be in this position prior to further guidance being made available by the Office of Local Government, further advice will be sought and provided to Council.

The decision does not affect the ability of the Chief Executive Officer and conduct reviewers/investigators to informally resolve Code of Conduct complaints against councillors by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat offending behaviour.

CL19.346



Circular Details	Circular No 19-25 / 2 October 2019 / A671874
Previous Circular	18-44 Commencement of the new Model Code of Conduct for Local Councils in NSW and Procedures
Who should read this	Mayors / Councillors / General Managers / Joint Organisation Executive Officers / Complaints Coordinators / Conduct Reviewers
Contact	Council Governance Team – (02) 4428 4100 / olg@olg.nsw.gov.au
Action required	Council to Implement

Penalties available to councils for code of conduct breaches by councillors

What's new or changing?

- The purpose of this Circular is to inform councils and joint organisations of the recent decision by the Supreme Court in the matter of *Cornish v Secretary, Department of Planning, Industry and Environment* [2019] NSWSC 1134. The Court's decision may be found [here](#).
- The Supreme Court has held that, notwithstanding the penalties available to councils for code of conduct breaches by councillors under the *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW* (the Procedures), the only disciplinary power available to councils under the *Local Government Act 1993* for code of conduct breaches by councillors, is the power to formally censure conferred under section 440G.

What this will mean for your council

- The Office of Local Government (OLG) is currently considering the implications of the decision and will provide further guidance to councils once it has done so.
- In the meantime, OLG strongly discourages councils from imposing penalties on councillors for breaches of their codes of conduct other than those available under paragraphs (h) and (i) of clause 7.59 of the Procedures, namely:
 - that a councillor be formally censured for a breach under section 440G of the Act (clause 7.59(h)); and
 - that a councillor be formally censured for a breach under section 440G and the matter referred to OLG for further action under the misconduct provisions of the Act (clause 7.59(i)).
- The Supreme Court has held that it remains open to councils to make findings of inappropriate conduct by councillors public by publishing the investigator's findings and determination in the minutes of the meeting (see clause 7.59(f) of the Procedures).
- Councils should be mindful that under the new Procedures, an investigator must first consult with OLG prior to finalising their report where they propose to recommend that the councillor be formally censured for a breach and the matter referred to OLG for further action under the misconduct provisions of the Act.
- OLG would encourage councils' complaints coordinators to make conduct reviewers aware of the Supreme Court's decision and to discourage them from

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recommending penalties for breaches by councillors other than those referred to above.

Key points

- The Supreme Court's decision means that decisions by councils to impose the following penalties on councillors under the new Procedures may be open to challenge:
 - that a councillor undertakes training or other education relevant to conduct giving rise to a breach (clause 7.59(a));
 - that a councillor is counselled for their conduct (clause 7.59(b));
 - that a councillor is removed from membership of a committee of the council or any other body or organisation that the councillor serves on as the council's representative (clause 7.59(c));
 - that a councillor give an undertaking not to repeat offending behaviour in such time and form specified by a resolution (clause 7.59(d));
 - that a councillor apologise to any person or organisation affected by a breach in such a time and form specified by a resolution (clause 7.59(e)).
- The Supreme Court's decision makes it clear that it remains open to general managers and conduct reviewers/investigators to informally resolve code of conduct complaints against councillors by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat offending behaviour.
- The decision has no implications for councils' ability to take disciplinary action under the Procedures for code of conduct breaches by council officials other than councillors.

Where to go for further information

- For more information, contact the Council Governance Team by telephone on 02 4428 4100 or by email at olg@olg.nsw.gov.au.



Tim Hurst
Deputy Secretary
Local Government, Planning and Policy

CL19.347 Community Participation Plan- Exhibition Outcomes and Request for Adoption

HPERM Ref: D19/403116

Section: Executive Strategy

Approver: Stephen Dunshea, Chief Executive Officer

Attachments: 1. Community Participation Plan (under separate cover) [⇒](#)

Reason for Report

To provide Council with the feedback and requested changes that have resulted from the exhibition of the Community Participation Plan (CPP).

Seek Council's adoption of the CPP to enable the document to be submitted to the Department of Planning by the required 1 December 2019 timeframe.

Recommendation

That Council:

1. Adopt the Community Participation Plan (CPP) presented as Attachment 1 with the changes that have resulted from the exhibition process, including editorial changes and additions to provide further clarity to readers, including the addition of a glossary of terms, to support understanding of the document.
2. Submit the CPP to the Department of Planning portal by the 1 December 2019
3. Commence a review of the DA notification process and other required consultation details, contained in Council's Community Consultation Policy for Development Applications (Including Subdivision) and the Formulation of Development Guidelines and Policies, which can provide further clarity and improvements to Council's CPP.
4. Receive a report on the outcome of this review for consideration in early 2020

Options

1. Adopt the CPP with proposed changes

Implications: This will enable Council to meet the legislative requirements that have been set for us by the State Government, ensuring that the CPP can be loaded on the Planning Portal by 1 December 2019.

2. Make further changes or alternative changes to the CPP prior to adoption

Implications: This will impact on Council's ability to meet the required timeframes that have been set by the State Government.

3. Do not adopt the CPP

Implications: If Council does not adopt the CPP, it will mean that the CPP cannot be submitted to the Department of Planning by 1 December 2019. This will have significant impacts on Council's ability to process DA's in a timely manner.

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Background

As part of the recent planning reforms the State Government has introduced the requirement for all councils in NSW to have a Community Participation Plan. A CPP will outline how and when planning authorities engage the community across their planning functions. The purpose of the CPP is to provide a single document that the community can access, that sets out all of Council's community participation requirements under the planning legislation, including all minimum mandatory exhibition timeframes.

All applicable NSW planning authorities (including councils) will be required to have the final version of their first CPP published on the NSW Planning Portal by 1 December 2019.

On 8 October 2019 Council resolved to:

1. *Make necessary changes to the working draft Community Participation Plan (CPP) prior to exhibition in accordance with feedback received from key stakeholders*
2. *Once changes have been made proceed to exhibit the draft CPP for a period of 28 days, as soon as possible, following finalisation of feedback in order to meet the 1 December 2019 timeframe.*
3. *Report the outcome of the exhibition and the final CPP to Council for adoption at the November 2019 Ordinary Meeting*
4. *Consult with the community in accordance with the Community Engagement Plan detailed within the report.*

Exhibition Method

The CPP was formally exhibited from the 21 October 2019 to the 18 November 2019 inclusive.

The following engagement methods to inform the community were used during the exhibition process:

- Get Involved Page
- Media releases
- E-news items
- Email to all CCBs
- Email to all business chambers and key stakeholders
- Social media engagement
- Discussions with stakeholders

Exhibition Outcomes

During the exhibition period a total 372 visits were made to the Get Involved Page with a total of 116 informed participants. At the end of the exhibition period a total of 12 submissions were received from external stakeholders.

The key issues raised via submissions and the proposed changes resulting to the document are summarised in the following Table 1 below.

Table 1 – Summary of Community Submission Topics and Staff Comments

Issue	Specific Details	Total No.	Staff Comment
Meaningful Engagement	Question whether any engagement conducted will be meaningful or simply a tick box exercise	1	Council does aim to provide meaningful engagement opportunities for residents and the community. Further improvements to the methods utilised and engagement outcomes are consistently being undertaken and refined.
Digital Accessible Feedback	Additional focus in the plan on digital accessible feedback and forms. Suggestion of provision of apps and other online options	2	<p>The Get Involved Platform provides a digital option that has been used for a number of planning projects and documents.</p> <p>There is further work needed on the digitalisation of the DA process and feedback options however Council does provide email and other digital forms for the provision of feedback. Changes have been made to the draft CPP to reflect these options.</p>
Role of CCBs	Community involvement, consultation and engagement should not rely solely on CCB's to collate and disperse information. Representativeness of CCBs and whether they represent the broader community.	2	<p>Council utilises a range of engagement methods and techniques to reach as many of the community as possible.</p> <p>CCBs are part of our engagement methods and opportunities however there are many other groups, stakeholders and engagement forums that are also used by Council.</p>
Compliance with zoning and DCPs	Council should not accept DAs that do not comply with existing zoning and DCP's. The ability to lodge non-complying DAs is being used by developers within the Shoalhaven and leaving the community with no certainty or security.	1	<p>The assessment of DAs is undertaken after receipt of the application. There are criteria that need to be met prior to lodgement and applicants are encouraged to meet with staff to discuss variations and non-compliance.</p> <p>Assessments are undertaken via a merit-based process and as such can not be rejected at the counter without consideration by planning staff.</p> <p>Noncomplying DAs are often refused by staff following the assessment process.</p>
Notification Radius and consultation time frames	<p>A change in notification regarding DA's should extend beyond the 25m radius to include homes just outside this area that are directly affected by the DA specifications.</p> <p>A number of other submissions also referred to the need for a review of notification boundaries and process.</p> <p>Two CCBs have specifically requested that a change is made to Council policy to ensure that when any change is made to an approved DA it will require that neighbours, general public and the CCB are notified.</p> <p>CCBs have also requested extensions to time frames particularly controversial DA's.</p>	5	<p>A change to the notification radius would be a change to the overall policy of Council in relation to DA's. Given the timeframe required for delivery of the CPP no specific changes to the approach adopted by Council were included.</p> <p>The feedback received has shown that there is a need to review the notification radius and the times when notification to neighbours are provided.</p> <p>This will require further detailed work and additional engagement with stakeholders. This is proposed to occur over the next few months in order to create a detailed appendix to the CPP to support decision making processes and engagement procedures.</p> <p>A balance between the need to notify and inform the community and the ability to adequately and efficiently process DA's requires further analysis and discussion prior to any change occurring.</p>

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Issue	Specific Details	Total No.	Staff Comment
Plan Goals	The plan and purpose of engagement are supported but do not agree that the goals stated in the document are met with the strategies proposed	1	It is intended that a review of Council's Community Engagement Policy is to be undertaken and a new engagement framework and strategy developed for all Council projects. This will include further strategies and actions to align to the goals.
IAP2 Values	Would like more emphasis and alignment with the IAP2 values		These values and emphasis on them will be applied in the future review of Council's engagement policy. This document specifically relates to DA's and to planning functions only. As such there are limitations set by legislation which do not apply to other Council projects.
Format	Positive comments about the new format and guidelines were received outlining that the new plan was clearer for the public to understand	1	<p>Further refinements have been made to the document during exhibition to enhance the layout and imagery.</p> <p>Continued improvements to all of Council's corporate documents are being made to provide a clearer format for our customers. It is pleasing that this is being noticed by our community and assisting in their understanding of Council and Council processes.</p>
Exhibition during December and January	Submission period calculation excludes 20 December to 10 January. Fully endorsed. That makes sense, as many are engaged in holidays, are elsewhere or at least distracted, and many businesses are overloaded (then possibly close for some days).	2	Further clarification is to be added to the document to assist in understanding and alignment with legislative requirements.
Lackersteen Incident	Seeking to ensure this situation does not eventuate again. The submission suggested some specifics within the CPP to assist which will require further investigation.	1	<p>Some changes have been made as suggested.</p> <p>Further detail will need to be investigated to ensure that future content of the is reflective or these concerns and balanced with the practicalities of Council process and legislative requirements.</p>
Prince Alfred Street Berry DA example	Comments relate to the notification area and who was notified of the application	1	<p>Some changes have been made to the document to further enhance the details and content to support notification specifics.</p> <p>There is further work to be done to refine requirements around notification. This would require a potential change to existing policy and procedures.</p> <p>Further engagement will need to occur with stakeholders in this review and would form part of an appendix to this document if accepted by Council.</p>
Level of engagement and resource allocation	Seek a plan and details for the full spectrum of engagement to be used, alternative methods and additional resources applied to Community engagement in the organisation	1	It is intended for methods, alternative types of engagement and options for additional involvement in Council's process and projects to be outlined within the overarching community engagement framework which is currently in development.

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Issue	Specific Details	Total No.	Staff Comment
General Feedback	<p>Holding Council's annual budget and information night in Bay and Basin</p> <p>Expand information on Council's website about works and services including schedules of works</p> <p>Run drop in sessions at local communities where attendees can assist questions and find out about different topics</p> <p>Look at making Shoalhaven presentable and in peak tourist times.</p>	3	<p>Council rotates the location of the information nights to provide opportunities for our residents and community. It is likely that next year an information night will be held in the Bay and Basin area, if this method is continued next year. Council is currently undertaking a website project which will significantly enhance the delivery and quality of information for our customers.</p> <p>Drop in sessions are a good option for reaching our community and will continue to be suggested as an option to be utilised for engagement projects.</p> <p>Ongoing works to improve the appearance of our towns and villages is occurring and does occur during peak tourist periods.</p>
Editorial Changes	<p>Suggestions relating to specific statements within the document, seeking clarification or additional detail</p>	3	<p>A number of changes have been made to the document to assist in clarification or specifications relating to discretion and beneficiaries.</p> <p>Additional work will occur in the review of the CPP to refine details and provide specifics which will be provided as a future appendix to the document (and be provided to the community for comment as part of development)</p>
Evaluation	<p>There is no evaluation process specified within the document and would like additional detail to be provided on how Council will monitor and evaluate performance</p>	1	<p>Work is occurring as part of the review and refinement of Council's Integrated Planning and Reporting Framework to include additional monitoring, evaluation methods and measures. This will also include measures related to engagement and consultation.</p>

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Planning NSW Submission

A submission was received from the Department of Planning. In this submission it was outlined that:

“A CPP is intended to make it easier for the community to understand how to participate in planning matters in NSW. Your document is comprehensive, high level and should provide the community with an understanding on how they will be consulted by Council in accordance with Schedule 1 of the Environmental Planning and Assessment Act 1979 (EP&A Act).”

Some suggested changes were provided as follows:

Suggested Change	Staff Comment
Section 7 Appendix 1 (pg. 22) – reference is made to a ‘second-hand dwelling’. It is unclear what this is referring and may just be an error.	Change made to document to remove reference.
To avoid any inconsistencies between Council's CPP and the Department's requirements over time, it is recommended that the draft Community Participation Plan only include planning functions that are applicable to Council;	The Department's planning functions have been removed from the CPP.
The document should clearly identify what are mandatory timeframes and what timeframes are	Additional detail has been provided within the document.

Suggested Change	Staff Comment
a discretionary choice by Council. Reference is made to non-mandatory timeframes in the CPP; however, it is unclear what these are;	
The finalised CPP is required to be placed on the NSW Planning Portal by 1 December 2019.	Noted – Will be uploaded to the planning portal once adopted by Council. Staff are liaising with the Department about the portal as there are several issues to be rectified by the Department prior to access being granted for Council.

Other Comments- Bomaderry Community Inc.

A request was received from a new community group located in Bomaderry (Bomaderry Community Inc). The request was made for a community meeting to be held to discuss the CPP and the Local Strategic Planning statements.

The date set for the meeting by the group was after the exhibition process had ended. The request included an extension of time for the exhibition.

Given the requirement for submission to the Department of Planning by 1 December an extension was not possible in this instance. It was also noted that the LSPS is not currently out for community engagement, as further work is being undertaken on this project. A specific response has been sent to this group to explain the situation and an offer to meet with them will also be extended.

Development Assessment Team Review

A review of the document was undertaken as part of the exhibition process by the Development Assessment team. A number of editorial changes and clarifications were provided to aid in ensuring the accuracy and relevancy of the document. These changes have been incorporated into the document attached. The changes reflect existing Council policy and have been added to assist in the understanding of the document and of the existing process undertaken.

Conclusion

The Community Participation Plan provides a clearer and more concise representation of Council’s policy and engagement processes for decisions related to Planning and Development Assessment. It is an improvement on existing documentation and goes some way to assisting the community understand, what is often a complex and detailed process.

Further work and refinement will need to occur on the document, particularly related to notification processes and radius of notification. This would require changes and review of existing Council Policy which requires further analysis and discussion with the community. Given the timeframe for delivery of the document to the Department of Planning and the promise made as part of the consultation process that the document reflected existing policy, this review if proposed to occur following adoption of the CPP.

Any future changes can then be added to the document at a later stage or provided as a more detailed appendix or alternative option.

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CL19.348 Southern Phone Company Limited - Sale of Council Shares

HPERM Ref: D19/407297

Section: Economic Development

Approver: Stephen Dunshea, Chief Executive Officer

Attachments: 1. Share Sale Agreement (councillors information folder) [⇒](#)

Reason for Report

The Board of Southern Phone Company Limited has made a recommendation to Shareholders to sell the company to AGL Energy.

Recommendation

That Shoalhaven City Council:

1. Agree to the sale of its Southern Phone shares to AGL Energy in line with the share sale agreement (contained in the Councillor's Information Folder); and
2. Authorise the Chief Executive Officer (Economic Development Manager) to execute any relevant documentation necessary.
3. Receive a further report in the matter following the Extraordinary Meeting of shareholders to be held on 2 December

Options

1. To accept the resolution as printed.

Implications: This would convey to both Southern Phone Company Limited and AGL Energy that Council will sell its shares in accordance with the Board recommendation.

2. To not accept the resolution by the required date, or to defer the making of the resolution

Implications: This would not allow the Authorised Delegate to inform Southern Phone Limited by the designated date required to commit to the AGL Energy sale

3. To reject the application i.e. "not to sell".

Implications: This would place Shoalhaven Council's shares as not for sale and the following provisions would then apply

- The Shoalhaven's vote at the Extra Ordinary General meeting would be in the negative and the provisions of the Southern Phone Limited Constitution would then be brought into play (whether a 75% majority would be achieved- most likely, yes)
- Should Shoalhaven's shares, along with any other shares not being offered for sale formed less than 10% of the shareholding, then the provisions for compulsory acquisition of the shares by AGL Energy would apply.

Background

The Southern Phone Company Limited grew out of a desire by Shoalhaven and Eurobodalla Councils wanting to offer low cost voice and data services in the south east of NSW.

A Company Constitution was prepared by legal firm Minter Ellison, and approval for Councils to form the company and take shares was received from the NSW Minister for Local Government on 31 January 2001. In the Ministerial consent sent to Eurobodalla Shire Council General Manager, it was stated: “...that the Minister be advised if there are any changes to the corporate structure, such as the forming of subsidiaries or becoming part of another corporation.”

Council has sought clarification of this matter and specifically the clause from the OLG and the following general information was provided:

It would appear that the conditions imposed by the Minister in granting consent to form Southern Telephone Company Limited (STCL) do not prohibit a sale of that company to AGL Limited.

If, in order to facilitate the proposed sale, changes are made to the corporate structure of STCL one of the member councils, or STCL itself, must notify the Minister accordingly. This can be done after the change is made. Once the sale is complete, the Minister should be formally advised by one of the former member councils that all the councils have divested themselves of the shares in STCL and no longer have any interest in it, if that is the case.

If Council is unsure about any legal issues in relation to the matter it should seek and be guided by its own legal advice.

Under the Company Constitution shareholders in the company was to be limited to NSW local government authorities. No individuals or corporations were permitted to own shares.

The operations of the Board and the Company were to be governed by the Corporations Act 2001 and all relevant federal and state legislation. The Company was formed on 13 June, 2001

Two shares were offered to NSW Councils for the nominal sum of \$1 each. All shareholders hold an A Class share. This share entitles each shareholding Council to an equal share of 20% of the profits being distributed. So, a small rural Council would get exactly the same A Class dividend as a major regional Council.

Each shareholder will receive one B to ZZ Class Share. The remaining 80% of profits being distributed would be given to each shareholder in proportion to the amount of business billed by Southern Phone to customers within the Local Government Area, determined by postcode. Shoalhaven did represent the largest recipient from this distribution pool and through the Economic Development Office actively promotes Southern Phone as a regional alternative to business and personal subscribers.

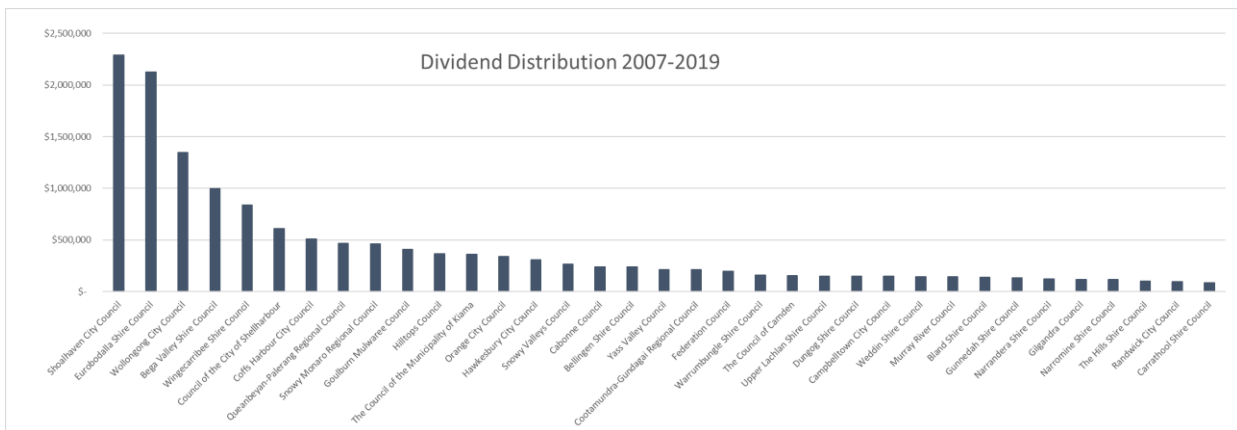
At the commencement Southern Phone Company was fully funded. Grants totalling \$4,773,000 had been made by the federal government's Networking the Nation program. There were to be no call on Councils for funds.

In establishing the company structure advice was sought from Pricewaterhouse Coopers Legal and Minter Ellison on the best structure to ensure there would be no risk to Councils or their ratepayers. Both firms concurred the best structure was the formation of a company limited by shares, as outlined above. This structure was to ensure the liability of each shareholder was to be limited to the value of their shares - in this case two shares per Council valued at \$1 each. Should the venture fail there can be no call on shareholders for funds.

Shoalhaven Council was one of the original 22 Councils to buy its shares, with the number growing to 35 by the commencement of trading. This number has since been reduced owing to Council amalgamations.

Dividends to Council

Southern Phone declared a dividend in each of 11 years from 2007 to 2018. Shoalhaven’s total dividend amounted to \$2,288,651 or an 11 year average of approximately \$208,000.



Over this same period all other Councils received dividends between that of Shoalhaven and that of Carrathool Shire with \$88,801 over the 11 years

Current situation

In 2017/18 Southern Phone declared a profit of \$246,845 and is posting a loss of (\$5,759,998) for 2018/19.

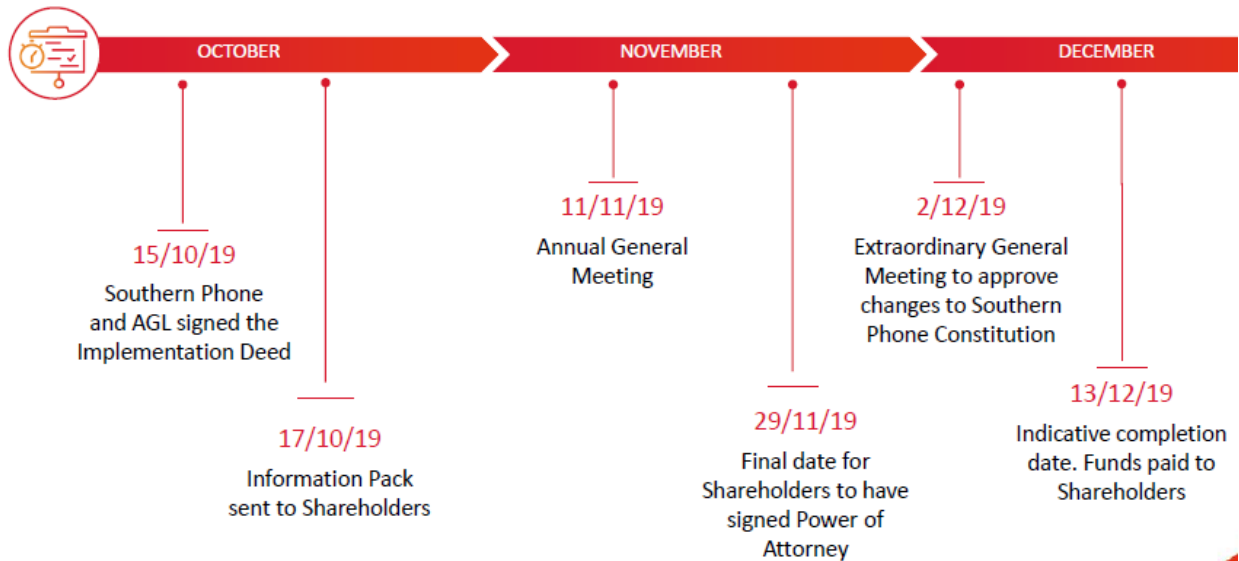
In light of the narrowing margins in telephony and data product services above the wholesale rate, combined with the entry of many players into the market, to sustain a viable profit margin there needs to be an injection of capital into the company from shareholders. Whilst the major beneficiaries may have been to provide the capital, this would have been beyond most shareholders given their turnover and the potential rate of return that could be achieved.

