

Ordinary Meeting

Meeting Date: Monday, 31 October, 2022
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.30pm

Membership (Quorum - 7)
All Councillors

Please note: The proceedings of this meeting (including presentations, deputations and debate) will be webcast, recorded and made available on Council's website, 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.

Shoalhaven City Council live streams its Ordinary Council Meetings and Extra Ordinary Meetings. These can be viewed at the following link

<https://www.shoalhaven.nsw.gov.au/Council/Meetings/Stream-a-Council-Meeting>.

Statement of Ethical Obligations

The Mayor and Councillors are reminded that they remain bound by the Oath/Affirmation of Office made at the start of the council term to undertake their civic duties in the best interests of the people of Shoalhaven City and to faithfully and impartially carry out the functions, powers, authorities and discretions vested in them under the Local Government Act or any other Act, to the best of their skill and judgement.

The Mayor and Councillors are also reminded of the requirement for disclosure of conflicts of interest in relation to items listed for consideration on the Agenda or which are considered at this meeting in accordance with the Code of Conduct and Code of Meeting Practice.

Agenda

1. **Acknowledgement of Country**
2. **Moment of Silence and Reflection**
3. **Australian National Anthem**
4. **Apologies / Leave of Absence**
5. **Confirmation of Minutes**
 - Ordinary Meeting - 10 October 2022
6. **Declarations of Interest**
7. **Presentation of Petitions**

8. Mayoral Minute

Mayoral Minute

MM22.27	Mayoral Minute - Congratulations - 2022 IMB Bank Illawarra Business Awards Winners	1
MM22.28	Mayoral Minute - Safe Shelter Shoalhaven	2

9. Deputations and Presentations

10. Call Over of the Business Paper

11. A Committee of the Whole (if necessary)

12. Committee Reports

Nil

13. Reports

City Performance

CL22.541	Ongoing Register of Pecuniary Interest Returns - September 2022	3
CL22.542	Investment Report - September 2022.....	5

City Futures

CL22.543	Policy - Events	15
CL22.544	Proposed Update Amendment - Shoalhaven Development Control Plan 2014 - Subdivision Chapter (DCP2014.24)	17
CL22.545	Proponent Planning Proposal Request - 48 to 54 Paradise Beach Road, Sanctuary Point (includes former Anglican Church site)	23
CL22.546	Exhibition Outcomes/Proposed Finalisation - Planning Proposal (PP064) - Willinga Park Equestrian Centre, Bawley Point - Functions.....	41
CL22.547	Tree Management in Shoalhaven - Proposed Trial Amendment to Shoalhaven Development Control Plan 2014 - 45 Degree Rule and Asset Protection Zone Clearing.....	66
CL22.548	Update and Proposed Next Steps - Land Use Planning Changes for Agritourism.....	74

City Services

CL22.549	Natural Disaster Recovery - Change to CEO Delegation of Authority.....	82
CL22.550	Policy - Tree Management Policy - Public Land	85
CL22.551	Policy - Rural Fire Services Stations - Community Use	86
CL22.552	Policy - Management of Mobile Food Vending Vehicles on Council Owned or Managed Land.....	91
CL22.553	Proposed Acquisition - Lot B DP 367157 - 49 Meroo Street Bomaderry	94
CL22.554	Tenders - Bitumen Spray Sealing of Pavements - July 2022 to June 2024.....	97

City Development

CL22.555	Variations to Development Standards - September Quarter 2022	99
CL22.556	Development Application Fee Reimbursement Request - Southern Cross Community Housing Ltd - RA22/1002	107

City Lifestyles

CL22.557	Feasibility Study - Community Infrastructure at Wowly Creek Reserve, Callala Bay.....	110
CL22.558	Policy - Shoalhaven City Council Art Collection - Acquisition and Management	129
CL22.559	Policy - Shoalhaven Entertainment Centre Sponsorship	139
CL22.560	Policy - Shoalhaven Arts Board Terms of Reference.....	141
CL22.561	Tenders - Park Road Netball Court Resurfacing	148

Shoalhaven Water

CL22.562	Acquisition for Easement of Water Supply - Lot 129 DP 3060 and Lot 110 DP 131219 - Moss Vale Rd Bomaderry.....	150
CL22.563	Connection to Conjola Sewerage System - Lot 320 DP 788391 - 24 Coolibah Ave, Conjola Park	154

14. Notices of Motion / Questions on Notice

Notices of Motion / Questions on Notice

CL22.564	Notice of Motion - Burton St Mall - Vincentia - Toilet Amenities.....	157
CL22.565	Notice of Motion - Provision of Waste Vouchers for Men's Sheds	159
CL22.566	Notice of Motion - Call in of Development Application DA22/1614 - 5 Flora St, Sanctuary Point	161
CL22.567	Notice of Motion - Comerong Island Road Closure.....	162
CL22.568	Notice of Motion - Lake Tabourie Community Connectivity – Proposed Lake Tabourie Pathway Network	164
CL22.569	Notice of Motion - DA22/1542 - 1 Buchan Street Mollymook - Lot 14 DP 20321	166
CL22.570	Notice of Motion - Review of Policy 22/18 - Waiving of Development Application Fees and Other Fees for Charitable Organisations & Community Groups	167
CL22.571	Notice of Motion - Development Application Fee Reimbursement Request - Anglican Church Property Trust Diocese of Sydney - DA22/1550.....	171
CL22.572	Notice of Motion - Affordable Housing	172
CL22.573	Question on Notice - Gross Pollutant Traps / Drain Buddies in the Shoalhaven.....	173
CL22.574	Question on Notice - Youth Week 2022	175
CL22.575	Question on Notice - Conjola Community Recovery Association (CCRA) Transfer of Funds	178
CL22.576	Question on Notice - Huskisson Church.....	180

15. Confidential Reports

Reports

- CCL22.29 Proposed Acquisition - Lot B DP 367157 - 49 Meroo Street Bomaderry

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.

- CCL22.30 Tenders – Bitumen Spray Sealing of Pavements - July 2022 to June 2024

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.

- CCL22.31 Tender - Park Road Netball Court Resurfacing

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.

MM22.27 Mayoral Minute - Congratulations - 2022 IMB Bank Illawarra Business Awards Winners

HPERM Ref: D22/446846

Recommendation

That Council write to both Renee Knight from CareSouth and Amy Hall founder of Banksia Support Services congratulating them on winning awards at the 2022 IMB Bank Illawarra Business Awards.

Details

The IMB Bank Illawarra Business Awards were held on 14 October at the WIN Entertainment Centre, in recognition of the achievements of business and business leaders from across our region.

Council would like to acknowledge the efforts of all nominees, acknowledge all finalists from all sixteen award categories, and congratulate all winners.

In particular Council would like to congratulate Renee Knight, CEO of CareSouth Nowra for winning the 2022 Outstanding Business Leader Award. This award “recognises an inspirational business leader aged 36 or over, who has demonstrated commitment to their workplace, industry and the community through leadership, whilst providing mentorship to others”.

Council would also like to congratulate Amy Hall, founder of Banksia Support Services North Nowra, and winner of the 2022 Outstanding Start-up Award. The Outstanding Start-up Award “recognises a start-up business that has effectively driven growth and is able to demonstrate the potential to achieve future success”.

MM22.27

MM22.28 Mayoral Minute - Safe Shelter Shoalhaven

HPERM Ref: D22/448521

Recommendation

That Council:

1. Notes the emergency funding donation of \$20,000 from the Mayor's Relief Fund to Salt Care on the 21 October 2022, providing immediate financial assistance to the Shelter to resume interim operations for four weeks while State and Federal Governments consider funding requests.
2. Thank the staff and volunteers of Salt Care and the wider Shoalhaven community for their generosity in setting up and continuing to fund the Shelters operations over the past 5 years. A phenomenal effort, which shows both the importance of this service and the commitment of the community to support vulnerable people in their time of need.
3. Continues to advocate for Salt Care to receive sustained financial support from State and Federal Government.

Details

On Monday 17 October 2022, Salt Care was forced to cease operations of the Safe Shelter Shoalhaven, unable to continue supporting the vulnerable in our community due to the lack of sustainable funding.

Over the past 5 years, the shelter has supported more than 800 individuals and families, providing over 16,000 beds to people who would otherwise be sleeping rough. A crucial support service achieved through the dedication of more than 243 volunteers, and financial support from private donors, local churches and the heartfelt kindness of our community.

Throughout the years Peter Dover and the team have strongly advocated for the service and sought out political leaders to ensure that we all know the value of the work they do and the unique "wrap around" model of care that is being enacted.

The Government has basically walked away from providing these types of services directly to the community, instead they rely on the energy, compassion and good will of the community to create not for profit organisations and establish the services.

Salt Care is one such organisation, born from desperate community need, it has grown rapidly over the last five years, a one-of-a-kind service here in the Shoalhaven, taking people directly from the streets into a wraparound care service.

Shoalhaven City Council played an integral part in the establishment of the shelter at Kinghorne St, and as an active partner for the last 5 years will continue to support the endeavours of Salt Care through ongoing active advocacy wherever possible.

MM22.28

CL22.541 Ongoing Register of Pecuniary Interest Returns - September 2022

HPERM Ref: D22/417712

Department: Business Assurance & Risk

Approver: Kevin Voegt, Director - City Performance

Reason for Report

To provide the Council with the Register of Pecuniary Interest Returns from newly designated persons lodged with the Chief Executive Officer for the period of 1 September to 30 September 2022 as required under Section 440AAB of the Local Government Act 1993 and Part 4.26 of the Model Code of Conduct.

Recommendation

That the report of the Chief Executive Officer regarding the Ongoing Register of Pecuniary Interest Returns lodged for the period of 1 September to 30 September 2022 be received for information.

Background

Under Section 440AAB of the *Local Government Act 1993* and Part 4.26 of the Model Code of Conduct, newly designated persons are required to complete an Initial Pecuniary Interest Return within 3 months of becoming a designated person.

Section 440AAB (2) of *The Local Government Act 1993* states:

Returns required to be lodged with the general manager must be tabled at a meeting of the council, being the first meeting held after the last day specified by the code for lodgement, or if the code does not specify a day, as soon as practicable after the return is lodged.

Part 4.26 of the Model Code of Conduct states:

Returns required to be lodged with the general manager under clause 4.21(c) must be tabled at the next council meeting after the return is lodged.

This report is one of a series of reports of this nature which will be provided throughout the year to align with the legislative requirements.

Those persons who have submitted a return within the period in accordance with their obligation to lodge an initial pecuniary interest return are listed below:

Directorate	Name	Designated Position Start Date	Returned
City Development	Michael Smith	15/08/2022	26/09/2022
City Futures	Fallon Kassis	19/07/2022	30/08/2022

Advice provided to Council by the Office of Local Government in September 2015 was that 'hard copies' of returns are no longer required to be tabled at the Council meeting. Therefore, the register of returns for this period is listed and tabled. Electronic versions of the documents may be viewed upon request.

CL22.541

Electronic versions of the disclosure documents (with relevant redactions) are available on the Council website, in accordance with requirements under the *Government Information (Public Access) Act, 2009*.

Risk Implications

A failure of meeting the obligations with respect to the Pecuniary Interest Returns by a designated officer leaves Council at risk of non-compliance with legislative requirements, conflicts of interest and limited transparency.

CL22.541

CL22.542 Investment Report - September 2022

HPERM Ref: D22/432178

Department: Finance

Approver: Kevin Voegt, Director - City Performance

Attachments: 1. Shoalhaven Monthly Report - September 2022 (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 2021, a written report is provided to Council setting out the details of all funds it has invested.

Recommendation

That Council:

1. Receive the Record of Investments for the period to 30 September 2022.
2. Note that Council's total Investment Portfolio (excluding the Long-Term Growth Fund) returned 1.90% per annum for the month of September 2022, outperforming the benchmark AusBond Bank Bill Index (1.79% pa) by 11 basis points (0.11%).
3. Note the performance of the Long-Term Growth Fund as presented in the report.

Options

1. The report on the Record of Investments for the period to 30 September 2022 be received for information.

Implications: Nil

2. Further information regarding the Record of Investments for the period to 30 September 2022 be requested.

Implications: Nil

3. The report of the Record of Investments for the period to 30 September 2022 be received for information, with any changes requested for the Record of Investments to be reflected in the report for the period to 31 October 2022.

Implications: Nil

Background

Please refer to the attached monthly report provided by Council's independent Investment Advisor, Imperium Markets Pty Ltd.

Portfolio Return

The overall portfolio (excluding cash) returned a negative -2.5% p.a. for the month of September 2022, due to the negative movement of the growth fund.

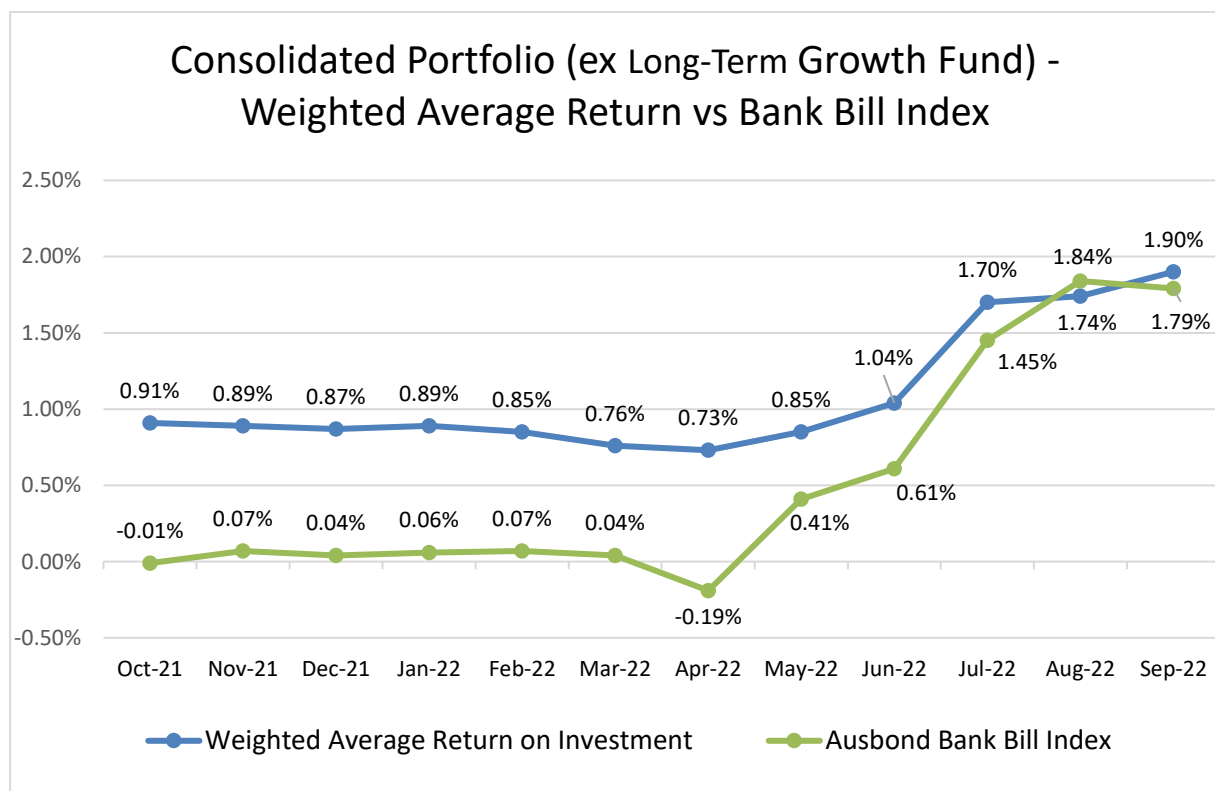
The investment returns excluding growth fund were a stable 1.90% p.a., outperforming the benchmark AusBond Bank Bill Index (1.79% p.a.) by 11bp p.a (0.11%).

CL22.542

Investments (Excluding Long-Term Growth Fund)

The following graph shows the performance of Council's Investment Portfolio (excluding Long-Term Growth Fund) 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.

It should be noted that the Bank Bill Index will respond to increasing interest rates more quickly than Council's average returns. This is due to Council's limitations to reinvest when term deposits with lower interest rates reach their maturity, resulting in average returns lower than the benchmark. As Council reinvests its maturing term deposits, its returns will improve back above the benchmark as indicated with the positive return in September after the dip below the benchmark in August.



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Investment Interest Earned – September 2022

The following table shows the interest earned for the month of September 2022.

Fund	Monthly Budget \$	Actual Earned \$	Difference \$
General	124,027	129,207	5,180
Water	62,137	92,853	30,716
Sewer	29,534	57,169	27,635
Total excluding Long-Term Growth Fund	215,698	279,229	63,531

The interest earned for the month of September, excluding changes in the fair value of the TCorp Long-Term Growth Fund was \$279,229 compared to the monthly budget of \$215,698.

Investment Interest Earned - Year to Date

The following table demonstrates how the actual amount of interest earned year to date has performed against the total budget.

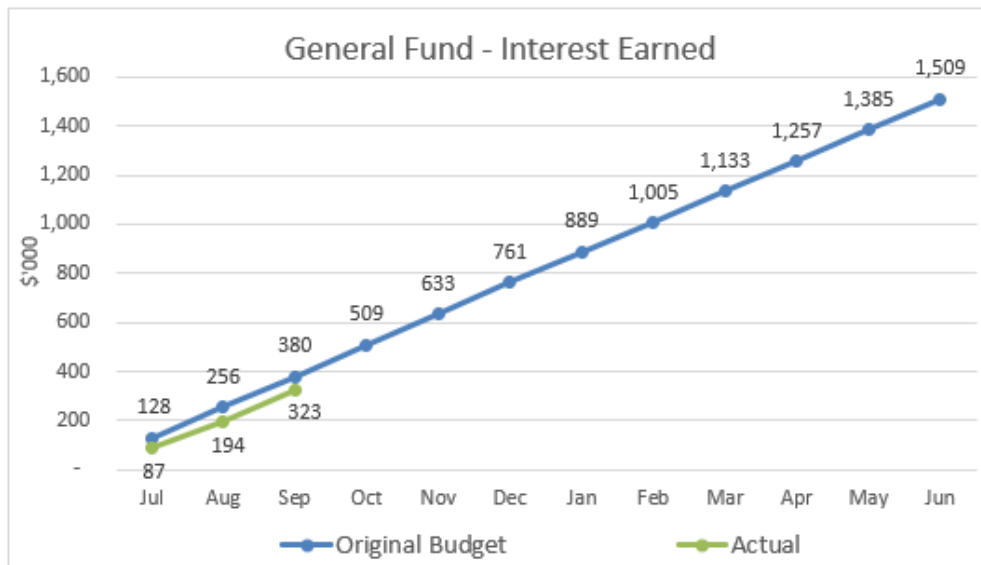
Fund	Original Total Annual Budget \$	Actual YTD \$	% Achieved
General	1,509,000	323,222	21.42%
Water	756,000	238,155	31.50%
Sewer	359,333	150,659	41.93%
Total excluding Long-Term Growth Fund	2,624,333	712,036	27.13%

The cumulative interest earned for the year (July to September), excluding the change in fair value of TCorp Long-Term Growth Fund was \$712,036 which is 27.13% of the current full year budget.

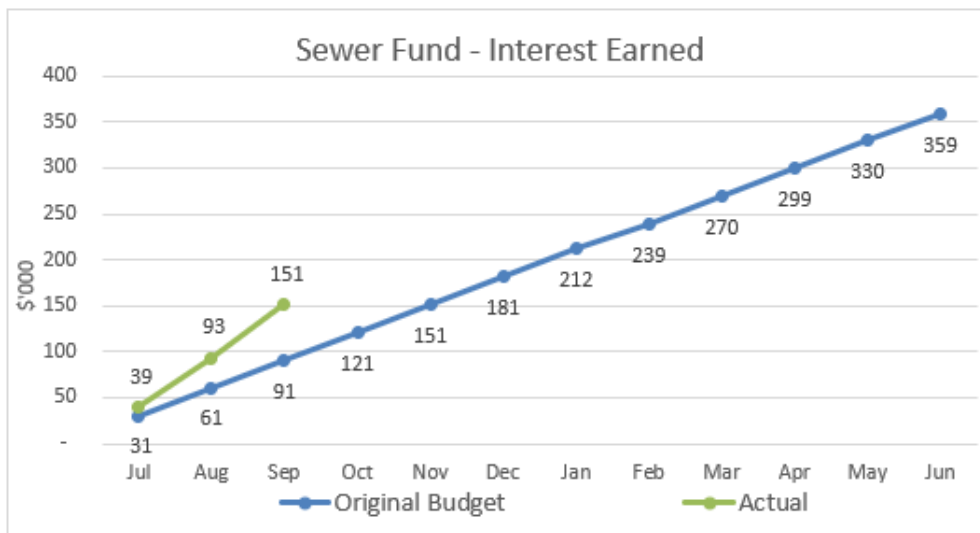
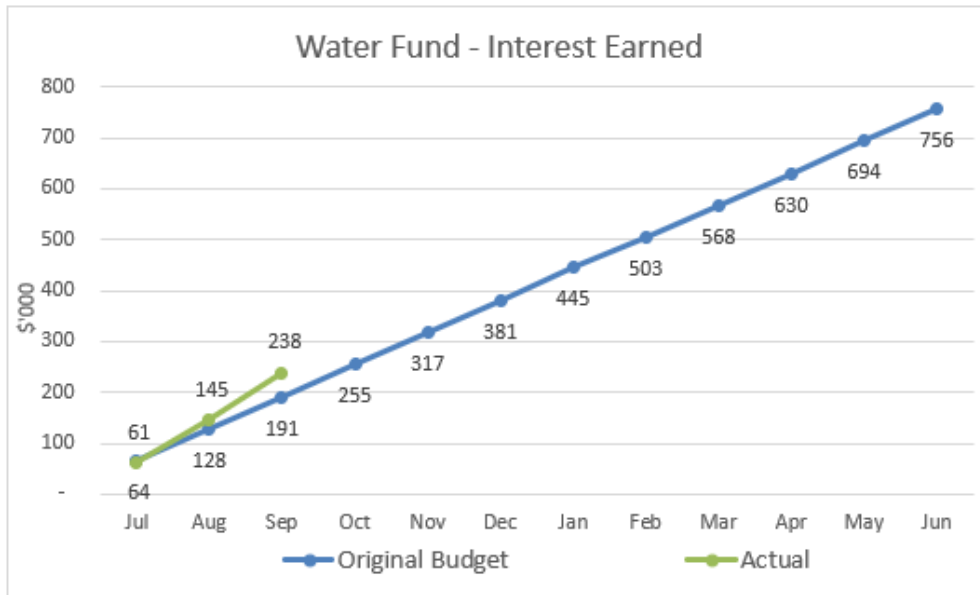
It should be noted that a portion of the General Fund \$1,509,000 budget will be attributed to the Long-Term Growth Fund, in the September Quarterly Budget Review. This adjustment will reduce the General Fund Budget and increase the Long-Term Growth Fund by \$250,000.

