

Ordinary Meeting

Meeting Date: Monday, 27 June, 2022
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.30pm

Membership (Quorum - 7)
All Councillors

Addendum Agenda

Reports

City Development

CL22.296 Access Agreement - Gas Pipeline - Shoalhaven Starches Bomaderry1

CL22.296 Access Agreement - Gas Pipeline - Shoalhaven Starches Bomaderry

HPERM Ref: D22/258079

Approver: Stephen Dunshea, Chief Executive Officer

Attachments: 1. SCC Manildra Deed of Agreement for Easement - Compiled - FOR EXECUTION [↓](#)
2. Proposed Easement Pursuant to the Pipelines Act 1967 [↓](#)

Reason for Report

The purpose of this report is to present Council with a Deed of Agreement (the Deed) for consideration between Shoalhaven City Council (Council) and Shoalhaven Starches Pty Ltd (Manildra Group). The Deed has been drafted by legal representation on behalf of both parties, and if agreed and executed, will further formalise easements over Council managed land. For that reason, a resolution of Council is sought.

Given the immediate urgency of progressing this proposal through multiple levels of government, the Deed is being presented via a late report to Council.

Recommendation

That Council:

1. Receive and note the report titled “Access Agreement Gas Pipeline – Shoalhaven Starches Bomaderry”.
2. Delegate authority to the CEO to execute the Deed of Agreement on behalf of Shoalhaven City Council.

Options

1. As recommended
2. That Council resolve to not enter into a Deed of Agreement with Shoalhaven Starches.
Implications: The progression of the gas pipeline will halt, and requisite economic and environmental benefits will not be realised.
3. That Council resolve other directions as they see fit and advise the CEO accordingly.

Background

PROJECT DETAILS

Manildra Group (of which the entity operating in Nowra are known as Shoalhaven Starches Pty Ltd) are Australia’s largest manufacturer of wheat and ethanol products, presenting a major economic benefit domestically. Launched in 1952, Manildra Group employ over 1000 people nationwide as a diverse agribusiness partnering with Australian families to produce food and industrial products at their world-class manufacturing sites. The Shoalhaven Starches site in Nowra, is considered a global leader in the production of vital wheat glutens, modified proteins, syrups to ethanol, wheat starches and animal stockfeed. It is the largest

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wheat gluten manufacturing facility of its kind in the world, and contributes to Manildra Group being one of the largest container product exporters through Port Botany.

As part of their corporate strategy, Manildra Group are moving to exit their existing coal mining interests, drawing on an \$85 million investment as a significant step to reducing their greenhouse gas emissions footprint. The Clean Energy Finance Corporation (CEFC) investment on behalf of the Australian Government intends on shifting the manner in which steam and energy for processing is generated at the Nowra Manildra Group facility, eliminating the need for coal and replacing it with a gas co-generation plant (producing both heat and electricity) for manufacturing energy needs.

Domestic manufacturing presents a major decarbonisation challenge nationally, and the proposal will see the largest integrated wheat starch, wheat gluten, glucose and ethanol production facility of its kind in the world contribute to Australia's decarbonisation targets, reducing carbon emissions in Australian manufacturing. The project presents a contribution to Australia's 2050 net-zero target, but also provides an opportunity for Shoalhaven to showcase an industrial scale co-generation facility at one of the region's major economic and employment generators.

The \$190 million project is funded through the CEFC, in addition to a \$95 million debt package backed by Export Finance Australia. Manildra Group has registered the project with the Clean Energy Regulator to generate Australian Carbon Credits.

The co-generation facility requires a consistent gas source, which will benefit both operationally and environmentally from steady gas supply infrastructure, as opposed to either coal or gas being trucked in on a daily basis. The project therefore requires a permanent gas pipeline be constructed to supply the co-generation plant from existing bulk gas supply lines.