The Board has received an offer to buy the entire company from AGL Energy. The purchase price will entitle each A class shareholder to a purchase figure of \$785,714. In addition, the “surplus cash” at the handing over of the company will be distributed in accordance with the formula that applies to those B class shares. This should mean approximately another \$175,000 to Shoalhaven Council.

To enable the offer by AGL Energy to be accepted, certain actions need to take place. Firstly, the Constitution needs to be changed to allow the shares to be sold to a corporation. On checking the original consent of the Minister for Local Government this amendment to the constitution is not prohibited, nor does it require the Minister’s consent. The only requirement is that the Department be notified of the action to do so.

To enable the change in the constitution, a 75% majority of shareholders needs to approve this change at the Extraordinary Meeting to be held on 2 December. This means that if 8 or more shareholders do not vote in favour, the sale deal is off, as only Councils can own shares.

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Prior to that, each Council will need to resolve to sell its shares to AGL Energy. If this is not unanimous then AGL Energy can withdraw their offer and no sale will take place. The provision is there under the Corporations Act that if 10% of shareholders or less refuse to sell, then AGL Energy can invoke the compulsory acquisition provisions and acquire those shares.

In Summary

- The trading position of Southern Phone Company Limited has become more marginal in a cluttered market which offers only small margins.
- To increase the size and turnover of Southern Phone Company, there is an injection of capital required, as it is most unlikely that exiting shareholders would be prepared to invest.
- The Board has negotiated a sale deal with AGL Energy which will return to Shoalhaven Council approximately \$950,000.
- Council needs to commit to sell its shares to AGL Energy and if doing so, to agree to the amendments to the constitution of the Southern Phone Company and to sign/execute the necessary documents to bring this about.
- To oppose the sale, this Council would be frustrating the wishes of the majority of smaller Councils that would regard a sale price of \$785,714 as a positive windfall.
- The original outcomes that this Council, and others, sought to be delivered by the founders of the Southern Phone Company have been delivered “in spades”. The cost of data and voice services are no longer determined by distance and the base rates have fallen dramatically.

Community Engagement

This matter has primarily been presented to the shareholders. The Board has indicated that AGL Energy is a new entrant into the telecommunications market and will continue to trade the Southern Phone Company brand and to increase the subscriber base by bundling to its wider customer base.

Policy Implications

This was a bold initiative by local government, backed by the Department of Local Government. It does demonstrate that a joint business undertaking can yield a return to local government. Opportunities like this should be closely examined by Councils as a means to diversify their income streams.

Financial Implications

Council's Economic Development Office has been involved in the project from the time that the initial concept was thought about. The project was seen as a means to fund economic development projects within this City and by other councils. This Council's dividends have been utilised for investigations into projects such as marine infrastructure, motor sports, blue biotech, Defence initiatives, trade show participation, business development programs and the current investigations into another trading entity under a PPP.

Future commitments through the Economic Development Reserve for contributions to the above requirements were dependent on a continued dividend stream from Southern Phone. The proceeds from the sale will provide the income to continue these projects.

Risk Implications

No known risks are anticipated with the sale of the Council shares. However reputational damage would accrue to this Council if it proposes and takes a different course of action to the majority of shareholders and jeopardises the sale and "windfall" to other, smaller Councils.

The minimalist risk position would be to go with the majority and sell.

CL19.349 Presentation of Annual Financial Statements 30 June 2019

HPERM Ref: D19/386515

Section: Finance

Approver: Jane Lewis, Acting Director Finance Corporate & Community Services

Attachments: 1. Annual Financial Statements - 2018 / 2019 (under separate cover) [⇒](#)

Reason for Report

Council must present its audited financial reports, together with the auditor's reports, at a meeting of the Council not more than five weeks after receiving the Auditor's Report.

Recommendation

That:

1. The audited Annual Financial Statements for the year ended 30 June 2019, together with the Auditor's Report, be presented to the public at the Ordinary Meeting of Council on 26 November 2019.
2. Council note the attendance of Dominika Ryan, Director of Financial Audit Services at the Audit Office, and that she be thanked for her presentation in relation to the Annual Financial Statements.

Options

1. The audited Annual Financial Statements for the year ended 30 June 2019 are presented to the public

Implications: Council meets its statutory requirements in relation to reporting the Financial Statements to Council and the public.

2. Further information regarding the Annual Financial Statements be requested.

Implications: Staff will need to prepare a further report to provide any information that is required.

Background

Council resolved on 29 October 2019 that the audited Financial Statements and the Auditor's Report be presented to the public at this Council meeting. Public Notice of the presentation of the audited Financial Statements at this meeting was given in *The South Coast Register* on 13 November 2019. The public notice was in accordance with Section 418 of the Local Government Act 1993. Copies of the audited Annual Financial Statements are available for inspection by members of the public at Council's Administration Buildings in Nowra and Ulladulla, at Council's Library Branches in Nowra and Sanctuary Point and available on Council's website. Any person can make written submissions to the Chief Executive Officer with respect to the Statements within the next seven (7) day period.

The audit reports were received on 1 November from the Audit Office. Council is required to present its Financial Statements to the public within five weeks of receiving the Audit Reports.

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Dominika Ryan, Director of Financial Audit Services at the Audit Office, has audited the financial statements for the financial year ending 30 June 2019 and has provided the Audit Reports and the Audit Conduct Report, and these have been included in the Annual Financial Statements.

Ms Ryan will be attending the Ordinary Meeting to discuss the performance audit program of the audit office and to answer any questions concerning the Audit of the 2018/19 financial statements.

The Conduct of the Audit Report states that:

“I expressed an unmodified opinion on the Council’s general purpose financial statements.”

The report also states that:

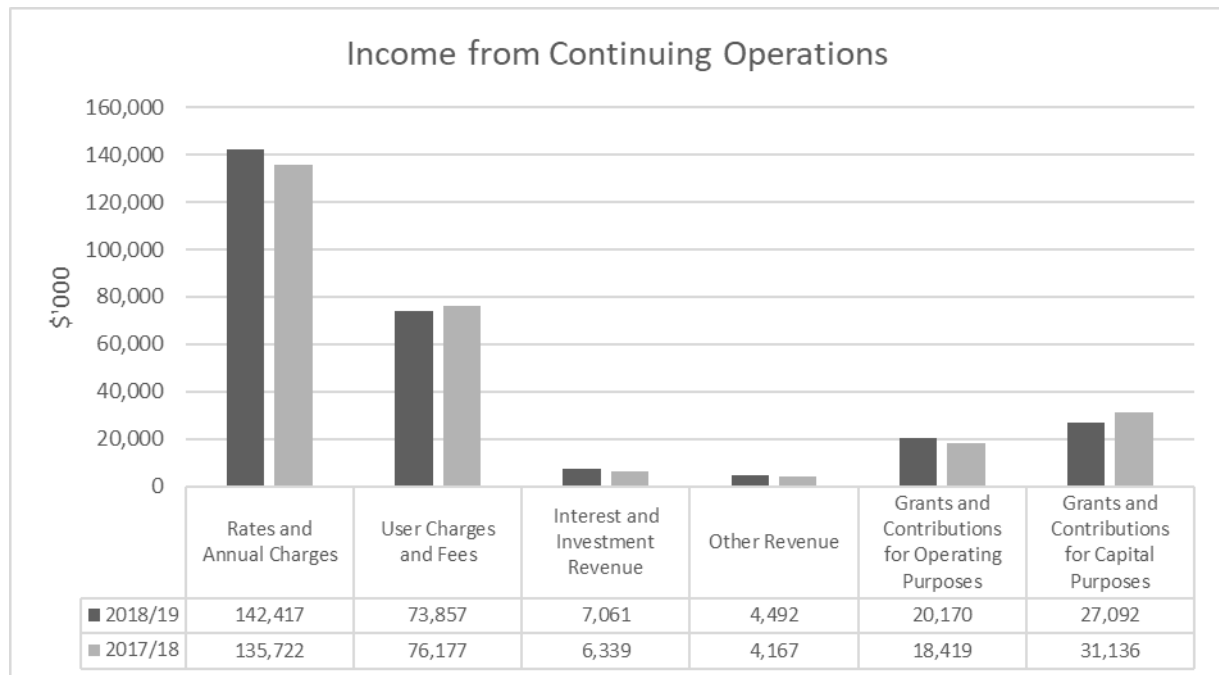
“my audit procedures did not identify any instances of non-compliance with legislative requirements or a material deficiency in the Council’s accounting records or financial reports.”

Key Financial Results

General Purpose Financial Statements

Income Statement

Income



Council's revenue increased by \$3.25M; a breakdown of the key variances is shown below:

Category	Change	Major Factors
Rates and Annual Charges	+\$6.7	<ul style="list-style-type: none"> • +\$2M special rate variation • +\$1.6M rate peg • +\$541K additional assessments • +\$917K domestic waste services • +\$1.7M sewerage services

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User Charges and Fees	-\$2.3M	<ul style="list-style-type: none"> • +\$1.3M tourist parks • +\$602K communication charges • -\$2.3M private works (this is offset by reduced expenditure) • -\$900K water supply user fees • -\$440K planning and building regulation • -\$208K sewer user fees • -\$259K cemeteries fees • -\$68K swimming and leisure centres
Interest and Investment Revenue	+\$722K	<ul style="list-style-type: none"> • +\$503K interest on investments • +\$193 fair value adjustments
Other Revenue	+\$325K	<ul style="list-style-type: none"> • Minor movement across all line items
Grants and Contributions for Operating Purposes	+\$1.7M	<ul style="list-style-type: none"> • Increase in operating grants
Grants and Contributions for Capital Purposes	-\$4.0M	<ul style="list-style-type: none"> • Mainly a reduction in developer contributions received

Financial Assistance Grant

During 2018/19, Council received a \$6.3M advance payment of its 2019/20 Financial Assistance Grant. This also occurred in 2016/17 and 2017/18, with Council receiving a \$6.2M and \$5.9M advance payments.

If, or when, the Federal Government stops the advance payment, this will have a large impact on the results for that year. This has occurred previously with the 2010 advance, starting in the 2009 financial year and the last advance being for 2014 received in the 2013 year.

The advance payment has been placed in an internal restricted reserve and is moved to the general unrestricted cash every quarter in line with the normal receipt of the grant.

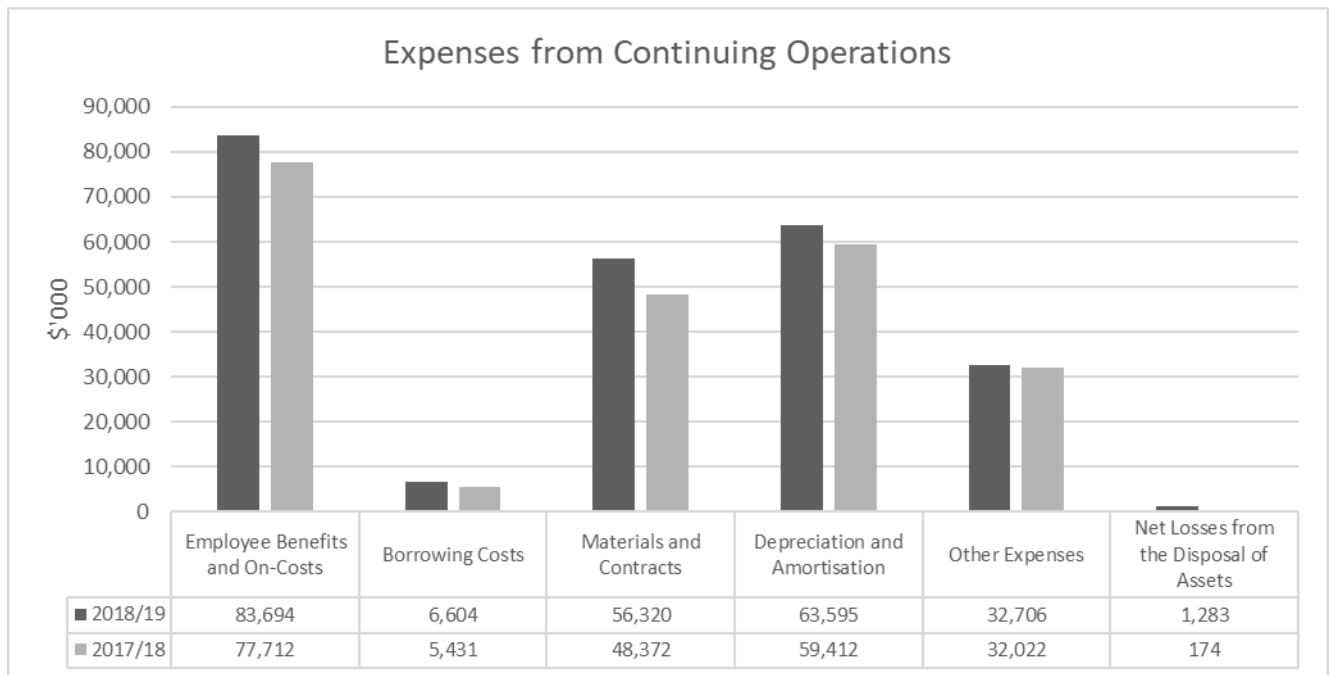
Special Purpose Grants

As in previous years, Council accrues grant income for specific purpose grants on projects according to the progress of the project. Given the nature of the deliverables funded by specific purpose grants, the transaction is more akin to a 'fee for service' arrangement and, therefore, a reciprocal transfer.

Where the work is completed but outstanding grant payments have not been received, the payments are included in revenue and as a receivable on the Statement of Financial Position. This treatment of special purpose grants comprised \$4.3M.

Last financial year, Council recognised grants received in advance as a liability. This was noted by the Audit Office as an uncorrected misstatement. It was reversed in due course on the 1 July 2018, but it is also noted as a misstatement in this year, as grant income is now overstated by the reversal. This process of recognising grants received in advance was not followed in 2019. There are two new accounting standards concerning the recognition of income that will come into effect in 2019/20. This will mainly affect the recognition of grant income, the impacts of the two new accounting standards has been explored and is disclosed in Note 1.

Expenditure

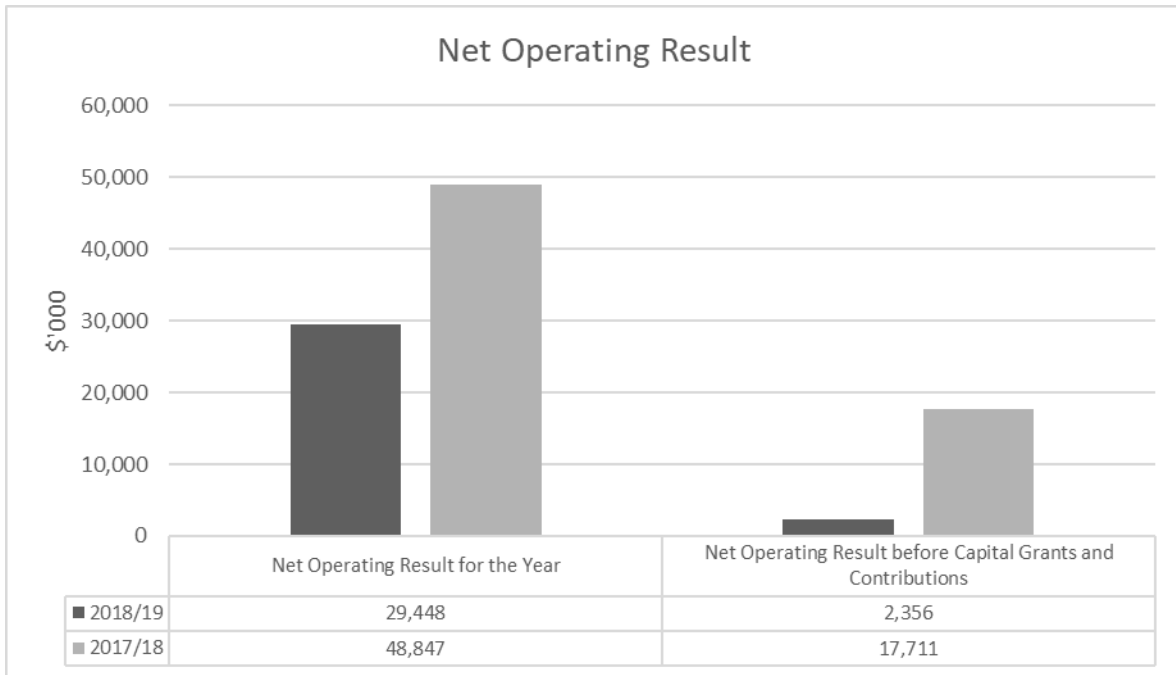


Council's Operating Expenditure increased by \$22.65M; a breakdown of the key variances is shown below:

Category	Change	Major Factors
Employee Benefits and On-Costs	+\$5.98M	<ul style="list-style-type: none"> • +\$2M local government award increase. • +\$1.2M additional staff employed due to special rate variation. • +\$2.4M reduction in discounting rate applied to leave entitlement provisions.
Borrowing Costs	+\$1.17M	<ul style="list-style-type: none"> • Additional interest due to the second loan for REMS being drawn down in June 2018.
Materials and Contracts	+\$7.95M	<ul style="list-style-type: none"> • +\$2.15M Jerberra Estate electricity infrastructure construction (not a Council asset) • +\$2.29M Shoalhaven River flood levee repairs • +\$1.5M Water and Sewer operations • \$1M increase in Domestic Waste & Recycling contract • +\$440K managing Wondalga Farm • +\$340K Milton croquet
Depreciation	+\$4.18M	<ul style="list-style-type: none"> • +\$1.2M Specialised buildings valued at \$20M were added to the asset register in 2017/18, this resulted in additional depreciation during 2018/19 • +924K roads valued at \$22M were constructed during 2017/18 • +\$763K water and sewer depreciation
Other Expenses	+\$684k	<ul style="list-style-type: none"> • Minor movement across all line items
Net Losses from the Disposal of Assets	+\$1.11M	<ul style="list-style-type: none"> • Disposal of infrastructure assets
Revaluation Decrement/ Impairment of IPPE	+\$1.57M	<ul style="list-style-type: none"> • \$1.57M Change in valuation methodology for Land Under Roads

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Net Operating Result

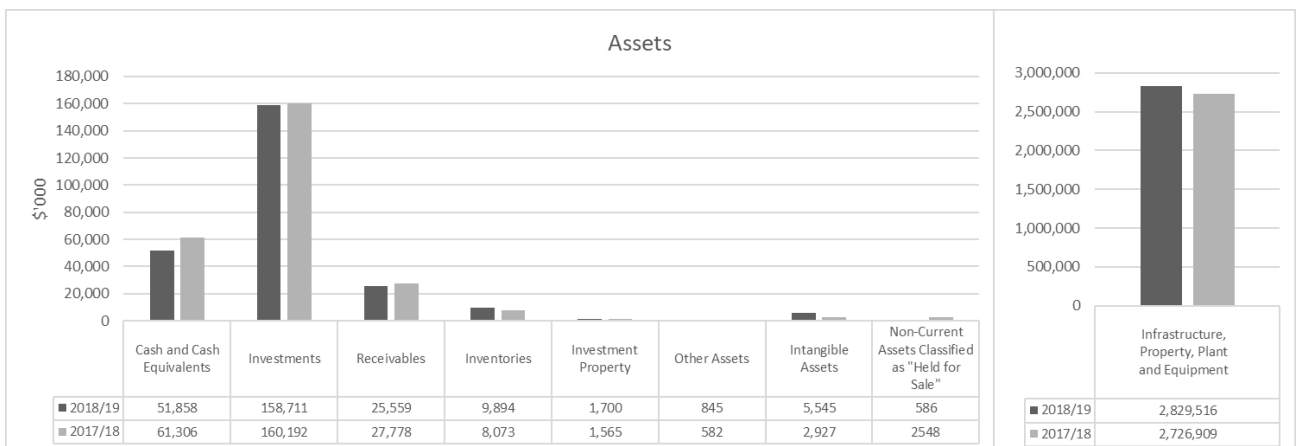


Council's Net Operating Result has decreased in 2018/19, due to additional income being less than the expenses for the year.

Statement of Financial Position

There have been various corrections to assets (explained in the Infrastructure, Property & Plant Assets section below), these are also disclosed in Note 15 of the Annual Financial Statements. The 2017 and 2018 figures have been restated in the Assets table below to represent the comparative figure

Asset Values



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Council's assets increased by \$92.3M. A breakdown of the key variances is shown below:

Category	Change	Major Factors
Cash and Investments	-\$10.9M	<ul style="list-style-type: none"> • -\$25M sewer fund • +\$3.4M unexpended general fund loans • +\$5.5M water fund • +\$2.9M domestic waste services • +\$2M special rate variation • +\$1.5M unrestricted cash
Receivables	-\$2.2M	<ul style="list-style-type: none"> • -\$1.9M government grant accruals
Inventories	+\$1.82M	<ul style="list-style-type: none"> • \$1.8M increase in industrial land for sale due to the construction of Stage 5 at Woollamia Industrial Estate
Investment Property	+\$135K	<ul style="list-style-type: none"> • Annual fair valuation adjustment
Other Assets	+\$263K	<ul style="list-style-type: none"> • Increase in prepayments
Intangible Assets	+\$2.6M	<ul style="list-style-type: none"> • Corporate software expenditure
Infrastructure, Property, Plant and Equipment	+\$102M	<ul style="list-style-type: none"> • \$104M additional • -\$4M disposals • -\$64M depreciation • \$65M revaluation

Infrastructure, Property and Plant – Assets

Revaluation - Buildings

Council engaged APV to value its buildings in 2018/19, this resulted in an additional asset value of \$54.4M. This increase is mainly due to a more detailed breakdown in building components and longer remaining useful lives due to the good condition the assets were in at the time of the inspection.

Recognised Buildings

During the process of obtaining the full list of buildings, it was identified that there were nine buildings not recorded in Council's asset register. These buildings were smaller sheds that were constructed in previous financial years and have been recognised through retained earnings and disclosed as a correction of an error relating to a prior period; the valuation of these buildings is \$503K.

Revaluation – Land Under Roads

The revaluation of land under roads resulted in a decrement of \$1.5M, due to the revaluation reserve not having a balance for this asset category, the decrement was recognised in the income statement.

Recognised Land

There were two parcels of land identified in 2018/19 during the reconciliation between GIS and the asset register, \$385K

Water and Sewer Assets

Data Cleansing

Shoalhaven Water has continued the detailed data cleansing process it started in 2017/18. The data cleansing process was instigated by the need to improve the accuracy of the asset register, thereby improving the reporting of assets in the financial statements. In addition, the Geographic Information System (GIS) and Asset Management System (AMS) are both in the

process of being upgraded and, therefore, accurate and clean data is required prior to migration.