Following this change, the monthly budget for General Fund will be \$103,479 and the annual budget will reduce to \$1,259,000. The actual YTD of \$323,222 represents an achievement of 25.67% of budget compared to 25.20% of the year passed.

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



CL22.542



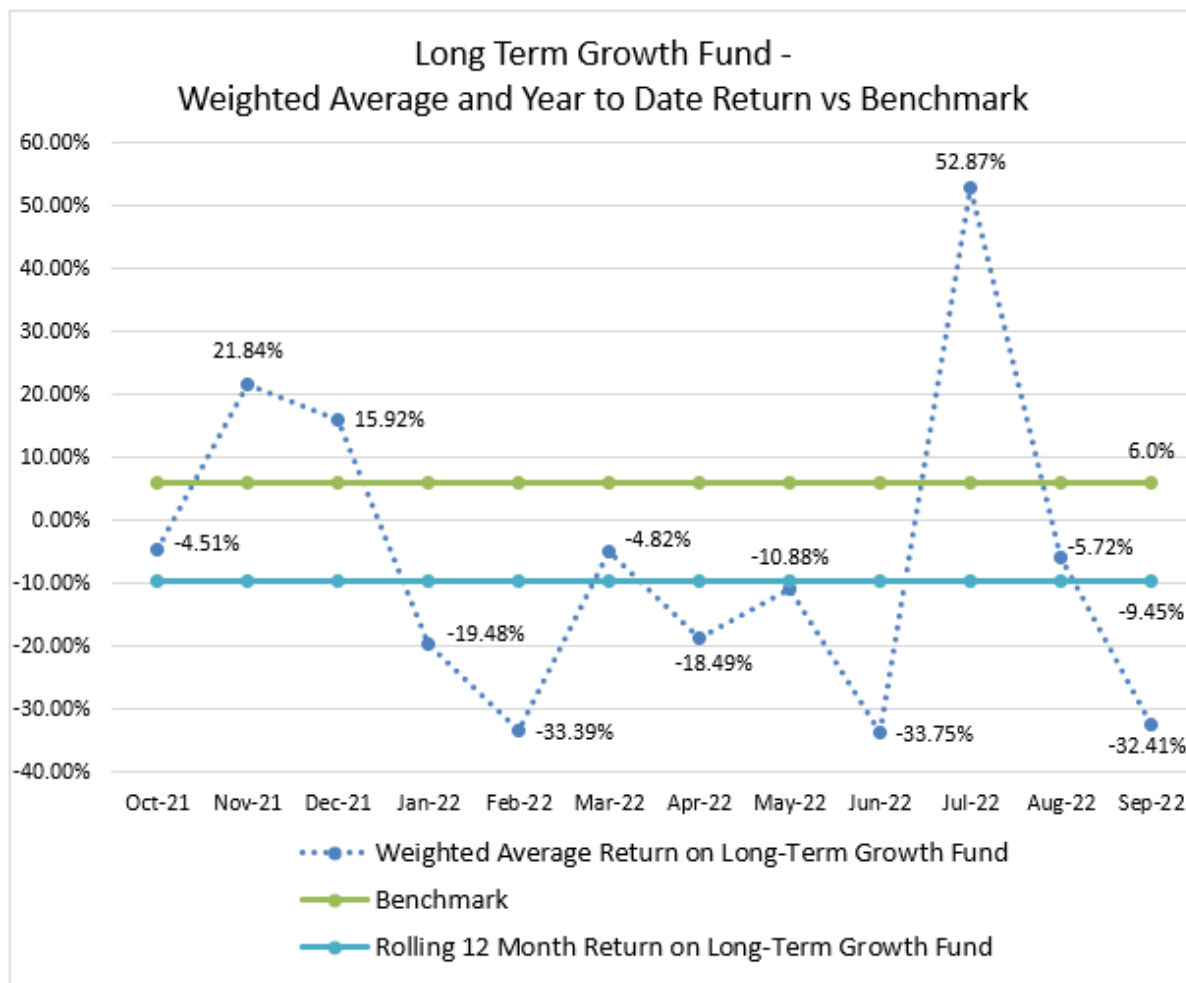
Long-Term Growth Fund

Council's investment in TCorp's Long-Term Growth Fund returned a negative \$604,589 or -32.41% (annualised) for the month of September 2022, offsetting previous significant market gains, bringing the financial year-to-date return to a negative -0.46% and rolling twelve (12) months return to a negative -9.45%.

It is important to note that TCorp has a target of 3.5% above inflation of 2.5%, therefore the long-term target is expected to return an average of 6.0% per annum (benchmark) over a seven-year cycle with positive months outweighing the negative months over the long-term.

The following graph shows the performance of Council's Long-Term Growth Fund against the benchmark on a rolling twelve (12) months basis.

CL22.542



CL22.542

Cash and Restricted Assets

Record Of Investments		
Cash and Investment Balances		
	\$ September 2022	\$ August 2022
Cash and Investments Held		
Cash at Bank - Transactional Account	4,530,024	20,060,028
Cash on Hand	20,191	20,191
Other Cash and Investments	186,893,140	185,474,791
	191,443,355	205,555,010
Fair Value Adjustment	(204,441)	(288,089)
Bank Reconciliation	186,567	338,837
	(17,874)	50,748
Book Value of Cash and Investments	191,425,481	205,605,758
Less Cash & Investments Held in Relation to Restricted Assets		
Employee Leave Entitlements	7,049,913	7,049,913
Critical Asset Compliance	464,738	464,877
Other Internal Reserves	3,397,642	2,889,282
Section 7.11 Matching Funds	278,906	300,522
Strategic Land Development Reserve	6,357,661	6,619,575

Plant Replacement	1,106,981	1,165,661
S7.11 Recoupment	535,511	277,604
Water Communication Towers	4,784,422	4,669,993
Commitment To Capital Works	2,012,742	2,036,905
Total Internally Restricted	25,988,516	25,474,332
Loans - General Fund	5,150,831	8,934,953
Self-Insurance Liability	3,250,591	3,241,593
Grant reserve	25,427,494	28,160,683
Section 7.11	19,105,589	21,066,382
Special Rate Variation	5,062,408	5,384,440
Storm Water Levy	374,535	319,592
Trust - Mayors Relief Fund	107,899	107,732
Trust - General Trust	4,780,380	4,756,452
Waste Disposal	3,642,347	6,345,341
Sewer Fund	31,943,738	33,293,116
Sewer Plant Fund	4,990,627	4,873,875
Section 64 Water	20,944,056	20,797,476
Water Fund	29,982,686	29,428,944
Water Plant Fund	7,226,528	7,093,640
Total Externally Restricted	161,989,709	173,804,219
Total Restricted	187,978,225	199,278,551
Unrestricted Cash Balance - General Fund	3,447,256	6,327,207

NOTE: The Water Communication Towers reserve is no longer an external restriction, changed to internal on 30 June 2022.

Restricted Asset Movements

The table below lists the major movements in cash reserves increase/(decrease):

Total Cash	(14,180,275)	September is not a rate instalment month. Expenditure on major capital projects.
Other Internal Reserves	508,361	Insurance expense recovery.
Loans - General Fund	(3,784,122)	Delivery of major capital projects funded by loans including Boongaree, Materials Recovery Facility and Lake Conjola Entrance Road.
Section 7.11	(1,960,793)	Delivery of capital projects.
Waste Disposal	(2,702,994)	September not a rates instalment month and Materials Recovery Facility project.
Sewer Fund	(1,349,378)	Various capital projects.

CL22.542

Water Fund	553,742	Receipts from ratepayers.
Unrestricted cash	(2,879,948)	September is not a rates instalment month.

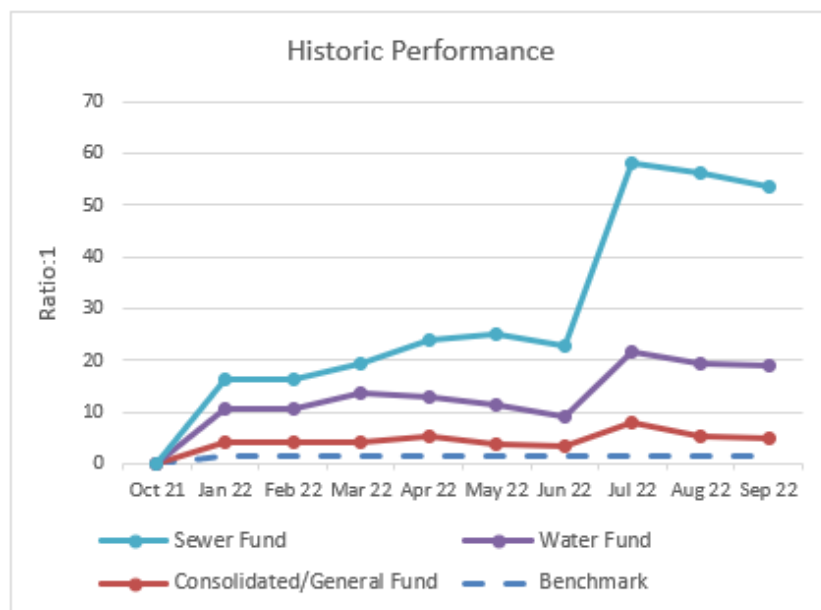
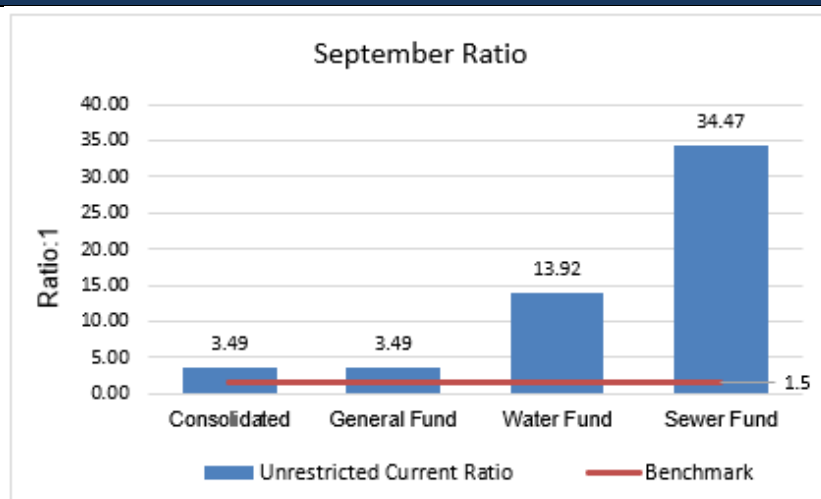
Liquidity Indicators

In accordance with the Liquidity Contingency Plan as endorsed by Council, the following liquidity indicators are included in the Monthly Investment Report to enhance the transparency of Council's financial reporting.

All liquidity ratios remain above their respective benchmarks and Council remains in a sound financial position.

Please note the historic trends for some key financial indicators such as Unrestricted Current Ratio, Cash Expense Cover Ratio and Unrestricted Cash were added below as requested by Council at a previous meeting.

Unrestricted Current Ratio



The **Unrestricted Current Ratio** is an indicator used to assess the adequacy of working capital and its ability to satisfy obligations in the short term for the unrestricted activities of Council.

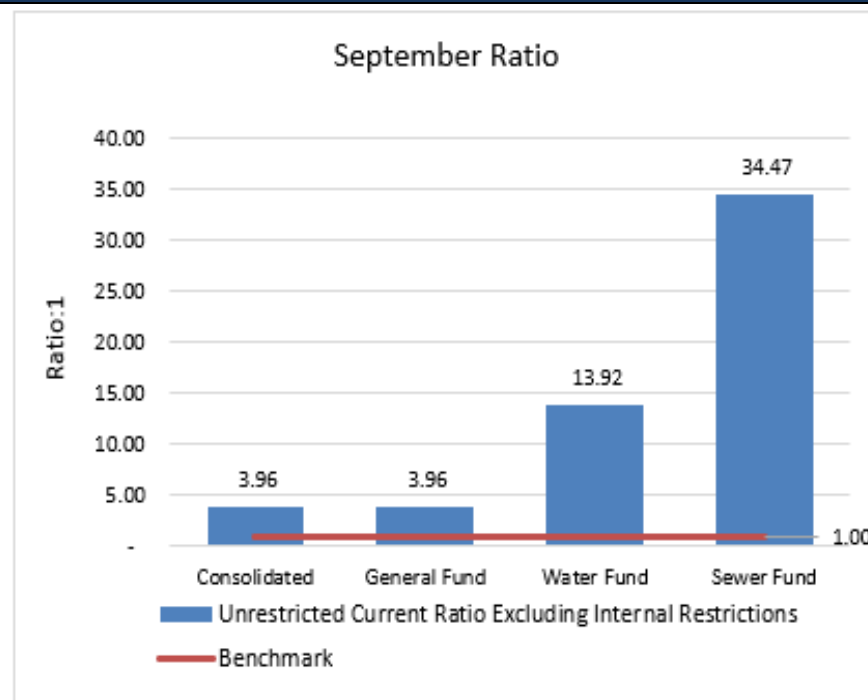
Unrestricted Current Ratio = (Current Assets less all external restrictions) / (Current Liabilities less specific purpose liabilities)

The ratio remains above the benchmark for all funds.

The first graph displays the September 2022 Unrestricted Current Ratio and, the second graph displays the previous rolling 12-months Unrestricted Current Ratio by fund.

CL22.542

Unrestricted Current Ratio Excluding Internal Reserves



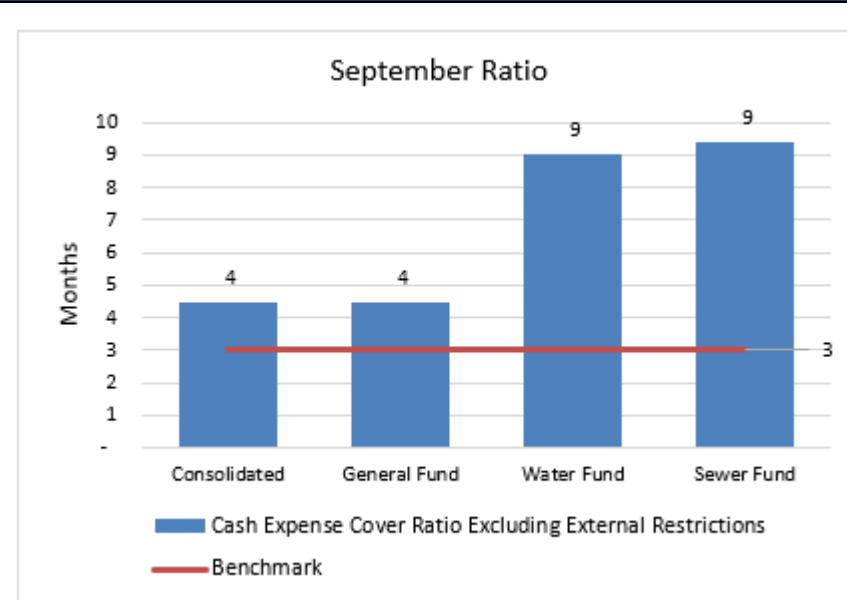
Unrestricted Current Ratio Excluding Internal Reserves is an indicator used to assess the adequacy of working capital and its ability to satisfy obligations in the short term for the unrestricted activities of Council.

Unrestricted Current Ratio Excluding Internal Reserves = $\frac{\text{Current Assets less all external and internal restrictions}}{\text{Current Liabilities less specific purpose liabilities}}$

The ratio remains above the benchmark for all funds.

CL22.542

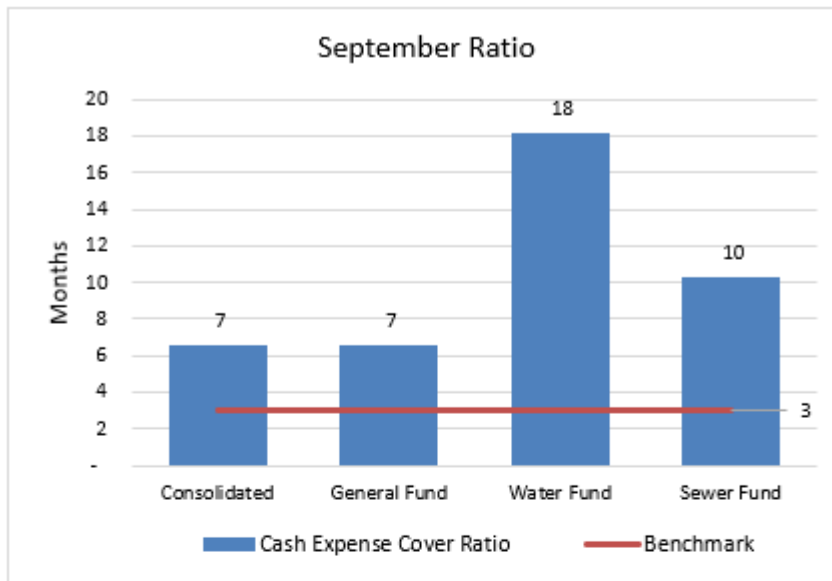
Cash Expense Cover Ratio Excluding External Restrictions



Cash Expense Cover Ratio Excluding External Restrictions takes the OLG calculation for the Cash Expense Cover Ratio and removes external restrictions to represent the amount of months Council can continue paying for its immediate expenses without resorting to external restrictions.

The ratio remains above the benchmark of 3 months as at the end of September for all funds.

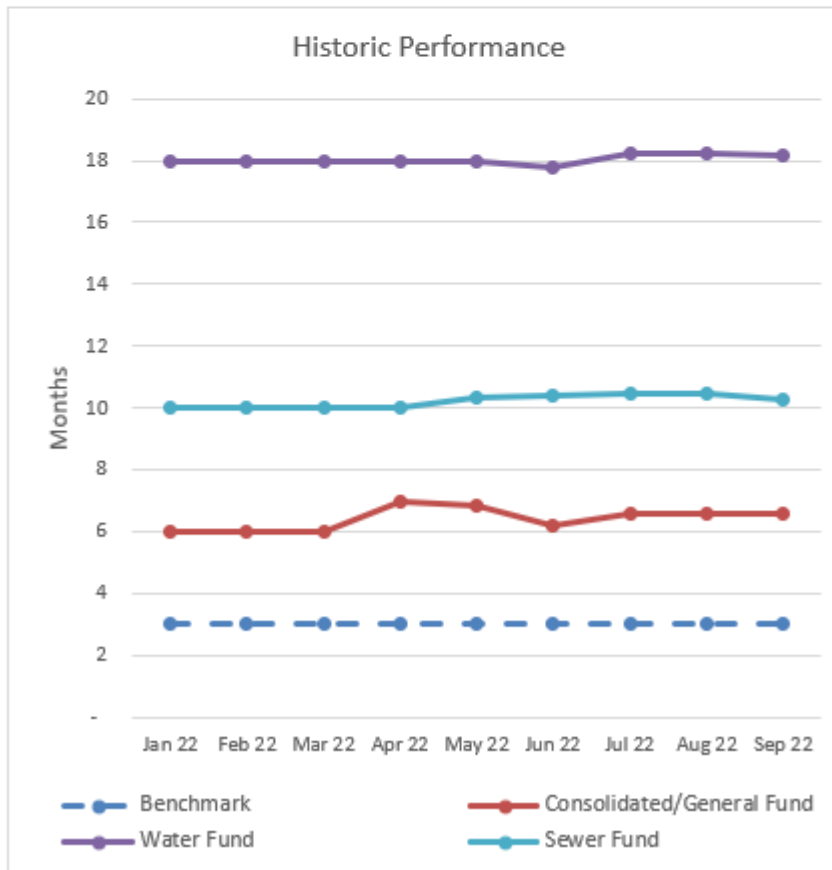
Cash Expense Cover Ratio



Cash Expense Cover Ratio indicates the number of months a Council can continue paying for its immediate expenses without additional cash inflow.

Cash expense cover ratio = $(\text{Cash equivalents, TDs and FRNs} \times 12) / (\text{Payments from cash flow of operating and financing activities})$

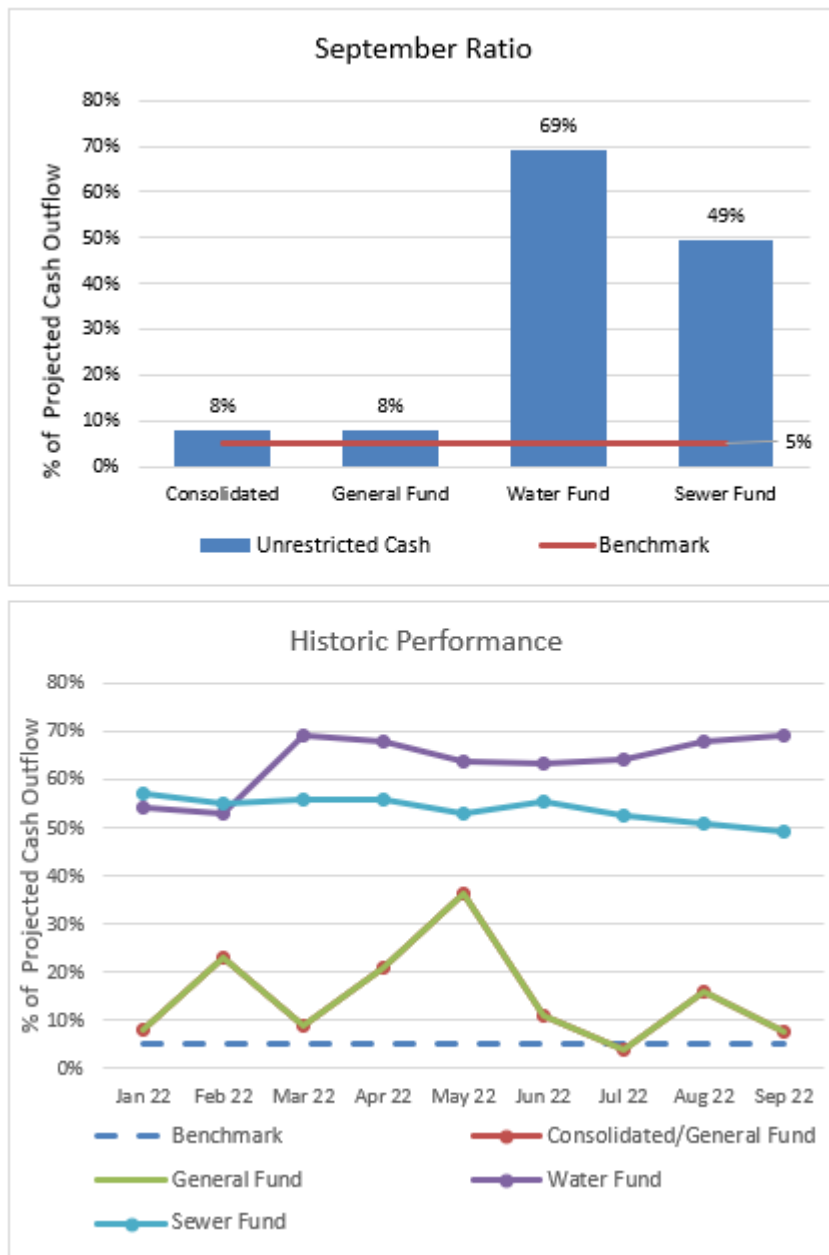
The ratio remains above the benchmark of 3 months as at the end of September 2022 for all funds.