While recognised that it is not wholly viable to undertake Australian manufacturing through the use of renewable energy sources at present, the shift to reduce reliance on coal provides a transitional step towards carbon reduced processing and eventual shift to utilisation of renewable sources for the Australian manufacturing sector.

Manildra Group have confirmed to Council that they intend on introducing hydrogen as a clean fuel source at the Shoalhaven Starches site in Nowra once it becomes commercially available.

PROJECT BENEFITS

Manildra Group currently employ 400 persons at their Nowra site, with integrated manufacturing processes requiring steam to create heat and electricity on a daily basis, 365 days per annum. The proposal will generate a projected 80 jobs during the construction phase, with 10 further permanent jobs created at the Nowra facility once operational.

The operation of a fully functional gas supplied co-generation facility is projected to yield a 40% reduction in greenhouse gas (GHG) emissions from the Shoalhaven Starches Nowra site, abating an estimated 332,000 tonnes of carbon dioxide (CO₂-e) annually once operational. Furthermore, the construction of a permanent gas pipeline will significantly affect truck traffic to and from the site, reducing truck movements by up to 112 movements per week through relinquishing the need to transport coal and coal ash waste.

The new facility will remove the need to transport and dispose of coal ash waste from Nowra, as it will no longer be a by-product of energy generation. By nature of its source and through the combustion of coal, coal ash can contain residual contaminants including mercury, cadmium and arsenic. Disposal of coal ash is now regulated by the NSW Environmental Protection Authority (EPA) as it poses a risk to the environment through leaching, waterway contamination and atmospheric releases, and which can bioaccumulate.

PIPELINE PROJECT PROPOSAL

The project proposes a steady supply of gas through permanent pipelines installed beneath Council’s road reserves and existing road infrastructure. In recognising Council’s role as a Roads Authority, the deed has been drafted to ensure that Council can continue to undertake required road maintenance, construction activities, safe access and ongoing public accessibility into the future. For certain activities within proximity to the pipeline, notification requirements are included to ensure that both parties are aware of any activities Council intends to undertake in its role as a Roads Authority, noting that such notification is not required in the event of an emergency.

The pipeline is proposed to be installed below roads and land north of the Shoalhaven River. The general location of the pipeline is shown in figure 1 (below), which will create a direct connection between the existing high pressure bulk gas supply managed by Jemena, and the Shoalhaven Starches Site at Bolong Road in Nowra.

FIGURE 1 – Proposed location of gas pipeline: Aerial View.



To enable Council to ensure its interests in the management of local public roads, drainage reserves, road reserves and generally publicly accessible areas are maintained, a formalised Deed of Agreement has been proposed in addition to the registration of easements. The Deed of Agreement appears at Attachment 1, and enables access and maintenance rights to be maintained, as well as a payment mechanism based on fair valuation for the occupation of the road reserve and Council managed lands (which easements typically do not afford). The deed has been signed by appropriate representatives from Shoalhaven Starches Pty Ltd (Manildra), and requires countersigning from Council for formal execution.

The exact location, depth and position of the pipeline will be determined through formalisation of easements, which will ensure that impacts on Council infrastructure are minimised, and that existing subsurface assets and services are not interfered with as a result of construction, or in ongoing use. A proposed set of drawings outlining the easement

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locations has been provided by Manildra Group for the purposes of registration in accordance with the *Pipelines Act 1967*, and is included at Attachment 2. Furthermore, a table of land parcels has been provided identifying relevant lands and ownership, and is detailed in table 1 (below).

TABLE 1 – Lands proposed to be traversed by pipeline.