The cleansing process required adjustments to be recorded against retained earnings and recorded as a correction of a prior period error. Below is a list of the adjustments:

Water Infrastructure

Fire services and other assets incorrectly valued as mains	-210,252.00
Triplicated Assets	-84,796.00
Water services incorrectly values as mains	-440,660.00
	-735,708.00

Sewer Infrastructure

Duplicate overflow mains	-73,703
Other items valued as mains	-33,725
Pressure pump duplication	-801
Ancillary mains incorrectly valued as gravity mains	-17,030
Duplicated pressure mains	-875,452
Ancillary mains incorrectly valued as gravity mains	-17,030
	-1,017,741

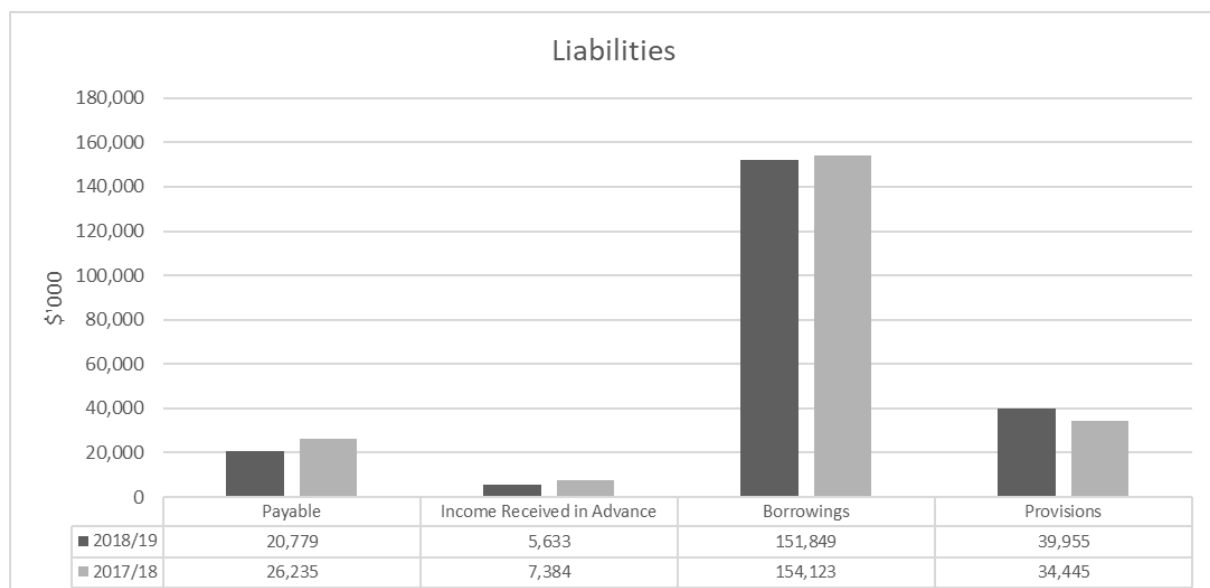
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In 2018/19, the water and sewer asset values were indexed according to the NSW Water Supply and Sewerage Construction Cost Indices, at the rate for 2018/19 was 1.6%. This resulted in an increase of \$5M for water and \$6.7M for sewer infrastructure assets.

RFS Assets

Council’s position on the recording of the RFS plant and equipment remains the same, where we believe that Council does not have any control over these assets, and they are not recognised in the asset register.

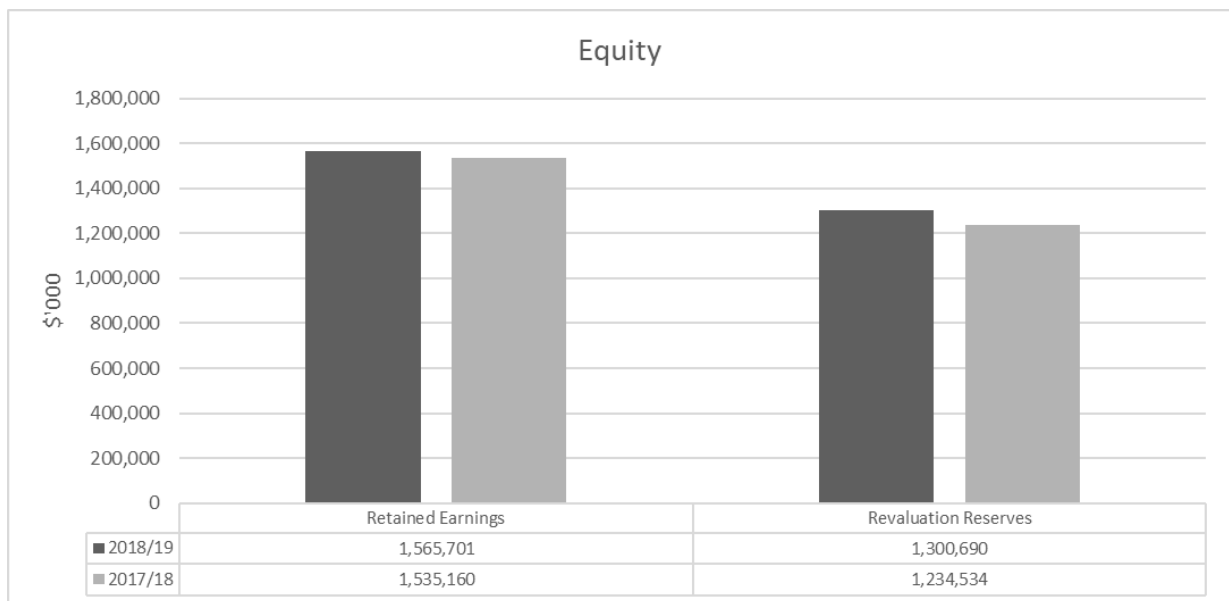
Liabilities



Total liabilities decreased by \$3.97M, a breakdown of the key variances is shown below:

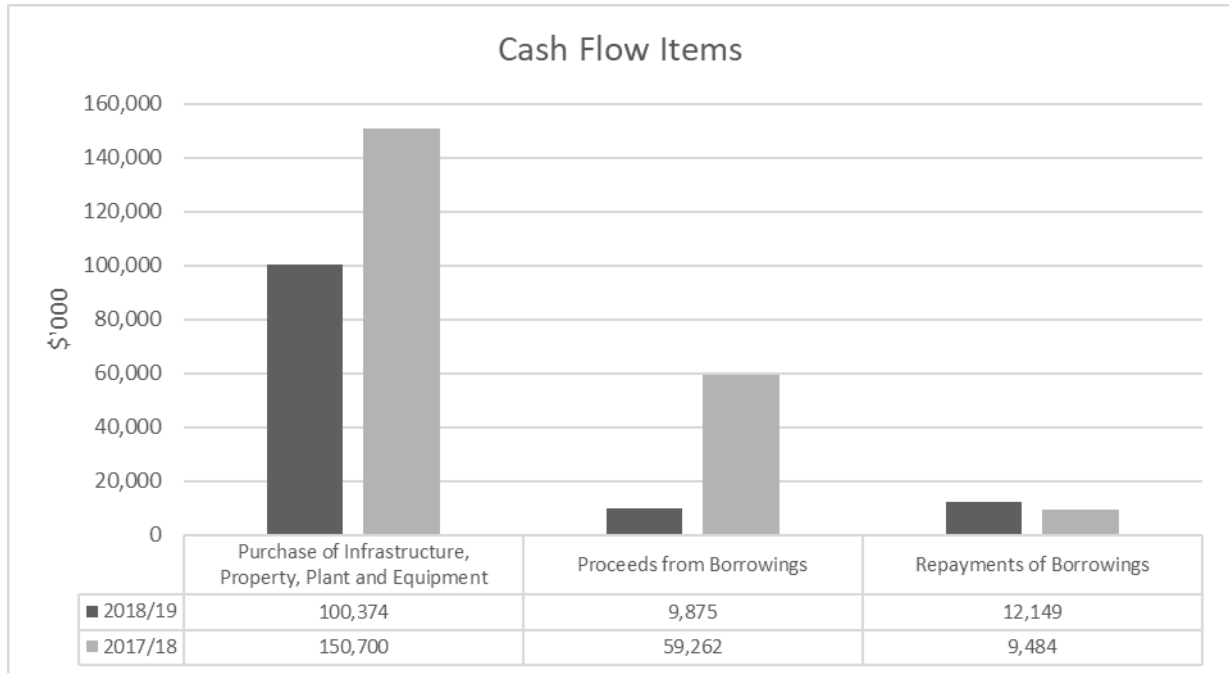
Category	Change	Major Factors
Payables	-\$5.5M	<ul style="list-style-type: none"> -\$400K decrease in security bonds and deposits -\$5.2M decrease in general payables, due to large constructions projects at the June 2018 year end.
Income Received in Advance	-\$1.75M	<ul style="list-style-type: none"> -\$2.6M Special purpose grant received but not yet spent. +\$310K Rates/Water/Sewer accounts in credit +\$451K Holiday Haven deposit payments
Borrowings	-\$2.3M	<ul style="list-style-type: none"> No new borrowings for Sewer fund, the repayments on existing loans was more than the new loans taken
Provisions	\$5.5M	<ul style="list-style-type: none"> +\$3.2M leave provisions due to discounting factors (\$2.4M) and award increase on previous balances and additional provisions. +\$2.3M tip remediation provision

Equity



Council's equity increased by \$96.3M, retained earnings increased by the consolidated profit made during the year \$30.5M and the revaluation reserves increased by \$66.2M. Other reserves have decreased by \$393K.

Statement of Cash Flows



The above items in the Statement of Cashflows include a decrease of \$97.0M, a breakdown of the key variances is below:

Category	Change	Major Factors
Purchase of Infrastructure, Property, Plant and Equipment	-\$50.3M	<ul style="list-style-type: none"> Reduction in major capital works expenditure
Proceeds from Borrowings	-\$49.4M	<ul style="list-style-type: none"> Reduced loans taken in 2018/19, 2017/18 included large borrowings for REMs
Repayment of Borrowings	+\$2.7M	<ul style="list-style-type: none"> Repayments of REMs loan taken in 2017/18

Note 26 - Statement of Performance Measures

Indicator	Benchmark		Consolidated	General Fund	Water Fund	Sewer Fund
Operating Performance Ratio	Greater than 0%	2018/19	1.97%	-4.36%	6.69%	24.58%
		2017/18	7.42%	0.35%	15.98%	28.23%
Own Source Revenue	Greater than 60%	2018/19	81.86%	79.45%	90.64%	93.28%
		2017/18	80.82%	78.65%	88.93%	88.94%
Unrestricted Current Ratio	Greater than 1.5x	2018/19	2.54	2.48	25.20	2.32
		2017/18	1.76	1.70	16.70	1.99
Debt Service Ratio	Greater than 2.0x	2018/19	4.00	4.32	NA	2.48
		2017/18	5.55	5.45	NA	2.98
Rates, Annual Charges, Interest and Extra Charges	Less than 10%	2018/19	8.16%	6.51%	11.48%	11.05%
		2017/18	8.16%	5.81%	13.87%	12.10%
Cash Expense Cover Ratio	Greater than 3 months	2018/19	9.30 months	7.15 months	23.48 months	10.39 months
		2017/18	11.61 months	7.62 months	48.84 months	9.21 months

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General Fund

Operating Performance Ratio - there was a decline in this ratio with a result of -4.36%; this is now below the benchmark of 0%, the major contribution factors are the recognition of the Jerberra Estate electricity infrastructure works as an operating expense rather than capital, and the increased cost of the Shoalhaven River flood levee repairs as reported to Council in the year-end budget review.

Own Source Revenue - there is a small increase in this ratio and the result of 79.45% remains above the benchmark of 60%.

Unrestricted Current Ratio - there was a slight improvement in this ratio to 2.48, and it is still above the benchmark of 1.5.

Debt Service Cover Ratio - this ratio decreased from 5.455 to 4.32 and is still above the benchmark of 2. General Fund has sufficient operating funds to cover the cost of borrowing.

Rates, Annual Charges, Interest and Extra Charges Outstanding - the ratio has worsened slightly with a result of 6.51%. It remains below the benchmark of 10%.

Cash Expense Cover Ratio - this has decreased to 7.15 months and is still above the minimum benchmark of 3 months. General Fund has enough cash to fund 7.15 months of operating expenditure.

Water Fund

Operating Performance Ratio - there was a reduction of this ratio with a result of 6.7%; this is above the benchmark of 0%

Own Source Revenue – This ratio remains strong at 90.64%, a slight increase on last year and it is well above the benchmark of 60%.

Unrestricted Current Ratio - there was an increase from 16.70 to 25.20. The result is well above the benchmark of 1.5.

Debt Service Cover Ratio – due to Water now having no debt, this ratio is now zero.

Rates, Annual Charges, Interest and Extra Charges Outstanding - the ratio is unfavourably above the benchmark of 10%. The reason for this unfavourable result is due to the timing of invoicing, that is, accounts invoiced in June are outstanding but are not due as at 30 June. This ratio has, however, dropped from 13.87% to 11.48%.

Cash Expense Cover Ratio – while this ratio has reduced, it is well above the minimum benchmark of 3 months, Water Fund has enough cash to fund 23.48 months of operating expenditure.

Sewer Fund

Operating Performance Ratio - there was a small decrease with a result of 24.58%. This is a strong result, being above the minimum of 0%.

Own Source Revenue - there is a further increase in this ratio (result 93.28%) and is well above the target of 60%.

Unrestricted Current Ratio - there was an increase in this ratio from 1.99 to 2.32 which is above the benchmark of 1.5.

Debt Service Cover Ratio - this ratio decreased from 2.98 to 2.48 and is above the benchmark of 2. This decrease is due to new loans being taken out.

Rates, Annual Charges, Interest and Extra Charges Outstanding - the ratio has decreased slightly from 12.10% to 11.05% - but is still unfavourably above the benchmark of 10%. This is due to the timing of the invoicing for the sewer availability.

Cash Expense Cover Ratio - this has improved and is still above the minimum benchmark of 3 months, Sewer Fund has enough cash to fund 10.39 months of operating expenditure.

Note 25 - Financial Result and Financial Position by Fund

Income Statement \$'000		General Fund	Water Fund	Sewer Fund
Income from Continuing Operations	2018/19	209,759	33,320	55,421
	2017/18	197,959	34,316	55,218
Expenses from Continuing Operations	2018/19	197,828	29,205	40,202
	2017/18	175,592	26,005	35,334
Net Operating Result	2018/19	11,931	4,115	15,219
	2017/18	22,367	8,311	19,884
Net Operating Result before Capital Grants and Contributions	2018/19	-9,352	1,518	12,005
	2017/18	107	5,029	14,290

Balance Sheet \$'000		General Fund	Water Fund	Sewer Fund
Assets	2018/19	1,991,521	439,701	658,272
	2017/18	1,930,117	428,864	644,008
Liabilities	2018/19	103,741	1,886	117,869
	2017/18	102,034	1,349	125,730
Equity	2018/19	1,887,780	437,815	540,403
	2017/18	1,828,083	427,515	518,278

All of Council's funds produced a positive operating result after capital grants and contributions. The general fund has a negative result before capital grants and contributions, this is due to some large one-off expenditure lines mentioned above and the reduced user fees received.

The balance sheets for all three funds are healthy with sufficient assets to cover the liabilities.

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Special Schedules

Special Schedule 7 - Report on Infrastructure Assets - Performance Indicators

Indicator	Benchmark		Consolidated	General Fund	Water Fund	Sewer Fund
Building and Infrastructure Renewals Ratio	Greater than 100%	2018/19	58.9%	55.9%	32.5%	92.8%
		2017/18	94.4%	76.6%	64.2%	187.6%
Infrastructure Backlog Ratio	Less than 2%	2018/19	3.2%	4.1%	1.9%	1.6%
		2017/18	3.4%	4.3%	1.2%	2.6%
Asset Maintenance Ratio	Greater than 1x	2018/19	0.9	0.8	1.0	1.0
		2017/18	0.9	0.8	1.0	1.0
Cost to Bring assets to agreed service level		2018/19	0.9%	1.6%	0.0%	0.0%
		2017/18	1.0%	1.6%	0.0%	0.0%

Building and Infrastructure Renewals Ratio – this shows as a decline primarily due to the significance of the 2017/18 capital works program which included a much larger program of grant funded works. Council is committed to asset renewal and this ratio is expected to improve in future years based on the currently adopted Long Term Financial Plan (LTFP) which includes the Special Rate Variation for 2020/2021 and assumes this is maintained and further increases are in line with the Rate Peg.

Infrastructure Backlog Ratio – whilst this remains below benchmark for General Fund, there has been a slight improvement.

Asset Maintenance Ratio – this ratio has remained the same at 0.9 for the consolidated accounts but is still below the benchmark of 1.

Cost to Bring assets to agreed service level – this ratio has improved slightly overall.

Fit for the Future (FFtF) – Performance Comparison against Benchmark and Submission

Below is a comparison of Council’s Fit for the Future submission and the historical results (2013/14 to 2018/19) including the 2019/20 LTFP budgeted figures. The indicators below are only for Council’s General Fund.

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Indicator	Benchmark		2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25
Operating Performance Ratio	Greater than 0% over a three year period	Original Submission	-5.44%	-6.26%	-7.42%	-5.99%	-4.06%	-1.70%	0.13%	1.00%	1.30%	1.72%	2.30%	2.78%
		Including 2014/15 to 2018/19 results and 2019/20 LTFF	-5.44%	-4.24%	-5.16%	-3.67%	-2.83%	-2.69%	-1.91%	-1.53%	0.67%	2.32%	3.49%	4.51%
Own Source Revenue	Greater than 60% over a three year period	Original Submission	81.92%	81.01%	79.36%	80.25%	82.56%	85.97%	87.27%	87.77%	88.05%	88.09%	88.17%	88.23%
		Including 2014/15 to 2018/19 results and 2019/20 LTFF	81.92%	81.24%	79.12%	77.51%	77.13%	78.26%	80.26%	82.79%	84.63%	86.31%	85.20%	86.24%
Building and Infrastructure Asset Renewal Ratio	Greater than 100% over a three year period	Original Submission	48.76%	66.11%	71.55%	66.79%	57.54%	64.88%	72.86%	76.87%	73.96%	72.92%	72.51%	74.68%
		Including 2014/15 to 2018/19 results and 2019/20 LTFF	48.76%	64.90%	70.60%	56.27%	58.94%	62.42%	66.51%	67.71%	67.31%	67.07%	65.89%	66.44%
Infrastructure Backlog Ratio	Less than 2%	Original Submission	3.63%	0.90%	0.88%	0.90%	0.92%	0.94%	0.96%	0.99%	1.02%	1.05%	1.08%	1.11%
		Including 2014/15 to 2018/19 results and 2019/20 LTFF	3.63%	2.58%	3.14%	5.02%	4.30%	4.11%	5.02%	5.03%	4.97%	4.87%	4.75%	4.58%
Asset Maintenance Ratio	Greater than 100% over a three year period	Original Submission	91.04%	95.83%	78.87%	80.37%	79.73%	81.96%	83.66%	86.32%	87.90%	89.42%	90.65%	91.74%
		Including 2014/15 to 2018/19 results and 2019/20 LTFF	91.04%	98.42%	80.71%	81.35%	79.62%	79.60%	82.64%	86.07%	89.83%	90.11%	90.11%	90.15%
Debt Service Ratio	Between 0% and 20% over a three year period	Original Submission	5.69%	5.99%	5.55%	6.27%	5.89%	5.69%	4.79%	5.07%	5.16%	5.05%	4.61%	4.22%
		Including 2014/15 to 2018/19 results and 2019/20 LTFF	5.69%	5.99%	5.53%	6.67%	6.23%	5.93%	4.51%	4.39%	4.16%	3.89%	3.63%	3.50%
Real Operating Expenditure per Capita	A decrease in Real Operating Expenditure per capita over time	Original Submission	1,434	1,469	1,452	1,428	1,422	1,417	1,400	1,393	1,373	1,353	1,337	1,321
		Including 2014/15 to 2018/19 results and 2019/20 LTFF	1,434	1,406	1,469	1,476	1,406	1,514	1,513	1,482	1,450	1,422	1,394	1,369

Operating Performance Ratio – the 2016/17 year saw a significant improvement against the submission due to this being the initial year where Council received the financial assistance grant in advance. The years after 2018/19 in the Long-Term Financial Plan (LTFF) present as behind the FFtF submission result due to a lower Special Rate Variation (SRV) than the submission.

Own Source Revenue – this ratio is on track with the FFtF submission.

Building and Infrastructure Asset Renewal Ratio – the actual results and LTFF results are below the FFtF submission result due a lower SRV than in the submission.

Infrastructure Backlog Ratio – the actual and LTFF results are behind the FFtF submission due to a review of the asset condition occurring in 2014/15, resulting in more assets being assessed at a lower condition than previously estimated.

Asset Maintenance Ratio – this ratio is tracking slightly behind the FFtF submission.

Debt Service Ratio – the actual results are higher than the submission due to additional borrowings taken out for the small lot estates and the open space acquisition on Moss Vale Road. The LTFF has lower borrowings than the FFtF submission.

Real Operating Expenditure per Capita – the actual result for 2018/19 increased due to the additional expenditure incurred during the year as mentioned above.

Community Engagement

The presentation of the Financial Statements has been advertised, inviting the community to attend and write a submission.

Financial Implications

The 2018/19 financial year has seen mixed outcomes in the financial results, position and performance measures and is falling behind the trajectory set by Council to be financially sustainable.

Council needs to be mindful when setting the rates for 2020/21 to ensure that the path to financial sustainability is still on track.

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CL19.350 Investment Report - October 2019

HPERM Ref: D19/390932

Section: Finance

Approver: Jane Lewis, Acting Director Finance Corporate & Community Services

Attachments: 1. Monthly Investment Report -Shoalhaven City Council - October 2019 (under separate cover) ⇄

Reason for Report

In accordance with section 625 of the Local Government Act 1993 and Clause 212 of the Local Government (General) Regulation, a written report is provided to Council setting out the details of all money it has invested.

Recommendation

That:

1. The report of the Chief Executive Officer (Finance, Corporate & Community Services Group) on the Record of Investments for the period to 31 October 2019 be received for information.
2. Council note Council's investment portfolio returned a solid 2.22% for the month of October 2019, exceeding the benchmark AusBond Bank Bill Index (0.95% pa) by 127 basis points (1.27%)

Options

1. The report on the Record of Investments for the period to 31 October 2019 be received for information.

Implications: Nil

2. Further information regarding the Record of Investments for the period to 31 October 2019 be requested.

Implications: Nil

3. The report of the Record of Investments for the period to 31 October 2019 be received for information, with any changes requested for the Record of Investments to be reflected in the report for the period to 30 November 2019.

Implications: Nil

Background

Please refer to the attached monthly report provided by Council's Investment Advisor, CPG Research and Advisory Pty Ltd.

In the August and September reports, CPG Investment Advisors noted Council was above the compliance for investing in BBB Institutions. This was due to the downgrading of AMP from A to BBB by the rating agency, Standard and Poor's. Council has acted upon CPG's recommendation and taken steps to draw down on the funds invested in the 31-day notice

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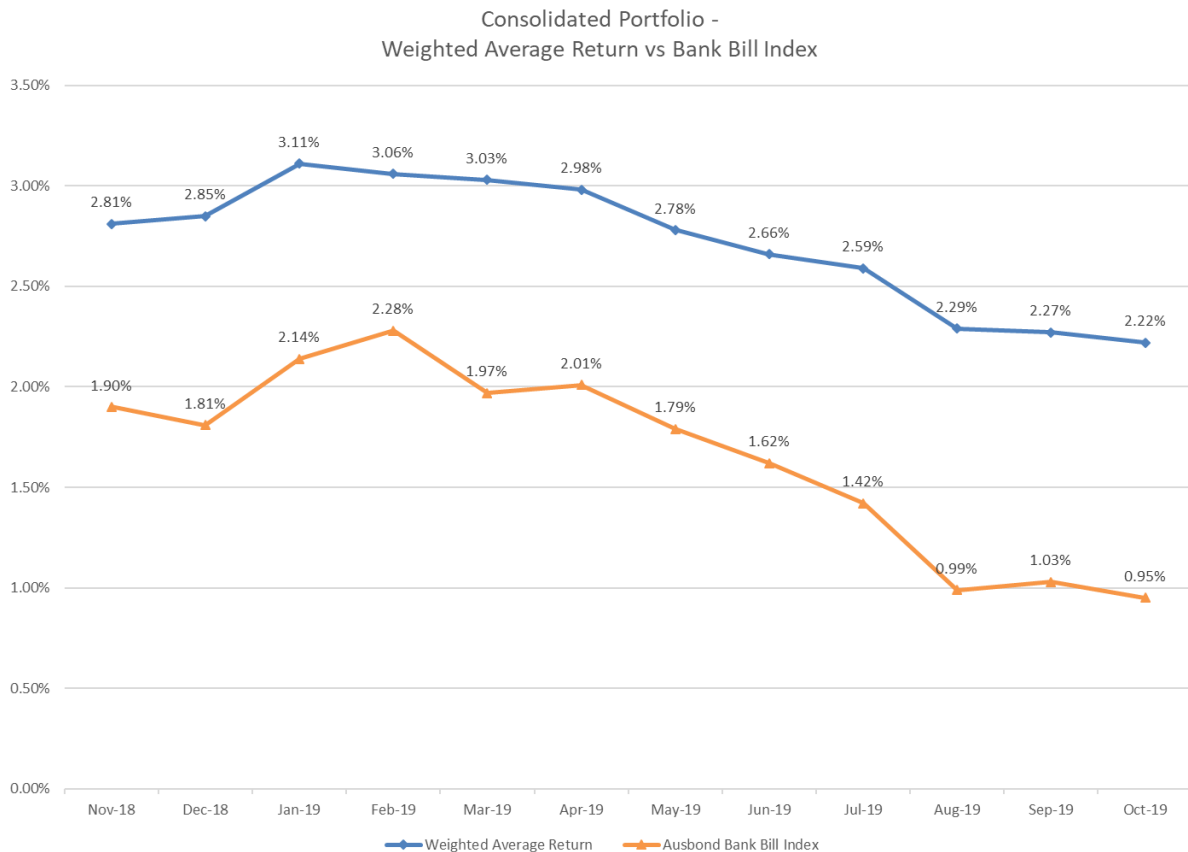
account with AMP. These funds have been received by Council and re-invested in October in A-rated institutions. The portfolio is again compliant.