The first graph displays the September 2022 Cash Expenses Cover Ratio and, the second graph displays the previous rolling 9-months Cash Expenses Cover Ratio by fund.

CL22.542

Unrestricted Cash



Unrestricted Cash is calculated as a total Cash and Investments, less external and Internal restrictions.

The unrestricted cash balance remains above the benchmark as at the end of September for Sewer and Water funds and close to benchmark for the General fund.

The unrestricted cash is relatively low in September due to timing of receipts from rates and significant payments for capital projects in September.

The benchmark is set up at 5% of budgeted cash outflows (excluding investment purchases and expenditures funded by reserves).

The first graph displays the September 2022 Unrestricted Cash Ratio and, the second graph displays the previous rolling 9-months Unrestricted Cash Ratio by fund.

Statement by Responsible Accounting Officer

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 2021 and Council's Investments Policy POL 22/78.

Don Johnston

Date: 20th October 2022

CL22.542

CL22.543 Policy - Events

HPERM Ref: D22/390440

Department: Tourism

Approver: Carey McIntyre, Director - City Futures

Attachments: 1. DRAFT Events Policy (under separate cover) [⇒](#)
2. Current Events Policy POL17/75 (under separate cover) [⇒](#)

Reason for Report

To present a policy review to Council and to seek an endorsement of the proposed amendments.

Recommendation

That Council adopts changes made to the Events Policy (**Attachment 1**).

Options

1. Endorse the recommendation as written.

Implications: The proposed changes are accepted and formally updated.

2. Council do not endorse proposed amendments and make recommendations to staff outlining suggested considerations.

Background

The Event Policy applies directly to all public events conducted on Council owned or managed land, including roads and footpaths.

The purpose of the Event Policy is to:

- Provide clarity to event organisers on expectations, regulations, and processes for applying and hosting an event on land under the ownership and/or management of Shoalhaven City Council.
- Ensure events in the Shoalhaven meet a minimum standard, set by Council, utilising industry standards and best practices.
- Allow for transparency in the event application and assessment process and ensure events are equitably assessed using a clear process and criteria.

This policy is implemented by the Event Liaison Officer at Council and managed by the Tourism Investment and Event Specialist.

On average there are 130 event approvals issued under this policy per year, these range from community events, through to commercial events.

This policy is intended to be a guide for organisers and additional information and templates are available on Councils Website and via the Event Liaison Officer.

It should be noted that this policy does not cover private events on public land, e.g. weddings, and is supported by the Private Functions on Public Reserves Policy, [with information available on Councils Website.](#)

CL22.543

Community Implications

Many community organisers submit applications to Council. Therefore it is important, this policy exists and clearly identifies the necessary requirements to use Council land.

Financial Implications

Outside of wages, there is no operational budget allocated to the implementation of this policy.

Risk Implications

If this policy is not endorsed - there will be no clear policy for event approvals on Council owned/managed land in the Shoalhaven, this opening the region up to risk of misconduct by event organisers.

CL22.543

CL22.544 Proposed Update Amendment - Shoalhaven Development Control Plan 2014 - Subdivision Chapter (DCP2014.24)

HPERM Ref: D22/395762

Department: Strategic Planning

Approver: Carey McIntyre, Director - City Futures

Attachments:

1. Draft Chapter G11 and Supporting Document 1 (under separate cover) ➡
2. Draft Introduction (under separate cover) ➡
3. Draft Dictionary (under separate cover) ➡

Reason for Report

The purpose of this report is to seek a resolution of Council to commence the formal exhibition of the draft update amendment to the Subdivision (G11) and ancillary chapters of the Shoalhaven Development Control Plan (DCP) 2014.

Recommendation

That Council:

1. Support the exhibition of the draft Subdivision Amendment to Shoalhaven Development Control Plan 2014, consisting of the following chapters, for a period of 28 days as per legislative requirements:
 - a. Draft Chapter 1: Introduction.
 - b. Draft Chapter G11: Subdivision.
 - c. Draft Dictionary.
2. Facilitate an Industry workshop/information session during the public exhibition period.
3. Receive a further report on the draft Subdivision Amendment following the conclusion of the public exhibition period.
4. Advise key stakeholders, including relevant industry representatives, of this decision and exhibition arrangements.

Options

1. As recommended.

Implications: This is the preferred option as it will enable the resolution of a range of operational issues and matters that require clarification to improve the function of the subdivision and ancillary chapters in the DCP.

The current chapter is outdated, confusing and in parts, not consistent with industry best practice. The Amendment will result in contemporary provisions that consider urban design, amenity, subdivision and opportunities for resulting development in a balanced and sustainable way.

CL22.544

2. Adopt an alternative recommendation.

Implications: This will depend on the extent of any changes and could delay the implementation of updated and more appropriate subdivision related development provisions.

3. Not adopt the recommendation.

Implications: This could stop the implementation of more appropriate and better structured subdivision provisions in the DCP. This option is not preferred as the current approach is outdated, confusing and in parts, not consistent with industry best practice.

Background

Amendment Context

In June 2015 Council resolved to undertake large-scale systematic reviews/amendments of Shoalhaven DCP 2014 to address several existing Council resolutions and other matters identified since the commencement of the original plan on 22 October 2014.

This process has been ongoing alongside other strategic planning work. Comprehensive reviews of Council's development controls relating to low and medium density residential development has been undertaken/completed, resulting in the following contemporary chapters:

- Chapter G12: Dwelling Houses, Rural Worker's Dwellings, Additions and Ancillary Structures.
- Chapter G13: Medium Density and Other Residential Development.

Current DCP [Chapter G11: Subdivision of Land](#) provides more detailed provisions (controls and guidelines) to facilitate a range of subdivision opportunities consistent with the Local Environmental Plan across Shoalhaven. As such the DCP chapter does not create the legal opportunity for subdivision of land, but it does outline more detailed controls and guidelines for the subdivision of land and strata subdivisions e.g., neighbourhood design, street network, stormwater, servicing etc. Updating Chapter G11 is identified as a priority project in Council's adopted Strategic Planning Works Program.

The Draft Amendment

The proposed draft Amendment includes the following:

- The repeal of existing [Chapter G11: Subdivision of Land](#).
- Proposed new Chapter G11: Subdivision and supporting Technical Design Specifications (**Attachment 1**).
- Minor housekeeping type changes to Chapter 1: Introduction (**Attachment 2**).
- Proposed consequential amendment to the DCP Dictionary resulting from the above changes (**Attachment 3**).

The proposed new Chapter G11 applies to the subdivision of land and buildings, across the three main types of subdivision possible in NSW: Torrens subdivision, community title subdivision and strata subdivision.

Essentially, the draft Amendment proposes to improve the function of the subdivision controls that apply across the City, address gaps in policy and address operational issues or matters that need clarification that have been identified since the original DCP became effective on 22 October 2014.

The proposed amendment is a result of a number of years of engagement with technical specialists across Council, including 4 rounds of targeted internal consultation and a number of workshops.

The most notable/key components of the proposed new Chapter G11 are outlined in the following Table:

Change Theme	Key Change
General Chapter structure and layout	<ul style="list-style-type: none"> Relocated technical content into Supporting Document 1 to enhance readability. Rationalised figures/images as required. Deletion of content that is duplicated in the LEP or elsewhere in the DCP. Consolidated and reordered provisions into a more logical framework. Refinement of road network terminology and characteristics. Refinement of policies, guidelines and legislation in the 'Other legislation you may need to check' section. Changes to ensure consistency with other related and recently amended DCP chapters, e.g., Chapter G2: Sustainable Stormwater Management and Erosion/Sediment Control.
Generic changes throughout	<ul style="list-style-type: none"> Introduction of objectives regarding retention of existing mature trees (where practicable) to provide shade and reduce the heat island effect in accordance with Council's resolution of 6 December 2016 (MIN16.949). The relocation of the 'Residential Neighbourhood Design' performance criteria to relevant sections as required. The wording: '<i>No recommended acceptable solution. Each situation requires an individual approach</i>' has been deleted where there was a conflict between other relevant sections which provided an acceptable solution.
Subdivision Layout and Design	<ul style="list-style-type: none"> Rationalisation and consolidation of lot size and dimension requirements, as well as building envelope standards. Removal of frontage width and depth/width ratios for industrial development. Amendment of the dual occupancy subdivision provisions to reflect the recent changes to the LEP (Amendment No. 35). The provisions now relate to other forms of medium density development and redundant or duplicated content has been removed. Refinement and clarification of controls and intent relating to Torrens subdivision of certain medium density development. Inclusion of controls to enable the provision and protection of rooftop solar systems in accordance with Council's resolution of 6 October 2020 (MIN20.711). The single use access corridor width for residential battle-axe lots has been decreased from 6m to 4m to be consistent with multiple use access corridor widths. Number of lots/dwellings gaining access from a right of way has been reduced from 6 to 4. Inclusions of provisions relating to Asset Protection Zones.
Transport and road network design and construction	<ul style="list-style-type: none"> Introduction of street tree planting as a way to restrain traffic speeds and volumes. Widening of footpath widths as follows: <ul style="list-style-type: none"> Pedestrian footpath: 1.5m wide (existing 1.2m) In the vicinity of meeting points, schools, shops and other activity centres: 2m (existing 1.4m). Cycle paths and shared paths: 2.5m width with a 16% maximum longitudinal gradient.

CL22.544

	<ul style="list-style-type: none"> • Introduction of provisions requiring footpaths on one side of streets with traffic volumes over 500 vehicles per day (existing 2000 vpd). • Cul-de-sacs are to provide a sufficient area for a single movement for waste collection vehicles to avoid reversing where possible. • Technical reference updates - Removed reference to “RTAD96/6” and “Construction Specification C271” and replace with “RMS Supplement to AS1742.10 and TDT 2011/01a”. • Increase walkable distance to bus route from 500m to 800m consistent with Austroads requirements.
Streetscape design	<ul style="list-style-type: none"> • Reduction in footpath trees in residential subdivisions from 2 trees per lot to 1 large tree per lot and deletion of spacing requirements. It is often impractical to provide two street trees when considering driveways and services. One large, well-considered street tree will better assist in reducing the heat island effect (MIN16.949) into the future than two impractical trees that may ultimately fail or need to be removed. Maintenance period has been extended from 6 months to 12 months to reflect other maintenance/bond requirements in the Chapter.
Stormwater and flooding	<ul style="list-style-type: none"> • Revision of stormwater provisions to include reference to the latest version of ‘Australian Rainfall and Runoff – A Guide to Flood Estimation’ and increase the AEP flow to 10% (existing 5%) for commercial subdivision. • Clarification that building envelopes on small infill lots that are flood prone are to comply with Chapter G9: Development on Flood Prone Land to remove inconsistency between the two chapters. • New objective added regarding water sensitive urban design.
Environmental Considerations	<ul style="list-style-type: none"> • Removed provisions relating to the conservation of ecological diversity and promotion of ecologically sustainable development in relation to rural subdivision. Whilst important, the content of the existing acceptable solutions duplicates content elsewhere within the DCP which is not considered necessary. • Refinement of geotechnical requirements. • Inclusion of a mandatory control regarding bushfire consideration.
Public Space	<ul style="list-style-type: none"> • Clarification that fruit or nut bearing trees are not acceptable for street trees or for planting in Council managed parks, reserves and public open spaces. • Needs analysis requirement to determine and provide adequate open space and community infrastructure for a development. This will need to be provided in areas where there is not adequate local or citywide provision to meet the infrastructure demands of the development.
Advisory Information	<ul style="list-style-type: none"> • Removal of all content regarding the naming of roads and address numbering. The two related Council policies are instead referred to in the advisory section of the Chapter. • ‘Bonding of Works in Subdivision’ commentary has been revised to clearly identify Council’s position, including the Deed of Agreement requirement. Under no circumstances will Council accept bonding of outstanding works within existing or future private lots. • Clarification that vegetation management plans, water sensitive urban design and major landscaping embellishments should be maintained in accordance with the approved management plans and be subject to a longer defects liability and maintenance period prior to handover to Council. • ‘Assessment of Bond Amount’ commentary has been revised to identify Council’s current standard practice – 30% bond with 5% contingency. The minimum maintenance period has been extended to 12 months with the requirement for the road/s to be open to the public for this period. • ‘Defects Liability (Maintenance) of Works’ commentary has been revised to: <ul style="list-style-type: none"> – Update the terminology of the defects and liability (maintenance) period

CL22.544

	<p>including the minimum 12-month maintenance period.</p> <ul style="list-style-type: none"> – Reflect Council's current structure with appropriate responsible officer/position. – Identify Council's position in relation to subdivision civil works and bond within the defect liability period.
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The proposed new Technical Design Specifications is a new supporting document to Chapter G11 that seeks to consolidate all the detailed and technical requirements relating to subdivision in one central location. The technical provisions in current Chapter G11 are located in the Advisory Information section, or throughout the control section. There is no consistency to this information and as a result, the current chapter is difficult to navigate and use.

The key changes to the technical design specification detail includes:

- Revision of the road carriageway width to be invert-to-invert, which is an industry standard (Austroads, Australian Standards, Transport for NSW/RMS, neighbouring Councils).
- Revised road typologies and dimensions/construction specifications (including plans/sections) for all road typologies.
- Refinement of classification of streets to resolve previously experienced road width issues.
- Deletion of duplication between Council's Engineering Design Specifications and the DCP provisions.
- Update location of intersections to include all road typologies, and application of approach site distance (as per Austroads AGTRD4A).
- Refinement of geometric road design and minimum stopping distance requirements.
- 'Rural right of way construction standards' (existing Table 12 in Chapter G11) has been amended to consolidate the number of lots serviced by a right of way to 4 and to simplify the table.

The associated Amendments to DCP Chapter 1: Introduction and the Dictionary includes:

- Chapter 1: Introduction:
 - Revision of terminology relating to DCP variations to provide more appropriate commentary regarding reasonable alternative solutions.
 - Making references to State Environmental Planning Policies generic to acknowledge that a range of SEPPs enable exempt development.
 - Replaced reference to Shoalhaven Contributions Plan 2010 (and link) with Shoalhaven Contributions Plan 2019 which is Council's contemporary contributions plan.
- Dictionary:
 - Change in term name from 'Variation Statement' to 'Performance Based Solution Statement' to reflect the proposed changes to Chapter 1: Introduction above. No changes to the definition are proposed.
 - Introduction of new terms and definitions: Access place and Industrial road.
 - Refinement of existing terms and definitions: Access street, Collector road, Laneway, Local distributor road and Local road/street.

CL22.544

Community Engagement

If accepted, the draft Amendment will be publicly exhibited for at least 28 days in accordance with legislative requirements.

Development Industry representatives will be directly notified of the exhibition arrangements and a workshop/information session will be held during the exhibition period for the Development Industry.

Policy Implications

The Development Control Plan

The draft Amendment seeks to introduce further user-friendly DCP provisions in a logical structure that addresses gaps in policy and respond to operational matters that have arisen through time.

Should the Amendment not proceed, these fundamental concerns will not be addressed.

It is proposed that draft Chapter G11: Subdivision will ultimately replace the existing Chapter G11: Subdivision of Land due to the substantial review of the content and structure that has been undertaken as part of the review process.

Engineering Design Specifications

The current and draft Chapter G11 makes reference to specifications within Council's [Engineering Design Specifications](#) (EDS) document. This document provides detail to guide the design and construction of infrastructure within Shoalhaven, The EDS is currently applied/managed in two different ways within Shoalhaven:

1. The City Development and City Services Directorates have recently updated the EDS to align with industry best standards, and this revised version is currently being applied to Council infrastructure. This version is not publicly available as it has not been endorsed by Council for use by the broader industry.
2. The older (Council endorsed) EDS remains in use for private development - the EDS in the link above.

There is merit in working towards the public exhibition and endorsement of the revised EDS so that it can also be used for private development. This will ensure that a consistent approach is applied across the City in this regard. It is noted that the references to the EDS in the draft Chapter G11 are generic, and as such, the Chapter will not need to be amended in the future to update EDS references.

Financial Implications

This project will continue to be resourced within the existing Strategic Planning budget.

Risk Implications

Should the draft Amendment not proceed, there is a risk that Council will not be able to respond to subdivision proposals in a way that holistically considers matters such as urban design, amenity and development in a balanced and sustainable way. This could result in poor built form, road network, drainage, recreation, environmental and liveability outcomes for both residents and the broader community. There are also matters that need to be revised to ensure the planning controls continue to operate as expected/intended and resolve inconsistencies and duplications.

CL22.545 Proponent Planning Proposal Request - 48 to 54 Paradise Beach Road, Sanctuary Point (includes former Anglican Church site)

HPERM Ref: D22/334804

Department: Strategic Planning

Approver: Carey McIntyre, Director - City Futures

Attachments: 1. Summary of Preliminary Community Submissions - Paradise Beach Road PP Request [↓](#)

Reason for Report

The reason for this report is to present a proponent-initiated Planning Proposal (rezoning) request for initial consideration by the Council, related to Lot 80 DP 817353 and Lot 921 DP 27856 (48-54 Paradise Beach Road) Sanctuary Point. The applicant is PDC Lawyers & Town Planners Pty Ltd on behalf of the landowner (Container Group Investments Pty Ltd/A.Papagelou).

Recommendation

That Council

1. Support the proponent's request, in part only, by progressing a Planning Proposal that seeks to:
 - a. rezone the subject land to *R3 Medium Density Residential*
 - b. apply a building height limit of 8.5 m over the subject land, as opposed to the requested 13m
2. Confirm, in relation to Council's fees for progressing proponent-initiated planning proposals, that any Planning Proposal over the subject land that seeks to rezone the land to residential will be treated as 'major'.
3. Request the proponents to also provide one-bedroom units to provide affordable housing opportunities should they proceed with the proposal and the resultant development.

Options

1. Support the Planning Proposal request in full as submitted: this would involve progressing a Planning Proposal that seeks to rezone the land to *R3 Medium Density Residential* and increase the proposed *Height of Buildings* (HOB) to 13 m.

Implications: This option would potentially allow a four (4) storey development to be considered on the subject land. Surrounding development is one to two storeys high.

This option would potentially maximise the potential provision of housing on the site. However, notwithstanding the conclusions of the proponent's Urban Design Assessment, the proposed height increase on balance would potentially create an undesirable precedent for the broader locality. It would also potentially impact significantly on the amenity of several adjoining residential properties and be at odds with the local character. Various concerns have been raised by neighbouring landowners in this regard. Option Not supported.

CL22.545

2. Support the Planning Proposal request in part: progress a Planning Proposal to rezone the land to R3 and apply an 8.5m building height limit rather than the proponent's requested height limit of 13m.

The mapped building height limit on the immediately adjacent and surrounding *R2 Low Density Residential* zoned land is 8.5m. An 8.5m height limit is also more consistent with the built form in the broader locality, including within the adjacent *R3 Medium Density*-zoned land. Option Recommended.

Alternatively, an 11m building height limit could be applied across the site. This would be consistent with the height limit in the adjacent R3 land and the nearby Sanctuary Point commercial area.

Implications: The site attributes that favour a R3 zoning include:

- Land on the northern side of Paradise Beach Road is zoned R3
- Access and proximity to the services and facilities associated with the Sanctuary Point commercial area.
- Relatively large site area provides an opportunity to design a development that is sympathetic to adjoining residential development, particularly to the north-east.

However, consideration needs to be given to the full range of uses that could eventuate in the R3 zone under a range of building height limits, such as shop-top housing, and the desirability of these in isolation in this location.

For example, an 11m building height limit would potentially allow a three (3) storey residential flat building. The NSW Government's Apartment Design Guide could be applied under the *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* (SEPP 65). The proponent's Urban Design Assessment is structured around the nine Design Principles contained in SEPP 65.

An 8.5m building height limit would effectively limit any development to a maximum of two (2) storeys, consistent with surrounding development. There is also a hybrid option that could see a lesser building height limit applied to part of the subject land to help reduce impacts on the adjoining residential properties off Gibson Crescent.

Advice can be provided should Council consider other variations under this option.

3. Not support the Planning Proposal or support in another form.

Implications: Given that the SP2 zoned land has been sold and is no longer used as a 'place of public worship', it is not appropriate to retain this zoning which effectively sterilises/limits the land. Should Council decide not to support rezoning the land to R3, it may be appropriate to consider rezoning it to *R2 Low Density Residential* and applying an 8.5 m building height limit (consistent with R2 land more broadly).

If the SP2 land is ultimately rezoned to R2, dual occupancies and secondary dwellings would be permissible and potentially result in a similar density of development to Option 2. The disadvantage of this option however is that it would result in a more ad hoc development outcome that is potentially less sympathetic to the amenity of adjoining residential properties.

For example, if the land is subdivided, the individual lots could be separately purchased and developed (and possibly redeveloped) over time. Thus, there is less ability to achieve a good overall development outcome that makes best use of the site while also respecting the amenity of the adjacent residents.

Background

Subject Land

The subject land is made up of Lot 80 DP 817353 (former Anglican Church site) and Lot 921 DP 27856 (54 Paradise Beach Road), Sanctuary Point. The subject land and aerial photograph are provided in **Figure 1**.