Reference to title and land description (including County and Parish)	Name of owner
Pestells Lane	Shoalhaven City Council
Princes Highway	Roads and Maritime Services
Meroo Road	Shoalhaven City Council
Fletchers Land	Shoalhaven City Council
8302/1150373 being Lot 8302 in DP 1150373 at Bomaderry	Transport Holding Entity of NSW
3/1109510 being Lot 3 in DP 11109510 at Bomaderry	Manildra Energy Australia Pty Ltd
Unnamed Road	Shoalhaven City Council
Railway Street	Shoalhaven City Council
16/1121337 being Lot 16 in DP 1121337 at Bomaderry	Manildra Energy Australia Pty Ltd
2/538289 being Lot 2 in DP 538289 at Bomaderry	Manildra Energy Australia Pty Ltd
B/371388 being the lands referred to in AUTO CONSOL 6318-134	Manildra Energy Australia Pty Ltd
Bolong Road	Shoalhaven City Council
31/1222627 being Lot 31 in DP 1222627 at Bomaderry	Manildra Energy Australia Pty Ltd
34/1222627 being Lot 34 in DP 1222627 at Bomaderry	Manildra Energy Australia Pty Ltd
11/1/3885 being the lands referred to in VOL 2268 FOL 103 Lot 11 of Section 1 in DP 3885 at Bomaderry	Shoalhaven City Council
241/1130535 being Lot 241 in DP 1130535 at Bomaderry	Manildra Energy Australia Pty Ltd
1/838753 being Lot 1 in DP 838753 at Bomaderry	Manildra Energy Australia Pty Ltd

While the proposed pipeline will traverse land under both public and private control by various entities, the specific land covered by the Deed of Agreement between Shoalhaven Starches Pty Ltd and Shoalhaven City Council is specific to the following lands for which Council have an interest in as both a management entity and/or Roads Authority:

- Pestells Lane;
- Meroo Road;
- Fletchers Lane;
- Unnamed Road;
- Railway Street;
- Bolong Road; and,
- A land parcel owned in freehold by Shoalhaven City Council occurring on Bolong Road – marked as a reserve for drainage resultant from a previous subdivision.

The execution of a Deed of Agreement is a binding contractual agreement. Section 377 of the *Local Government Act 1993* has the effect that Council cannot delegate real property transactional matters, with 'land' and 'property' being defined in the *Interpretations Act 1987* as including easements. Accordingly, Council cannot delegate the purchase, sale, exchange or surrender of an easement. Furthermore, as a requirement of the *Roads Act 1993*, Council as a Roads Authority will review and assess the issuing of certificates under section 138

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where the Manildra Group proposes to undertake works for pipeline installations, including (but not limited to) road openings.

Community Engagement

There has been no direct community engagement on this matter. Manildra Group site development is designated as State Significant Development, and for components of the sites ongoing development, as Council is not the appropriate approval authority. Furthermore, the proposed Deed is a legal agreement with no opportunity for the community to influence its drafting.

Council staff have undertaken significant liaison with Shoalhaven Starches on this matter as the fundamental stakeholder, as well as staff from Regional Development Australia.

Internal consultation has been undertaken on this matter across relevant directorates, including the road asset owners.

Policy Implications

This proposal links to Councils IP&R framework and Community Strategic Plan 2027 (CSP). Specifically, the following CSP themes and key priorities are enhanced by the proposal:

2.2 – Plan and Manage Appropriate Sustainable Development.

3.1 – Maintain and Grow a Robust Economy with Vibrant Towns and Villages.

The CSP details what is important to the community, and the proposal and deed execution will assist in progressing the following community aspirations:

- 'Employment, more jobs are needed'.
- 'Help create jobs through business opportunities'.
- 'Mitigate and adapt to climate change'.
- 'Appropriate sustainable development'.

Financial Implications

The Deed, once executed, binds Shoalhaven Starches (Manildra) to pay for Councils legal fees incurred for the drafting of this agreement, as well as the cost of a mutually agreed valuer.

Upon agreed valuation, Council will benefit from revenue as part of the agreement to occupy our road reserve as detailed within the draft Deed.

Risk Implications

Council will be mitigating risk arising from the proposed Pipeline project through execution of the Deed of Agreement, which will protect our interests as a landowner and Public Roads Authority.