Councillors will recall a Councillor Briefing with Andrew Vallner, Managing Director CPG, was held on 20 June 2019 that identified options for Council to consider when it revises its Investment Policy. An evaluation of the options presented by Mr Vallner has been undertaken and it is proposed to have a follow-up Councillor Briefing with Mr Vallner prior to presenting a report to the December Strategy and Assets Committee on a revised Investment Policy.

Portfolio Return

Council’s investment portfolio returned a solid 2.22% for the month of October 2019, exceeding the benchmark AusBond Bank Bill Index (0.95% pa) by 127 basis points (1.27%).

The following graph shows the performance of Council’s investment portfolio against the benchmark on a rolling twelve (12) month basis. As can be seen, performance has consistently exceeded the benchmark due to the mix of Council’s investment portfolio.



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Interest Earned – October 2019

The following table shows the interest earned for the month of October 2019. The interest earned for the month of October was \$386,081; which was \$322 above the current budget.

Fund	Original Monthly	Actual Earned	Difference	Revised Budget	Revised Difference
General	\$277,471	\$242,416	-\$35,055	277,471	-\$35,055
Water	\$57,329	\$100,347	\$43,018	57,329	\$43,018
Sewer	\$50,959	\$43,318	-\$7,641	50,959	-\$7,641
Total	\$385,759	\$386,081	\$322	\$385,759	\$322

Interest Earned - Year to Date

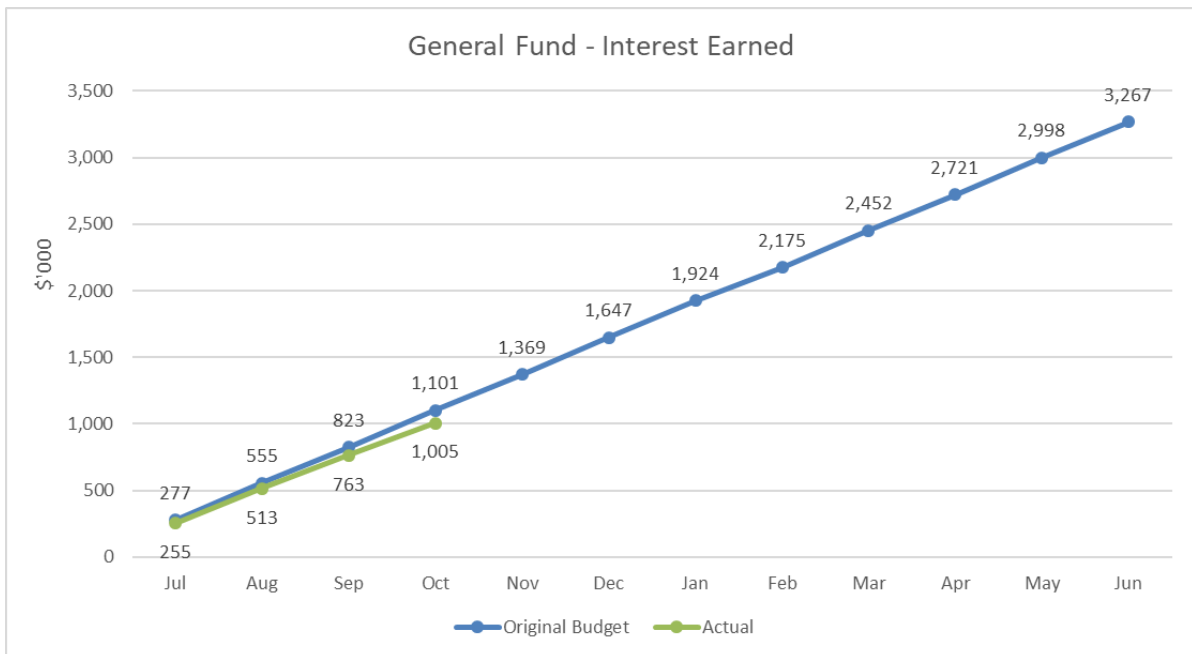
The following table shows how the interest earned year to date actual dollars against the total budget forecast dollars is performing with 34% of the year passed - the interest earned to the month of October was \$1,638,695, 36.08% of the current full year budget.

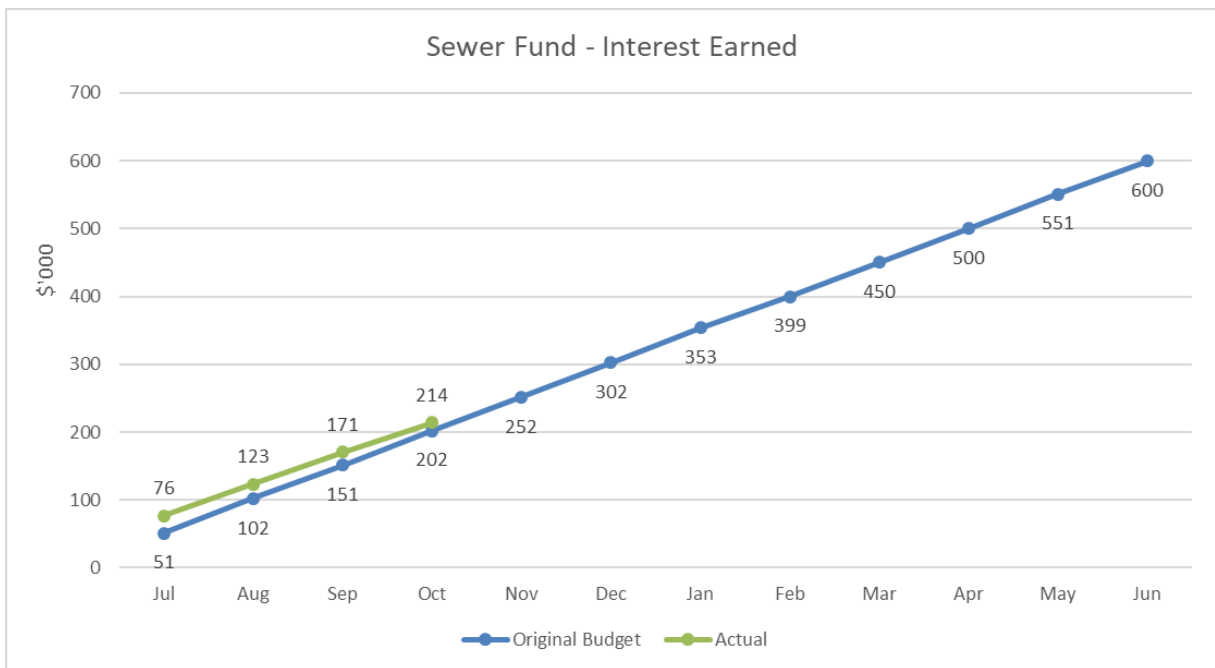
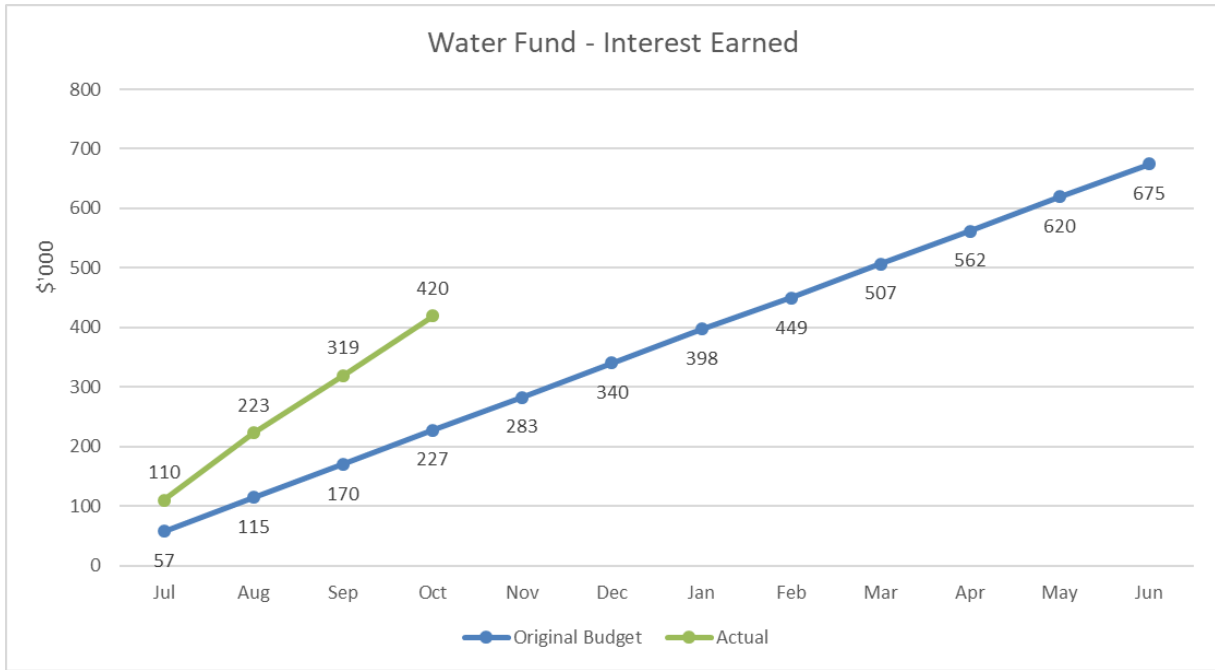
Appropriate budget adjustments are being recommended as part of the September quarterly budget review.

Fund	Original Total Annual Budget	Actual YTD August	% Achieved	Revised Budget	Revised %
General	\$3,266,999	\$1,005,003	30.76%	\$3,266,999	30.76%
Water	\$675,000	\$419,834	62.20%	\$675,000	62.20%
Sewer	\$600,000	\$213,858	35.64%	\$600,000	35.64%
Total	\$4,541,999	\$1,638,695	36.08%	\$4,541,999	36.08%

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The graphs below illustrate the cumulative interest earned for the year for each fund against original budget.





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RECORD OF INVESTMENTS Cash and Investment Balances

	October 2019	September 2019
Cash And Investments Held		
Cash at Bank - Transactional Account	\$3,628,886	\$6,126,316
Cash at Bank - Trust Fund	\$0	\$0
Cash on Hand	\$48,425	\$50,240
Other Cash and Investments	\$199,277,391	\$205,525,730
	\$202,954,701	\$211,702,285
Fair Value Adjustment	\$363,922	\$364,572
Bank Reconciliation	\$18,233	-\$381,902
	\$382,155	-\$17,330
Book Value of Cash and Investments	\$203,336,856	\$211,684,955
Less Cash & Investments Held In Relation To Restricted Assets		
Employee Leave Entitlements	\$8,119,913	\$8,119,913
Land Decontamination	\$810,358	\$872,980
Critical Asset Compliance	\$1,930,366	\$1,990,230
North Nowra Link Road	\$33,782	\$35,269
Other Internal Reserves	\$7,932,128	\$7,943,756
Section 7.11 Matching Funds	\$311,169	\$311,169
Strategic Projects General	\$2,009,622	\$2,244,751
Industrial Land Development Reserve	\$6,812,240	\$6,186,554
Plant Replacement	\$451,691	\$2,196,316
Financial Assistance Grant	\$4,724,485	\$4,724,485
S7.11 Recoupment	\$24,777,976	\$24,778,268
Commitment To Capital Works	\$1,298,598	\$1,699,842
Property Reserve	\$1,156,861	\$1,186,780
Total Internally Restricted	\$60,369,189	\$62,290,313
Loans - General Fund	\$9,205,797	\$9,644,657
Self Insurance Liability	\$1,584,275	\$1,550,964
Grant reserve	\$3,711,989	\$3,879,620
Section 7.11	\$10,891,354	\$10,584,213
Storm Water Levy	\$1,178,187	\$1,185,222
Trust - Mayors Relief Fund	\$88,954	\$88,881
Trust - General Trust	\$3,049,250	\$3,060,818
Waste Disposal	\$7,025,841	\$9,411,978
Sewer Fund	\$29,444,546	\$29,420,119
Sewer Plant Fund	\$1,801,021	\$1,870,190
Section 64 Water	\$18,470,405	\$18,386,319
Water Fund	\$30,171,113	\$31,041,640
Water Communication Towers	\$1,373,108	\$1,373,108
Water Plant Fund	\$2,092,243	\$1,984,874
Total Externally Restricted	\$120,088,084	\$123,482,603
Total Restricted	\$180,457,273	\$185,772,916
Unrestricted Cash And Investments		
General Fund	\$22,879,583	\$25,912,039

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Restricted Asset Movements

The table below lists the major movements in Restricted Assets:

Total Cash	-\$8,747,584	
Waste Disposal	-\$2,386,136	Expenditure on projects
Unrestricted Cash	-\$3,031,456	October wasn't a Rates instalment month with normal expenditure on operations and projects

Financial Implications

It is important for Council to be informed about its investments on a regular basis. Revenue from interest forms a vital part of Council's revenue stream.

I hereby certify that the investments listed in the attached report have been made in accordance with Section 625 of the Local Government Act 1993, clause 212 of the Local Government (General) Regulations 2005 and Council's Investments Policy POL18/57.

Vanessa Phelan

Vanessa Phelan
Acting Chief Financial Officer

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CL19.351 Ward Boundary Adjustments - Outcome of Public Exhibition

HPERM Ref: D19/397523

Section: Human Resources, Governance & Risk

Approver: Jane Lewis, Acting Director Finance Corporate & Community Services

Attachments: 1. Existing and Proposed 2020 Wards [↓](#)
2. Submissions - Ward Boundary Adjustment [↓](#)

Reason for Report

To provide Council with the outcome of the public exhibition on proposed Ward Boundary adjustments and seek determination to proceed to advise the NSW Electoral Commission of Council's endorsed wards for the 2020 Election.

Recommendation

That Council

1. Pursuant to the provisions of Section 211 of the *Local Government Act 1993*, adopt the variations to its current wards as exhibited and outlined in the draft Ward Boundary Plan outlined as Attachment 1 to the report.
2. Ensure that the Ward Boundary adjustments are clearly communicated to electors in the lead-up to the 2020 Local Government Elections.

Options

1. As recommended in the report.

Implications: The Council previously endorsed the proposed boundaries for advertisement on 27 August 2019. This will allow the submission to the NSW Electoral Commission by the due date of 9 December 2019.

2. Alternate Ward Boundary Adjustment

Implications: In order to check that any newly proposed boundaries reflect legislative requirements, any proposal for alternate adjustments should include a deferral of the decision to allow a further report back to the Council and determination prior to (9 December 2019).

Background

A report was provided to the Ordinary Meeting on 27 August 2019 which outlined that a Ward Boundary Adjustment was required as there is now a greater than allowable variance in Elector Numbers across wards. The report outlined a proposed model which

- aligned Council's Wards with the ABS Census Collector Districts;
- reduce the variance to meet requirements; and
- ensure that the boundaries do not split suburbs as has previously been the case.

In considering the report the Council resolved (MIN19.601)

“That Council:

- 1. Notes the proposed alterations to the draft Ward Boundary Plan pursuant to the provisions of Section 211 of the Local Government Act 1993;*
- 2. Forward the draft Ward Boundary Plan to the Electoral Commissioner and Australian Statistician for comment;*
- 3. Exhibit the proposed draft Ward Boundary Plan subject to the concurrence of the Electoral Commission for a period of 42 days inviting public submissions; and*
- 4. Receive a further report at the completion of the exhibition period in order to consider all submissions received and make a final determination.”*

As outlined in Step 3 of the process above, under Section 210A of the Local Government Act, the plan must be exhibited for 28 days and submissions on the proposal must be permitted for a 42-day period.

Following the Council resolution, the following has occurred:

- In accordance with the Council Resolution, a Ward Boundary adjustment report was lodged with the NSW Electoral Commission (NSWEC) and the ABS on 6 September 2019.
- The ABS advised Council on 9 September 2019 that it acknowledges that the legislation governing local government in NSW requires that councils notify the ABS about these changes. However, the ABS currently has no role or mandate to approve (or otherwise) ward boundaries as they relate to Local Government elections. We recommend ward boundaries align with the Australian Statistical Geography Standard as closely as possible in order to maximise the availability of Census data for ward areas.
- The NSW Electoral Commission replied on 13 September 2019 and advised that some minor mapping adjustments were required to align the outer boundaries of the Shoalhaven with the LGA Boundaries. These were made and a further submission was made to NSWEC on 23 September 2019. The NSW Electoral Commissioner wrote to Council on 2 October 2019 and advised that our further submission had been consistent with requirements and the plan could be exhibited.
- Public Exhibition period commenced on 11 October 2019 and closed on 22 November 2019 - total 42 days. Public Exhibition included:
 - [Get Involved Webpage](#) (including Webpage banner advertising)
 - Letters sent to residents living in properties affected by the proposed amendments
 - Notification to CCBs
 - Facebook posts

The adjustments were also discussed in the local media and by local radio outlets.

The Ward Adjustment Proposal

In summary the adjustments:

- Reflect the new SA1 Statistical areas and align with the request made by the Council to ensure that no suburbs or towns are split between wards. This means

that it will be clearer to individuals which ward they are in as there will be no 'split' suburbs.

- Achieve a variance of 4.17% which will allow for elector number fluctuations in the next 12-month period before the 2020 Local Government elections.
- Have been altered slightly after consultation with the NSWEC – these amendments are slight only and will not be apparent unless viewed in detail.

The complete suburbs in each proposed ward (Refer Attachment 1) are as follows:

Ward 1 – (Shown in pink in the Proposed Boundary Map), comprises the following suburbs:

Back Forest, Budderoo (part), Budgong, Budderoo, Bundewallah, Bangalee, Barrengarry, Barren Grounds (part), Beaumont, Bellawongarah, Berry, Berry Mountain, Bolong, Bomaderry, Brogers Creek (part), Broughton, Broughton Vale, Broughton Village (part), Browns Mountain, Buangla, Cambewarra, Cambewarra Village, Coolangatta, Far Meadow, Illaroo, Jaspers Brush, Kangaroo Valley, Meroo Meadow, Moolattoo, Mundamia, North Nowra, Nowra, Red Rocks, Shoalhaven Heads, Tapitallee, Upper Kangaroo River, Watersleigh, Wattamolla, West Nowra, and Woodhill.

Ward 2 – (Shown in green in the Proposed Boundary Map), comprises the following suburbs:

Bamarang, Barringella, Beecroft Peninsula, Bream Beach, Brundee, Bulee, Burrier, , Callala Bay, Callala Beach, Comberton, Comerong Island, Culburra Beach, Currarong, Erowal Bay, Ettrema, Falls Creek, Greenwell Point, Huskisson, Hyams Beach, Kinghorne, Longreach, Mayfield, Nowra Hill, Myola, Numbaa, Old Erowal Bay, Orient Point, Parma, Pyree, Quiera, Sanctuary Point, South Nowra, Tallowal, Terara, Tolwong, Touga, Vincentia, Wollumboola, Woollamia, Worrigeer, Worroving Heights, Wrights Beach, Yalwal, and Yerriyong.

Ward 3 – (Shown in yellow in the Proposed Boundary Map), comprises the following suburbs:

Basin View, Bawley Point, Bendalong, Berrara, Berringer Lake, Bewong, Boolijah, Brooman, Budawang (Part), Bulee, Burrill Lake, Cockwhy, Conjola, Conjola Park, Coolumburra, Croobyar, Cudmirrah, Cunjurong Point, Currowan (part), Depot Beach, Dolphin Point, Durras North, East Lynne, Endrick, Fishermans Paradise, Jerrawangala, Kings Point, Kioloa, Lake Conjola, Lake Tabourie, Little Forest, Manyana, Milton, Mogood, Mollymook, Mollymook Beach, Mondayong, Morton, Mount Kingiman, , Narrawallee, Pebbly Beach, Pointer Mountain, Porters Creek, Pretty Beach, Sassafras, St George, St Georges Basin, Sussex Inlet, Swanhaven, Termeil, Tianjara, Tomerong, Tullarwalla, Twelve Mile Peg, Ulladulla, Wandandian, Woodburn, Woodstock, Yadboro, and Yatte Yattah.

Feedback from the public exhibition process

During the submission period seven (7) submissions were received. Six (6) were lodged via the Council 'Get Involved' Page and the other was lodged by email. A summary of those submissions and responding comments is outlined as **Attachment 2** to this report.

Five (5) of the submissions supported the proposal, the remaining two (2) submissions refer to the splitting of the 'Bay and Basin' area across different wards. Councillors will be aware that removing this split was a goal of the adjustment process, and while the proposal was able to bring all of Sanctuary Point together in Ward 2, a number of ways were attempted to adjust the boundaries to fit St Georges Basin and Sanctuary Point into the same ward without success. This is partly due to the distribution of the population in particular pockets along the coast, where there are much greater elector numbers than the inland areas and the fact that growth in elector numbers in Ward 3 has been the reason why adjustment is needed (it is currently 14.7% greater than Ward 1). It is considered that there may be opportunity for adjustment prior to the 2024 election to bring together Sanctuary Point and St Georges Basin together given planned development in Wards 1 and 2.

It is not considered that there is sufficient opposition to the proposal or alternative suggestions to warrant reconsideration or re-mapping of the boundaries. Council is therefore recommended that the Council endorse the proposed model for final submission to the NSWEC.