Figure 1 – Subject land and aerial photo

Existing development on the subject land

The subject land is rectangular in shape, has a total area of approximately 2,400 m² and currently contains the following:

- Single storey church building, which was erected by the Anglican Church on the western side of Lot 80 DP 817353 in 1986 (BA86/1179). A car park for the church is located on the eastern side of the Lot. Lot 80 ceased to be used as a church several years ago and was sold to the current owner in 2021. The church building is currently used by Noah's Inclusion Services, a registered NDIS provider.
- Single storey dwelling, which was approved on Lot 921 (54 Paradise Beach Road) in 1991 (BA91/0498). The property was purchased by the current owner in early 2022.

The subject land slopes gently toward Paradise Beach Road and has minimal vegetation apart from a mature tree on the western side of the carpark and shrubs on the north-eastern side of the carpark and landscaping around the dwelling at 54 Paradise Beach Road.

A photo of the subject land is provided in **Figure 2**.

CL22.545



Figure 2 – Site viewed from Paradise Beach Road: former church building second on the right and the single storey dwelling at 54 Paradise Beach Road second on the left.

Surrounding development

The Sanctuary Point Library is currently next to the church, at 46 Paradise Beach Road (the building on the right in **Figure 2**) which is owned by the Department of Education. A new library is proposed on Council's land adjacent to Kerry Street and the Department's intentions for the current library site are currently unclear.

The Sanctuary Point Public School site currently extends from 38-44 Paradise Beach Road to Lot 8 DP 805351 (41 Idlewild Avenue).

The Sanctuary Point commercial centre is less than 150m to the west, along Paradise Beach Road.

The subject land immediately adjoins low density residential land to the north-east and south-east which is characterised by one and two storey detached dwellings.

Opposite the site between Paradise Beach Road and the St Georges Basin Golf Course, there is a mix of one and two storey residential development including detached dwellings, duplexes, and multi dwelling housing. A photo of a single storey multi dwelling housing development directly opposite the subject land is provided as **Figure 3**.



Figure 3 – Single storey medium density development opposite the subject land.

A one and two storey motel approved in 1988, known as the Golf View Motel, is located diagonally opposite the subject land to the northwest.

CL22.545

A photo of an adjacent, more recent, one and two storey medium density development that was completed in 2018 is provided in **Figure 4**.



Figure 4 – one and two storey medium density development on the opposite side of Paradise Beach Road (No. 41), midway between the subject land and the Sanctuary Point shops.

Shoalhaven Local Environmental Plan 2014 (SLEP 2014)

The subject land is currently zoned a mix of *R2 Low Density Residential* and *SP2 Special Uses (Place of Public Worship)*. The maximum height of buildings (HOB) is currently 11m on the SP2 zoned land and mapped at 8.5 m on the R2 land - see **Figure 5**.

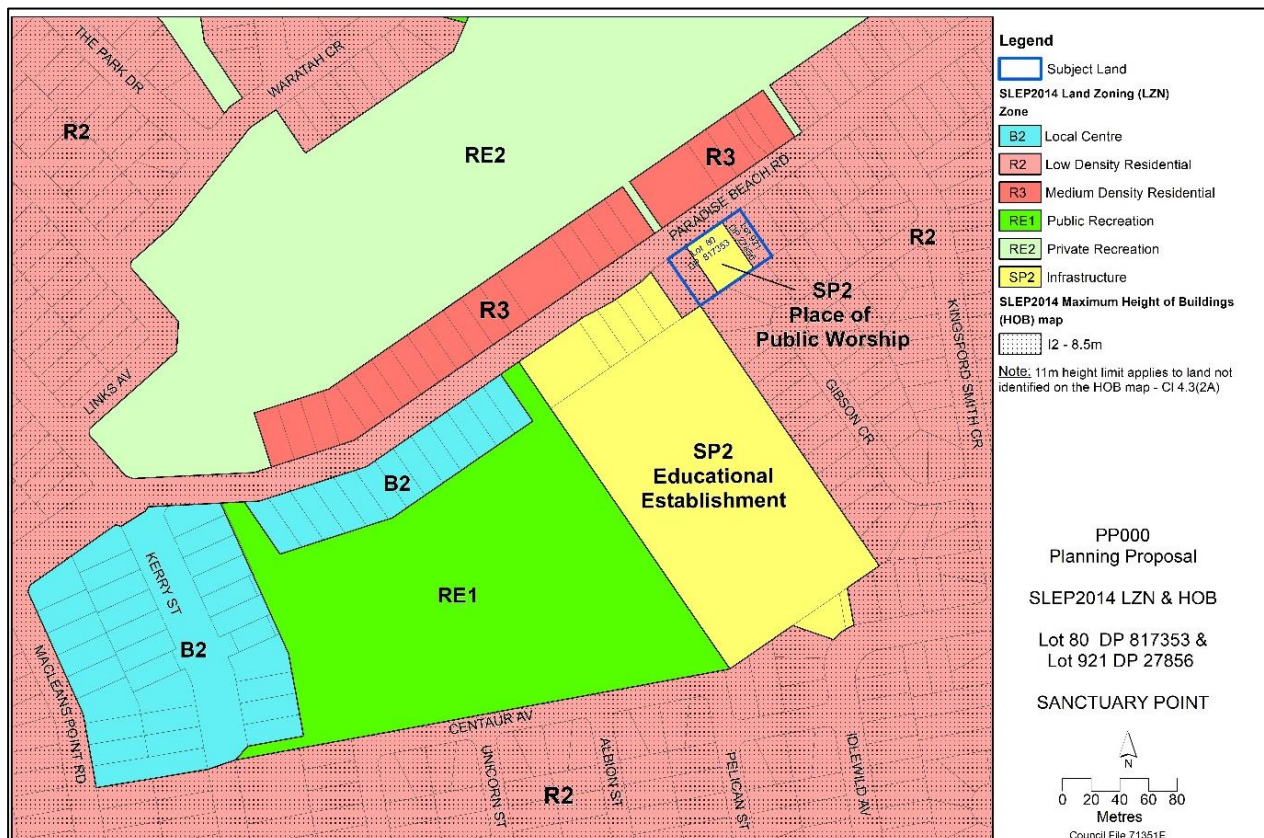


Figure 5 – Current LEP zoning and building height controls

History of the SP2 zoning

The subject land was previously zoned *Special Use 5(a)(Church)* under the earlier Shoalhaven LEP 1985 (LEP 1985).

CL22.545

Under Clause 48 of LEP 1985 uses that were permissible in the adjoining residential land could also be considered/approved within the 5(a) zoned land if it was not being used as a church.

The Standard LEP Instrument (on which LEP 2014 is based) mandates that 'places of public worship' are permissible in certain zones, including the R2 and R3 residential zones. One of the State Government's principles in regard to the use of SP zones is that they should not be used where the surrounding zone (e.g., in this case residential) permits the proposed use. This avoids the need for a 'spot' rezoning should a use cease or change in the future.

Notwithstanding the broader principles, given that Council generally applied a 'like for like' approach to the new LEP, a number of existing 'places of public worship', including the subject land, were zoned 'SP2 - Place of Public Worship' consistent with their previous 5(a) Church zoning. Had Council not followed this approach in the delivery of LEP 2014, it is highly likely that the subject land would have been zoned R2 at that point.

History of building height controls

Prior to the preparation of the LEP 2014, building height controls largely sat outside the LEP and were generally controlled via Development Control Plans (DCP's) and a provision in the previous Illawarra Regional Environmental Plan (REP) that enabled Council to consider development up to 11m. Any development above 11m required the concurrence of the NSW Planning Minister (or a delegate).

With the move to the new Standard LEP Instrument, Council was required to include 'height of building' controls in its new LEP. This occurred in LEP 2014 in two ways:

- Zones, areas or sites were mapped at a specific height based on existing controls that may have been in place in existing DCP's.

The current mapped maximum height of buildings generally for residential zones in the towns and villages around St Georges Basin are 8.5m, except for part of the St Georges Basin commercial area, where the mapped height is 8m (which was carried over from the former DCP No. 17).

- Under Clause 4.3 (Height of Buildings) of the LEP in those areas that are not mapped on the Height of Buildings (HOB) map overlay, buildings up to 11m can be considered.

Proponent's Planning Proposal Request

Proponent's Documentation

The proponent's Planning Proposal request was formally received on 1 August 2022 and includes the following documentation (which can be viewed via the hyperlinks):

- [Draft planning proposal](#)
- [Urban design assessment report](#)
- [Traffic impact assessment report](#)
- [Survey plan](#)
- [Concept plans](#)
- [Preliminary water & sewer comments](#)
- [Electrical report](#)
- [Massing views](#)
- [Shadow diagrams sheet 1](#)
- [Shadow diagrams sheet 2](#)

The proponent also submitted a 'commercial in-confidence' feasibility assessment on 12 September (in response to staff feedback provided during the pre-lodgement process that a feasibility assessment should be done). The feasibility assessment is addressed briefly below but has not been made publicly available in accordance with the proponents' request.

Proponents' Economic Feasibility Assessment

The proponent submitted a feasibility assessment but advised that it is 'commercial in-confidence' because it contains "... *indicative sale price information, but also price of acquisition of land and other matters (e.g., projected construction costs etc)*" and requested that it not be made publicly available as a result.

The assessment, dated 7 September 2022, examined the feasibility of two scenarios:

- Three (3) storey apartment building with one level of basement parking
- Four (4) storey apartment building with two levels of basement parking

The feasibility assessment was based on plans and cost estimates provided by the proponent. It includes a monthly cashflow over a 21-month period and showed profitability of approx. 10% for the three level scenario and 12 % for the four level scenario.

Proponents' explanation of provisions

The Planning Proposal request seeks to amend the LEP to:

- Rezone the subject land to R3 Medium Density Residential
- Increase the maximum Height of Buildings (HOB) for the subject land to 13 m.

Proponent's objectives and intended outcomes

The proponent's PP report states that the objectives are:

- *To enable the subject site to be developed by way of multi-storey medium density residential development (an apartment building).*
- *To enable development to occur on part of the subject land up to 13m above natural ground level.*

The Planning Proposal report also states that the intended outcomes are:

- *The provision of housing in a well serviced location that is within walking distance to local shops, community facilities, and public transport.*
- *The provision of additional diverse housing and housing choice*
- *The responsible utilisation of well-located land*
- *A positive contribution to the character of Sanctuary Point*
- *A positive economic and social contribution to the local shopping centre*

It is noted however that the proponents' Urban Design Assessment states that the "...*ground floor height should be high enough to allow for alternative commercial uses at the ground level, in order to provide for building flexibility and adaptability to respond to the needs of the local area in the future, with a medical or café use considered a potential use for adaptation.*"

Comparison of the low and medium density zones

A comparison of the objectives and the pertinent permissible uses for the R2 (adjoining) and R3 (requested) zones is provided in Table 1.

Table 1 – Zone objectives and pertinent permissible uses in the R2 and R2 zones

	R2 Low Density Residential zone	R3 Medium Density Residential zone
Zone objectives	<ul style="list-style-type: none"> To provide for the housing needs of the community within a <u>low-density residential environment</u>. To enable other land uses that provide facilities or services to meet the day to day needs of residents. To provide an environment <u>primarily for detached housing</u> and to ensure that other development is compatible with that environment. 	<ul style="list-style-type: none"> To provide for the housing needs of the community within a <u>medium density residential environment</u>. To provide a <u>variety of housing types</u> within a <u>medium density</u> residential environment. To enable other land uses that provide facilities or services to meet the day to day needs of residents. To provide opportunities for development for the purposes of <u>tourist and visitor accommodation</u> where this does not conflict with the residential environment.
Pertinent uses permissible in both R2 and R3 zones.	Boarding houses; Centre-based childcare facilities; Community facilities; Dual occupancies; Group homes; Home-based child care; Home businesses, Home industries; Neighbourhood shops; Places of public worship; Respite day care centres; Secondary dwellings; Seniors housing (Housing SEPP)	
Pertinent uses permissible in one but not the other zone	Bed and breakfast accommodation; Dwelling houses; Health consulting rooms; Semi-detached dwellings;	Emergency services facilities; Home occupations; Hostels; Information and education facilities; <u>Multi dwelling housing</u> ; Registered clubs; <u>Residential flat buildings</u> ; <u>Shop top housing</u> ; Tourist and visitor accommodation; Veterinary hospitals

CL22.545

Local Character

With funding provided by the Department of Planning and Environment (DPE), consultants RobertsDay prepared a Shoalhaven local character assessment report in consultation with Council to assist with future related work.

The report titled [Guiding Future Growth – Shoalhaven Character Assessments](#) was completed in 2020. The RobertsDay report describes the existing character of Sanctuary Point as follows:

A middle order centre that sits on St Georges Basin, surrounded on three sides by the estuary, Sanctuary Point is a suburban and family-friendly town. It is a residential settlement supported by a retail and community core, with the amenities of Vincentia

and the beaches of Jervis Bay a 10-minute drive away. Large suburban family homes in traditional post-war styles, clear public-private delineation and curved roads all add to the suburban character of this settlement. Sanctuary Point provides basic retail, services and recreational uses for surrounding settlements, offering a family-friendly and convenient place to live in a well-loved waterfront area.

The report describes the following 'elements to retain' in Sanctuary Point:

- *Good selection of retail, services, recreation and community uses*
- *Simple built form character featuring brick and modest setbacks*

The report also describes the following 'elements to improve' in Sanctuary Point:

- *Amenity of the retail centre and its role as a community hub*
- *Lack of landscaping in newer areas*
- *Poorly serviced open spaces*
- *Poor permeability*
- *Estuarine and public foreshore assets*

Preliminary Assessment

DPE's [LEP Making Guideline](#) was released in December 2021, replacing the 'Guide to preparing planning proposals' and 'Guide to making LEPs'. Council's Planning Proposal Guidelines will be reviewed in coming months to ensure consistency with the new Guideline which contains more detailed criteria than was provided in the preceding guidelines. Hence, the assessment undertaken below focuses primarily on DPE's Local Environmental Plan Making Guideline (the Guideline).

DPE's Local Environmental Plan Making Guideline states that a Planning Proposal must have strategic merit and site merit to be progressed.

Strategic merit is the degree to which a proposal is consistent with the NSW strategic planning framework, which includes a range of NSW Government and endorsed Council documents, and Ministerial directions issued under section 9.1 of the NSW *Environmental Planning and Assessment Act, 1979*.

Site merit is the site-specific environmental, social, and economic impacts/cost/benefits of the proposal.

Preliminary assessments of strategic and site merit are provided below.

Preliminary Strategic Merit Assessment

A preliminary strategic merit assessment is provided below. The following overarching strategic documents have been considered.

- Illawarra Shoalhaven Regional Plan 2041 (ISRP)
- Shoalhaven 2032 Community Strategic Plan (CSP)
- Shoalhaven 2040 (Local Strategic Planning Statement - LSPS)
- Shoalhaven Growth Management Strategy (GMS) (V1)
- Jervis Bay Settlement Strategy (JBSS) 2003
- Shoalhaven Affordable Housing Strategy, December 2017

In summary, the proponents' Planning Proposal is considered partly consistent and partly inconsistent with the strategic framework.

- The proponents' proposed Planning Proposal is generally consistent with the strategic framework as it seeks to facilitate provision of additional housing within an existing urban area close to a range of services and social infrastructure associated with the Sanctuary Point commercial centre.
- However, Council's strategic planning documents all include priorities/actions that any such proposal must consider the lifestyle needs of the adjoining residents, and potential impacts on local character and amenity.
- The proposed increase in building height provisions would potentially enable 4 storey building(s) to be considered. The proponents' documentation does not adequately demonstrate that this height increase will not have unacceptable impacts on local amenity and character. This is also discussed further under 'Preliminary Site Merit Assessment' below.

Illawarra Shoalhaven Regional Plan 2041 (ISRP)

The Planning Proposal is generally consistent with this plan as it seeks to facilitate provision of additional housing within an existing urban area close to a range of services and social infrastructure associated with the Sanctuary Point commercial centre.

The proponents' Planning Proposal report contends that the provision of medium density development will increase the supply and diversity of housing within an existing urban area, close to commercial and retail facilities and public transport (bus services).

Shoalhaven 2032 Community Strategic Plan (CSP)

Priority 2.2 is to 'Manage growth and development with respect for environmental and community values'. One of the 'outcomes' sought under this priority is that 'Development contributes to and enhances neighbourhood character'.

The subject land is well located to allow some form of residential development. The proponents' Planning Proposal report contends that the proposal will improve the viability and vibrancy of the Sanctuary Point Village centre. The provision of additional housing in this location will help assist the viability of the Sanctuary Point commercial centre.

The proposed increase in building height provisions is however not considered appropriate given the nature of existing development in the locality, potential impacts on adjoining residential properties, and the precedent of increasing the height in this location.

Shoalhaven 2040 (Local Strategic Planning Statement - LSPS)

Priorities relevant to this Planning Proposal request include:

Planning Priority 1: Providing homes to meet all needs and lifestyles

Planning Priority 3: Providing jobs close to home

Planning Priority 13: Protecting and enhancing neighbourhoods

Comments:

- The subject land is close to the Sanctuary Point Commercial Centre, and as such, is well located to accommodate appropriate residential development.

CL22.545

- As noted in the proponents' Planning Proposal: Increasing the number of people living in and around centres supports the viability of shops and businesses.
- However, any proposal to rezone the site to medium density residential and increase the building height controls needs to be balanced against the potential impact on the amenity of the adjoining residents, and consideration of potential impacts on local character and amenity.

Shoalhaven Growth Management Strategy (GMS) (V1)

The proposal to rezone the subject land to R3 and also increase the building height provisions to 13m is considered to be inconsistent with the following strategic directions in this Strategy:

C.5 Create connected urban areas that reinforce the strengths, individual character and identity of each place.

C.10 Encourage growth which promotes community wellbeing and quality of living throughout various stages of life.

Comment: the proposed building height increase would potentially impact on the amenity of adjoining residents and on this basis is not consistent with this direction.

EN.4 Create urban environments that meet community needs.

Comment: the proposed building height increase would potentially reduce solar access for adjacent dwellings located on Gibson Crescent and on this basis is not consistent with this direction.

Strategy Section 5 summarises the existing endorsed structure plans and settlement strategies including the Jervis Bay Settlement Strategy, which is discussed below.

Strategy Section 6 provides a hierarchy of settlements in the LGA. The St Georges Basin district (including Sanctuary Point) is identified as one of several 'major towns', which should have a mix of low and medium density dwellings.

Jervis Bay Settlement Strategy, 2003

This Strategy recognises the need to identify and investigate opportunities for appropriate infill development, urban renewal and consolidation within existing urban areas in the longer term given the environmental constraints and finite social infrastructure and services (refer to Actions 1 and 2 under 'Urban Renewal'). In this regard, the JBSS acknowledges the challenge of accommodating future housing demands without adversely impacting on local character.

The site is well located and large enough to accommodate an appropriate form of residential development. However, rezoning to R3 combined with an increase in the maximum height of buildings to 13m has the potential to substantially impact on the amenity of neighbouring dwellings and also possibly have an impact on local character.

Shoalhaven Affordable Housing Strategy, December 2017

The subject land meets the numerical criteria of being within 600 m of B2 zoned land at Sanctuary Point. The proponent's documentation indicates an intention to provide a mix of two and three bedroom units. No one bedroom units are proposed and there appears to be no intention to specifically provide an 'affordable housing' product. Hence, the proposal is only partly aligned with Council's Affordable Housing Strategy.

The proponents should be requested to consider the provision of one bedroom units if they proceed with development.

CL22.545

Ministerial Directions under s 9.1 of the Environmental Planning and Assessment Act

The relevant Ministerial Directions are briefly discussed below.

1.1 Implementation of Regional Plans

The proposal is broadly consistent with the Illawarra Shoalhaven Regional Plan and therefore with this Direction. Refer to earlier discussion.

5.1 Integrating Land Use and Transport

The proposal is generally consistent with this Direction. The subject land is located within walking distance of the Sanctuary Point commercial centre and associated services and facilities. Bus services operate between Nowra/Bomaderry and the Bay and Basin area and locally.

6.1 Residential Zones

The proposal is generally consistent with this Direction apart from concerns about potential impacts on local amenity, loss of privacy, overshadow etc which are relevant to (1)(d) of this Direction. See discussion below under Preliminary Site Merit Assessment.

Precedent

The proposed increase in the maximum height of buildings (HOB) on the subject land to 13m would potentially set a precedent for the towns and villages around the St Georges Basin waterway given the inconsistency with the existing height controls that are discussed earlier in this report.

The Anson Street example discussed below is also relevant to this proposal given that it relates to the adjoining town of St Georges Basin.

Island Point Road (Anson Street) Planning Proposal

In 2019, Council finalised a Planning Proposal (PP023) to reduce the mapped HOB over Lots 1 and 6 in DP1082382 at Island Point Road (Anson Street), St Georges Basin, from 13m to 8.5m (and retain the 8 m HOB that applied to part of Lot 1).

The 13m building height limit was introduced when the LEP commenced in 2014, in response to landowner submissions as part of the process of transitioning to the Standard Instrument LEP format. It was first recommended at the time that the height increase not be supported as it was inconsistent with the former DCP No. 17 that applied to the locality.

Of relevance to the current Planning Proposal request, the rationale for PP023 was essentially that a 13m HOB was considered inconsistent with the existing and desired future character for the St Georges Basin area.

Preliminary Site Merit Assessment

DPE's Local Environmental Plan Making Guideline includes the following site merit considerations:

- the natural environment on the site to which the proposal relates and other affected land (including known significant environmental areas, resources or hazards)

- existing uses, approved uses, and likely future uses of land in the vicinity of the land to which the proposal relates
- services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.

Potential impacts on adjoining properties

The proposed increase in maximum building heights to 13 m (from 8.5 m and 11 m) would potentially have significant adverse impacts on the amenity of neighbouring residential properties. The proponents' information suggests that No's 11, 13 and 15 Gibson Crescent would be severely impacted by overshadowing, reduced solar access, and loss of privacy.