There is a risk in not executing the Deed of Agreement that Council may have the need for easements imposed by the Court, without appropriate management rights or payment mechanisms otherwise put into place.

There is a risk that in not executing the Deed of Agreement, Council will not realise the economic and environmental benefits arising from the pipeline and energy co-generation proposal.

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Agreement to Grant Easement

Date: 2022

Shoalhaven City Council
(Owner)

and

Shoalhaven Starches Pty Ltd
(Shoalhaven)

Property: Road Reserves and FI 11/1/3885

161 2 8651 8700
Level 1 - 25 King Street - Sydney NSW 2000 Australia - ABN 31 165 119 657
ashstreet.com.au

Liability limited by a scheme approved under Professional Standards
Legislation

CL22:296 - Attachment 1

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REFERENCE SCHEDULE

Item	Subject	Reference	Details and meaning of term
1	Parties		
	Owner		
	Name		Shoalhaven City Council ABN 59 855 182 344
	Address		36 Bridge Rd, Nowra NSW 2541 Australia
	Email		james.ruprai@shoalhaven.nsw.gov.au
	Shoalhaven		
	Name		Shoalhaven Starches Pty Ltd
	Address		ABN 94 000 045 045, ACN 000 045 045
	Email		6 Frank Street, Gladesville NSW 2111 Australia
	Attention		brian.hanley@manildra.com.au
			Brian Hanley
2	Land		The road reserves owned by the Owner as shown in Schedule 1.
3	Easement	2.1	The easement on the terms set out in Schedule 2 burdening the road reserves shown in Schedule 1 and in favour of Shoalhaven as a prescribed authority under the Conveyancing Act
4	Proposed Easement Site		That part of the Land delineated within the draft plan in Schedule 1.
5	Sunset Date	7	The date being 18 months after the date of this deed
6	Compensation	2.5	To be determined in accordance with clause 2.5.

BACKGROUND

- A. The Owner is the registered owner of the Land.
- B. Shoalhaven requires pipeline works to be constructed within the Easement Site to supply gas to its premises at Bomaderry.

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- C. Shoalhaven has obtained development consent within the meaning of the *Environmental Planning & Assessment Act 1979* for the majority of the pipeline works (being the consent granted to SSD 10_0108 and modifications) and will also seek development consent for the remainder of the proposed pipeline works.
- D. As of the date of this deed, it is intended by Shoalhaven that National Australian Pipelines Pty Ltd will construct and install the pipeline works within the Easement Sites in accordance with the terms of an agreement between National Australian Pipelines Pty Ltd and Shoalhaven.
- E. Shoalhaven intends to become a registered licensee under the Pipelines Act and will then be a *prescribed authority* within the meaning of section 88A of the Conveyancing Act.
- F. Shoalhaven will operate the Pipeline including through the Easement Site.
- G. The Owner will grant the Easement to Shoalhaven and Shoalhaven agrees to pay to the Owner the Compensation as compensation for the grant of the Easement

TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions in Reference Schedule apply

A term which is capitalised in column 2 ("Subject") of the Reference Schedule has the meaning set out adjacent to that term in column 4 ("Details and meaning of term") of the Reference Schedule, unless the context requires otherwise.

1.2 Other definitions

In addition to those words which are defined in the Reference Schedule, the following words have the following meanings in this deed, unless the context requires otherwise.

Additional Land means the land comprised in certificate of title folio identifier 11/1/3885.

Approval means an approval, consent licence, permission or the like.

Associate means an officer, employee, agent, contractor (or any sub-contractor of a contractor), consultant, adviser, licensee, invitee or other authorised person of the party or person so named in this deed.

Authority means:

- (a) the Crown in any capacity;
- (b) any government in any jurisdiction, whether federal, state, or local;
- (c) any other person having jurisdiction, rights, powers, duties or responsibilities over the Land or in relation to the Land under legislation, including a commission, panel, court, tribunal or the like.