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Submissions Lodged Via 'Get Involved'

	Resident's Location	Agree with proposal?	Submission	Comment
1	Shoalhaven Heads	Yes	The rationale for change seems sensible to me.	No comment required
2	Bendalong	Yes	I fully support aligning the wards with locality boundaries. However I note that Council also proposes to align with ABS Census Collection Districts. It is important to align Wards with ABS Geography but CCD is not the right spatial unit to use. Years ago it was the smallest geographic unit for which data could be obtained but that is no longer the case. In fact I dont think it is even an output unit any more. The ABS introduced a new standard geography after I retired so I am nnot up with the latest but if you call the ABS they will certainly advise what is the most appropriate spatial unit to use. ABS geographical boundaries are also free so the Shire's GIS unit can make good use of the geography without incurring any costs. (Former Director of Geography ABS)	Correspondence sent to submitter confirming approach taken is as required by NSWEC using their current data.
3.	Vincentia	No	Although I do agree that there is a need to change/expand Ward 2, in my opinion, because for the past many years we have developed a "Bay and Basin" culture with very similar needs and lifestyle (i.e. truism/short term rentals), including facilities	The creation of a ward which covers all of the 'Bay and Basin' area was a goal for this adjustment process. However, due to the geography of the Shoalhaven and the centralisation of electors in pockets along the coastline this has not been able to be achieved at this time.
4.	Callalla Bay	Yes	Alignment with the Census boundaries and also not splitting suburbs are great ideas.	No comment required
5.	Sanctuary Point	No	I would ask to be sent the number of voters in each ward please. Also Sanctuary Point has been established for over 3 decades, including shops, a school, our own churches, mens shed, etc. Why are we still part of St Georges Basin.	Responding information has been forwarded to submitter. Refer to comment to submission 3 above.
6.	Huskisson Woollamia	Yes	We wish to advise that the Huskisson Woollamia Community Voice endorses the proposed ward boundary changes.	No comment required

Submissions lodged by Email

Submitter	Submission	Reponse
Basin Villages Forum	<p>Thank goodness - Sanctuary Point will no longer be split in two wards!!!!</p> <p>The only problem I see is that Sanctuary point should really be kept with Ward 3 Sanctuary Point and St Georges Basin for Councillors to be effective for this area of Central Shoalhaven.</p> <p>We have continually had the problem of having Sanctuary Point cut in half with 2 wards represented. To make Sanctuary Point whole would be one wish list item granted but to be whole with St Georges Basin would be even better. Perhaps that Boundary could be swapped and Tomerong could be in Ward 2 and Sanctuary Point in Ward 3 - Tomerong is a bigger area but less populated than Sanctuary Point.</p> <p>Does that balance the population equation?</p>	<p>Refer Comment to Submission 3 above.</p> <p>Response sent advice advising that a number of ways to achieve request were attempted but not achievable at this time.</p>

CL19.352 2020 Local Government Election Cost Estimates

HPERM Ref: D19/383614

Section: Human Resources, Governance & Risk

Approver: Jane Lewis, Acting Director Finance Corporate & Community Services

Attachments: 1. 2020 Election Cost Estimate [↓](#)

Reason for Report

This report provides Council with cost estimates for the 2020 Elections which have been received from the Electoral Commission NSW (NSWEC).

Recommendation

That Council

1. Note the Cost estimate of \$663,032 (excluding GST) for the NSW Electoral Commission to conduct the 2020 Local Government Election.
2. Increase the Election Budget in future budget reviews to accommodate for the estimated election management costs and internal costs.
3. Authorises the Chief Executive Officer (Group Director- Finance, Corporate and Community Services) to finalise contractual arrangements with the NSW Electoral Commission.

Options

1. As recommended. The Council has previously resolved to engage the NSW Electoral Commission to undertake the Election.

Implications: The election contractual arrangements will proceed.

2. Alternative resolution

Implications: Council was required under Legislation to make a decision by 1 October 2019 on its electoral provider. Alternate resolutions would be restricted from rescinding this decision on election provision.

Background

Council has previously considered three (3) reports in relation to the arrangement for the 2020 Election during 2019.

At the Ordinary Meeting of the Council held on 26 February 2019, Council considered report CL19.39 entitled “2020 Local Government (Council) Elections” and resolved (MIN19.97):

“That

1. *Pursuant to s.296(2) and (3) of the Local Government Act 1993 (NSW) (“the Act”) that an election arrangement be entered into by contract for the Electoral Commissioner to administer all elections of the Council.*
2. *Pursuant to s.296(2) and (3) of the Act, as applied and modified by s.18, that a Council poll arrangement be entered into by contract for the Electoral Commissioner to administer all Council polls of the Council.*

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3. Pursuant to s.296(2) and (3) of the Act, as applied and modified by s.18, that a constitutional referendum arrangement be entered into by contract for the Electoral Commissioner to administer all constitutional referenda of the Council.
4. The contract be finalised by 11 June 2019 (15 months before the scheduled election) subject to:
 - a. The cost estimate from Electoral Commission NSW being presented to, and accepted by the Council, and
 - b. Any alternative requirements enacted by legislation passed or directives from the Office of Local Government received before that time (as foreshadowed in Office of Local Government Circular 19-02)."

The situation at the time of the February Report was that a review of IPART had been called on Election Costs; however, there had not been legislative change required to alleviate the requirement to engage a provider by 11 June 2019 and the NSWEC had advised that they were unable to provide a cost estimate until the IPART review was concluded.

On 25 July 2019 the Ordinary Meeting considered and noted a report (CL19.186) which outlined the Local Government Amendment Act 2019 which was assented to on 24 June 2019 and several provisions came into effect on 25 June 2019.

With respect to the Local Government Elections, the amendments resulted in:

- i. extending the "cut-off date" for councils to decide on the administration of elections in 2020 (to 1 October 2019), and;
- ii. removing the ability for the General Manager of the Council to conduct elections, and thereby requiring councils that do not enter into an arrangement with the Electoral Commissioner to engage an alternate electoral services provider to administer elections.
- iii. Councils engaging the Electoral Commissioner are required to enter into contracts by 1 January 2020.

A further report was presented to the Extraordinary Meeting of the Council held on 20 September 2019, CL19.228 entitled "2020 Local Government Election Arrangements - Update" at which time it was resolved (MIN19.708)

'That Council:

1. Note the information provided in the report
2. Confirm its previous resolution (MIN19.97) of February 2019 to engage the NSW Electoral Commission to conduct the 2020 Shoalhaven City Local Government Election
3. Receive a further report which outlines the estimated costs for the 2020 Local Government Election when received from the NSW Electoral Commission
4. Enter into contractual arrangements with the NSW Electoral Commission prior to the required date of 1 January 2020 as outlined in Section 296 (5A) b of the Local Government Act, 1993.'

This report outlined the result of the [IPART review of local government election costs](#) and the resolution ensured that the Council had met the requirements under s296(5A) (a) of the Local Government Act to appoint an election provider prior to the revised date of 1 October 2019. A cost estimate had not yet been received from the NSW Electoral Commission.

Council received the cost estimate for the Election from the NSW Electoral Commission on 26 September 2019. The estimate is provided as **Attachment 1** to this report.

The cost estimate provided to Council is for \$663,032 excluding GST. The table below provides comparison to the previous election and the recommendations of the IPART Report, taking into account the NSW Government Subsidy which was announced in September 2019.

Table 1.

Shoalhaven City Council - Election Cost Summary

Description	2016	2020	Variance 2016 Election to 2020	
Council Election Costs	\$516,000	\$663,000*	\$147,000	28%
Council Election Costs- CPI Estimate (as at June '19)	\$541,000	\$663,000	\$122,000	23%
Electors	78,000	81,000	3,000	14%
Cost per Elector	\$ 6.62	\$ 8.19*	\$ 1.57	24%
IPART Final Report recommended cost (less NSW Subsidy)		\$580,000	\$64,000	12%

Variance Between IPART Final Report and NSWEC Estimate **\$83,000 14%**

*Cost estimate.

After receipt of the cost estimate the Chief Executive Officer wrote to the NSW Electoral Commission on 30 October 2019 to clarify several points. The questions and responses from the NSW Electoral Commission received on 1 November 2019 are outlined below for the information of Councillors:

Q1. Does the estimate include the Poll for the Popular Election of the Mayor?

A: As the basis of the estimate was the service provision for the 2016 election where Council also had a poll for the election of the Mayor, yes it does.

Q2. The cost estimate you have forwarded is \$83,000 higher than the estimate for Shoalhaven indicated in the Final Report of the IPART on Election Costs – Can you outline why there is a 14% difference?

A: The IPART report was written by IPART. Even though we provided IPART with a full dataset of services and costs to conduct the elections, we did not provide estimated costs for each council. We have no idea how IPART derived its costs and IPART has chosen not to provide any explanation to us.

Q3. In reviewing the cost estimate I note that compared to the 2016 actual election costs there is a significant increase in the following areas. Can you please outline the rationale for these increases?

(a) Call Centre costs are estimated at \$36,277. This is an increase of \$25,994 or 253%

A: The call centre has previously been based at our Riverwood warehouse. The warehouse was subsidised by the State government, hence the full cost of the call centre was never passed onto councils. After the 2017 elections the lease wasn't renewed on the warehouse and all the functions managed from there were

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relocated. For the State general election we leased premises for the call centre and completely built the telephony system and centre infrastructure from scratch. After the election it was broken down and the property re-leased. We again have to build a call centre for the 2020 LG elections. As we did for the 2019 state election, we will explore all of the options, but none of them will be as cost-effective as the Riverwood centre.

(b) Event Staffing is estimated at \$327, 603. This is an increase of \$110,542 or 51%

A: We have consistently been the second lowest paying electoral commission in the country (in fact, we were paying below the minimum wage). We therefore obtained an independent determination on the pay rates for election staff (election day staff in particular) and have adjusted our rates accordingly. We have also made a number of other adjustments, including adding a deputy polling place manager to every polling place, reducing table loadings to enable election day staff to have their legislated breaks and capping the hours election day staff will work, to fall in line with work health and safety requirements. All of the above have caused an increase in the staffing costs.

The comments and information above outlines that the outcome of the [IPART review of local government election costs](#) did not achieve the decrease in election costs that was hoped to be achieved. The Council, is, however required to enter into arrangements with the NSW Electoral Commission as no other alternative exists at this time.

Financial Implications

As outlined in the above table the estimated cost for the 2020 election will be approximately \$147,000 or allowing for CPI adjustment \$122,000 greater than that which was paid for the 2016 election (ex GST).

The Council budget proposed for the 2020 election was \$600,000 distributed across two financial years as follows:

2018/2019 Financial Year – \$155,000 – Including pre-election costs such as ward boundary adjustments, advertising, venue procurement etc.

Proposed 2020/2021 Financial Year - \$445,000

Adjustments will be required in a future quarterly budget review for FY 2019/20 and to the 2020/2021 budget to reflect the service and costs estimate received from the NSW Electoral Commission and for estimated internal costs.

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Dear General Manager/CEO,

Ref: Service estimate for the conduct of the 2020 local government elections

On 18 September 2019, the Government released its response to the 'Review of local government costs' conducted by the Independent Pricing and Regulatory Tribunal (IPART). As part of its response to that Review, the Government has announced it will provide \$19.9m to fund the NSW Electoral Commission's core costs for the September 2020 local government elections.

In light of the release of the Government's response we are now in a position to provide you with an estimate of the cost of conducting Council's election.

This estimate takes into account the Government's announced contribution to the NSW Electoral Commission's costs. The estimate also covers use of our new vote count engine, incorporating the Weighted Inclusive Gregory Method. This estimate does not take into account the cost of any polls or referenda that Council may wish to conduct. We will be happy to revise our estimate should Council require polls or referenda to be conducted.

If you have not already done so, should Council resolve to enter into an arrangement with the NSW Electoral Commission to administer its 2020 election, please send us a copy of that resolution on or before 1 October 2019, as required by section 296(5A)(a) of the *Local Government Act 1993* (the Act). The NSW Electoral Commission will then send Council a copy of the service contract for review and approval. All contracts must be signed and returned no later than 1 January 2020, as required by section 296(5A)(b) of the Act.

If Council cannot pass the requisite resolution on or before 1 October 2019, we would ask that it be provided as soon as possible thereafter to enable the Electoral Commissioner to consider the resolution pursuant to section 296(5) of the Act. This provision empowers the Commissioner to enter into an arrangement to administer the election if he is satisfied that there are exceptional circumstances that make it desirable or necessary for him to do so.

The Commissioner has formed the preliminary view that constraints placed on councils in the context of the timing of the IPART review constitute 'exceptional circumstances' for the purposes of section 296(5). Having said, it must be stressed that, to enable the NSW Electoral Commission to adequately plan for all council elections which it is engaged to conduct, any contracts must still be signed and returned to it no later than 1 January 2020.

If you have any questions regarding the attached estimate or the process, please contact me by telephone on (02) 9290 5431 or email at steve.robb@elections.nsw.gov.au.

Yours faithfully,

Steve Robb
Director Customer Service & Relationship Management



**2020 Local Government Election - Cost Estimate
Shoalhaven Council**

Projects / Deliverables	Amount
<i>Ballot Papers</i>	42,623
<i>Call Centre</i>	36,277
<i>Event Management</i>	15,935
<i>Event Staffing</i>	327,603
<i>Information Technology</i>	44,266
<i>Logistics</i>	57,599
<i>Multi-Area Polling</i>	1,845
<i>Postal Voting</i>	10,594
<i>Venues</i>	87,519
<i>Voter Awareness</i>	38,771
TOTAL (excluding GST)	663,032
GST	66,303
TOTAL (including GST)	729,335

Assumptions

LGE 2020 Election Status - Fully Contested

NSWEC will conduct a similar proportion of council elections to 2016-17

Excludes cost for any referendum or poll a council may request NSWEC to conduct

All aspects of the election process will be as 2016/2017

Shared resources will be utilised where practical

Contact Details

Enquiries to Steve Robb, Director Customer Service & Relationship Management Tel: 02 9290 5431 Email: Steve.Robb@elections.nsw.gov.au

Level 25, 201 Kent Street Sydney 2000, GPO Box 832, Sydney 2001 Tel 02 9290 5999 Fax 02 9290 5991 ABN 94 828 824 124

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CL19.353 Tenders - Waste and Recycling Collection Services

HPERM Ref: D19/405574

Section: Commercial Services

Approver: Peter Knill, Project Delivery & Contracts - Section Manager

Reason for Report

To inform Council of the tender process for Waste and Recycling Collection Services.

In accordance with Section 10A(2)(d)(i) of the Local Government Act 1993, some information should remain confidential as it would, if disclosed, prejudice the commercial position of the person who supplied it. It is not in the public interest to disclose this information as it may reveal commercial-in-confidence provisions of a contract, diminish the competitive commercial value of any information to any person and/or prejudice any person's legitimate business, commercial, professional or financial interests. This information will be considered under a separate confidential report.

This report is submitted directly to the Ordinary Council Meeting pursuant to Clause 3 of Council's "Acceptance of Tenders – Reports to Council" Policy.

Recommendation (Item to be determined under delegated authority)

That Council consider a separate confidential report in accordance with Section 10A(2)(d)(i) of the Local Government Act 1993.

Options

1. Consider the separate confidential report.

Implications: Full details of the tendering process is available within the confidential report to enable Councillors to make an informed decision.

2. Council could propose an alternative.

Implications: No opportunity to assess and make an informed decision on the tender process and results.

Details

Council called Tenders for Waste and Recycling Collection Services on 31 August 2019 which closed at 10:00am on 15 October 2019. Sixteen (16) tenders were received from five (5) tenderers at the time of closing. All conforming and non-conforming tenders were evaluated.

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Tenders Received

Tenders were received from the following:

Tenderer	Location
Cleanaway Pty Ltd	Melbourne VIC 3004
J.J. Richards & Sons Pty Ltd	Cleveland QLD 4163
Remondis Australia Pty Ltd	Mascot NSW 2020
Rico Enterprises Pty Ltd atf Rico Family Trust t/as Solo Resource Recovery	Chinderah NSW 2487
Suez Recycling & Recovery Pty Ltd	Rhodes NSW 2138

Details relating to the evaluation of the tenders are contained in the confidential report.

Financial Implications

The waste and recycling collection services are funded through Council's collection of the domestic waste management charge applied to ratepayers for each parcel of land within the Shoalhaven local government area, which also covers the processing and / or disposal of the materials separately from this contract.

Risk Implications

The current extended kerbside collection service contract expires on 30 June 2020. There is a long lead-time on procurement of new collection vehicles and so it is preferable for Council to not delay its decision on the outcome of this tender process for what is one of its key essential services.

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CL19.354 Development Application – Clause 4.6 Variation of Development Standard – 170 Riversdale Road, Illaroo - Lot 101 DP 751273

DA. No: DA19/1134/4

HPERM Ref: D19/404571

Section: Development Services

Approver: Phil Costello, Director Planning Environment & Development Group

Attachments: 1. Clause 4.6 Request - Vary Height - 170 Riverside Rd, Illaroo [↓](#)

Description of Development: Additions and Expansion of Existing Facilities at the Boyd Education Centre (Riversdale) comprising a new gallery building, new building for creative learning, café, workshop and accommodation (bridge building)

Owner: Bundanon Trust

Applicant: Locale Consulting

Notification Dates: 27/3/19 – 26/4/19

No. of Submissions: Nine (9)

Purpose / Reason for consideration by Council

To seek direction from Council on a policy variation relating to the 11m height of buildings standard in Clause 4.3 (Height of Buildings) of Shoalhaven Local Environmental Plan 2014 (SLEP 2014). The extent of the variation is such that staff do not have delegation to deal with the matter.

Where a development standard is more than 10%, the variation must be determined by the elected Council.

Council is able to assume the concurrence of the Secretary of the Department of Planning and Environment for Clause 4.6 variations to vary a development standard.

Recommendation

That Council:

1. Confirm that it supports, pursuant to Clause 4.6 (exceptions to development standards) of SLEP2014, the request to vary Clause 4.3 building height limit of 11m to a maximum of 15.5m.
2. Refer the application (DA19/1134) back to staff for determination

Options

1. Resolve to support the requested variation to the maximum height of buildings requirement.

Implications: This will permit the application to proceed in its current form.

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2. Resolve not to support the proposed variation to the maximum height of buildings requirement.

Implications: This would result in the applicant needing to reconsider the design of the proposal.

3. Resolve to modify the recommendations contained in this report.

Implications: This would require the Council to provide direction to staff.

Figure 1 - Location Map



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Figure 2 – Showing existing development on the site



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Background

Proposed Development

A development application has been lodged with Council seeking approval for an 'information and education facility' at the Riversdale site on the Shoalhaven River. The following is an outline of the proposed development:

- A new gallery building which incorporates:
 - The proposed Boyd Art Gallery;
 - Collection management space; and
 - Administration space for the Bundanon Trust's operations.
- A new 'bridge' building which incorporates:
 - Accommodation rooms - 32 in total, each with an en-suite bathroom;
 - Workshop and dining room space;
 - Café with associated catering kitchen; and
 - Associated circulation, break out spaces, breezeways and decks.
- Associated site infrastructure including:
 - New access road from the existing creek crossing on the site, through to the arrival court space; and
 - Parking areas including:
 - Visitor parking on the northern and south-eastern side of the existing creek line (71 total);
 - Staff parking on the new access road (14 total); and

- Vehicle forecourt area (including 2 accessible spaces).
- Footbridge and pedestrian access pathways from car parking areas to buildings/ pedestrian forecourt; and
- Site services upgrades and associated landscaping.

The application has been amended twice since lodgement to include Lot 5315 DP 1166783 to include an Asset Protection Zone (APZ) over a portion of the land (29/8/19) and to include a jetty to enable legal access to the property (14/10/19).

Figure 3 – Site Plan



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Subject Land

The development is proposed over two large rural properties known as Riversdale (Lot 101 and Lot 227 DP 7511273) with a small portion of adjoining Lot 5315 DP 1166783 required for APZ purposes.

Site & Context

The development site:

- Is located approximately 10km west of Nowra commercial area;
- Currently has vehicular access from Riversdale Road (to the north of the site), through two (2) parcels of privately owned land via a right of access and across crown land (subject of a granted Aboriginal Land Claim);
- Is partially zoned RU1 – Primary Production (central portion), E2 – Environmental Conservation (north western and eastern portions) and E3 – Environmental

Management (western portion) under the Shoalhaven Local Environmental Plan 2014 (SLEP 2014);

- Is part of a rural property known as ‘Riversdale’ and currently contains a weatherboard building that is used as offices (Riversdale homestead), a weatherboard building that is used as a library and meeting and conference room (Mordant library), a timber clad studio building that is used as offices (Boyd’s first studio), a multipurpose building containing multipurpose area, accommodation, kitchen, storerooms and amenities (Boyd Education Centre), a storage/maintenance shed and formalised car parking for 40 cars;
- Has large cleared areas along with patches of remnant natural vegetation;
- Slopes upwards from the east to the west;
- Is serviced by electrical infrastructure, however it is not serviced by reticulated water or sewerage infrastructure;
- Is identified as being bushfire prone land and containing flood prone land; and
- Has a number of creeks that traverse the site.

Issues

The development application seeks a variation to Clause 4.3 (building height) for the ‘bridge’ building in accordance with Clause 4.6 of SLEP 2014.

Development Standard to be Varied

Clause 4.3 stipulates the objective and development standard for the height of buildings. Relevantly Clause 4.3(2) & (2A) state as follows:

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

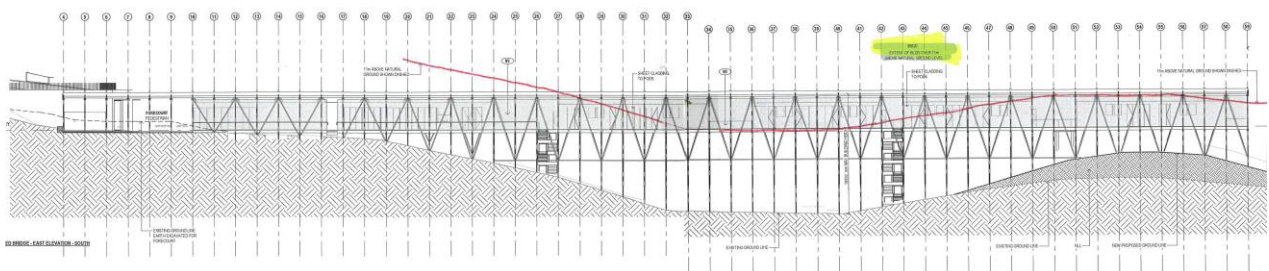
(2A) If the Height of Buildings Map does not show a maximum height for any land, the height of a building on the land is not to exceed 11 metres.

The Height of Building Map does not show a maximum height for the land and therefore the maximum building height defaults to 11 metres.

Extent of the Variation

The maximum height of the ‘bridge’ building above natural ground level varies along the length of the building due to the undulating ground beneath it. The maximum building height is 15.5m, which is a variation of 50% from the 11m height limit. The bridge building is approximately 165m long with the height exceedance over 88.8m in length occurring around the middle of the building due to the land form.

Figure 4: Bridge building east elevation showing building height variation



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Figure 5: 3D Image showing 'bridge' building height exceedance

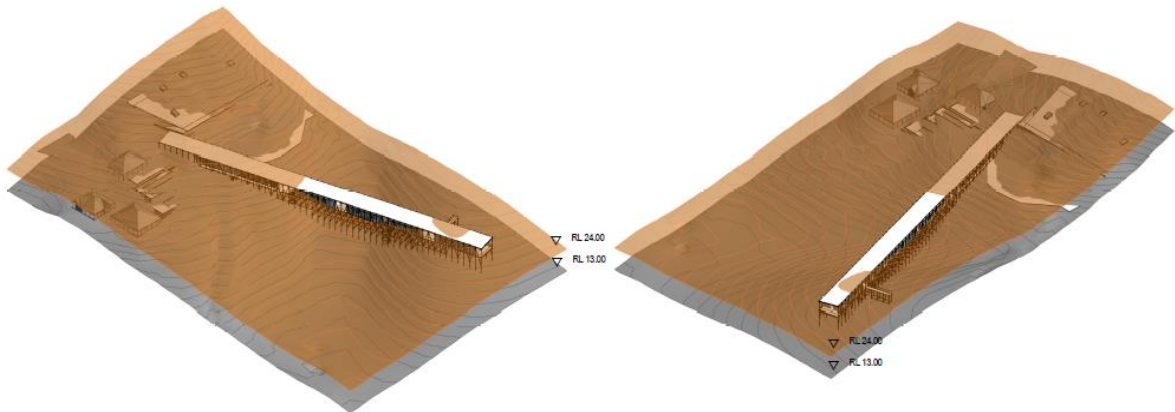


Figure 6: Looking west towards 'bridge' building



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Written Request provided by the Applicant

The applicant has submitted a variation report to justify the contravention of the development standard pursuant to the requirements of Clause 4.6 of SLEP 2014.

Council is required to consider subclauses (3), (4) and (5) of Clause 4.6.

Clauses 4.6(3) - (5) are reproduced below:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:

 - (a) the consent authority is satisfied that:*

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) the concurrence of the Secretary has been obtained.*
- (5) In deciding whether to grant concurrence, the Secretary must consider:*
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) the public benefit of maintaining the development standard, and*
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence."*

Council must be satisfied that Clause 4.6(4)(a)(i) and (ii) have been addressed prior to the grant of development consent.