- The midwinter shadow diagrams included in the Urban Design Assessment Report fail to adequately identify the existing dwellings and associated structures (including a swimming pool at 13 Gibson Crescent, which would be overshadowed from 2 pm onwards).
- Although the dwelling at 15 Gibson Crescent is not shown on the shadow diagrams, it appears that the solar panels would also be affected by shadowing. The orientation of the house 15 Gibson Crescent suggests that the living area would also be overshadowed.
- As shadow diagrams have not been provided for the mid-summer scenario, overshadowing for this time of year has not been assessed for either of the two most adversely affected adjoining properties.
- The Planning Proposal report claims that the urban design assessment has found the proposal competently manages the nine design principles of SEPP 65. The following comment is offered in regard to two of the principles:
 - *Principle 1 – Context and Neighbourhood Character.* As discussed further below, the proposed increase in building height provisions is not considered to be in keeping with local character. The proponents' shadow diagrams suggest that there would be significant overshadowing of the adjoining properties to the south/south-east (including a swimming pool in the rear yard of 13 Gibson Crescent) could potentially have health impacts on the occupants (e.g. arising from reduced use of the pool).
 - *Principle 2 – Built Form.* "Good design achieves a scale, bulk and height appropriate to the existing and desired future character of the street and surrounding buildings". Established one and two storey developments help establish the existing character. The desired future character for the area has also been influenced somewhat by the zoning of land on the north side of Paradise Road to R3 with a height limit of 11 metres.

The proponents' Urban Design Assessment recommends that consideration be given to "...greater setbacks to the north-east side boundary, in return for relaxed setbacks to the south-west as a best means of equitably sharing setbacks and mitigating impacts." The Assessment says that a 9 m setback should ideally be applied to the residential property to the NE. It is unclear if this is intended to mean to the boundary with No's 11, 13 and 15 Gibson Crescent or to No 56 Paradise Beach Road.

Page 6 of the Urban Design Assessment also says:

There should also be 9m setbacks to the rear, although as these are vacant sites and non-rectilinear it is considered a 6m setback to the rear would achieve the objectives of the ADG for visual privacy.

The above statement possibly refers to No's 13 and 15 Gibson Crescent, however these properties are not vacant, and they will be impacted by loss of privacy, overshadowing etc.

Local Character

The proponents' Urban Design Assessment states that:

The proposed design is considered to be compatible with the character of the area without imitating the existing built form stock, much of which has a poor quality of design, and will be an harmonious addition to the area.

The Councils staff assessment, however, is that the proposed 13m height limit would have a significant impact on local character given:

- The comparative height difference between the proposed development (4 storeys) and existing development in Sanctuary Point (1 and 2 storeys).
- The site is prominently located on Paradise Beach Road (main entry road) and is relatively elevated.
- The bulk and scale of the suggested 4 storey apartment building would differ significantly from that of the existing development in the locality.
- Under the LEP 2014, the 'maximum height of buildings' at Sanctuary Point and surrounding townships of St Georges Basin and Vincentia etc is 8.5m and 11m.

Internal feedback

Strategic Transport

- The proponents' traffic study has used 2014 traffic data and ideally should be updated with contemporary data at the appropriate point but is considered adequate for the purpose of progressing a Planning Proposal.
- A closer examination of the driveways would be required to ensure ramping up/down of the driveways does not create unsatisfactory pedestrian issues along the frontage.
- The description of proposal suggests sight distance at the driveway exit will be satisfactory however:
 - There appears to be non-compliant obstructions
 - Parking restrictions are likely to be required to ensure satisfactory sight distance(s)
- Implications of the motel located on the opposite side of Paradise Beach Road should be considered (at DA stage).
- If increased densities are to be considered in Sanctuary Point, a broader parking demand analysis should be undertaken to determine if additional parking will be required. The Shoalhaven Contributions Plan may then need to be updated to ensure that new developments contribute to the cost of providing increase in car parking

Shoalhaven Water

Shoalhaven Water has no objections to the Planning Proposal proceeding and provided technical feedback to the proponent in December 2021

City Development

- The adjoining R3 land is on the opposite side of Paradise Beach Road. The predominant adjoining zone is R2 Low Density Residential.

- Rezoning the subject land to R3 would be at odds with the surrounding development, as would the proposed height increase.
- Notes that the proponents' Planning Proposal report refers to *R3 Mixed Use Business*. Is this meant to be *R3 Medium Density Residential* or *B4 Mixed Use Business*?

Conclusion

Any Planning Proposal should only be progressed if it has both strategic merit *and* site merit. Given the subject land's position and close proximity to the Sanctuary Point commercial centre there is considered to be strategic merit in rezoning the land to enable medium density residential development provided impacts on local character and amenity are acceptable.

The proponent's proposed 13m building height limit would potentially result in unacceptable impacts on local character and amenity. Adjoining residential properties, particularly those on Gibson Crescent would potentially be severely impacted if a building of the scale depicted in the proponent's conceptual architectural drawings is built.

Thus it is recommended that Council progress a Planning Proposal that seeks to:

1. Rezone the subject land to *R3 Medium Density Residential*; and
2. Apply an 8.5m building height limit to the subject land.

Community Engagement

The proponent's documentation was made available on Council's pre-gateway Planning Proposal page.

The following community stakeholders were notified: adjoining/nearby landowners, the Basin Community Form (Community Consultative Body) and Sanctuary Point Community Pride.

In response, six (6) submissions were received, including from the three properties to the rear (No's 11, 13 and 15 Gibson Crescent). All submissions were opposed to the proposed rezoning and height increase. The issues raised are listed below and are summarised in **Attachment 1**.

- Loss of privacy – particularly the properties off Gibson Crescent
- Loss of solar access (properties off Gibson Crescent)
- Impacts on local character, (noise, dust, visual impact)
- Traffic and car parking
- Children safety (overlooking the school playing field)
- Precedent of the proposed building height increase
- Affordable housing / housing affordability
- Social impacts (increased vandalism, increased competition for limited local jobs, increased strain on local services, e.g. health, primary school placements)

One submission acknowledged that the site is well suited for development but encouraged Council to not increase the height provisions above 11m. One submission stated that a far smaller medium density development consisting of simple townhouses would be better suited and would not impact the community as significantly.

If the land is ultimately rezoned, further opportunities for community input would result as part of the development application process.

Policy Implications

An 8.5m height limit would be consistent with other residential zones in the area and in keeping with the scale/character of the existing adjacent residential development. This height would also be consistent with land in close proximity to other centres in the broader area.

It would however be inconsistent with the majority of other R3 zones city wide, where the height limit is generally 11m (to enable some flexibility given the development nature of the zone). Given that the subject land is currently being specifically considered, a specific height in this circumstance is considered appropriate.

Financial Implications

If Council resolves to progress a Planning Proposal that seeks to rezone the land to enable residential development, the appropriate fees will be applied to recoup costs incurred by Council. A recommendation has been included to confirm that the Planning Proposal would be treated as 'major' in terms of the applicable fees.

Risk Implications

If Council does not support the proponent's Planning Proposal as submitted, or it does not make a decision within 90 days of receipt, the proponent will have the option of applying to DPE for a pre-Gateway review.

CL22.545

Summary of Initial Submissions – Paradise Beach Road Planning Proposal

Submitter	Issues
#1 (D22/358647)	<p>Proposal will impact on son's health and wellbeing who requires outdoor space for stimulation and regulation.</p> <p><u>Noise</u> concerns</p> <p><u>Loss of privacy and overlooking</u>: future residents would have full view into my house and yard.</p> <p>Reduced <u>solar access</u> (impact the growth of gardens, drying of clothes, impact on solar panels, increased heating costs).</p> <p>Increased <u>traffic</u> on Paradise Beach Road and reduced <u>car parking</u>, especially during school pick up and drop offs. Increased danger to local wildlife and children.</p> <p>Could reduce <u>employment</u> opportunities and create extra demand for <u>school placements</u>. Potential <u>social</u> problems within the community, which can increase the risk of crime and community safety. Increase strain on services, such as health.</p> <p>Proposed building overlooks the school playground (privacy and safety issues).</p> <p><u>Local character</u>: Building of this size does not suit the current community... A far smaller development consisting of simple townhouses would be better suited and wouldn't impact the community as significantly as the above proposal, and it is more ideal in keeping with the current building landscape.</p> <p><u>Precedent</u>: would open the doors for further developments.</p>
#2 (D22/337548)	<p>Current zoning is Low Density Residential. Consulted with Council on chances of the church land being rezoned for a Commercial Office prior to building. Then Councillor [REDACTED] enquired on our behalf & [REDACTED] [former Director of Planning, Environment and Development] said that any rezoning from Med-Low Residential would not occur. Proceeded with building on this basis.</p> <p>Concerns:</p> <p>Increase <u>car parking</u> demand at Sanctuary Point shops - will eventually cost Council to upgrade services.</p> <p><u>Loss of privacy and overlooking</u>: Proposed building will overlook; backyard where grandchildren swim & play; my neighbours' home & backyard Building will look directly into the Primary School</p> <p><u>Local character</u>: We are a country Village not Sydney or Wollongong.</p> <p>Proposal would set a <u>precedent</u>. There are no like developments in our area.</p> <p>Property values: proposal will reduce value of my and neighbouring properties by hundreds of thousands of dollars.</p> <p>Impacts on <u>local amenity</u>: <u>noise, waste, vandalism</u>.</p> <p>Support medium density across the but that backs onto the golf course, not into people's lounge rooms.</p>
#3 (D22/355696)	<p>Shocked and offended at the lack of consideration for the people living behind this massive building and negative impacts that would be forced upon us.</p> <p><u>Loss of privacy and overlooking</u>: multiple levels of apartment windows would allow residents to look straight down into my entire property and home. My family and I spend most of our time in the backyard. My recreation and alfresco area faces my back fence.</p> <p>Reduced <u>solar access</u>: Shading from early afternoon. Whole property will be in its shadow in winter. Concerns about ability to dry clothes, health of lawn, dampness.</p> <p>Solar panels will not be able to collect light. Electricity bills will increase as a result.</p> <p><u>Local amenity</u> impacts: <u>Noise</u> and <u>dust</u> concerns, <u>during and post construction</u>. Tree lined view would be replaced by a massive building.</p> <p>Local character: Proposal would not blend into suburb – would be out-of-place.</p>
#4 (D22/346116)	<p>The proposal for a four storey apartment building is too high and inappropriate for the area. Sanctuary Point is a small village settlement with no buildings of a greater height than two storeys. Although I'm sure you're already aware of this and similar concerns in St Georges Basin were ignored.</p> <p>Also, the homes situated behind the block would be badly affected by this building proposal. It would block out all northerly light and warmth. Surely you can appreciate this issue?</p>

	<p>The building proposal will not ease rental issues in the area. The price of the units will only be within the reach of the wealthy and investors. This would have been an opportunity for council to ease these pressures for locals.</p>
#5 (D22/335898)	<p><u>Privacy</u>: the proposal seeks to rezone the site to medium density and build a four story apartment block with cafe and medical centre on the ground floor, increasing the height to 13 metres. An open communal space on the rooftop is also proposed. People in the apartments facing Paradise Beach Road and people gathered on the rooftop community space would have a view of our fenced private yard (garden and clothes line) and front bedrooms incurring a significant loss of privacy.</p> <p><u>Precedent</u>: there are no other four story buildings in Sanctuary Point and this precedent is not in keeping with the suburb's architecture. Four stories is too high.</p> <p><u>Traffic</u>: The assessment report states that "there are no traffic or transport issues of significance". This is questionable, with 34 apartments directly opposite or "30 plus retail (café & medical centre)" one could roughly estimate a dramatic increase in traffic. A possible estimate could be about 60 cars minimum coming and going every day. If the café and medical centre are operational, (not an unattractive prospect) where will the cars using those services park? It seems unlikely that they would be able to access the electronic gates for residents so they would have to park on the street as no front parking is noted on the design.</p> <p>Site is a <u>good site for development</u> and would provide more <u>needed housing options</u> and a great opportunity for developers, but this should not be at the cost of negatively impacting the quality of life, privacy and noise of those living opposite.</p> <p>Encourage the Council to adhere to the <u>11 m height limit</u> and anticipate that if it was a three story development there would be less possibility of losing our privacy, less traffic and <u>noise</u>.</p>
#6 (D22/37392)	<p>Proposal silent on improving <u>housing affordability</u> while also catering to a socially diverse residential population representative of all income groups. Housing will not be affordable due to <u>development costs</u>.</p> <p>Impacts on adjacent areas: Paradise Beach Road (The main road), Gibson Crescent and the primary school.</p> <p>Privacy concerns as a parent with young children at Sanctuary Point Primary School.</p> <p>Proposal does not achieve positive <u>social and environmental impacts</u>.</p> <p>Project should increase its focus on providing more <u>affordable housing</u>.</p> <p>Proposal should not drastically affect the <u>privacy</u> of the neighbouring homes and primary school and should be in keeping with the <u>local character</u>.</p>

CL22.546 Exhibition Outcomes/Proposed Finalisation - Planning Proposal (PP064) - Willinga Park Equestrian Centre, Bawley Point - Functions

HPERM Ref: D22/280690

Department: Strategic Planning
Approver: Carey McIntyre, Director - City Futures

Attachments:

1. Summary of Community Submissions and Proponent Responses (under separate cover) [⇒](#)
2. Internal Consultation Summary - Proponent Responses [↓](#)
3. Covering letter - Proponent Response to Submissions [↓](#)

Reason for Report

Present the public exhibition outcomes of a Planning Proposal (PP064) for the Willinga Park Equestrian Centre (Willinga Park) at Bawley Point (Proponent - Capital Property Corporation through BBC Consulting Planners).

The PP seeks to change/clarify the planning provisions by making 'function centre' a site-specific permissible use, to broaden the range of events permitted on the site. The proponent is no longer pursuing a secondary element of the PP that sought to allow functions involving up to 350 people (excluding staff) to be '*development without consent*'.

As a result, the report seeks finalise the PP to make 'function centre' an additional permitted use on the site, noting that any proposed expansion of events would require development approval and further assessment.

Note: Council will be briefed on this matter on 27 October 2022.

Recommendation

That Council:

1. Support the proponent's decision to not pursue the secondary (exempt) purpose of the exhibited Planning Proposal (PP064) for functions involving up to 350 people (excluding staff) to be allowed as '*development without consent*'.
2. Amend, adopt and finalise PP064 in accordance with Part 1 to make 'function centre' an additional permitted use (with consent) within the RU2 Rural Landscape Zone under Shoalhaven Local Environmental Plan 2014 on the subject land (Lot 21 DP 1217069 and Lot 33 DP 1259627, Forster Drive, Bawley Point) including:
 - a. requesting the proponent to amend the PP document in accordance with Part 2 and provide a copy to Council staff for review prior to uploading to the NSW Planning Portal;
 - b. forwarding the amended PP064 to the Office of the NSW Parliamentary Counsel (PCO) with a request to draft the amendment to Shoalhaven LEP 2014;
 - c. Issuing a final invoice for the balance of fees outstanding, to be paid by the proponent prior to making the LEP amendment.
3. Note that a future development application (DA) would be subject to public notification in accordance with the Environmental Planning & Assessment Act and Council's *Community Consultation Policy for Development Applications* and that members of the community would have the opportunity to review the DA documentation and to make any necessary submissions.

CL22.546

4. Acknowledge that technical studies to address relevant traffic, access, environmental and amenity impacts (such as effluent disposal, noise and light spill) arising from the proposed 'function centre' use will need to be prepared by the proponent and submitted as part of the DA documentation for assessment; and
5. Independent of the PP and DA process, offer to facilitate a meeting and participate in discussions between the proponent and relevant NSW State agencies with a possible view to securing a more permanent alternate access arrangement to Willinga Park for heavy vehicles from the Princes Highway.

Options

1. As Recommended

Implications:

'Function centre' would be made an additional permitted use within the RU2 Rural Landscape zoned area part of the site. This would potentially allow a wider range of events/functions (unrelated to equine activities) subject to development approval, enabling the existing significant facilities to be more fully utilised, contributing to the tourism profile of Shoalhaven and broader region.

The proponent's decision to not pursue the 'exemption' for events involving up to 350 people means potential impacts arising from holding additional functions, would be appropriately assessed at development application (DA) stage and be managed via development consent conditions. The proponent could seek to modify the existing events approval (DA18/1237) or apply for separate approval(s).

Any future DA would be subject to separate notification and consideration.

2. Finalise the PP as exhibited.

Implications: The exhibited PP included a proposed provision that sought to allow for functions up to 350 people (excluding staff) to occur without development consent. This secondary component of the PP would have meant there would be no planning path available to consider new or cumulative impacts¹. Further, if functions are permitted to take place as "*development without consent*" the approved Event Management Plan linked to DA18/1237, with amenity controls, would not be triggered.

Just over half the submissions opposed the PP, expressing concerns about frequent, possibly daily, functions with up to 350 people (excluding staff) being permitted as "*development without consent*" specifically because the potential traffic, environmental and amenity impacts have not been assessed and are therefore not quantifiable.

This option would not address these community concerns. In response, the proponent has decided to not pursue the 'exempt' provisions in the PP. Option not recommended.

3. Another Recommendation

Implications: Would depend on the recommendation, but could include deferring the matter or resolving to not proceed.

¹ The EP&A Act notes that: 'Environmental assessment of the development may nevertheless be required under Division 5.1 – Environmental Impact' and other legislation would therefore still apply, for example the Protection of the Environment Operations (POEO) Act 1997 for any noise or pollution impacts. Any licence or permit required from a public authority may still require an environmental assessment.

Background

Subject land

The PP applies to part of the 'Willinga Park' property at Lot 21 DP 1217069 and Lot 33 DP 1259627 Forster Drive, Bawley Point (See **Figure 1** below).



Figure 1 - Aerial Photo

The PP applies to the land zoned *RU2 Rural Landscape*. It does not apply to land within Lot 21 that is zoned *C2 Environmental Conservation* under Shoalhaven Local Environmental Plan (LEP) 2014 as shown in **Figure 2**.

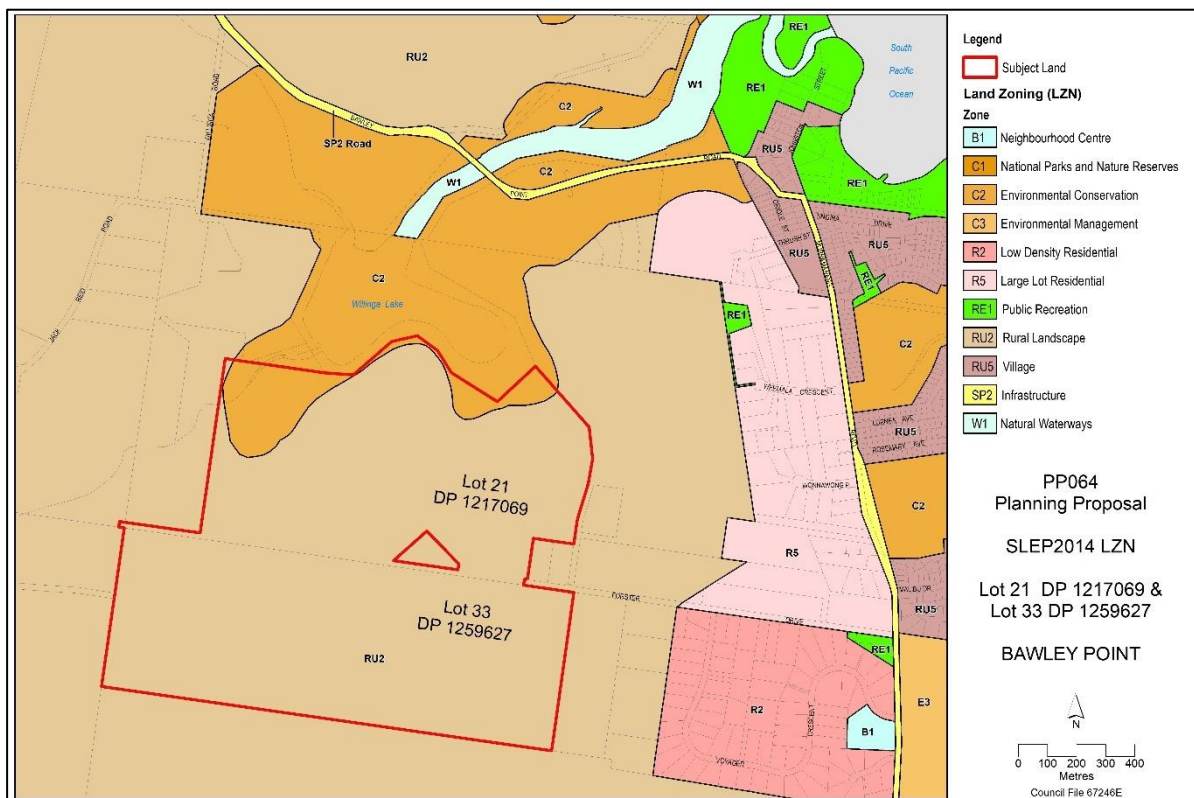


Figure 2 - Zoning under Shoalhaven LEP 2014

CL22.546

Planning Proposal (PP) Request

Council initially received a proponent initiated Planning Proposal (PP) request for Willinga Park on 29 April 2021 that sought to amend the LEP to:

- make 'function centre' an additional permitted use, meaning that a wider range of events could potentially be held at the site with approval; and
- make functions of up to 350 people (excluding staff) 'development without consent' (meaning development consent is not required).

In this context, Function centre means a building or place used for the holding of events, functions, conferences, and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.

The initial PP request generated a large volume of community submissions. The matter was reported to Council on 5 October 2021. The [report \(DE21.114\)](#) includes detailed background on the development history, analysis of the proposed LEP amendments and a summary of the preliminary community feedback.

In response, Council resolved (MIN21.688) to support the PP as submitted (both components) and submit it to the NSW Government for initial Gateway determination.

Gateway conditions

The resulting Gateway request was made to the NSW Department of Environment & Planning (DPE) on 10 November 2021 and a favourable [Gateway determination](#) was issued on 10 December 2021, with a 12-month timeframe (completed before 10 December 2022).

As required by the determination, the proponent was requested to make the following changes to the PP prior to public exhibition:

- *Provide an assessment of the proposal against the current Illawarra Shoalhaven Regional Plan (dated May 2021) and Shoalhaven Local Strategic Planning Statement and to remove reference to the superseded South Coast Regional Strategy; and*
- *Exclude land zoned C2 Environmental Conservation from the proposed Schedule 1 Additional Permitted Use clause and Local Clause Map*
- *Include an estimate of potential number of jobs that could be generated because of the planning proposal*
- *Update the Project Timeline.*

The pre-exhibition Gateway conditions were satisfied, enabling the PP to be publicly exhibited. The public exhibition is discussed below.

Public Exhibition

The PP was publicly exhibited on Council's website from 25 May to 24 June 2022 (30 days).