Business Day means a day, not being a Saturday, Sunday or public or bank holiday in New South Wales, and not being a day during the period commencing on 23 December and ending on the Friday in the second week of January.

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Claim means any claim, action, demand, suit or proceeding for damages, debt, restitution, equitable compensation, account, set-off or withholding, injunctive relief, specific performance or any other remedy whether:

- (a) under, arising out of, or in any way in connection with, this deed or at Law;
- (b) by original claim, cross claim or otherwise;
- (c) known or unknown at the date of this deed;
- (d) whether presently in contemplation of the parties or not; or
- (e) relating to Loss which is actual or contingent.

Conveyancing Act means the *Conveyancing Act 1919* (NSW).

Costs include fees (including consultancy and agency fees), costs, charges, expenses, disbursements, duties, levies and legal costs and expenses (on a solicitor and own client basis unless specified otherwise).

Dispute Notice means a notice under this deed which:

- (a) identifies that a dispute has arisen between the parties in relation to the subject matter of this deed;
- (b) provides reasonable details in relation to the dispute; and
- (c) designates the representatives of the party giving the notice who have authority to resolve the dispute on behalf of that party.

Draft Easement Plan means the draft plan prepared by or on behalf of Shoalhaven for the purposes of the Easement and showing the location of the Proposed Easement Site, a copy of which is attached to this deed in Schedule 1.

Easement Documents means the Easement Instrument and the Final Easement Plan.

Easement Instrument means an instrument in the form of Form 2 of the *Pipelines Regulation 2013*, which contains the terms of the Easement contained in Schedule 2 of this deed.

Easement Site means the final site of the Easement as surveyed and delineated on the Final Easement Plan.

Electronic Signature means a visual representation of a person's handwritten signature which is placed on this deed using DocuSign or other electronic signing platform agreed by the parties and "Electronically Signed" has a corresponding meaning.

Final Easement Plan means a plan in a form capable of registration at the Titles Office and showing the Easement Sites, prepared based on the Draft Easement Plan, and in the form approved by the Owner under clause 3.

GST Law has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth), and terms used which are not defined in this deed, but which are defined in the GST Law, have the meanings given in the GST Law.

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Insolvency Event means that:

- (a) if a party is or includes a corporation, incorporated association or other legal entity recognised by Law:
 - (i) the corporation has entered into a scheme of arrangement, a deed of company arrangement or a composition with its creditors or an assignment for their benefit;
 - (ii) an order is made to wind it up;
 - (iii) a liquidator, administrator or official manager is appointed to it;
 - (iv) a mortgagee enters into possession of all or a substantial part of its assets;
 - (v) it is deemed by any relevant legislation to be insolvent or unable to pay its debts; or
 - (vi) a receiver, receiver and manager or agent of a mortgagee is appointed to all or a substantial part of its assets; and
- (b) if a party is or includes an individual, the individual:
 - (i) dies;
 - (ii) becomes mentally ill; or
 - (iii) is declared bankrupt.

Law means common law, equity and statute law, including any delegated or subordinate legislation, regulations, by-laws, ordinances, official requirements of an Authority and, where the context permits, includes Australian Standards and official codes of practice (including the National Construction Code).

Loss includes, in each case whether of a direct, indirect or inconsequential nature:

- (a) any liability, damage, Cost and other outgoing, and any diminution in value of, or deficiency of any kind in, anything; and
- (b) to the extent not covered in paragraph (a), any loss of profits, sales, turnover, reputation (or damage to it), production, anticipated savings, goodwill, business opportunities, customers, software or data, or loss of use of any software or data, and loss in connection with any other contract.

Minister has the meaning given to it under the Pipelines Act.

Pipeline Licence means a pipeline licence granted under the Pipelines Act.

Pipelines Act means the *Pipelines Act 1967* (NSW).

Proposed Final Easement Plan has the meaning given in clause 3.2(a)(iii).

Reference Schedule means the part of this deed titled "Reference Schedule" and the table contained within that part.