The first step in satisfying Clause 4.6(4)(a)(i), is to consider whether the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). Subclause (3) requires the following two matters to be addressed:

1. That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)); and
2. That there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both matters.

Clause 4.6(3)(a) – Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

To assess whether compliance with a development standard is unreasonable or unnecessary the Courts have provided guidance in the required assessment, with particular reference to the accepted "5 Part Test" for the assessment established by the NSW Land and Environment Court (NSWLEC) in various court cases. The "5-part Test" is outlined as follows:

1. The objectives of the development standard are achieved notwithstanding noncompliance with the standard.
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.
3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.
4. The development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable.
5. The zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary.

Applicant's response to the "5 part test" test

Test 1. *The objectives of the development standard are achieved notwithstanding noncompliance with the standard.*

The 'bridge' building is considered compatible with the bulk and scale of the rural character of the locality and has minimal visual impact, therefore satisfying the relevant aims of the clause in the context of the site location. The environmental (E2 & E3) and rural (RU1) zonings of the site and surrounds epitomises the character of the area, where the bulk and scale of built form is large, separated structures amongst both an open and treed natural form.

The height exceedance creates no impacts on any buildings on surrounding properties such as view loss, considering its setting in the rural context and distance from adjoining properties. Nor will the building be prominent from any other location except for within the site itself, and at certain intervals along the river.

The height exceedance has no impact on solar access to existing development.

The roof of the 'bridge' building is of flat design and muted colour to reduce visual impact and enhance energy efficiency.

Test 2. *The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*

Through the flexibility afforded by Clause 4.6 of SLEP 2014 compliance with the 11 metre height limit is unnecessary due to the topographic response to the siting of the 'bridge' building, optimum design approach, minimised impact on the environment (through reduced excavation, improved gully treatment and energy efficiency) and appropriate visual impact (including bulk and scale) within the rural setting.

Test 3. *The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*

Not relied upon by the applicant.

Test 4. *The development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable.*

Not relied upon by the applicant.

Test 5. *The zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary.*

Not relied upon by the applicant.

Consideration of the written request relating to Clause 4.6(3)(a)

Council must form the positive opinion of satisfaction that the applicant's written request has adequately addressed those matters required to be demonstrated by Clause 4.6(3)(a).

The applicant has provided an assessment of the proposed development that the development standard is unreasonable or unnecessary in the circumstances of the case.

The applicant has principally sought to argue that the ‘the objectives of the standard are achieved notwithstanding non-compliance with the standard’. The justification that the application meets the objectives of the development standard has been provided and includes the following justifications:

- The 'bridge' building (creative learning centre) is a single storey structure that has been set above a gully to ensure optimum ecological outcome in terms of not impeding overland flow and supporting the revegetation of the degraded gully along with a design response that enables the highest levels of equitable access - the building being entirely on the same level throughout.
- The design is also a less invasive response to the sloping topography of the site, avoiding the need for excessive cut and fill. The restriction in earthworks result in a well-defined gully and doesn't diminish the overall landscape character, noting the cut would be used to form road grades and level car parking areas on site.

It is considered that the applicant has satisfactorily demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case for the following reasons:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard.
- The proposal's physical impacts on surrounding development are capable of being acceptable.
- The development will not disrupt views, result in unacceptable privacy or solar impacts.
- The development will not conflict with objective (c) of Clause 4.3 in relation to the height of the building having regard to the heritage significance of heritage items in the vicinity of the development.

Clause 4.6(3)(b) – Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?

Council must form the positive opinion that the applicant's written request has adequately addressed those matters required to be demonstrated by Clause 4.6(3)(b).

The environmental planning grounds relied on must be “sufficient” (*Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118. In the judgment, Preston CJ outlined the two methods for demonstrating that a Clause 4.6 is “sufficient” as follows:

*First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].*

The applicant has provided the following additional points to justify that there are sufficient environmental planning grounds to justify contravening the development standard.

- Section 1.3 of the EP&A Act contains the following objects relevant to the aspect of the proposed development that contravenes Clause 4.6:

“(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

(g) to promote good design and amenity of the built environment,”

- The aspect of the development that contravenes Clause 4.6 of SLEP 2014 relates to height (Clause 4.3 in SLEP 2014 sets an 11m maximum height). In this case the contravention is acceptable because:
 - The proposed building remains as a single storey in the landscape.
 - The proposed height above 11m is over a component of the building, not the entire building.
 - The proposed contravention is the result of positioning the building in a location that decreases impact on other natural environment elements including: topography, flooding and vegetation. In this case, impact on the natural, undulating landform is reduced, the building is outside of the flood prone component of the site and vegetation removal is minimised, all due to the location of the building and therefore the resultant height contravention.
- There are sufficient environmental planning grounds to justify contravening the development standard because:
 - The application has demonstrated that the proposal and the height contravention remain consistent with the objectives (where relevant) of the subject RU1 zone, specifically the height contravention does not create conflict between land uses within this zone and land uses within adjoining zones, despite the numerical non-compliance.
 - The proposed height contravention does not compromise the local land use planning framework that applies to the site.
 - The height contravention does not result in any unreasonable visual impacts, in the rural setting.
 - The height contravention does not result in any unreasonable overshadowing impacts, largely due to its context in the rural setting and single storey nature.
 - The height contravention is due to the location of the building on the site, and this location supports an important visual relationship with the existing heritage buildings and Boyd Education Centre (BEC) also known as the Glenn Murcutt building.
 - The height contravention assists with achieving a good design outcome and increased amenity for users of the building, which can exist on a single level internally, providing all-inclusive accessibility (due to the height contravention).
- Further, the variation is in the public interest as it will provide for a development outcome that is:
 - Consistent with the objectives of the zone and local land use planning framework.
 - Able to provide for further public access to an important regional facility.
 - Not unreasonable considering the rural context and setting, and respectful positioning of the building in the context of the existing built and natural environment.

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- The result of a detailed design exercise.

Consideration of the written request relating to Clause 4.6(3)(b)

The applicant's written request adequately addresses those matters required to be demonstrated by Clause 4.6(3)(b). The applicant's written request demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard for the following reasons:

Council can be satisfied that the written request has adequately addressed those matters required to be demonstrated by Clause 4.6(3)(b). The requirement to demonstrate that there are sufficient environmental planning grounds to justify contravention has been met.

Clause 4.6(4)(a)(ii) – Will the Proposed Development be in the Public Interest Because it is Consistent with the Objectives of the Particular Standard and Objectives for Development within the Zone in Which the Development is Proposed to be Carried Out?

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Pursuant to the provisions of the SLEP 2014, the land where the bridge building is located is RU1 zoned land. The objectives of this zone are as follows:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise the conflict between land uses within this zone and land uses within adjoining zones.*
- *To conserve and maintain prime crop and pasture land.*
- *To conserve and maintain economic potential of the land within this zone for extractive industries.*

Consideration of the written request relating to Clause 4.6(4)(a)

The proposal is associated with and consistent with the existing approved use as a significant education and art centre and the relevant objectives of the zone. The proposal is in the public interest as the development is consistent with the objectives of the development standard and the land use objectives of the RU1 zone.

Consequently, the applicant's written submission under Clause 4.6 is in the public interest under Clause 4.6(4)(a)(ii) and is supported.

Clause 4.6 (b) – Concurrence of the Secretary has been obtained

Council may assume concurrence. In this instance.

Clause 4.6 (5) – Decision to grant concurrence

In deciding to grant concurrence the following clauses must be considered.

Clause 4.6(5)(a) – Would Non-Compliance Raise any Matter of Significance for State or Regional Planning?

The non-compliance with the maximum building height development standard will not raise any matter of significance for State or regional environmental planning.

Clause 4.6(5)(b) – Is There a Public Benefit of Maintaining the Planning Control Standard?

In the judgement of *Ex Gratia P/L v Dungog Council* [2015] (NSWLEC 148), Commissioner Brown of the NSW LEC outlined that the question that needs to be answered in relation to the application of Clause 4.6(5)(b) is “*whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development*”.

The applicant has demonstrated that a better planning outcome and public advantage will be achieved through the variation to the height standard as opposed to strict compliance.

Clause 4.6(5)(c) – Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?

There no other matters required to be taken into consideration by the Secretary before granting concurrence.

Consultation and Community Engagement:

Nine (9) public submissions were received in relation to Council’s notification of the development. Eight (8) were objections to the development. The notification was made in accordance with Council’s Community Consultation Policy. The notification was for a two-week period.

The objections pre-dominantly relate to the ‘bridge’ building and the key issues raised as a result of the notification are provided below.

Issue

- The proposed ‘bridge’ building dwarfs the Boyd Centre buildings, dominates the landscape and is an overdevelopment of the site.
- The ‘bridge’ building conceptualised as a piece of “infrastructure” would be more at home in Broken Hill rather than a beautiful native forest environment.
- The ‘bridge’ building is oversized, dominates the entry to the site and is out of character with the environment.
- The ‘bridge’ building will stand in the foreground of the Glenn Murcutt designed building and visually dominate everything and disrespect this world-famous building.
- The ‘bridge’ building is aggressive, inaccessible, disconnect form the ground, alien to the site and landscape and does not form the function of a bridge by being a connecting element.

Applicants response to submissions

“Following Shoalhaven City Councils approval of a site masterplan for Riversdale in 2016, the Bundanon Trust ran an architectural design competition with an esteemed jury including leading Architects and Landscape Architects, to select an architect to design the facilities proposed by the masterplan. The design team lead by KTA were chosen based on their understanding and approach to the site and its cultural legacy.

This initial approach has since been developed from extensive site and brief analysis, research and an intensive process of user group consultation to meet the broader project objectives and operational requirements. KTA are a multi award winning architectural practice respected for their capacity to sensitively integrate architecture

and landscape and for their considered and refined response to unique briefs, especially within sites of natural and built heritage significance.

KTA are thoroughly aware of the cultural, environmental and architectural significance of this site. Together with a range of complex site opportunities and constraints including access, flooding, bushfire, operational demands and the availability of utilities, KTA's proposal respectfully builds on the legacy of the existing buildings at Riversdale.

Developed in collaboration with landscape architects Wraight Associates and environmental engineers Atelier 10 the proposal is for an integrated suite of buildings, landscapes and infrastructure that work with the environmental and ecological characteristics of the Riversdale site towards providing an array of new visitor experiences complimentary to those existing."

Legal Implications

If the requested variation is not supported and the application subsequently assessed and refused, or if the applicant is dissatisfied with Council's determination, the applicant has the right of a review and / or appeal to the Land and Environment Court.

Summary and Conclusion

The applicant's submission has provided sufficient justification to demonstrate that due to specific circumstances of the case, the 11m height limit is unreasonable, there are sufficient environmental planning grounds to justify contravention of the height requirement and that the proposal is in the public interest and should be supported.

CL19.354



07 November 2019

The General Manager
Shoalhaven City Council
PO Box 42
Nowra, NSW 2541

Our Ref: 2018/425
Your Ref:

By email: james.bonner@shoalhaven.nsw.gov.au

Dear James

RE: Riversdale DA19/1134 – Clause 4.6 Request

Clause 4.6 Exceptions to development standards of Shoalhaven Local Environmental Plan (SLEP) 2014 has the following objectives:

- a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—

- a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The term 'development standards' is defined in the *Environmental Planning and Assessment Act 1979*. They are provisions in environmental planning instruments that guide development to be carried out in accordance with particular requirements under certain circumstances, such as minimum building heights in residential areas. They can be numerical or may require compliance with a particular condition or require facilities to be provided in association with certain development.

In the case of DA19/1134 the relevant development standard is a minimum building height (of 11 metres) contained in *Clause 4.3 Height of Buildings*, in SLEP 2014. The written request and justification that demonstrates:

T 0419 700 401 / A 36 Sunset Ave Woolgoolga NSW 2456 / P PO Box 53 Woolgoolga NSW 2456
E info@localeconsulting.com.au / W www.localeconsulting.com.au / ABN 73 140 973 735

- a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- b) there are sufficient environmental planning grounds to justify contravening the development standard

is provided below, noting that Clause 4.3 aims to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality, to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and, to ensure that the height of buildings respect heritage significance (noting some the aims are more applicable in the urban context or to an urban site):

- As the maximum height is not shown on the Height of Buildings map for the subject land, the height of a building on the land is not to exceed 11 metres.
- It is noted that a component of the proposed development will exceed 11m in height. This is the 'bridge' building (creative learning centre). The extent of building higher than 11m is greater than 10% and is nominated on the elevations lodged with this request, noting that the revised design (lodged as an amendment to the DA) reduces the extent of the building higher than 11m. The reduction equates to a 12% reduction of bridge roof area, and a 6% reduction of total area, over 11m in the revised plan.
- The 'bridge' building (creative learning centre) is just a single storey structure that has been set above a gully to ensure optimum ecological outcome in terms of not impeding overland flow and supporting the revegetation of the degraded gully along with a design response that enables the highest levels of equitable access - the building being entirely on the same level throughout.
- The design is also a less invasive response to the sloping topography of the site, avoiding the need for excessive cut and fill. The earthworks result in a well-defined gully and doesn't diminish the overall landscape character, noting the cut would be used to form road grades and level car parking areas on site.
- The height exceedance creates no impacts on any buildings on surrounding properties such as view loss, considering its setting in the rural context and distance from adjoining properties. Nor will the building be prominent from any other location except for within the site itself, and at certain intervals along the river.
- The height exceedance has no impact on solar access to existing development.
- The roof of the 'bridge' building is of flat design and muted colour to reduce visual impact and enhance energy efficiency.
- The 'bridge' building is considered compatible with the bulk and scale of the rural character of the locality and has minimal visual impact, therefore satisfying the relevant aims of the clause in the context of the site location. The environmental (E2 & E3) and rural (RU1) zonings of the site and surrounds epitomises the character of the area, where the bulk and scale of built form is large, separated structures amongst both an open and treed natural form.
- Following Shoalhaven City Councils approval of a site masterplan for Riversdale in 2016, the Bundanon Trust ran an architectural design competition with an esteemed jury including leading Architects and Landscape Architects, to select an architect to design the facilities proposed by the masterplan. The design team lead by KTA were chosen based



on their understanding and approach to the site and its cultural legacy. This initial approach has since been developed from extensive site and brief analysis, research and an intensive process of user group consultation to meet the broader project objectives and operational requirements. KTA are a multi award winning architectural practice respected for their capacity to sensitively integrate architecture and landscape and for their considered and refined response to unique briefs, especially within sites of natural and built heritage significance. KTA are thoroughly aware of the cultural, environmental and architectural significance of this site. Together with a range of complex site opportunities and constraints including access, flooding, bushfire, operational demands and the availability of utilities, KTA's proposal respectfully builds on the legacy of the existing buildings at Riversdale. Developed in collaboration with landscape architects Wraight Associates and environmental engineers Atelier 10 the proposal is for an integrated suite of buildings, landscapes and infrastructure that work with the environmental and ecological characteristics of the Riversdale site towards providing an array of new visitor experiences complimentary to those existing. Further information on the design approach is included in the design report submitted with the amended DA.

It is further noted that as part of the Pre DA Lodgement meeting (in 2018) and associated process, Council approached the Department of Planning & Environment (now Department of Planning, Industry & Environment (DPIE)) in relation to the need for concurrence to vary this development standard. An email from was received from Council's Senior Development Planner on 14 December 2018, stating "I can confirm that this matter would need to be reported to the Council and is not required to be referred to the Department for concurrence", therefore referral to the DPIE will not occur in the case of variation request to a development standard.

It is therefore considered that the proposed variation to the development standard in this case, achieves the underlying purpose of the standard. Through the flexibility afforded by Clause 4.6 of SLEP 2014 compliance with the 11 metre height limit is unnecessary due to the topographic response to the siting of the 'bridge' building, optimum design approach, minimised impact on the environment (through reduced excavation, improved gully treatment and energy efficiency) and appropriate visual impact (including bulk and scale) within the rural setting.

If you require further information please don't hesitate to contact me on email (cinnamon@localeconsulting.com.au) or by phone (0401 447 603).

Yours Sincerely



Cinnamon Dunsford
Principal Planner
Localé Consulting Pty Ltd

CL19.355 Boat Harbour (Bendalong) Master Plan - Operations Actions

HPERM Ref: D19/409696

Section: Environmental Services

Approver: Phil Costello, Director Planning Environment & Development Group

- Attachments:**
1. Bendalong Boat Harbour - Storm Water Plan Stage 1 [↓](#)
 2. Bendalong Boat Harbour - Storm Water Plan Stage 2 [↓](#)
 3. Final Coastal Erosion Report - Bendalong Boat Harbour - Advisian (under separate cover) [⇨](#)
 4. Final Report - Bendalong Boat Harbour - Coastal Protection -Technical Advice - Advisian (under separate cover) [⇨](#)
 5. Email to Red Head Villagers Association - 09/07/2019 [↓](#)
 6. Draft Boat Harbour - Bendalong - Master Plan Operation Actions [↓](#)

Reason for Report

To provide Council with an update on the Bendalong - Boat Harbour Master Plan - Operational Actions and seek adoption of the Master Plan.

Recommendation

That Council adopt the Boat Harbour Master Plan – Operational Actions package pending receipt of the Aboriginal Heritage Impact Permit, to be issued by NSW Department of Planning, Industry and Environment (DPIE).

Options

1. As per the recommendation

Implications: Works identified in the Master Plan – Operations Actions, outside the AHIP area, can be undertaken. Works inside the AHIP area can be designed, programmed and implemented following receipt of the AHIP

2. Wait until the AHIP is finalised before adopting the Bendalong Boat Harbour Master Plan package

Implications: Implementation of all operational activities will be delayed pending receipt of the AHIP, at which time a further report will be prepared for Council.

3. Seek further advice from NSW Department of Planning, Industry and Environment (DPIE) on approval pathways for the trial coastal rock protection works, as per part two of MIN19.128, currently been managed by Asset & Works, at the eastern end of the beach.

Implications: NSW DPIE Coastal regional staff have advised Council that the proposed coastal protection works may require development consent. The Coastal Zone Management Plan currently has implementation of the Master Plan as a local area action, however the local Emergency Sub – Action does not identify new coastal protection works as an emergency response action.

4. Do not adopt the Bendalong Boat Harbour Master Plan and seek clarification or further changes

Implications: The implications of this recommendation would depend on changes and clarification required.

5. Alternative recommendation

Implications: Would depend on the recommendation.

Background

On 12 March 2019 Council resolved the following in relation to stormwater and coastal erosion control measures for the Boat Harbour Beach/Reserve (MIN19.128):

That Council adopt the following measures to address stormwater and coastal erosion at the Bendalong Boat Harbour and include these measures in the Draft Bendalong Boat Harbour Masterplan for consideration at a future date:

1. *As outlined in the report by MI Engineers (Stormwater Infrastructure Upgrade Report 18 January 2018):*
 - a. *Divert as much stormwater as possible away from the catchment that discharges to the beach. Strategic location of the optimum number of swails be part of the diversion solution. Estimated to cost (\$140,000);*
 - b. *Address erosion in the major draining channels within the catchment by lining the channels with rock protection. Estimated to cost (\$130,000);*
 - c. *Convert the piped outlets onto the beach to surcharge/soak-away pits thus allowing rock protection arrangements to be continuous along the beach. Estimated to cost (\$140,000);*
 - d. *Convert the piped inlets to pit inlets and line the roadside drain with rocks to provide scour protection. Estimated to cost (\$80,000)*
 - e. *Longer Term – When the time comes to reconstruct the road (say 5 to 10 years), provide a causeway crossing and thus eliminate the pipe crossings altogether. Estimated to cost (\$160,000).*
2. *As outlined in the Bendalong Draft Coastal Hazard/Erosion Technical Advice Report – April 2018 – prepared by Advisian, sort existing rock at the eastern end of the beach and place on the eroded sections of the beach to interlock and provide protection for wave attack up to 0.7m. Estimated to cost \$30,000. Select a trial location as per the Red Head Villages Association assertion, using large prismical rocks and using grass to bind them*
3. *Council monitor the effectiveness of the storm water diversion management through annual monitoring*

The Bendalong Boat Harbour Master Plan – Operational Actions was initiated by Council staff following concerns raised by the Red Head Villagers Association and other residents of Bendalong, about the impact of coastal erosion on the beach caused by the June 2016 East Coast Low (ECL). The erosion impacted the beach amenity, stability and public assets.

Concerns have also been raised with Council about the impact of increased visitation at Boat Harbour Beach during the peak tourist season and the additional strain being placed on the public assets that service this recreational area.

The June 2016 ECL was an unusual coastal storm event, in that it came from a north, north east direction. Previously beaches such as Bendalong Boat Harbour, which face north, had been protected from an ECL, which predominately come from a south east direction. As a result, Council engaged an expert consultant to undertake coastal hazard mapping at Boat Harbour beach.

It was at this time that Council officers meet with the community and asset custodians and started the development of the draft Bendalong Boat Harbour Master Plan – Operational Actions. The draft Bendalong Boat Harbour Master Plan – Operational Actions Plan outlines actions to be undertaken for the future management of public assets on the reserve.

The key issues identified during the consultation and investigations were as follows:

1. Coastal erosion from ocean storm waves, and the impact coastal hazards have on beach amenity and public assets
2. Erosion of the beach and foreshore from surrounding stormwater and surface runoff;
3. The impact of large volumes of visitors to the beach in a constrained site;
4. Impact of increased visitors on public assets;
5. Aging public assets, nearing the end of their life; and
6. Need for a plan that outlines the future management actions for the reserve

Coastal Hazards

In 2017 Council engaged Advisian–Worley Parsons to prepare a coastal hazard study and mapping to identify and assess the future coastal hazards impacting Boat Harbour for the planning periods of 2030, 2050 and 2100. The report identified the short and long-term erosion impacting the beach and the management options for addressing the coastal erosion.

The report recommended the following to address coastal erosion at Boat Harbour:

- Beach Scraping – Following large coastal storms, using beach scraping to push sand from the swash zone up to the incipient dune to aid beach recovery;
- Use of existing rock cobble on the eastern end of the beach (east of the boat ramp), to restore coastal protection rock revetment, in areas not affected by the Aboriginal midden deposits.
- For the area west of the boat ramp provide erosion protection and energy dissipation to the stormwater outlets as per standard Council stormwater engineering designs
- Sand from the beach to line the incipient dune, below the midden height to add additional protection.

Following the recommendations of the Bendalong Boat Harbour Coastal Hazard report, Council sought a further technical report from the Coastal Engineers, Advisian – Worley Parsons, detailing the methodology for using existing rock to provide coastal protection on the eastern end of the beach.

Advisian – Worley Parsons, were also requested to undertake a detailed assessment of the impact of larger coastal protection works on the beach. The report outlined the “end effects” of constructing larger scale rock protection (see attachment 4).

This was undertaken following a direct request from representatives of the Red Head Villagers Association, who expressed that they were not satisfied that the rock protection outlined by Advisian in the coastal hazard report was adequate and subsequent part two of the Council resolution (MIN19.128), which states.

“Select a trial location as per the Red Head Villages Association assertion, using large prismatic rocks and using grass to bind them”.

Currently Council’s Southern Asset and Works Maintenance Team are developing a project plan to undertake coastal protection rock works on the eastern end of Boat Harbour Beach, in direct response to community request and the above resolution. A Review of Environmental Factors has been prepared for these works.

These works will involve bringing in additional rock to undertake repairs to the existing rock protection works on-site. The CZMP does have as a local area action for Bendalong, Manyana and Cunjurong Point area, to prepare and implement the Boat Harbour Master

Plan, which has this upgrade to the coastal protection works identified as an operational action. Thus, with the adoption of the Master Plan, the proposed works will fall under the adopted CZMP.

Stormwater Management

The community have consistently raised concerns regarding the impact of stormwater, from the surrounding catchment, on beach erosion. In order to address this, as part of the Bendalong Boat Harbour Masterplan – Operational Actions, Council engaged MI Engineering to prepare a stormwater management plan/design. This plan was to cover the whole Bendalong Boat Harbour beach catchment, which is primarily managed by Holiday Haven Tourist Park.

The aim of the stormwater plan was to reduce the impact of stormwater and surface water flows on the Boat Harbour beach erosion. The majority of the Boat Harbour Stormwater Plan/Design, concentrated on managing the surface water flows from the Bendalong Holiday Haven Tourist Park, which consists of 90% of the catchment area.