The exhibition package was made up of the following:

- [1. PP064 - Exhibition Notice - \(115kb\)](#)
- [2. PP064 - Explanatory Statement - \(218kb\)](#)
- [3. PP064 - FAQ Planning Proposal - \(324kb\)](#)
- [4. PP064 - FAQ Existing Approvals & Operations - \(782kb\)](#)
- [5. PP064 - Planning Proposal Document - \(2,626kb\)](#)

6. PP064 - Gateway Determination - (216kb)

A basic questionnaire was also provided via a dedicated [Willinga Park Planning Proposal Get Involved project page](#) to assist with feedback.

Community Submissions

One hundred and eleven (111) submissions were received - approximately 41% in support and 59% opposed.

Attachments 1 and 2 provide relevant submission summaries – they also include proponent feedback and staff comments.

Copies of the actual submissions can be made available to Councillors if requested.

Positive Submissions

Just over 40% of the submissions received supported Willinga Park (and by inference also the PP). The key summarised comments indicate a level of support in the community and note that Willinga Park:

1. is a world-class facility that is a great asset to the local area and wider community
2. provides local employment and the proposal will create an additional 17 jobs
3. supports the local economy and benefits local businesses
4. infrastructure has sufficient capacity to facilitate additional events and functions
5. supports local community groups and has been a good neighbour; and
6. there is support for the PP from multiple NSW Government agencies; and
7. the range of permitted uses will grow the economy and culture of the region - will also allow Willinga Park to deliver social and educational benefits and to reach its potential.

Willinga Park has grown into and is recognised as a unique, world class equestrian centre. Hosting a broader range of functions is consistent with the strategies and actions identified in the Shoalhaven [Destination Management Plan](#) (pp36, 49) where Willinga Park is identified as a venue with the potential to “provide excellent event opportunities in the future”. The Shoalhaven 2040 [Local Strategic Planning Statement](#) (Planning Priority 7, p36) also identifies Willinga Park as a suitable venue to help deliver a year-round visitor economy.

Therefore, there is strategic merit/justification to finalise an amendment to the LEP to make ‘function centre’ a permitted use (Option 1).

Negative Submissions

Five (5) submissions fundamentally opposed the PP. The balance of the submissions (59%) raised concerns about the proposed ‘exempt’ provisions of the PP which sought to allow functions with up to 350 people (excluding staff) as ‘*development without consent*’.

The **key concerns** raised:

1. Cumulative, negative amenity impacts - increased traffic, noise and light pollution (spill)
2. Continuing degradation of local infrastructure (roads) due to increased vehicular traffic (cars, floats and heavy vehicles)
3. Direct access to Willinga Park from the Princes Highway is preferable
4. Detrimental impacts on water quality of Willinga Lake exacerbated

5. Supporting studies relate to DA18/1237 (Events) - not updated and not relevant to the impacts of this proposal
6. Function centre use is incompatible with the RU2 land-use zone and local character due to lack of infrastructure and/or services

Comments on the broad areas of concern are provided below

Proponent's Response to Submissions

The proponent requested copies of all submissions – the documents were provided in late July 2022 via the GIPA process.

In this regard, DPE's [Local Environmental Plan \(LEP\) Making Guideline \(December 2021\)](#) states:

"If the planning proposal is proponent-initiated, the proponent should have the option to respond to Council on any issues raised in submissions received. The Council should provide a copy of the submissions to the proponent. This gives the proponent the opportunity to address or redress issues raised in submissions, including amendments to the proposal.

"Depending on the level of stakeholder interest and number of submissions received, proponents should be given between 5-25 working days to provide a response"

The proponent's final responses to the points raised were received in early September 2022 and they are incorporated into the attachments to this report

The proponent advised that they no longer wish to pursue the secondary provisions of the PP which sought to make functions involving up to 350 people (excluding staff) 'development without consent'. The following is an extract from their response (**Attachment 3**):

"the Proponent does not [emphasis added] press that part of the owner-initiated Planning Proposal which seeks to make functions with a capacity of less than 351 persons as a type of development which is permissible without consent. Accordingly, having regard to the submissions which have been made, the Proponent now only seeks an amendment to Shoalhaven LEP 2014 so as to make 'function centre' a use which is permissible with consent at Willinga Park (except on the part zoned C2 Environmental Conservation).

Further, the proponent acknowledged (**Attachment 3**) that, should Council support the PP (as amended), a Development Application (DA) would be necessary and, whilst not pre-empting this, provided the following indicative list of likely function types:

- business conferences;
- product launches;
- training seminars/classes/workshops;
- ceremonies (awards dinners, graduations, presentation nights etc);
- exhibitions/trade shows;
- community events/ gatherings, Government disaster emergency response, forums;
- fund raisers; and
- concerts/recitals.

The exclusion of 'Weddings' was emphasised. It was also emphasised that the type of functions intended to be hosted "*are those which will enhance, not diminish, the established high standard of the estate*".

Council Staff Comment:

Opening Note - external submissions are summarised and the proponent's full response to the issues raised is at **Attachment 1**. Staff comments are included as appropriate.

The key community concerns appear to both directly and indirectly relate to the secondary (exempt) purpose of the exhibited PP. The underlying theme being, there would be no planning pathway for community concerns about new and cumulative impacts to be considered and assessed.

If the exhibited PP is adopted (Option 2), environmental assessment may nevertheless still be required under legislation, for example the Protection of the Environment Operations (POEO) Act 1997 for any noise or pollution impacts.

The proponent's decision to not proceed with the 'exempt' provisions does not diminish these concerns but, it is welcomed because issues can be assessed via the subsequent DA stage, supported by the required technical studies.

1. Cumulative, negative impacts (traffic, noise, amenity)

In relation to traffic impact, the PP relied upon the traffic report for DA18/1237 (Events) and the development consent conditions:

"In relation to the issue of traffic, the development consent to DA18/1237 (as modified) contains conditions to manage traffic impacts which may arise as a result of the hosting of events at Willinga Park. Given that the events approved by the consent to DA18/1237 are likely to give rise to much greater traffic impacts than those resulting from the types of functions which are sought to be made permissible by this planning proposal, there is no risk of any greater traffic impact being generated by the proposal that would not already be controlled by these conditions of consent."

The premise that the PP would generate a relatively minor increase in traffic compared to that permitted under the consent was generally not supported by Council staff and no traffic study has been prepared to support this claim. The traffic report is not relevant to the PP as it does not address the more permanent traffic impacts that may arise from it.

Environmental impacts such as noise and light spill are also of considerable ongoing concern. In relation to noise, the PP states:

"development consent to DA18/1237 (as modified) contains conditions to manage noise and the acoustic impacts which may arise as a result of the hosting of events at Willinga Park. Given that the events approved by the consent to DA18/1237 are likely to give rise to much greater noise impacts than those resulting from the types of functions which are sought to be made permissible by this planning proposal, there is no risk of any greater acoustic impact being generated by the proposal that would not already be controlled by these conditions of consent."

Currently no noise assessment report has been prepared to support this statement. The proponent has advised (**Attachment 3**) that concerts and recitals (presumably featuring amplified music) are among the types of functions proposed to be hosted. Amplified music and concerts were not assessed under DA18/1237 as the noise assessment report specifically excluded them. For example, the report stated that "*there will be no concerts or similar occurring at Willinga Park for the proposed events*".

Relevant justification (studies) is required to ensure that the potential impacts of allowing more frequent functions (unrelated to equine activities) are appropriately assessed and managed.

The original PP request acknowledged that the ‘exempt development’ provisions had the potential to be problematic. The proponent’s decision not to proceed with these provisions means that, if supported, community concerns in relation to traffic, access, noise and lighting, including cumulative impacts, will be further considered at development application stage.

Continuing degradation of local roads

The PP did not discuss the condition of the local road network but described the means of access to and from the Princes Highway as follows:

[the site] ... is located to the west of Bawley Point on Forster Drive, an east-west aligned all-weather road which connects with Murramarang Road, then Bawley Point Road to the Princes Highway at Termeil.

Long term and continuing degradation of local roads in and around Bawley Point as a consequence of heavy vehicular traffic associated with Willinga Park attracted many comments to which the proponent has responded (**Attachment 1**) - and summarised as follows:

- *Heavy vehicle movements are not anticipated to be generated by the very large majority of functions*
- *The existing road infrastructure is capable of accommodating traffic generated by functions (which will be likely to occur at a typical frequency of 2 per week)*
- *Local road conditions in and around Bawley Point are consistent with road conditions throughout the Shoalhaven generally (i.e., damage is symptomatic of the general status of roads)*
- *Willinga Park does not generally operate in the period mid-December to mid-January, [therefore] it is not adding to traffic volumes at peak time and the traffic volume it generates at other times is significantly below the design capacity of the roads.*
- *traffic generated by Willinga Park at any time is inconsequential when compared to the summer holiday period season traffic influx*
- *the part of Forster Drive, constructed by Willinga Park, shows no sign of degradation and is one of the best local roads in the locality.*

Internal Council staff feedback suggests that the capacity of the local road network to accommodate the additional traffic has potentially not been adequately assessed by any traffic study received to date. Thus a traffic study is required to consider the cumulative impacts of the approved DA18/1237 (Events) and any new ‘function centre’ use. This will be required to support any development application that seeks to broaden the range of functions/events permitted at Willinga Park and to also, via the submission of a DA, assess the cumulative impacts of the additional traffic, including the capacity of the existing road infrastructure/network and whether alternate access (for heavy vehicles) is required.

Direct access from the Princes Highway

On this key concern, the proponent responded (summary) as follows:

- *the management team at Willinga Park has no foreseeable new plans for further expansion of the facilities at Willinga Park (other than a DA for functions, which is dependent (of course) on the Planning Proposal);*

CL22.546

- *heavy vehicle use will therefore be limited to the normal operations of the estate as opposed to new construction;*
- *the Willinga Park team has no plans for, or any intention to seek, a permanent access off the Princes Highway: rather, any such access would be on an ‘as needs’ basis as the cost would be prohibitive and unjustifiable given the adequate and functional existing access arrangements off Forster Drive;*
- *in the event of an unforeseeable situation arising relating to abnormal heavy vehicle use the Willinga Park team will investigate and consider temporary/ time-limited use of the access road off the Princes Highway (subject to appropriate approvals).*

There is community concern about continuing degradation of local roads caused by heavy vehicle usage (construction traffic), approved events (horse floats and trailers) and the cumulative impact of additional functions, unrelated to equine activities. Internal Council staff comments suggest that associated traffic, particularly heavy vehicles, has affected road conditions in the vicinity. The proponent however does not agree that Willinga Park is responsible for deteriorating local road infrastructure and also does not agree that alternate permanent access to the Princes Highway is necessary, suggesting that the cost of such a new access would be “*prohibitive and unjustifiable given the adequate and functional existing access arrangements off Forster Drive.*”

Notwithstanding, the proponent conceded that if an unforeseeable situation were to arise where heavy vehicular access is required, they would be willing to consider/investigate, subject to approvals, the provision of temporary access similar to that enabled under DA18/1867 (soil importation for Show Jumping Arena).

As noted in **Attachment 1**, there is an existing right-of-way (r-o-w) through land owned by the NSW National Parks & Wildlife Service (not currently part of Murramarang National Park) that benefits the land owned by Capital Properties P/L. Independent of the PP and any DA process, the opportunity should possibly be explored with the relevant State agencies, including TfNSW, to see if this r-o-w could be formalised to provide a more permanent legal/practical heavy vehicle access. Council could consider facilitating a meeting and participating in discussions in this regard.

2. Willinga Lake water quality impacts

Concerns were raised about the impact that hosting additional functions might have on the capacity of the existing on-site sewage management system (OSMS) and Willinga Lake. The proponent responded as follows:

- *“The use of existing facilities for the hosting of functions is unlikely to have any unreasonable impact on the local environment. This issue will be further addressed in the DA.*
- *“Current concerns of residents regarding harm to the water quality of Willinga Lake should be reported to and investigated by Council.”*

Internal Council staff feedback noted concerns about the existing OSMS and also its capacity to process the additional effluent. Some of the concerns raised (**Attachment 3**) are already being addressed by the proponent and an effluent disposal report would need to be included in any future DA documentation. It is understood that an updated report is being prepared.

3. Reliance on supporting studies for DA18/1237 (Events)

As noted above there is an undue reliance in the PP on technical studies submitted as part of DA. These studies relate to the development history of Willinga Park, but are not necessarily relevant to the PP.

CL22.546

If the recommendation is supported, a DA will need to be submitted, supported by technical studies to address relevant traffic, access, parking, environmental and amenity impacts (such as effluent disposal, noise and light spill) arising from the use of 'function centre'.

However if Option 2 is pursued, then community concerns about a range of impacts will not necessarily be addressed/managed.

4. Function centre use incompatible with RU2 zone

This is a broader policy issue that was raised in many submissions. The following proponent responses are relevant in this regard:

- *"The world class nature of the facilities at Willinga Park estate lends itself to use for functions, particularly the EEC, whilst still maintaining an environmental quality compatible with the RU2 zoning of the estate and its surrounds.*
- *"The existing zoning will remain unchanged but for the addition of 'function centre' as another permissible use of the Willinga Park estate."*

It is correct that, if the PP to allow Willinga Park to host functions is finalised as recommended, the RU2 zone that applies to the land will not change. The PP does not establish a poor planning precedent as claimed in several submissions. Schedule 1 – Additional Permitted Uses of the LEP already includes provisions for site-specific uses across Shoalhaven. The ability to add additional permitted uses is included in the NSW Government's [standard LEP instrument](#) and, therefore, has state-wide application.

Comments on the broader policy issue of 'function centres' in rural zones is discussed below under **Policy Implications**.

NSW Government Agency Consultation

The following agencies were consulted prior to public exhibition, as required by the Gateway determination:

- [NSW Rural Fire Service](#)
- [Transport for NSW \(TfNSW\)](#)
- [NSW Police](#)

Additionally, Council sought comments from the following additional agencies:

- [NSW Environment Protection Authority \(EPA\)](#)
- [NSW State Emergency Service \(SES\)](#)

The comments received are summarised below:

NSW Rural Fire Service (RFS)

NSW RFS generally raise no objection to progression of the proposal to exhibition stage, however concern is raised that where functions of up to 350 people are permitted without consent there may not be the appropriate measures in place to ensure procedures in the event of a bush fire emergency are followed.

NSW RFS request an amendment to point (3) of the proposed Schedule 1 clause as follows: (3) Notwithstanding (2) above, consent is not required for an event, function, conference or the like provided the number of attendees is less than 351 persons (excluding staff). An on-site manager shall be present at any function permitted without consent to ensure the requirements of the Willinga Park Bushfire Emergency Management and Evacuation Plan are followed in the event of a bush fire emergency.

It would be the preference of NSW RFS that this amendment be made prior to exhibition of the Planning Proposal.

Staff Comment: The proponent amended the PP by adding the following text to the exhibited version:

An on-site manager shall be present at any function permitted without consent to ensure the requirements of the Willinga Park Bushfire Emergency Management and Evacuation Plan are followed in the event of a bush fire emergency.

Transport for NSW (TfNSW)

TfNSW has completed an assessment of the planning proposal, based on the information provided and focussing on the impact to the state road network. The key state road is the Princes Highway. TfNSW notes:

- The subject site is accessed via local roads and has no direct connections to a classified state road. Council should consider any potential traffic impacts of the proposal on the surrounding local road network.*

Staff Comment: The proponent noted the comments at Appendix 10 of the PP document and no changes were made to it in response to the comments.

NSW Police

Cannot see this being an issue for us. Events, with large gatherings of people, have not been an issue for us at any stage. They are well managed and catered for. Can only see this being a welcome addition to the Shoalhaven. In regard to the works, increased traffic both during the construction and afterwards will be an issue. The entrance is quite a way off Murramarang Road through Bawley Point, so impact on north south traffic would potentially be minimal. As long as traffic issues are attended to during construction, do not see any issues.

Staff Comment: The proponent has noted the comments from NSW Police at Appendix 10 of the Planning Proposal (PP) document. No changes were made to the PP in response to the comments.

The PP proposes that functions would generally be held within the existing Equine Education Centre building. This being the case, no new construction works/traffic is envisaged as a consequence of the PP.

NSW Environment Protection Authority (EPA)

Provided detailed comments in relation to the need to regulate, mitigate or manage potential noise impacts from activities being undertaken at the function centre. These comments were made in the context of the secondary (exempt) PP provisions being finalised. In summary, the EPA favours:

- proactive noise management conditions which establish clear standards and expectations for the local acoustic environment.
- a comprehensive acoustic study which properly characterises the acoustic environment of the area, identifies sensitive receivers and outlines strategies that ensure the acoustic amenity of those receivers is properly protected.

Staff Comment: The proponent noted the comments and no changes were made to the PP. The proponent responded that:

- *the development consent to DA 18/1237 (as modified) contains conditions to manage noise and the acoustic impacts which may arise as a result of the hosting of events at Willinga Park;*
- *given that the events approved by the consent to DA 18/1237 are likely to give rise to much greater noise impacts than those that will result from the types of functions which will be hosted as a result of the Planning Proposal there is no risk of any greater acoustic impact being generated by the proposal; and*
- *the existing buildings at Willinga Park which are capable of hosting functions are built to the highest construction standards and are well-removed from the site's boundaries*

As noted, no relevant noise assessment report was submitted to support the PP. However, the proponent's decision not to pursue the secondary (exempt) provisions of the PP will allow potential noise impacts to be examined more closely through the subsequent DA assessment.

NSW State Emergency Service (SES)

Overall, the NSW State agencies did not raise any fundamental objections to the PP.

Should Council agree to endorse and finalise an amended PP as recommended, any DA would be referred to NSW RFS and NSW EPA for comment as required.

Internal Council Consultation

Internal feedback was received from a number of directorates (see **Attachment 2**) and the proponent's responses are also contained in the attachment.

The issues raised were largely linked to the secondary purpose of the exhibited PP to allow functions involving up to 350 people (excluding staff) to be '*development without consent*'. This link is acknowledged by the proponent in the responses received on 5 September 2022.

Comment

As the proponent has decided not to pursue the exempt component of the PP, any new and cumulative impacts arising from additional events could be appropriately assessed under a DA supported by the necessary technical studies.

Policy Implications

The broader policy issue related to the growth of event locations/venues (weddings etc) in existing rural/environmental zoned areas of Shoalhaven (particularly the northern part of the City) is relevant.

The PP is however a proponent-initiated, site-specific proposal to broaden/diversify the range of events/functions (unrelated to equine activities) that can be held within the existing facilities at Willinga Park, subject to development approval. Given the circumstances (e.g., significance of the existing facility), it is considered that the PP will not create a broader precedent for enabling function centres in rural areas.

At present, other locations/venues have used the provisions of LEP Clause 2.8 – Temporary use of land to obtain development approvals for events in rural/environmental zones.

CL22.546

Financial Implications

Fees & Charges

This matter is being managed in accordance with Council's Fees and Charges for progressing proponent-initiated PP's.

Road Infrastructure

Council is responsible for maintaining the road network, including the roads required to access Willinga Park. Deterioration of the local roads due to the cumulative impact of increased vehicular traffic in the area (cars, floats and heavy vehicles) was raised in submissions.

Internal staff comments suggest that traffic associated with Willinga Park, contributes to road conditions in the vicinity. However, it is not possible to definitively determine the extent to which road deterioration can be attributed to construction activities and events Willinga Park. It is likely that a new/revised traffic study will be required to support any DA(s) to expand the range of events and this provides an opportunity to look more closely at this aspect.

Conclusion

As discussed, Willinga Park is an existing unique, world class equestrian centre and there is sound strategic merit/justification for the proposed amendment to the LEP to make '*function centre*' a permitted use of the site, to allow consideration of a broader range of events/functions/conferences to be held there.

The proponent has responded to the community feedback by deciding not to pursue the secondary (exempt) provisions proposed in the exhibited PP. Any new and cumulative impacts arising from additional functions/events would be assessed under a DA supported by the necessary technical studies.

This report includes a recommendation to offer to facilitate a possible meeting with the proponent and relevant NSW State agencies to explore the possibility of a more permanent arrangement for heavy vehicular access to/from the Princes Highway and Willinga Park, independent of the PP or any DA process.

If Council supports the recommendations of this report, a new clause would be introduced in [Schedule 1 Additional permitted uses](#) of the LEP, making 'function centre' an additional permitted use (with consent) on the RU2 zoned land within at Willinga Park.



COMPILATION SUMMARY – Internal Consultation

PP064: Willinga Park Equestrian Centre, BAWLEY POINT

This summary includes relevant:

Responses received during preliminary consultation on the PP during late June and August 2021

Responses to public exhibition of the PP (25 May – 24 June 2022)

Date	Directorate/Function	Response
06-08-21 as updated on 25-07-22	City Development (Environmental Services)	<p>On site Sewerage Management</p> <p>The following is required before it can be determined whether effluent can be satisfactorily managed on site to meet the planning proposal:</p> <p>The package treatment plant and effluent application areas have been designed to cater for the effluent loading for the current approved uses.</p> <p>Whilst there has been some conservatism built into these calculations, they do not allow for additional functions of up to 350 people twice per week.</p> <p>An amended wastewater report is required that:</p> <ul style="list-style-type: none"> determines the additional loading that will be generated for the proposed functions; details proposed amendments or upgrades required to the treatment plant. <ul style="list-style-type: none"> The package treatment plant currently consists of six pods. Either just one or up to all six can be operated at any one time – depending on load volumes being generated at the site. All 6 pods were identified as being required during the already approved events.

		<ul style="list-style-type: none"> • Consideration needs to be given to whether functions will be held at the same time as an event or immediately before or after when the package plant is already operating at maximum capacity. Also, will the accommodation be utilised at the same time as a function? • More pods can be added to the system, but how many pods will be required? • There is also a large balance tank present, but is this large enough for any additional loads? <ul style="list-style-type: none"> • Addresses the proposed use of the Polocrosse field for functions. This field is one of the main subsurface effluent application areas. Two approved measures to minimise any environmental and public health risks are that there aren't to be many events held on this field and that it was to be inspected before and after every event. Holding additional functions in this location is in contrary to these control measures. • Calculates the size of additional effluent application and reserve areas required to accommodate the additional effluent loading from the proposed functions. • Identifies sufficient suitable area available for the additional effluent application and reserve areas. Suitable locations effluent application is very limited on the site due to the extensive development and use of the site and environmental considerations. • Approval to operate the package treatment plant and associated effluent application areas under DR18/1976 was issued on 28 June 2022 with a 12-month renewal. • A Verification and Validation report has not yet been submitted to Council as per Council's approval. • Further, a number of non-compliances were noted as previously detailed are yet to be rectified to ensure the continued safe operation of the system: <ul style="list-style-type: none"> • An updated commissioning and validation plan; • A pump out point installed on the wet weather storage tank; and • Warning signs erected within the land application area in accordance with AS1547:2012 and AS1319:1994. <p>Therefore, we would require the submission of the above reports demonstrating the efficient treatment and disposal of the existing system before we could consider future planning proposals. An increase in the patronage as proposed in the new planning proposal would require a minimum review of the wastewater loads from the design engineer of the current system and effluent disposal area and include any considerations and recommendations which may be implemented.</p> <p>Noise Of particular concern are events that may utilise amplified music. Such details will need to be considered when assessing this proposal. Having a conference centre may be low key but as soon as alcohol and amplified music</p>
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		<p>are introduced, the level of disturbance may be considerably higher. If the proposal includes the latter then the level of scrutiny will be much higher. If the function centre is not proposing such activities then the approval shall reflect that limitation.</p> <p>An acoustical investigation should be undertaken by a suitably qualified acoustical consultant describing and assessing the impact of noise emissions from the proposal. The investigation should include:</p> <ul style="list-style-type: none"> • the identification of sensitive noise receivers potentially impacted by the proposal; • the quantification of the existing acoustic environment at the receiver locations (measurement techniques and assessment period being fully justified in accordance with Australian Standard AS1055:1997 Acoustic-Description and Measurement of Environmental Noise and Environment Protection Authority's Noise Control Manual); • the formulation of a suitable assessment criteria not giving rise to a sound level at the boundary of any adjoining premises or occupancy greater than 5dBA above the L90 background level. The source noise level shall be assessed as LAeq, 15 minutes and adjusted in accordance with the Environment Protection Authority's (EPA) guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations, and temporal content; • the identification of operational noise producing facets of the development and the subsequent prediction of resultant noise at the identified sensitive receiver locations from the operation of the premises. Where appropriate the prediction procedures shall be justified and include an evaluation of prevailing atmospheric conditions that may promote noise propagation; and a statement indicating that the development is capable of complying with the criteria together with details of acoustic control measures that will be incorporated into the development. • the acoustic investigation will be conducted using the NSW Environment Protection Authority's Industrial Noise Policy, 2000. <p>Reason: To prevent loss of amenity to the area.</p> <p>Note: Control measures that alter the built form of the proposal require incorporation into the development plans and statement of environmental effects.</p> <p>Food Regulation</p> <p>The kitchen facilities are finished to a very high standard, were compliant and are equipped with commercial fixtures fittings & equipment. I note on page 10 of the PP that "all water supplied for human consumption complies with The Australian Drinking Water Guidelines 1996".</p>
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		<p>These kitchens are therefore more than adequate for functions of any size, including the proposed 350 pax. In addition, the kitchens are suitable for the production/processing of high-risk foods as often required by such events as weddings.</p> <p>From a food safety & food compliance perspective this proposal will not change or compromise what is currently there & already in use, just the frequency of events & varied caterers employed to cater for booked events</p>
Proponent's response: <ul style="list-style-type: none"> The part of the Planning Proposal which seeks to make functions permissible without consent is no longer pressed by the Proponent, therefore a DA will need to be submitted as part of which the adequacy of the on-site waste water treatment system can be demonstrated. There is no intent to host functions when events are taking place at Willinga Park estate. The primary existing facility to be used to host events is the EEC, not the Polocrosse field. Issues relating to the verification and validation of the existing on-site waste water treatment system are being addressed. Potential noise emissions from the hosting of functions will be addressed in the DA documentation. 		
25-05-22	City Services (Works & Services)	Through this process, can we get better infrastructure in this area that is a nexus to be improvements / benefits associated with proposed change.
Proponent's response: <ul style="list-style-type: none"> The existing infrastructure is adequate to accommodate the hosting of functions on average two per week. (Functions will not be hosted when events are taking place at Willinga Park or generally in the summer shut down period of Willinga Park from mid-December to mid-January). 		
25-05-22	Shoalhaven Water	Reticulated water and sewer are not available south of Lake Tabourie and Shoalhaven Water has no long-term plans to provide these services. Any planning proposal will need to manage water supply requirements and wastewater services on site.
Proponent's response:		

<ul style="list-style-type: none"> See response to City Development (Environmental Services) above. 		
27-05-22	City Services (Natural Areas Infrastructure)	No issues – Nil natural area assets in the vicinity.
Proponent's response: Noted		
01-06-22	City Development (Development Services)	<ol style="list-style-type: none"> Council resolved on 5 October 2021 (DS21.114) (in part) to “support the proponents request to amend SLEP 2014 to make functions involving less than 351 attendees (excluding staff) ‘development without consent’.” Development Services raises no issue with the holding of functions. The facility is undoubtedly world class and contributes to the tourism profile of the Shoalhaven. However, if Council is inclined to pursue the PP as is, we are of the opinion that additional investigations may be required to address noise and traffic impacts. We note that the site has the capacity to hold multiple functions simultaneously and the <u>cumulative impact</u> may warrant consideration. Furthermore, we note that there is an approval – DA18/1237 (as modified) which relies on a Plan of Management (POM). This POM has amenity controls. This POM would <u>not be activated</u> because events under 350 persons would be exempted. The POM can be found at D19/294814. This (DA18/1237) application and supporting documents, did not envisage music events. For example, the noise report stated that “<i>there will be no concerts or similar occurring at Willinga Park for the proposed events</i>” (page 2). The POM does reference non-equine events but these relate to “<i>architecture, gardens, sculptures and tours</i>”. (Page 8 of POM.) Documentation pertaining to traffic issues suggested there would be potentially up to 12 events per year with “A” class and “B” class events. The “A” class would occur some 4 times per year with 3000-5000 visitors however this related to equestrian activities. The 4.15 assessment report for DA18/1237 stated: <i>An Acoustic Assessment report (prepared by The Acoustic Group dated 3 October 2018) [D18/391693] and a letter from Steven Cooper of The Acoustic Group to Addison’s Lawyers [D18/387155] dated 31 August 2018 seek special considerations which can be applied to major events at Willinga Park on the basis that they are special sporting activities that can reasonably be exempted from standardised noise impact assessment. A summary of the Acoustic letter and how the special considerations work is provided in the following excerpt of Section 5.3.5 of the SEE)....</i>

Proponent's response: <ul style="list-style-type: none"> The additional investigation considered necessary will be undertaken as part of a DA to host functions at Willinga Park. There is no intention to hold multiple functions simultaneously. There will be no functions when events are taking place (other than functions ancillary to those events). A Plan of Management can be implemented for functions as a condition of development consent. Traffic generation can be addressed in the DA. 		
14-06-22	City Development (Environmental Services)	<p>Events larger than 351 will apply for a DA, for which a Flood Evacuation Plan is required to be prepared in accordance with DCP Chapter G9. However, as the area is currently unmapped, this requirement may fall between the cracks until Council have completed the Willinga Lake Flood Study. In addition, a Flood Evacuation Plan will not be provided for events up to and including 351 people.</p> <p>As part of the PP documentation provided, an Emergency Plan has been prepared. It includes standardised Emergency Response Procedures to a variety of emergencies, including direct flood impacts.</p> <p>However, it does not consider a situation where Bawley Point Road is flooded and Willinga Park becomes isolated. Hence flood isolation should be incorporated into the Emergency Response Procedures and ideally an on-site manager should be present at any function permitted, with or without consent, to ensure the requirements of the Emergency Response Procedures are followed in the event of a flood.</p>
Proponent's response: <ul style="list-style-type: none"> An on-site manager will be present when functions are being conducted. 		
08-07-22	City Futures (Traffic)	<p><u>Submissions</u></p> <ul style="list-style-type: none"> A significant proportion of the submissions raise concern with traffic and poor road condition, and this is a legitimate concern. <p><u>No Traffic Study to support the PP</u></p>

		<ul style="list-style-type: none"> • It is a concern that there has been no traffic study to support the PP. • The argument that this would be a relatively small increase in traffic compared to that permissible under the DA18/1237 consent is not supported. • The traffic study submitted with D18/1237 was not accepted by the former Traffic & Transport Unit due to a number of significant flaws. A revision of the study wasn't sought because the proposal was for a series of "events" that were conditioned to be managed through the preparation of an event management plan, so any concerns were intended to be addressed by an event mgmt. plan and it was proposed that there be regular briefing meetings after events to allow the event mgmt. plan to be refined and mitigation measures addressed ... that hasn't happened. • The traffic study originally submitted for D18/1237 is not valid and does not address the more permanent traffic impacts that will arise as consequence of approving the PP • Some key (relevant) shortcomings of the original traffic study are documented below. • The current situation represents a 'death by 1000 cuts' scenario. There is a clause in TfNSW "Guide to Traffic Generating Developments" that requires for any incremental development that might generate more than 10% extra traffic, the whole of the development must be reassessed. This PP is clearly in that category, as it should relate to the traffic generation from the existing site development, compared to the traffic that will be generated "in addition" by a proposed function centre. The assessment of that should also consider the additional traffic generated as consequence of DA18/1237, ie the cumulative effects, as required by TfNSW guidelines. <p><u>No relevance of DA18/1237 – though the cumulative traffic impacts need to be considered</u></p> <p>Further to the points above;</p> <ul style="list-style-type: none"> • Consent for DA18/1237 does not permit any events in January, and accordingly the original traffic study did not assess January conditions • The "worst case" scenario for the function centre will be an assessment of its impacts in January, this further identifies that the original traffic study has no relevance to the current proposal • Conditions 9/10 of DA18/1237 require a spreadsheet/schedule to be submitted to Council each year, has that ever happened? and where is that information (for review)? Suggest that be taken into consideration as part of a traffic study to assess the PP. • Part E of DA18/1237 clearly identifies that DA18/1237 was treated as if an "event", not a permanent generator of traffic. This was a contention at the time, and remains a concern. If it is not feasible to manage
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		<p>weekly functions under “traffic control” as an “event”, then the original traffic study is invalid as a body of information to assess the current PP</p> <p><u>Traffic Impact Statement (for DA18/1237)</u></p> <p>Further to the points above, some key flaws in the traffic study, adding to the concerns about it being an invalid document to consider the current PP;</p> <ul style="list-style-type: none"> • Clearly states that no site inspections were done as part of the study, accordingly the authors would have been unable to appreciate the poor conditions and sub-standard nature of the surrounding road network • Information in the report identifies that the existing road network does not satisfy AUSTROADS requirements for the current levels of traffic, and makes no assessment of how the existing network could be upgraded to satisfy AUSTROADS requirements based on the projected assumed levels of traffic • Capacity assumptions in the report are flawed and do not relate to the surrounding road network • Intersection performance was only assessed using SIDRA, there were no site inspections and no assessment of intersection treatment “warrants” under AUSTROADS • The traffic impacts as stated in the report were spread over an assumed number of days of theoretical events, in effect watering down the impacts of the events, whereas the impacts of functions could be expected to be more concentrated in terms of arrival/departure patterns • The report clearly states that more detailed assessment will be required once the types of events are more clearly defined, that shows how loose the assessment was at the time it was prepared, as there was a lack of detailed information about the proposals (again it was proposed to deal with the proposals as temporary “events”, not permanent traffic generators) <p>A traffic study should be prepared to assess the PP, the study should take into account the existing development and the cumulative impacts of D18/1237 + the PP. Council and TfNSW should be consulted in the first instance over the study spec to ensure all previous Traffic Study flaws are also addressed when the revised study is prepared.</p> <p>The poor condition of the surrounding road network has been noted and [the question asked] how the proponent can be held to account to ensure an appropriate level of investment in external works, nexus to the development. Running “events” as opposed to more “permanent traffic generators” is no excuse to avoid external works. And the cumulative impacts of construction and trailer traffic also needs to be taken into account (these vehicles generate most if not all of the pavement impacts).</p>
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Proponent's response:

- Traffic generation will be addressed in the DA.



5 September 2022

RJC:17-134J

The General Manager
Shoalhaven City Council
Bridge Road (PO Box 42)
Nowra NSW 2541

Attn: Mr Eric Hollinger
Ms Maggie Chapman

email: eric.hollinger@shoalhaven.nsw.gov.au
maggie.chapman@shoalhaven.nsw.gov.au

Dear Eric,

Re: Planning Proposal PP064
Additional Permitted Use and Exempt Development Provision Functions
Willinga Park Equestrian Centre
132 and 123 Forster Drive, Bawley Point

I write with reference to the above Planning Proposal and in particular in response to your invitation to respond to submissions and to internal consultation. Thank you for providing an opportunity to make such responses.

As previously discussed, the Proponent does not press that part of the owner-initiated Planning Proposal which seeks to make functions with a capacity of less than 351 persons as a type of development which is permissible without consent. Accordingly, having regard to the submissions which have been made, the Proponent now only seeks an amendment to Shoalhaven LEP 2014 so as to make 'function centre' a use which is permissible with consent at Willinga Park (except on the part zoned C2 Environmental Conservation).

That will, in due course (and assuming that the Planning Proposal proceeds to finalization), necessitate the lodgement of a DA. Whilst not pre-empting the content of such a DA, the following list of function types has been provided to me by the team at Willinga Park as an indication of their current intent: -

- business conferences;
- product launches;



- training seminars/classes/workshops;
- ceremonies (awards dinners, graduations, presentation nights etc);
- exhibitions/ trade shows;
- community events/ gatherings, Government disaster emergency response, forums;
- fund raisers; and
- Concerts/ recitals.

You will see that weddings are not on the above list.

Willinga Park is world class, exhibiting excellence in building and landscape design, equine management and equestrian facilities. It has been impressed on me by the team at Willinga Park that the type of functions which are intended to be hosted at Willinga Park are those which will enhance, not diminish, the established high standard of the estate.

With the above concession having been made, what I perceive to be a central theme and fundamental concern raised in submissions objecting to the Planning Proposal has been addressed: that is, the prospect of functions with a capacity of less than 351 persons being able to be conducted without the need for development consent to be first obtained has been removed.

Furthermore, however, to the extent that concern has been expressed in submissions about uncertainty as to the frequency of functions, the adequacy of existing wastewater management, on which parts of the estate functions will be conducted, whether functions will be indoors or outdoors (and thus whether noise might or might not be an issue), whether the plan of management will be implemented, the adequacy of on-site parking, increased traffic generation, co-ordination with other events, the use of outdoor lighting during functions and the like, these are all matters which will now be addressed as part of a DA. (Please note, however, that Section 1 of the Planning Proposal did address these and other issues and to the best of my knowledge there has never been any suggestion that outdoor sports lighting is necessary to the hosting of functions at Willinga Park Estate).

I think that there can be little doubt that a world class facility of the likes of Willinga Park is capable of hosting functions and to be able to do so will positively contribute to the tourism and visitor profile of the Shoalhaven City Council LGA and provide local employment opportunities. That capability will, however, now need to be demonstrated in a DA. That is not the planning pathway outcome that the Proponent originally sought, but it is the planning pathway outcome that the Proponent accepts.

Please see attached: -

- mine and the Proponent's inputs to the submissions summary you have provided to me; and
- mine and the Proponent's inputs to the internal referrals summary.



If you think a meeting with myself and/ or representatives of the Willinga Park team would be productive, please let me know. I look forward to discussing the matter with you further in due course.

Yours faithfully
BBC Consulting Planners

A handwritten signature in blue ink, appearing to read 'Robert Chambers', is written over a horizontal line.

Robert Chambers
Director
Email bob.chambers@bbcplanners.com.au

CL22.546 - Attachment 3

CL22.547 Tree Management in Shoalhaven - Proposed Trial Amendment to Shoalhaven Development Control Plan 2014 - 45 Degree Rule and Asset Protection Zone Clearing

HPERM Ref: D22/421733

Department: Strategic Planning
Approver: Carey McIntyre, Director - City Futures

Attachments: 1. Draft Amendment to Chapter G4 of Shoalhaven DCP 2014 (under separate cover) [↗](#)

Reasons for Report

The reason for this report is:

- i. To seek endorsement to amend the 45 Degree Rule exemption in Chapter G4: Tree and Vegetation Management of Shoalhaven Development Control Plan (DCP) 2014 on a 12-month trial basis.
- ii. To seek endorsement to commence work to run an educational campaign and prepare an Urban Greening strategy for Shoalhaven.
- iii. To not progress an amendment to the DCP regarding a possible additional exemption for the clearing of asset protection zones (MIN22.229).

Recommendation

That Council:

1. Support the exhibition of the draft 12-month trial amendment to Chapter G4: Tree and Vegetation Management of Shoalhaven Development Control Plan (DCP) 2014, as shown at Attachment 1, for a period of 28 days as per legislative requirements.
2. Advise key stakeholders, including key relevant tree removal operators working in the Shoalhaven Local Government Area, of this decision and exhibition arrangements.
3. Facilitate a tree contractor information session/workshop during the public exhibition period.
4. Commence the preparation of:
 - a. A data collection tool that will enable the efficient collection of the self-notification data relating to the 45 Degree Rule exemption.
 - b. An educational campaign relating to tree management and the 45 Degree Rule exemption, as outlined in this report, subject to the identification of required funding.
5. Receive a further report:
 - a. On the draft amendment following the conclusion of the public exhibition period.
 - b. After the 12-month trial operation period of the amended 45 Degree Rule exemption, that includes an analysis of data received during this period and recommended next steps.
6. Commence the preparation of an Urban Greening Strategy for Shoalhaven, including the identification of funding required to prepare the strategy.

CL22.547

7. Not progress an amendment to Shoalhaven DCP 2014 regarding an additional exemption for the clearing of asset protection zones (MIN22.229).

Options

1. As recommended.

Implications: This option enables the retention of the 45 Degree Rule exemption with some augmentation and a 12-month trial to address community concerns, legislative requirements, manage risk and align the exemption more closely with industry best practices.

This option includes suggested data collection over a 12-month period to better understand how and where the exemption is used.

An education campaign is considered critical in developing a broad reaching understanding of the value of trees, best practice tree management, as well as when the 45 Degree Rule exemption can be used and how. The preparation of an Urban Greening Strategy for Shoalhaven is also recommended.

This option also seeks to not progress a further exemption for tree removal relating to clearing for asset protection zones. It is considered that the existing mechanisms in place (development assessment/complying development process and the NSW Government's 10/50 Rule) provide a range of opportunities in this regard. Tree removal beyond these mechanisms can be considered by existing development approval and tree permit pathways.

2. Adopt an alternative recommendation.

Implications: This will depend on the extent of any changes/additions.

3. Not adopt the recommendation.

Implications: This could mean that no changes to Chapter G4 relating to the 45 Degree Rule exemption would be made at this time, and as such, the status quo would be retained. The option is not recommended. The 45 Degree Rule exemption is unique to Shoalhaven, it can be considered inconsistent with industry and environmental law standards and is subject to high levels of misuse and misunderstanding.

Tree and Vegetation Management and the 45 Degree Rule in Shoalhaven

Background & History

Shoalhaven's first Tree Preservation Order (TPO) came into effect in 1971. The TPO sought to help secure and preserve amenity, stop indiscriminate and uncontrolled removal, lopping etc. of trees in urban areas, and manage approval requirements for these trees.

In 2004, the new Shoalhaven TPO 2004 was adopted by Council. Importantly, this new TPO introduced the 45 Degree Rule exemption which made exempt:

"Tree works on private land where any part of a tree is above a line 45 degrees from the vertical extension of the wall of any building measured from its base."

The TPO remained in place until 2014, when the Shoalhaven Local Environmental Plan (LEP) 1985 was replaced by Council's new Standard Instrument LEP (Shoalhaven LEP 2014). The provisions of the TPO (including the 45 Degree Rule exemption) were transitioned into the new Shoalhaven Development Control Plan (DCP) 2014 shortly after the LEP came into effect.

CL22.547

Current planning legislation and policy establishes that a person must not cut down, fell, uproot, kill, poison, ringbark, burn or otherwise destroy the vegetation, or lop or otherwise remove a substantial part of the vegetation without a permit granted by Council (e.g., development application or private tree permit). However, there are currently a few exceptions to the restrictions, the most notable being the 45 Degree Rule exemption.

The 45 Degree Rule exemption can be used or is triggered where any part of a tree is within the 45 degree area of an approved dwelling, garage or outbuilding (including any part of the trunk or canopy), as per Figure 1 below.

The 45 Degree Rule exemption overrides the protection of any declared vegetation in Section 5.1 of the Shoalhaven DCP 2014, except where there are overriding consent conditions, 88B instruments or heritage listing protections. Without an exemption, a development application or private tree permit would be required to consider the removal of a tree or trees.

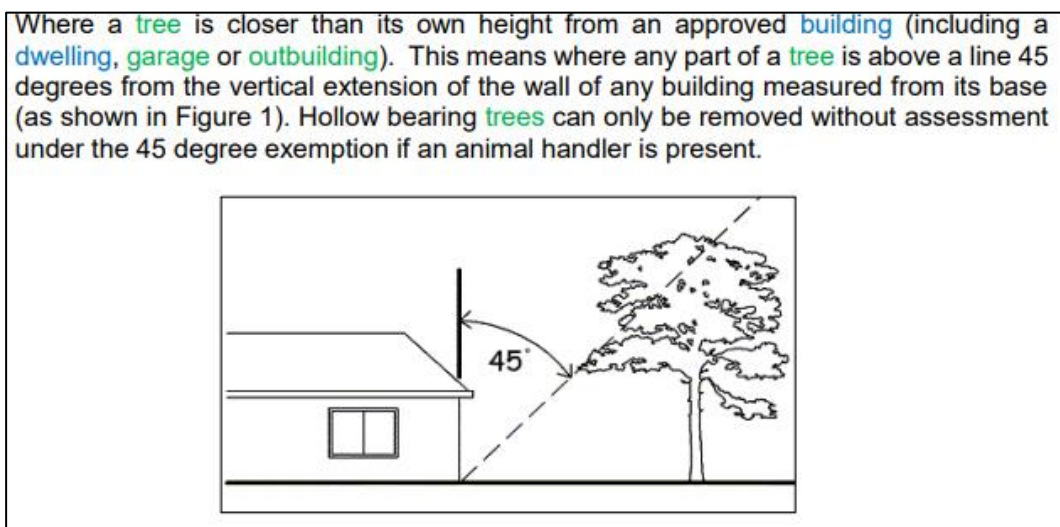


Figure 1: 45 Degree Rule Exemption

2022 Mayoral Minute and Review

On 21 February 2022, a Mayoral Minute was presented to Council seeking an amendment to Chapter G4: Tree and Vegetation Management of the DCP to remove the 45 Degree Rule exemption (MM22.3). Council resolved to 'defer' the matter to a Councillor briefing for further consideration and discussion (MIN22.118).