The actions used to address the storm water impacts, in the storm water plan consisted of the following:

- Rock check dams
- Storm water diversion mounds
- Swales to divert surface water
- Detention structures
- Erosion control devices at storm water outlets

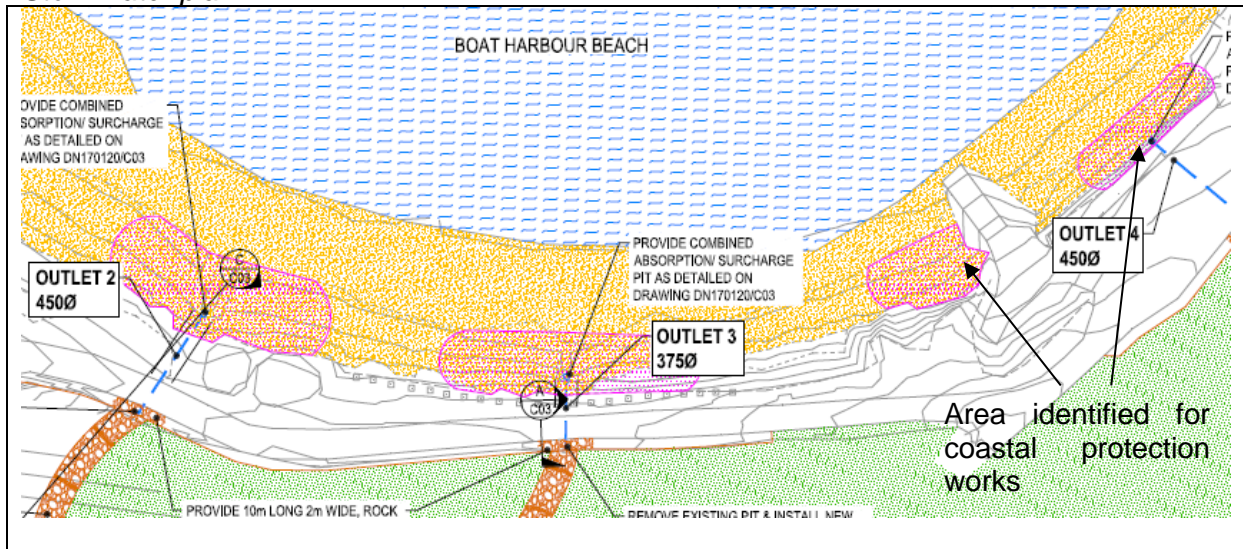
Following the Council resolution (MIN19.128), Council has reviewed the MI Engineers – Stormwater Management Plan/Design. Considering the plan is an integral part of the Bendalong Boat Harbour Master Plan - Operational Actions, minor changes to the stormwater design plan have been made.

These changes relate to size of the rock scour/embankment protection at the three stormwater outlets that empty onto the beach. The adopted stormwater plan had large volumes and mass of scour/embankment rock protection at each of the three stormwater outlets and adjacent to the western boat ramp (see figure 1). Council received engineering advice, from MI Engineers, that the large volumes and mass was not required to address stormwater scouring of the beach.

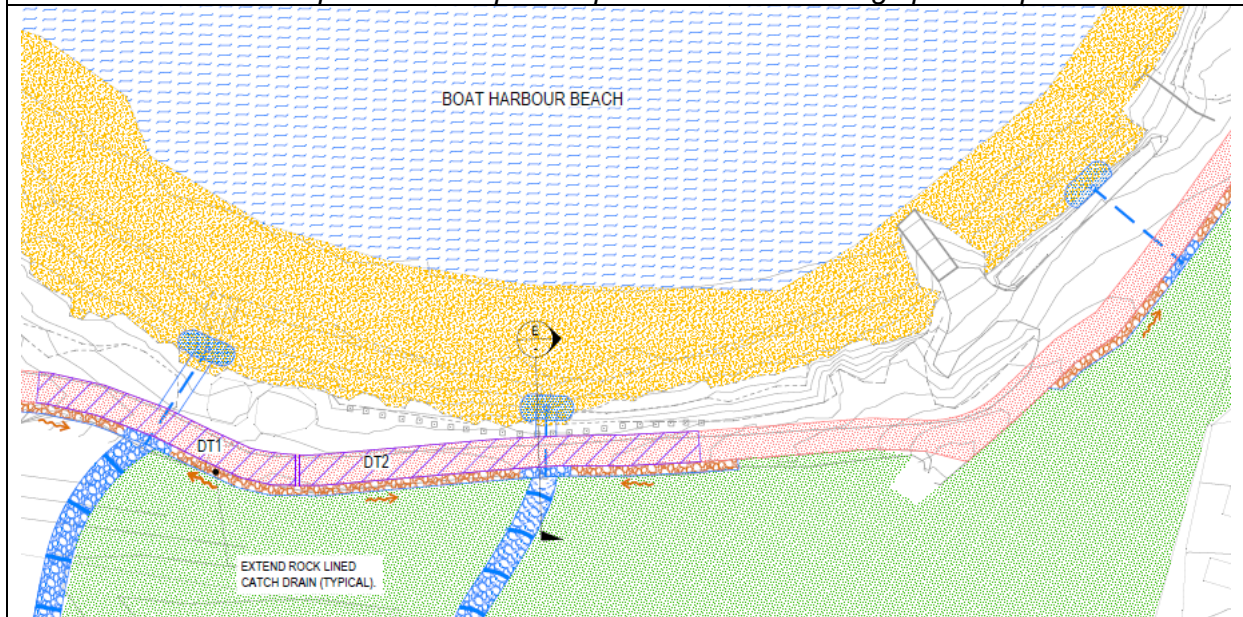
As the rock scour/embankment also encroached onto the beach it would heavily impact on the visual amenity of the beach and increase public risk for beach users.

The original stormwater scour protection works also impacted on the revised Aboriginal Cultural Heritage areas around the western boat ramp and western storm water outlets due to the larger disturbance footprint of the original adopted stormwater plan.

Figure 1: Changes to stormwater scour/embankment protection – Bendalong Boat Harbour Stormwater plan



stormwater rock scour protection as per adopted Stormwater design/plan – April 2018



Stormwater rock scour protection as per amended Masterplan – June 2019

It is important to note that the foreshore areas east of the boat ramps have been identified for coastal protection as per part two of resolution (MIN19.128) on 12 March 2019 and as identified in the Bendalong Draft Coastal Hazard/Erosion Technical Advice Report – April 2018 – prepared by Advisian.

Aboriginal Cultural Heritage

Large parts of the foreshore area of Boat Harbour area have Aboriginal shell middens located on the beach front. This encompasses mainly central and western sections of Boat Harbour Beach.

As per the NSW National Parks and Wildlife Act 1974, Council is required to undertake an Aboriginal Cultural Heritage Assessment (ACHAR), in accordance with the NSW Due Diligence Code, to assess exactly what Aboriginal cultural heritage exist at the site. This was

CL19.355

undertaken by Council (attachment 6), which forms the basis of an Aboriginal Heritage Impact Permit (AHIP) in order to carry out the actions identified in the Master Plan.

Application for an AHIP was made to DPIE in October 2017. In November 2017, Council received a 'Notice to supply further information'. The information was supplied in early December 2017.

In May 2018, the NSW Department of Planning, Industry and Environment 'stopped' the statutory clock so that the 60-day time limited period for the provision of an AHIP wasn't exceeded. If this didn't occur, Council would have had to start the AHIP process again and pay the fee again. The clock was stopped, due to delays in preparing the Master Plan.

Council and NSW DPIE officers met on 13 May 2019, with the purpose to review all proposed works at Boat Harbour. During the site meeting, NSW DPIE officers found an Aboriginal artefact in a location outside of the original AHIP areas, as defined by Council's consultant archaeologist, Sue Feary, who prepared the ACHAR.

Accordingly, an addendum to the ACHAR is required to be submitted to NSW DPIE before the AHIP application can be processed. The addendum to the ACHAR was prepared and submitted to DPIE on 18 October 2019.

NSW DPIE have since advised that the plan shown in the 'revised operational masterplan actions' (attachment 6) is acceptable. This plan shows one single AHIP area, combining the original two areas, and includes the area where the artefact was discovered on May 13, 2019. The accompanying notes explain the various actions identified and numbered on the plan.

Draft Boat Harbour Master Plan

The Boat Harbour Master Plan – Operational Actions consists of a package of three components, plus the Aboriginal Cultural Heritage Assessment Report (ACHAR). The first two components of which have been adopted by Council,

1. A storm water remediation design (MI Engineers) adopted by Council on 12/03/2019 - MIN19.128;
2. Coastal erosion protection work (Advisian) also adopted by Council on 12/03/2019 – MIN19.128; and
3. The Bendalong Boat Harbour Master Operational Actions Plan – with accompanying notes and revised AHIP area.

Community Engagement

In July 2017 Council exhibited the draft Bendalong Boat Harbour Master Plan for community consultation, via the "Get Involved" web portal and sought public comment via on-line submission. Council received 26 submissions via the Get Involved forum.

Council staff have meet with representatives of the Red Head Villagers Association three times over 2017/18 during the development of the Coastal Hazard Reports, Stormwater Management Plan and the Master Plan.

Councillors, Staff and the Red Head Villagers Association also attended a briefing with Advisian – Worley Parson, and MI Engineering on 18 September 2018, to outline the coastal hazard and storm water advice provided in the reports/plans.

The Red Head Villages Association were emailed on 9 July 2019 with a progress report and provided with the Master Plan package as attached to this report.

Councils Director of Asset and Works met with two representatives of the Red Head Villages Association on 5 June 2019 and 5 July 2019.

Council officers also meet with representatives of the Red Head Villages Association on 17 September 2019 and provided a briefing on the changes to the Bendalong Boat Harbour Stormwater Plan. At this meeting staff also outlined the contents of the Master Plan and sought any last changes, prior to sending the plan to Council for adoption

The Red Head Villages Association requested the following changes to the Master Plan:

- a) Requested that Council undertake further investigations and costings for the construction of a public viewing facility on the eastern end of reserve, adjacent to the turning cul-de-sac (see attached for details). This has been included.
- b) Inclusion of a picnic shelter on the eastern end of the reserve, on the foreshore, near the far eastern boat ramp. This has been included.
- c) Create a de-rigging area west of the first boat ramp. This has been identified only when the road is replaced or major repairs to the road are undertaken.

Acknowledgement that the far western shared access pathway should be linked up with the villager’s masterplan historic walk, along Washerwomen’s Beach. This has been included.

Policy Implications

The Shoalhaven Coastal Zone Management Plan, for the Shoalhaven open coastline, identifies as a local area action for Bendalong, to prepare and implement the Boat Harbour Masterplan and the Stormwater Upgrade Plan.

The Shoalhaven CZMP’s Emergency Action Sub-Plan (Figure 2) identifies the emergency response actions that are available to Council in response to coastal hazards as follows.

“Beach scraping, with existing boulders, as per recommendations of the Bendalong Boat Harbour Coastal Mapping Study to enhance resilience of this area post storm repair”.

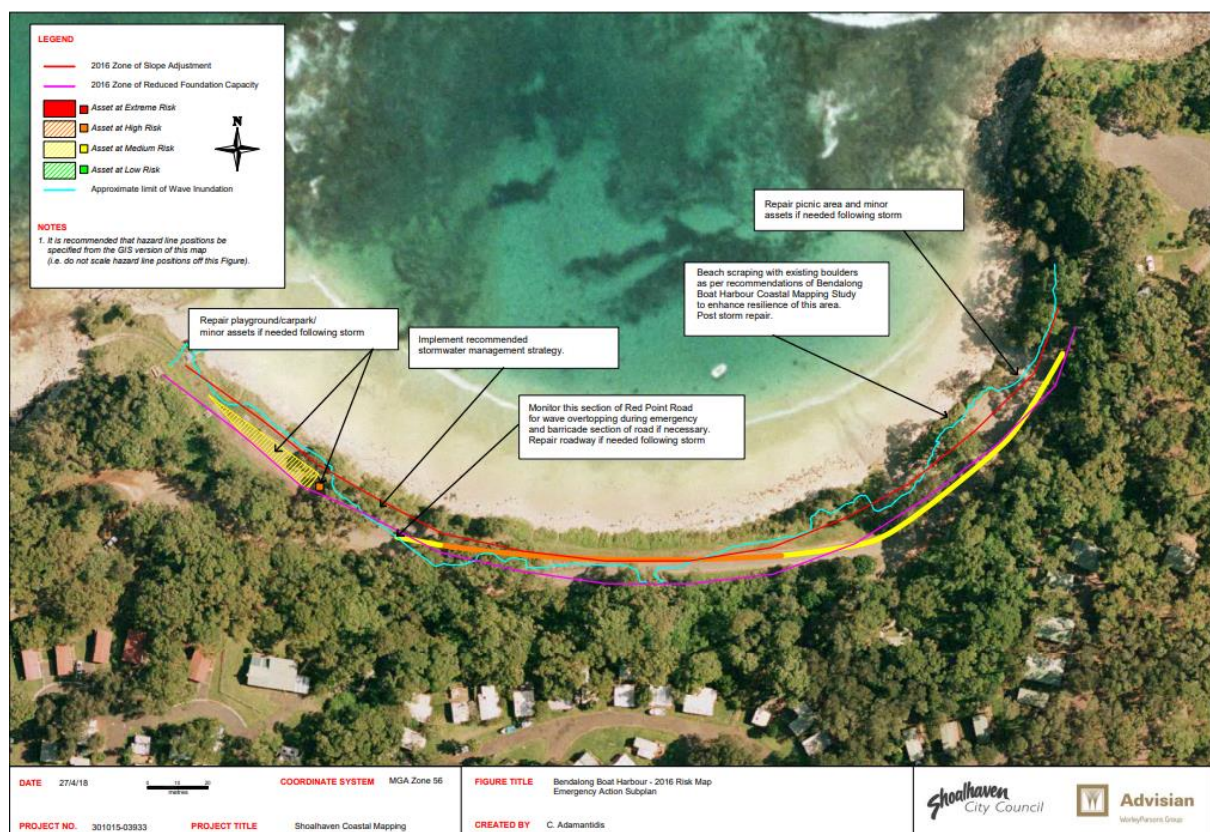


Figure 2: Emergency Action Sub-Plan (CZMP) Bendalong Boat Harbour Beach Map

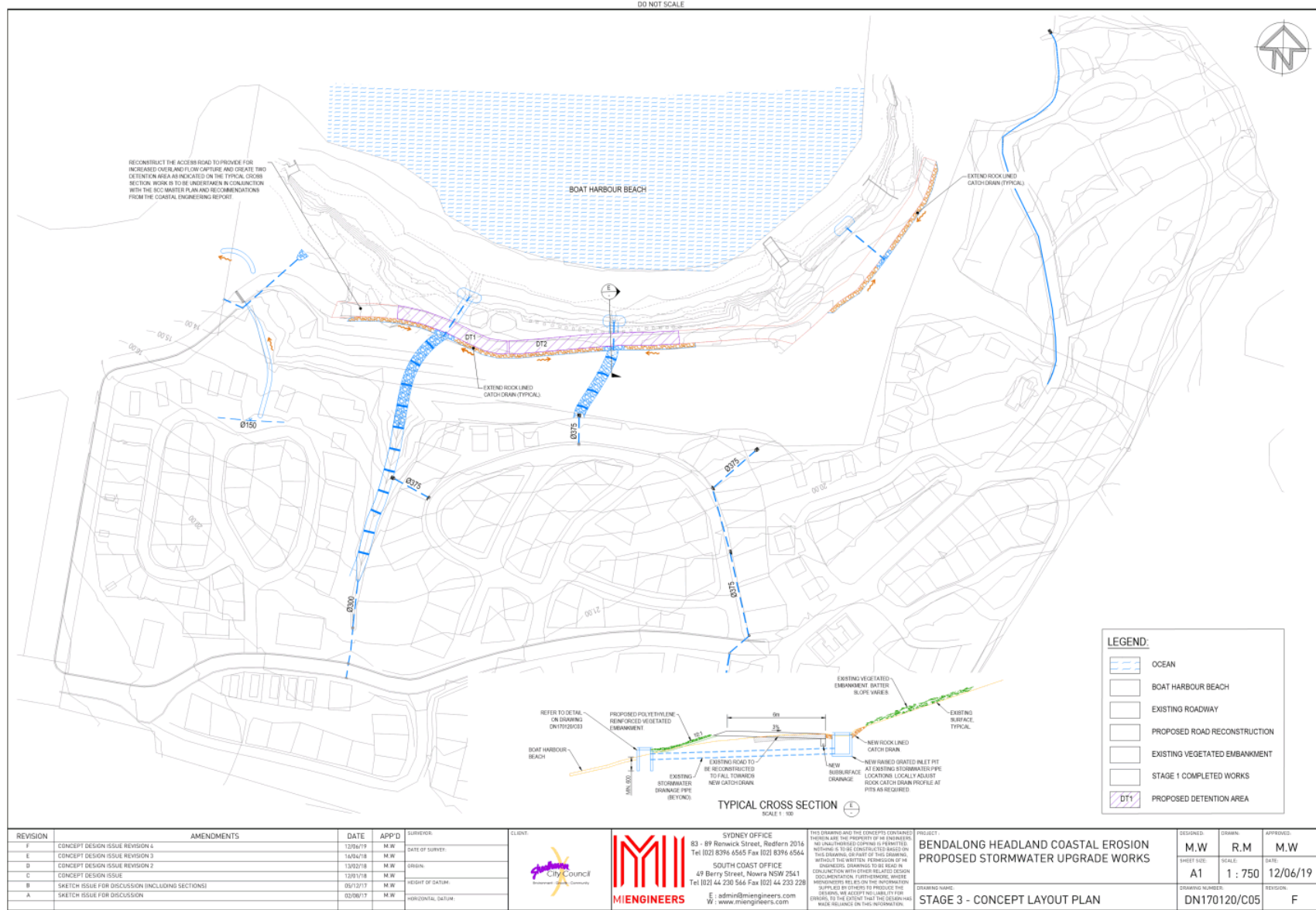
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Financial Implications

The CZMP identifies the cost of preparation and implementation of the Boat Harbour Master Plan to be \$100,000. At this time these works are proposed to be funded within current budget allocations and/or grant funding wherever possible. Any funding requested outside of these identified sources would need to be reported back to Council.

Risk Implications

The coastal hazards for Boat Harbour Beach have been updated and have identified that the beach is subject to coastal erosion from an East Coast Low. The actions outlined in the Master Plan – Operational Actions will address the risk associated with such an event.



Email to Red Head Villagers Association 9 July 2019 -

On Tue, 9 Jul 2019 at 15:42, Alasdair Stratton
<Alasdair.Stratton@shoalhaven.nsw.gov.au> wrote:

>

> Dear Neil

> You may be aware that Council has been preparing a Master Plan for the of the Boat Harbour Beach Reserve over the past two years. Council has been working closely with the Red Head Villages Association on the development of the master plan.

>

> On 12 March 2019, Council adopted the following measures to address stormwater and coastal erosion at Bendalong Boat Harbour and also include these measures in the Draft Bendalong Boat Harbour Masterplan for consideration.

>

> As outlined in the report by MI Engineers (Stormwater Infrastructure Upgrade Report 18 January 2018):

> a. Divert as much stormwater as possible away from the catchment that discharges to the beach. Strategic location of the optimum number of swails be part of the diversion solution. Estimated to cost (\$140,000);

>

> b. Address erosion in the major draining channels within the catchment by lining the channels with rock protection. Estimated to cost (\$130,000);

>

> c. Convert the piped outlets onto the beach to surcharge/soak-away pits thus allowing rock protection arrangements to be continuous along the beach. Estimated to cost (\$140,000);

>

> d. Convert the piped inlets to pit inlets and line the road side drain with rocks to provide scour protection. Estimated to cost (\$80,000)

>

> e. Longer Term – When the time comes to reconstruct the road (say 5 to 10 years), provide a causeway crossing and thus eliminate the pipe crossings altogether. Estimated to cost (\$160,000).

>

> 2. As outlined in the Bendalong Draft Coastal Hazard/Erosion Technical Advice Report – April 2018 – prepared by Advisian, sort existing rock at the eastern end of the beach and place on the eroded sections of the beach to interlock and provide protection for wave attack up to 0.7m. Estimated to cost \$30,000. Select a trial location as per the Red Head Villages Association assertion, using large prismatic rocks and using grass to bind them.

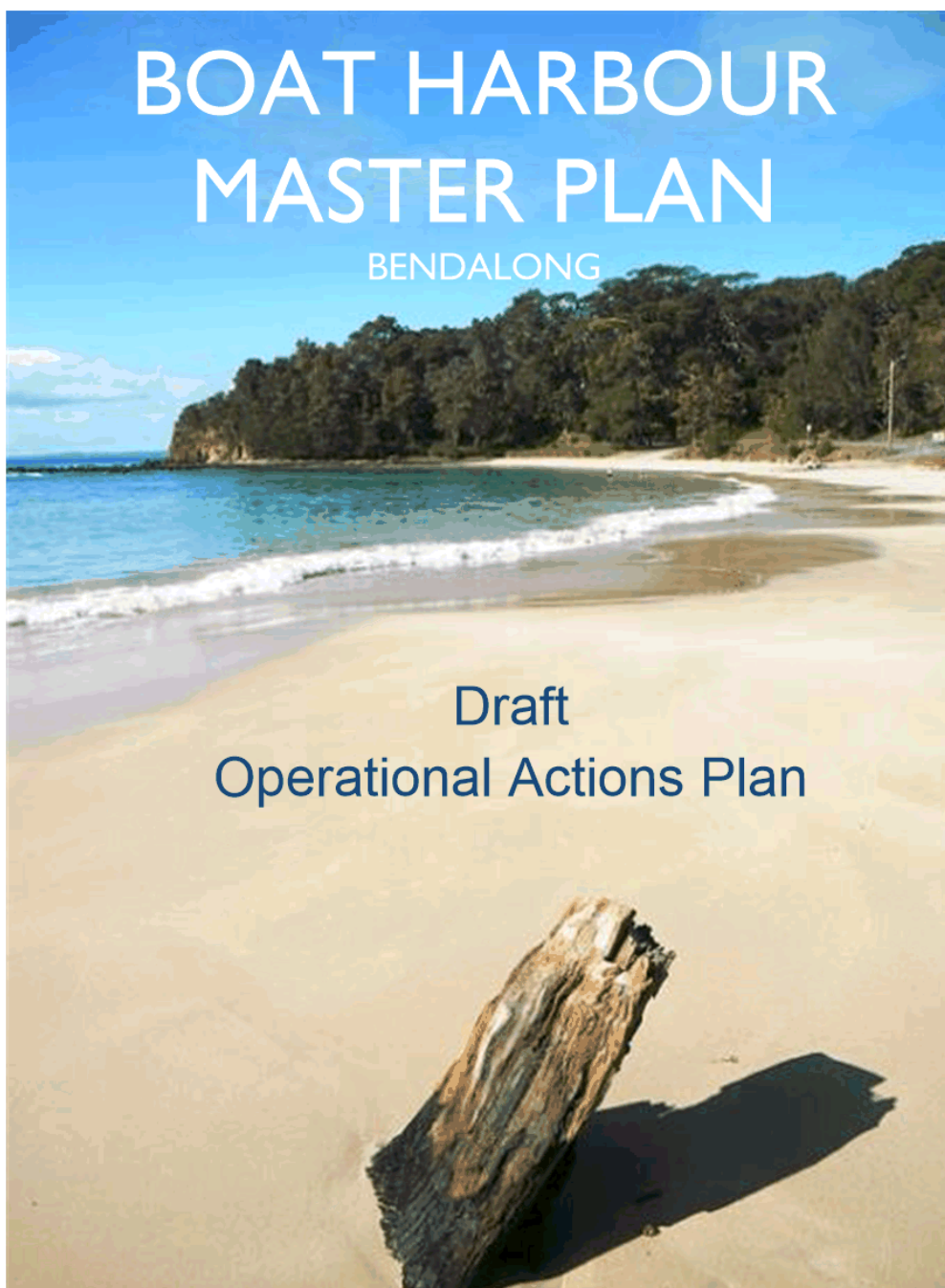
>

> 3. Council monitor the effectiveness of the storm water diversion management through annual monitoring

>

> With the Stormwater Plan now finalised, Council will be reporting the Bendalong Boat Harbour Masterplan to Council for adoption in August 2019.

- >
- > The Master Plan is now a package of three documents, as attached.
- >
- > 1. The Draft Bendalong Boat Harbour Masterplan, with accompanying notes
- >
- > 2. The MIEngineers Storm water design plan – Stage 1 & 2
- >
- > 3. The Bendalong Boat Harbour Coastal Hazard Report – Advisian
- >
- > 4. The Bendalong Boat Harbour - Coastal Protection – Technical Advice Report – Advisian
- >
- > We are concurrently finalising the Aboriginal Heritage Impact Permit (AHIP) which was also delayed due to the storm water plan and confirmation of operational actions. Any operational actions that fall in the AHIP area can't be implemented until the AHIP is approved by The NSW Office of Environment and Heritage, once it's approved, we can't add other actions into the AHIP area without preparing another AHIP.
- >
- > In order to progress the approval of the AHIP, an on-site meeting was held with two representatives from the NSW Office of Environment & Heritage (OEH) on Monday May 13. As this department issues the AHIP. At this meeting, the Aboriginal Cultural Heritage Officer found another artefact which hadn't been found previously, when the consulting archaeologist prepared the initial AHIP report. This means that the previously identified AHIP area needed to be expanded.
- >
- > The attached Operational Actions Plan and accompanying notes, reflect these changes and additions. The consulting archaeologist is currently preparing the necessary documentation for submission to OEH so that the adjusted AHIP can be approved by OEH. It's a complex process and should you wish to meet and discuss any aspects of the Masterplan and accompany documents, please feel free to contact myself and I would be happy to meet and discuss, prior to reporting it up to Council for adoption.
- >
- > Regards
- >
- > Alasdair Stratton
- > Natural Resources & Floodplain Unit Manager Shoalhaven City Council
- >
- > 02 4429 3300
- >
- > Bridge Rd (PO Box 42) Nowra NSW 2541
- > alasdair.stratton@shoalhaven.nsw.gov.au
- >
- > www.shoalhaven.nsw.gov.au



The Boat Harbour Master Plan consists of

- The MI Engineers Stormwater Design Plan
- The Bendalong Coastal Hazard Mapping and the Bendalong Coastal Hazard/Erosion Advice
- The Operational Actions Plan with AHIP areas
- Bendalong Boat Harbour Landscape Masterplan – 5411_2A

1. Background

The June 2016 East Coast Low (ECL) caused unusual beach erosion at Boat Harbour beach, Bendalong. Most coastal storms approach from the south-east, and north facing beaches such as Boat Harbour are usually protected from damaging coastal hazards such as beach erosion and wave inundation. At Boat Harbour, Red Head provides protection from the south-east swell.

Following a pre and post storm study of the ECL, Dr Mitchell Harley from the University of NSW (UNSW) said, *'whilst the storm was only moderately intense... it hit from a highly unusual direction – the anomalous easterly direction – approximately 45 degrees more counter-clockwise than average.'* Additionally, because the storm was blocked from continuing its journey south by a high-pressure system in the south Tasman Sea, the wave energy had a longer period of time to inflict damage. The predominantly easterly wave direction, over several days, was unprecedented when compared to 25 years of directional wave data.

The UNSW study concluded that, as the climate changes and storm patterns change, areas once thought to be sheltered and safe are now at risk.

In 2016, Boat Harbour beach emerged as one of those areas.

Due to the usually sheltered nature of Boat Harbour, it has attracted a broad range of activities and assets. There are two boat ramps, an access road to service the ramps, picnic tables, public amenities and a playground. The Holiday Haven Tourist Park, immediately adjacent to the beach, accommodates up to 2,000 guests at peak times, and this means that the beach and reserves become very busy.

Because of the

- beach erosion experienced at Boat Harbour in 2016
- stormwater damage to the reserves and beach
- revised sea level rise projections adopted by Council in 2015
- existence of the boat ramps and other Council assets
- community concerns about beach erosion – both wave attack and stormwater
- preparation of the original Boat Harbour Master Plan, and
- significant Aboriginal cultural heritage,

three reports were commissioned.

1. A Coastal Hazard Mapping report followed by the Bendalong Coastal Hazard/Erosion Advice
2. A stormwater upgrade plan
3. An Aboriginal Cultural Heritage Report

1.1 Timeline of document preparation

June 2017: Aboriginal Cultural Heritage Report (ACHAR)

September 2017: Aboriginal Heritage Impact Permit application submitted to OEH. Due to various delays the Master Plan was unable to be revised and a revised Master Plan was required before

Boat Harbour Bendalong Draft Operational Action Plan

the AHIP could be issued, so OEH applied a ‘stop the clock’ to processing of the AHIP. Then there were delays to finalising the storm water plan, which further delayed the AHIP process being re-activated.

April 2018: MI Engineers revised, final Stormwater Upgrade Plan

June 2018: Bendalong Coastal Hazard Mapping (Advisian) – final report. The report utilises latest available data and Council’s adopted sea level rise projections. It describes the coastal processes and the impact of those processes on the areas where infrastructure is at risk. The risk is defined in terms of current risk, risk by 2030, 2050 and 2100 together with wave runup.

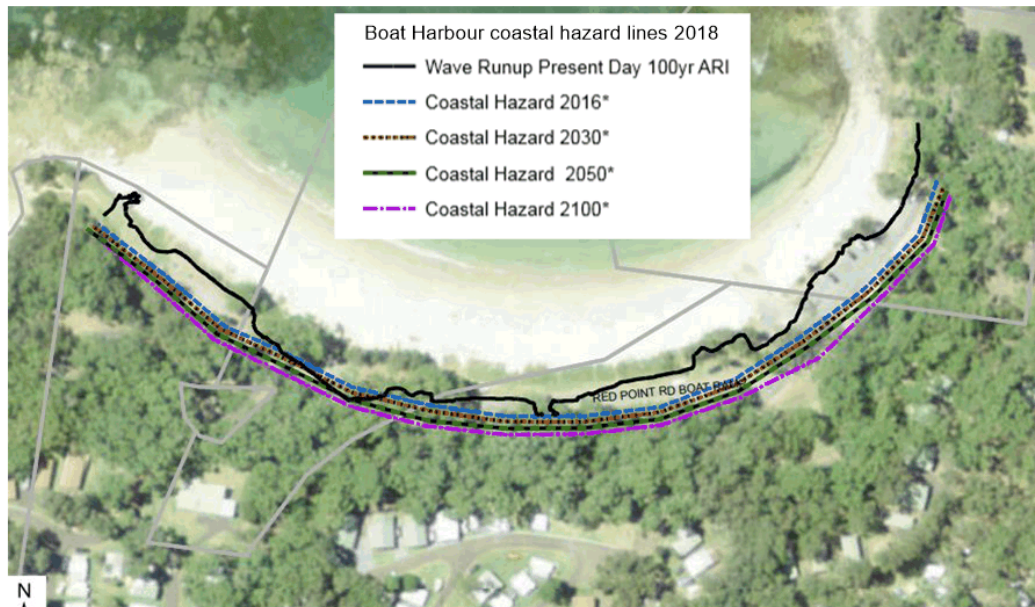


Figure 1: Coastal Hazard Mapping for Bendalong Boat Harbour beach (2016, 2030, 2050, 2100 & wave runup planning periods) Advisian 2018

October 2018: Bendalong Coastal Hazard/Erosion Advice (Advisian) – final report. Due to community concerns regarding erosion remediation treatment at the eastern end of the beach and described in the Hazard mapping Report, Advisian was requested to provide more detailed advice which confirmed and refined the previous advice.

March 2019: Strategy & Assets meeting - Council adopted the MI Engineers Stormwater Upgrade Plan and the Bendalong Coastal Hazard/Erosion Advice Report.

October 2019: Review of Environmental Factors (REF) for the stormwater upgrade completed

Now that these documents have been completed, and once the Operational Actions Plan has been adopted by Council, Natural Resources staff can resubmit the AHIP form, with all the relevant documentation, to OEH.

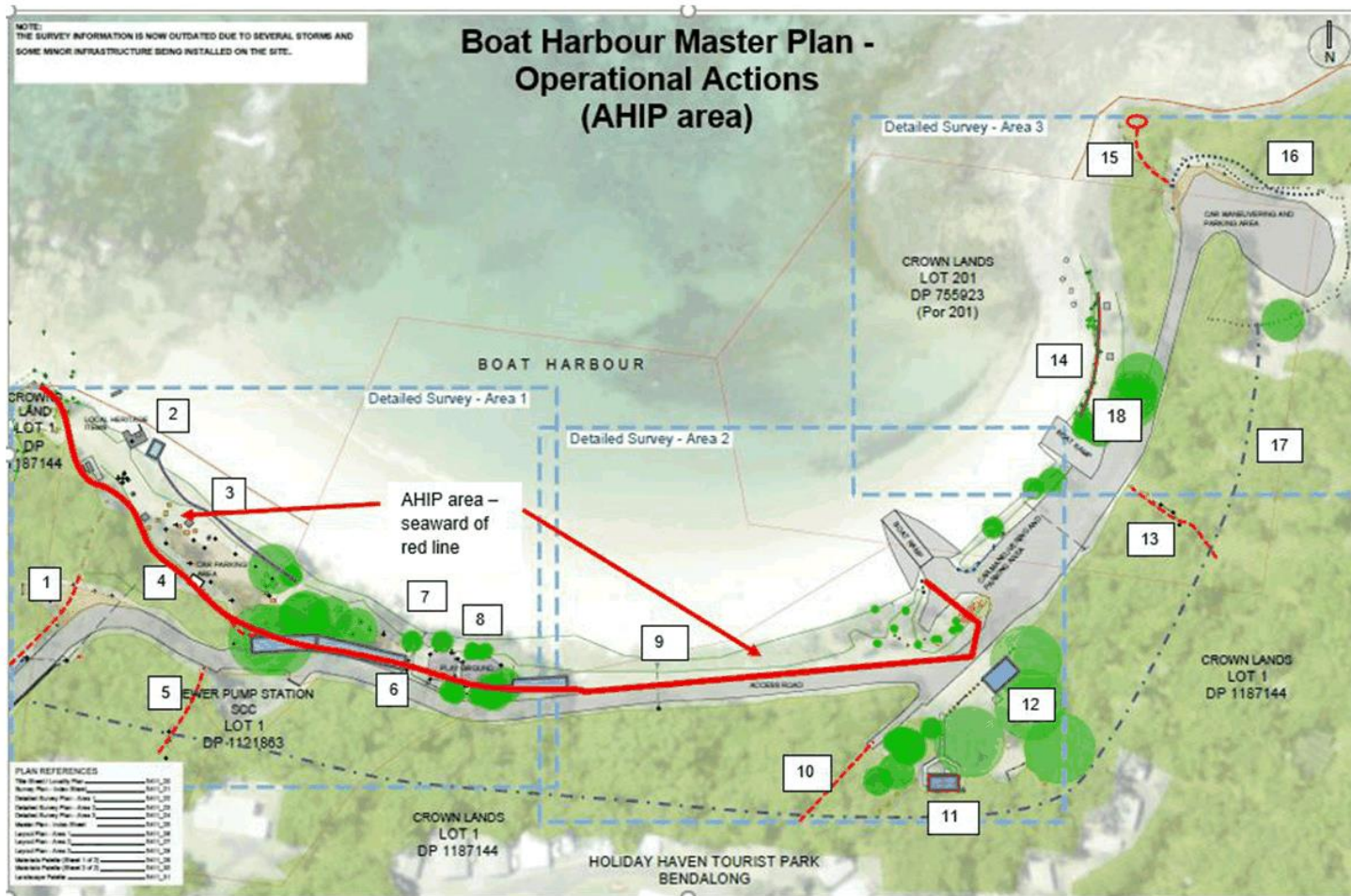


Figure 2: Operational Actions Plan

Boat Harbour Bendalong Draft Operational Action Plan

1. Explanatory notes to accompany the Operational Actions Plan with AHIP Areas

The items described below, coincide with the numerals on the Operational Actions Plan.

NOTE: Some of the items, as shown, are indicative only e.g. the location of the disabled access path and picnic table, the location of the fence line around the Tourist Park's southern and eastern boundaries and the car parking arrangements. Final decisions about these items will be made by the relevant sections of Council (Holiday Haven, Assets & Works and Recreation, Community & Culture Services) and clarified in detailed designs.

- 1. Shared path:** Concrete path to provide safe, off road pedestrian access from the village and the western end of the Tourist Park. It's unknown at this stage how far the path will extend to the south and west into the village. This will be decided by Assets & Works.

The path will link with an existing bush track that heads west, for approximately 600m, to Washerwomans Beach car park and picnic area. This track follows the route of an historic tramway line that carried silcrete from a quarry, to the north west of Washerwomans Beach, to the wharf at Boat Harbour.

- 2. Beach access stairs:** Council's preference is to install a Fibre Reinforced Polymer staircase at this location. These stairs represent stage 2 provision of safe beach access and will complete the desire line from the road to the beach. Stage 1 steps (Photo 1), from the road to the reserve, were completed in May 2017.



Photo 1: Stage 1 beach access steps at the western end of the beach

Currently this is one of the locations where pedestrians scramble down the face of the midden onto the beach (Photo 2). Providing the stairs will also assist in protecting the midden and will be constructed in conjunction with the midden protection barrier.

- 3. Midden protection barrier and dune restoration:** As recommended in the 2017 ACHAR, the barrier is required to stop damaging pedestrian access at several places along the face of the midden (see photo 2 and 3). A design for the barrier hasn't yet been confirmed. Council will seek advice for a design that doesn't require digging post holes into the midden. Once the barrier (Photo 3) is in place the face of the dune will be 'restored' with planting.

- 4. Disabled access picnic table and path:** This section of the reserve, at the western end of the beach, will be closed to parking and turfed to provide an extended passive recreation area. Currently there are three ageing picnic tables in this area, none of which provide disabled access. It's proposed to install an accessible picnic table and to link it to a disabled car parking space with a concrete path. Closing this area to vehicles will also contribute to protecting the midden. Currently vehicles are parking on top of the midden. Because a new table will be added, one of the old picnic tables will be removed as it obstructs the desire line from the road to the beach.



Photo 2: Damage to midden due to uncontrolled pedestrian access



Photo 3: Concept for midden protection barrier with some form of fencing bolted to the top of the rock. Interpretive information about the Aboriginal cultural heritage will be incorporated into the barrier.



Photo 4: Central storm water outlet to be treated as part of the storm water upgrade

- 5. Pedestrian path and steps from Tourist Park:** this access requires an upgrade.
- 6. Parking:** Extra space for 90-degree parking will be provided to compensate for closing the western car park. When the playground is removed (end of life or due to storm erosion) parking can be continuous through this area.
- 7. Storm water outlet 2:** There are four storm water outlets shown in the MIE design plan. This is identified as outlet No. 2 and described as an absorption/surcharge pit with a raised grated lid and no pit floor. It includes rock protection on either side.
- 8. Playground:** The playground will be removed when it reaches the end of its life or when storm erosion requires its removal. Consultation with the community on a suitable relocation site will occur at this time.
- 9. Storm water outlet 3:** this is identified as outlet No. 3 in the MIE design plan 2 and described as an absorption/surcharge pit with a raised grated lid and no pit floor. It also includes rock protection on either side (Photo 4).
- 10. Pedestrian access steps and ramp from Tourist Park:** this access may require some minor improvements.
- 11. Barbeque shelter:** This was the location of the old public amenities block so it's level and has electricity and water still connected to the site. It's proposed to construct a barbeque shelter here.



Photo 5: New public amenities



Photo 6: Location of shoreline protection works at eastern end

- 12. Public amenities and associated parking:** new build in 2018 (Photo 5).
- 13. Pedestrian access from tourist park:** this access has been 'closed' at the Tourist Park boundary at the top of the slope but is still being used. It's steep and dangerous and will be upgraded to provide the third formal access from the Tourist Park.
- 14. Coastal erosion protection:** Works to be completed in accordance with Part 2 of MIN19.128, and Assets and Works - Rock Protection Project Plan for Boat Harbour Beach – Bendalong.

'As outlined in the Bendalong Draft Coastal Hazard/Erosion Technical Advice Report – April 2018 – prepared by Advisian, sort existing rock at the eastern end of the beach and place on the eroded sections of the beach to interlock and provide protection for wave attack up to 0.7m. Estimated to cost \$30,000. Select a trial location as per the Read Head Villages Association assertion, using large prismatic rocks and using grass to bind them.'

Coastal erosion protections work will now be undertaken in accordance with a new design prepared by Assets & Works. New works will be undertaken at location 14 (as shown) using both imported and existing rock, and repairs to existing rock protection will be undertaken between the two boat ramps

- 15. Pedestrian track and viewing area:** a short track leads to an informal viewing point (Photo 7). Based on advice received from the JK Geotechnics assessment, investigate the design requirements and cost of constructing a viewing platform at this site.

5.1 Viewing Platform

From a geotechnical perspective, the principle design consideration for the viewing platform will be to reduce the potential impacts of on-going cliff instability (Hazards A, B or C described in Section 4 above). In order to achieve this, the platform would need to be supported on footings founded in bedrock, with the footings set-back at least 3.0m landward of the edge of the cliff. This would necessarily position the viewing platform landward of the cliff edge and would most likely restrict ocean views compared to being positioned close to the cliff edge. To overcome the sight restrictions the viewing platform could be designed to cantilever seaward of the 3.0m set-back zone. However, this would require deeper footings or anchors installed into bedrock.

Source: *Geotechnical Assessment of Existing Informal Cliff Top Lookout, Bendalong Point, JK Geotechnics July 2019.*



Photo 7: Informal viewing area at cliff edge – showing possible location of viewing platform

16. Headland fence: It's proposed to install a timber fence/leaning rail around the top of the headland to deter pedestrian access to the cliff edge.

17. Fencing: Holiday Haven will construct a fence (type to be determined) to stop informal access at several locations down the steep slope to the beach. These accesses are causing vegetation loss and erosion.

18. Picnic Shelter: Replace old picnic table with a covered, inclusive access picnic shelter, once coastal protection works have been constructed.

CL19.356 28th NSW Coastal Conference

HPERM Ref: D19/401853

Submitted by: Clr John Wells
Clr Mark Kitchener

Attachments: 1. Conference Report [↓](#)

Reason for Report

To provide a report (Attachment 1) from Clr John Wells and Clr Mark Kitchener on the 28th NSW Coastal Conference held in Terrigal, NSW in accordance with Clause 3.3(e) of the Council Members – Payment of Expenses and Provision of Facilities Policy.

Recommendation

That Council receive the report from Clr John Wells and Clr Mark Kitchener on the 28th NSW Coastal Conference for information.

Options

1. Receive the report for information
2. Request further information on the conference

CL19.356

Report on the 28th NSW Coastal Conference

The 28th NSW Coastal Conference was held in Terrigal on the NSW Central Coast between 30 October – 1 November 2019.

The Conference delivered some 85 sessions and presentations addressing a range of issues, studies, projects and case studies addressing coastal infrastructure works and management in NSW and beyond. As no conference delegate could possibly attend all sessions, we have taken the liberty of placing the Conference program and abstract book in the Councillors Room for the information and edification of Councillors.

The conference was supported by an extensive trade exhibition of consultants, agencies and engineering firms of whom the Central Coast Council, DPIE, Local Land Services, Advisian, Niche, Fisheries and BMT were sponsors.

Of the sessions we attended the following delivered take home messages for us:-

- 1) Nobel Prize Winner, Professor Patrick Nunn of the University of the Gold Coast

He's been researching oral history of our first people and has evidence from Indigenous story telling of memories of when Tasmania and the Mainland were connected, and Kangaroo Island being linked to the Fleurieu Peninsula. That was 7000 year ago.

Nunn outlined that the last ice age melt started about 12000 years ago and since that time the seas have risen some 60 metres – in our reckoning that's about 5cm a year. So it seems sea level rise is an ancient phenomena. However, we also know that over the last couple of millennia the sea hasn't been rising at 5cm a year – so, is sea level rise today actually slowing, or is it firing up again as a result of mankind's post 1700's activity?

- 2) Associate Professor Will Glamore, Water Research Laboratory , UNSW. (Member of the Coastal Council)

Will delivered a presentation on "Climate Change in Estuaries – Moving beyond the high tide". During the presentation he made the following comment based on contemporary research experience – "we only use 50cm by 2050 and 90cm by 2100 if we want to frighten people". He stated that actual rises in estuarine situations will be lower than those predictions . Why? Because of the geomorphology of the estuaries – entrance width, shallowing, friction from coastal vegetation and constriction by man-made structures. Moreover, water-level rise will vary from estuary to estuary.

- 3) Angus Gordon (Member of the Coastal Council, Coastal Engineer with 40 years' experience)

In a panel discussion with the Coastal Council I (Clr Wells) asked Angus Gordon a question in relation to the rock wall to be built at Shoalhaven Heads to protect private and public assets at River Road following the damaging 2016 East Coast Lows. My question asked whether we should have adopted a softer option by piling dredged sand up against the bank, restoring its profile, and revegetating Or should we also do what I (Clr Wells) think is a better solution and do both – Rock wall and dredging.

His response – Do both.

Finally, it was interesting and intriguing to learn of Cardno's proposed recommendations for the estuary management plan for Lake Tabourie before the Council itself had been briefed on the matter.

A most enjoyable event.

John Wells
Mark Kitchener

LOCAL GOVERNMENT AMENDMENT (GOVERNANCE & PLANNING) ACT 2016

Chapter 3, Section 8A Guiding principles for councils

(1) Exercise of functions generally

The following general principles apply to the exercise of functions by councils:

- (a) Councils should provide strong and effective representation, leadership, planning and decision-making.
- (b) Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
- (c) Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (d) Councils should apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements.
- (e) Councils should work co-operatively with other councils and the State government to achieve desired outcomes for the local community.
- (f) Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- (g) Councils should work with others to secure appropriate services for local community needs.
- (h) Councils should act fairly, ethically and without bias in the interests of the local community.
- (i) Councils should be responsible employers and provide a consultative and supportive working environment for staff.

(2) Decision-making

The following principles apply to decision-making by councils (subject to any other applicable law):

- (a) Councils should recognise diverse local community needs and interests.
- (b) Councils should consider social justice principles.
- (c) Councils should consider the long term and cumulative effects of actions on future generations.
- (d) Councils should consider the principles of ecologically sustainable development.
- (e) Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.

(3) Community participation

Councils should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.

Chapter 3, Section 8B Principles of sound financial management

The following principles of sound financial management apply to councils:

- (a) Council spending should be responsible and sustainable, aligning general revenue and expenses.
- (b) Councils should invest in responsible and sustainable infrastructure for the benefit of the local community.
- (c) Councils should have effective financial and asset management, including sound policies and processes for the following:
 - (i) performance management and reporting,
 - (ii) asset maintenance and enhancement,
 - (iii) funding decisions,
 - (iv) risk management practices.
- (d) Councils should have regard to achieving intergenerational equity, including ensuring the following:
 - (i) policy decisions are made after considering their financial effects on future generations,
 - (ii) the current generation funds the cost of its services

Chapter 3, 8C Integrated planning and reporting principles that apply to councils

The following principles for strategic planning apply to the development of the integrated planning and reporting framework by councils:

- (a) Councils should identify and prioritise key local community needs and aspirations and consider regional priorities.
- (b) Councils should identify strategic goals to meet those needs and aspirations.
- (c) Councils should develop activities, and prioritise actions, to work towards the strategic goals.
- (d) Councils should ensure that the strategic goals and activities to work towards them may be achieved within council resources.
- (e) Councils should regularly review and evaluate progress towards achieving strategic goals.
- (f) Councils should maintain an integrated approach to planning, delivering, monitoring and reporting on strategic goals.
- (g) Councils should collaborate with others to maximise achievement of strategic goals.
- (h) Councils should manage risks to the local community or area or to the council effectively and proactively.
- (i) Councils should make appropriate evidence-based adaptations to meet changing needs and circumstances.