This Council briefing was held on 12 May 2022 and a further briefing was held on 15 September 2022.

Attachment 1 presents a recommended amendment to Chapter G4 of the DCP. This proposed model was presented and discussed at the 15 September briefing. The proposed amendment seeks to retain the 45 Degree Rule exemption with some refinement to address a range of concerns, as follows:

- Its application has been refined to 'lawfully erected buildings (including dwellings and outbuildings)'.
- Require tree removal to be undertaken by an Australian Qualification Framework (AQF) Level 3 arborist in accordance with relevant Australian Standards. Level 3 = minimum requirements in theoretical and practical tree assessment and care

CL22.547

- Specify that the 45 Degree Rule does not apply:
 - To a tree where that tree does not pose a demonstrable risk to the respective building.
 - Beyond the lot the lawfully erected building is located on, which includes public land.
 - To land in the Jerberra Estate (already the case as outlined in the DCP).
 - To trees with hollows or nests.
 - To trees on upward slopes greater than 18 degrees.
 - To the removal of trees on land zoned RU1 Primary Production and RU2 Rural Landscape (already the case as outlined in the DCP).
- Require notification of Council and all adjoining and adjacent landowners/occupants of the proposed tree removal works in writing, at least 72 hours before the tree removal is due to commence.

The notification mechanism will allow the gathering of more definitive information for a 12-month period on the use of the rule, prior to Council possibly making an ultimate decision on the future of the 45 Degree Rule at that time.

Council may also wish to consider the preparation of an urban greening strategy for Shoalhaven.

Recommendation

Considering the above and discussions at the two Councillor briefings, it is recommended that:

- Proceed with a 12-month trial amendment to Chapter G4: Tree and Vegetation Management of the DCP, as shown at Attachment 1. It is noted that the proposed amendment also includes minor administrative changes to reflect changes that have been made to legislation and policy since the last amendment.
- A data collection tool be prepared that will enable the efficient collection of the self-notification data relating to the 45 Degree Rule.
- An educational campaign be prepared and run, relating to tree management and the 45 Degree Rule, as outlined in this report.
- Commence the preparation of an Urban Greening Strategy for the Shoalhaven.

Asset Protection Zone Clearing – 2022 Notice of Motion

Council at its 28 March 2022 Ordinary meeting, considered a Notice of Motion seeking an exemption for the clearing of asset protection zones (APZ) under certain circumstances. The Notice of Motion recommended:

That Chapter G4 of the Shoalhaven Development Control Plan 2014 be amended to allow the creation of asset protection zones on mapped bushfire prone land, subject to the follow criteria being met.

1. *In order to permit clearing of trees and other vegetation to create asset protection zones around legally constructed dwellings, buildings and associated property access, or any development that would have been for a 'Special Fire Protection Purpose' & associated property access, pursuant to the provisions of the NSW Rural Fires Act 1997 on land mapped as being bushfire prone.*

2. *The clearing of vegetation for the creation of Asset Protection Zones must not exceed the minimum clearing standards set out in Planning for Bushfire Protection 2019 for structures with a BAL 12.5 rating. The extent of clearing required must be in accordance with a report prepared by an accredited bushfire consultant, with a minimum qualification of BPAD 2.*
3. *The CEO be permitted to make drafting amendments to the policy.*

The Notice of Motion Report outlined the following reasons for the motion:

In the wake of the Black Summer bushfires, the opportunity should be taken to amend Chapter G4 of the DCP to allow homeowners to maintain their properties in accordance with best practice guidelines to ensure adequate bushfire mitigation measures are in place for the protection of life and assets. I have given this much thought, and I believe that the foregoing should be included in the exemption criteria within Chapter G4.

Council resolved (MIN22.229) that the CEO report back to Council on the proposed Notice of Motion contained in the Business Paper (CL22.164) and the report be based on the Notice of Motion.

Existing Mechanisms in Place

There are two main mechanisms currently in place to address APZ's and vegetation management around structures:

- Development Assessment Process (New Development):
 - A Development Application Assessment by Council. Any new building in a bushfire risk zone requires a bushfire assessment which prescribes the construction level (BAL rating), the required APZ and several other bushfire risk mitigation measures as required by the NSW Government's [Planning for Bushfire Protection 2019](#). This process will also consider the impacts of the APZ (and any other) clearing on biodiversity, as required by the *Biodiversity Conservation Act 2016*.
 - A Complying Development Certificate issued by Council or a private certifier. Development on some bush fire prone land may be considered as complying development, however, complying development cannot be undertaken on land identified as a high bush fire risk (BAL 40 or Flame Zone). Any new building in a bushfire risk zone requires a BAL certificate confirming the land is not BAL 40 or Flame Zone. The proposal must be compliant with the NSW Government's Planning for Bushfire Protection 2019 (including APZs) and conditions are imposed accordingly.
- The NSW Rural Fire Service 10/50 Rule (Existing Development). Where an APZ has not been captured through the development application process (i.e., it pre-dates Planning for Bushfire Protection), eligible home owners can apply the 10/50 rule. Whilst there is no obligation for these properties to upgrade Planning for Bushfire Protection 2019 standards, many wish to ensure that their properties are consistent with industry best practice. Owners cannot 'double dip' and further clear their land under the 10/50 provisions if they have a conditioned APZ around their dwelling.

The NSW Rural Fire Service introduced the 10/50 rule in 2014 following the 2013 bushfires that heavily affected the Blue Mountains area in the Greater Sydney region. The 10/50 rule allows people in a designated area to:

- Clear trees on their property within 10 metres of a home, without seeking approval; and

CL22.547

- Clear underlying vegetation such as shrubs (but not trees) on their property within 50 metres of a home, without seeking approval.

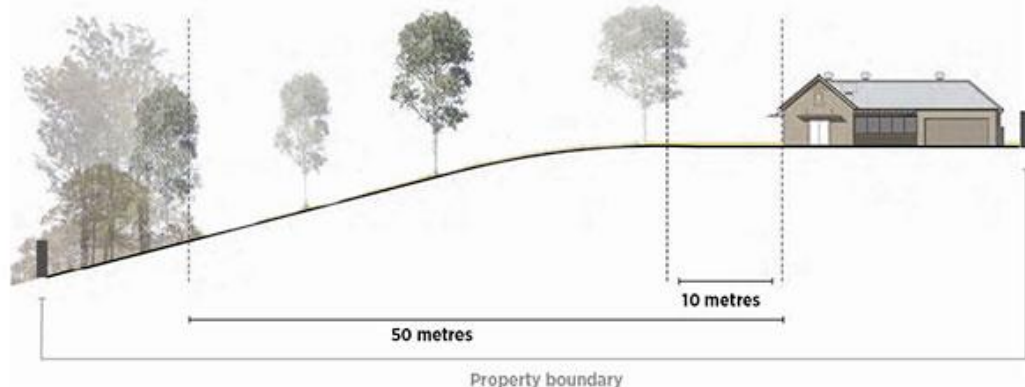


Figure 2: Example of 10/50 rule (NSW RFS)

The Biodiversity Offset Scheme

DCP Chapter G4 relates to the removal or pruning of vegetation that is under the biodiversity offsets scheme threshold on all non-rural land (land in any zone other than RU1-RU4) within the Shoalhaven LGA.

As per section 2.6(2) of SEPP (Biodiversity and Conservation) 2021, a person must not clear native vegetation in a non-rural area of the State that exceeds the biodiversity offsets scheme (BOS) threshold without the authority conferred by an approval granted by the Native Vegetation Panel under Part 2.4. Therefore, under the SEPP (Biodiversity and Conservation) 2021, Council can only issue a permit (or exemption) to clear if the clearing is below the BOS.

Council is permitted to assess clearing over the BOS via the development application process only (not via complying development). Appropriate clearing for retrospective APZ purposes, even to achieve BAL 12.5 on bushfire prone land, would still likely require very large APZs and in many cases, would exceed the BOS clearing threshold. Outside of the development application process, Council has no authority to permit this extent of clearing.

The proposed asset protection zone clearing exemption is essentially a self-assessment tool in a technically complicated space, which raises a number of concerns, the main being that Council cannot lawfully introduce an exemption that would allow clearing to exceed the BOS clearing threshold.

Discussion and Recommendation

Considering the above, the existing development application and complying development process for new development adequately considers appropriate APZ requirements and vegetation management for new development. The conditions of consent imposed will restrict any additional clearing beyond the APZ and a local clearing exemption in DCP Chapter G4 cannot override this restriction.

The NSW Government's 10/50 rule already enables clearing for bushfire protection and management for existing development. It establishes industry best practice and is similar to the [Victorian](#) and [Queensland](#) models. The added benefit of this approach is that it is a state lead exemption program which does not place any liability implications on Council.

A change to Chapter G4 of the extent proposed in the Notice of Motion could result in:

- Potential liability implications for Council with regards to bushfire safety of all residents in non-rural land (e.g., the APZs allowed are inadequate to protect a property/life).

CL22.547

- Community confusion regarding application, relationship to other exemptions (i.e., 45 Degree Rule and 10/50 Rule) and potential breaches of development consent conditions.
- Breaches of the SEPP (Biodiversity and Conservation) 2021. In many instances, the envisaged APZs would exceed the BOS clearing threshold without consent from Council or a permit issued by the Native Vegetation Panel. This can result in criminal proceedings with significant fines. There are also potential liability implications for Council with regards to enabling an exemption that may be inconsistent with State and Commonwealth legislation.

It is recommended that the following existing processes continue to be relied upon for APZ type management, rather than adopting a further Shoalhaven specific exemption for tree and vegetation clearing:

- Development application process (and complying development pathway) in accordance with the requirements of Planning for Bushfire Protection 2019.
- The NSW Government's 10/50 rule.

The development application or private tree permit process could be considered for land not eligible/designated for the NSW Government's 10/50 Rule.

Community Engagement

DCP Amendment

The draft DCP Amendment will need to be publicly exhibited for at least 28 days in accordance with legislative requirements.

Tree contractor representatives will be directly notified of the exhibition arrangements.

Specific Industry Consultation

Current tree removal operators in Shoalhaven are generally aware that the 45 Degree Rule is under consideration by Council. The recommended amendments to the 45 Degree Rule, including the transition to a AQF Level 3 qualification for some, will have some impact on the industry.

There is merit in holding an information session/workshop for the tree removal operators regarding the proposal during the public exhibition period. There would also be benefit in undertaking subsequent industry workshops:

- At the commencement of the 12-month trial to explain any change and to assist in the transition as far as practicable.
- Towards the end of the 12-month trial period to identify how the process is and is not working from the perspective of the industry.

Educational Campaign

It is also recommended that an educational campaign be undertaken concurrently with the DCP amendment and commencement process, that considers a range of matters including:

- Tree awareness, the cultural, social, economic and environmental value of trees and a balanced tree management approach.
- The specialist role of the NSW State Emergency Service post storm.
- The correct application and use of the amended 45 Degree Rule.

- Detail and clarification regarding threatened species and implications of unlawful habitat loss.
- Opportunities for appropriate plant species options for new plantings.
- Encouraging regular tree inspections.
- Reporting any unsafe trees on public land to Council.

Policy and Risk Implications

The 45 Degree Rule

The 45 Degree Rule exemption is somewhat unique to Shoalhaven, it can be considered inconsistent with industry and environmental law standards and is subject to misuse and misunderstanding. This presents risk to both Council and landowners, as discussed at the 15 September 2022 briefing.

Asset Protection Zone Clearing

The Notice of Motion seeks consideration of an additional exemption in the DCP to enable tree removal for the purpose of asset protection zones. The proposal could result in potential liability implications for Council with regards to:

- Bushfire safety of all residents in non-rural land (e.g., the APZs allowed are inadequate to protect a property/life).
- Enabling an exemption that may be inconsistent with State and Commonwealth legislation. Council cannot lawfully introduce an exemption that would allow clearing to exceed the biodiversity offset scheme clearing threshold.

Financial Implications

The draft amendment to Shoalhaven DCP 2014 will continue to be resourced within the existing Strategic Planning budget.

Council will need to consider any additional staff resources required to manage additional demand for tree removal applications and auditing/monitoring, on an as needs basis, during the initial 12-month period.

The preparation of an educational campaign and urban greening strategy would also need the allocation of an adequate budget.

CL22.547

CL22.548 Update and Proposed Next Steps - Land Use Planning Changes for Agritourism

HPERM Ref: D22/443695

Department: Strategic Planning

Approver: Carey McIntyre, Director - City Futures

Attachments: 1. March 2022 Agritourism Reform Resolution [↓](#)

Reason for Report

The purpose of this report is to provide a report on the agritourism related land use planning changes being pursued by the NSW Government, as per MIN22.747 (10 October 2022), and provide a range of recommended possible next steps for Council's consideration.

Recommendation

That Council:

1. Urgently and strongly object to the quasi mandating of 'Agritourism' and its sub terms as permissible with consent in Shoalhaven LEP 2014 from 1 December 2022 and February 2023.
2. Should the NSW Government persist with effectively mandating 'Agritourism' in certain zones in Shoalhaven:
 - a. Opt-in to the 'Farm gate premises' and 'Farm stay accommodation' optional clauses for Shoalhaven LEP 2014 and the 'Farm stay accommodation' optional clause for the Shoalhaven LEP (Jerberra Estate) 2014.
 - b. Commence the preparation of a Planning Proposal to provide additional development standards relating to the 'Farm gate premises' and 'Farm stay accommodation' optional clauses. Report the draft Planning Proposal back to Council with the draft Tourism Amendment to Shoalhaven Development Control Plan 2014, in due course.
 - c. Strongly request a deferral from the commencement of the Agritourism Reforms until February 2024, to enable the preparation, exhibition and finalisation of a Planning Proposal and detailed Development Control Plan provisions (as required), that will establish additional Shoalhaven specific development standards for the range of agritourism land uses.
3. Note Council's strong disappointment that the exempt and complying provisions that were exhibited in 2021 have been amended and notified without any meaningful consultation with Council.
4. Request that the NSW Government commit to:
 - a. Arranging public information sessions, as a matter of urgency, to explain the reforms to the public and interested communities; and
 - b. Depending on what eventuates, undertaking a 12 month review of the reforms to enable them to be refined/improved/adjusted if needed or appropriate.
5. Send a copy of this resolution to:
 - a. The NSW Department of Planning and Environment (Agritourism Team).
 - b. The Deputy Premier and Minister for Regional NSW, the Hon. Paul Toole.

CL22.548

- c. The Minister for Planning and Minister for Homes, the Hon. Anthony Roberts.
- d. The Minister for Agriculture, the Hon. Dugald Saunders.
- e. The Member for the South Coast, the Hon. Shelley Hancock.
- f. The Member for Kiama, Mr Gareth Ward.
- g. Local Government NSW.
- h. The community members/industry representatives who have previously engaged with Council on this issue.

Options

1. As recommended.

Implications: This is the preferred option as it reinforces Council's strong objection to the Agritourism Reforms, but also recommends a range of alternative measures that are needed to help protect the interests of the Shoalhaven community, should the NSW Government not support/accept Council's objection and continue with the Agritourism Reforms as released. This includes opting in to the optional clauses for 'Farm stay accommodation' and 'Farm gate premises' (as appropriate to the relevant LEP) and seeking a deferred commencement until February 2024 to enable the preparation, exhibition and finalisation of amendments to Shoalhaven LEP 2014 and Shoalhaven DCP 2014, as required.

2. Make an alternative recommendation.

Implications: This will depend on the changes made and could include continuing to opt out of the optional clauses, not progress amendments to Shoalhaven LEP 2014 and Shoalhaven DCP 2014 or make additional nominations for the agritourism related land uses.

3. Receive this report for information and make no further representations or submissions to the NSW Government.

Implications: This is not favoured as it appears the Agritourism Reforms will progress largely unchanged. As such, there is merit in establishing adequate development standards, development controls and guidance to provide some level of certainty for the community, industry and developers to ensure good development outcomes that are in the public interest.

Background to the Agritourism Reforms

In March 2021, the NSW Government released initial exhibition material relating to [Agritourism and small-scale agriculture development](#). This exhibition proposed amendments to the NSW Planning System to boost farm businesses and regional tourism, by streamlining the approval of agritourism and other small-scale agricultural development. The proposed reforms are part of the response to the economic impacts of natural disasters and COVID-19 on the farming community.

Council made a submission at the time that contained a range of feedback. The detailed report (DE21.41) relating to this resolution can be accessed [here](#).

The Explanation of Intended Effect (EIE) supporting the 2021 exhibition outlined that additional consultation would be needed relating to the agritourism proposals. Given the relevance of this matter to Shoalhaven, Council requested to be included in any additional consultation and engagement to ensure that the final reforms were appropriate for Shoalhaven, functioned as intended and balanced impacts (MIN21.252(2)).

CL22.548

In December 2021, further material on the Agritourism Reforms was released by the NSW Government and additional consultation commenced in this regard. The focus of this additional consultation was for Councils across NSW to:

- 'Opt in' or 'out' of the proposed new 'optional' clauses in the Standard Instrument LEP for 'Farm stay accommodation' and 'Farm gate premises'. If opting in, councils could nominate development standards as relevant for each optional clause.
- Nominate zones to apply the proposed new land use terms for 'Agritourism', 'Farm gate premises' and 'Farm experience premises'.

Council's resolution relating to the additional consultation opportunity and nomination process is at **Attachment 1**. Essentially though, this resolution Council signalled that it wanted to 'opt out' of, or not be included in, the proposed Agritourism Reforms.

Mayoral Minute – October 2022

On 10 October 2022, Council considered a Mayoral Minute relating to land use planning changes for agritourism, following the notification of part of the Agritourism Reforms and ongoing community interest in the matter. Council resolved (MIN22.747) that:

1. *Council urgently and strongly confirm to the NSW Department of Planning and Environment, that Shoalhaven City Council:*
 - a. *'opts out' of the new provisions for agribusiness/tourism until such time as we conduct our own review of where the provisions/clauses could possibly be appropriate;*
 - b. *Reaffirms Parts 1 to 3 of its resolution of 28 March 2022 (MIN22.200);*
 - c. *Objects to the land use terms 'Agritourism', 'Farm experience premises' and 'Farm gate premises' being made permissible with consent anywhere in our LEPs at this stage;*
2. *Once confirmed, Council write to those who have previously engaged with Council on this issue to reassure them of Council's position;*
3. *Given the community concern that this matter is generating, Council receive a short report as soon as practical on the agritourism related land use planning changes being considered/pursued by the NSW Government.*

In October 2022, correspondence was sent to the NSW Government (relevant Ministers etc) and community members who previously engaged with Council on this matter, advising of Council's position.

This report now addresses part three of the above resolution.

Summary - Agritourism Reform Changes and Implications for Council

In October 2022, the NSW Government proceeded to notify a range of changes to legislation relating to the first stage of the Agritourism Reforms:

- [Environmental Planning and Assessment \(Development Certification and Fire Safety\) Amendment \(Farm Stay Accommodation\) Regulation 2022](#)
- [Standard Instrument \(Local Environmental Plans\) Amendment \(Agritourism\) Order 2022](#)
- [State Environmental Planning Policy \(Exempt and Complying Development Codes\) Amendment \(Agritourism\) 2022](#)

The first stage of the reforms, commencing on 1 December 2022, will:

- Amend the NSW Standard Instrument LEP to:
 - Insert the new agritourism and related land use terms. Notably, 'Agritourism', and its sub terms ('Farm experience premises' and 'Farm gate premises') will

CL22.548

become permissible with consent in all Standard Instrument LEPs across the State (including Shoalhaven LEP 2014) where 'Agriculture' is permissible with consent.

- Refining controls relating to 'Farm stay accommodation'.
 - Expanding 'development without consent' opportunities for 'Poultry farms' and 'Pig farms'.
 - Introduce the new 'Farm stay accommodation' and 'Farm gate premises' optional clauses. These clauses remain optional and as such, Council has the opportunity to opt in or maintain its opt-out nomination.
 - Make related changes to the Dictionary to reflect the new and amended definitions.
- Amend State Environmental Planning Policy (SEPP) (Exempt and Complying Development Codes) 2008 to:
 - Make changes to the Interpretation section (i.e., dictionary) to reflect the new and amended definitions.
 - Introduce savings provisions for complying development.
 - Introduce an exempt development pathway for the rebuilding of farm buildings damaged by natural disasters, agritourism signs, 'Farm experience premises', 'Farm gate premises', 'Farm stay accommodation' and 'Roadside stalls'.
 - Introduce a new Code, being the 'Agritourism and Farm Stay Accommodation Code' that provides a complying development pathway for 'Farm experience premises', 'Farm gate premises' and 'Farm stay accommodation'.
 - Make consequential changes to the Housing SEPP, Primary Production SEPP and the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 in response to the Agritourism Reform changes.

The key themes that are considered to be potentially of most concern for Shoalhaven at this stage are outlined below:

Exempt and complying development pathways

These pathways were originally flagged as part of the initial EIE exhibition process in 2021, however, the notified amendments are different to that exhibited in a range of areas – some strengthened and others weakened. It is considered unlikely that the NSW Government will amend or defer the commencement of these pathways and as such they will commence on 1 December 2022.

Further, it would appear that Shoalhaven does not have a sound policy reason to request an exclusion from these pathways. It is understood that only one exclusion has been accepted to date, being the special Hunter Water Drinking Water Catchment land (note the Sydney Drinking Water Catchment land in Shoalhaven is unlikely to be considered similarly in this regard). The land around Mount Panorama in the Bathurst LGA is currently also being considered by the NSW Government for a specific exclusion.

Recommendation: Note Council's disappointment that the exhibited exempt and complying provisions have been amended and notified without any meaningful consultation with Council.

Changes to the Standard Instrument LEP and Shoalhaven LEP

The changes to the Standard Instrument LEP and Shoalhaven LEP have substantial implications for Shoalhaven, however unlike the changes to the Codes SEPP, Council has the greater likelihood of influence/change in this area.

Significantly, the new land use term 'Agritourism', and its sub terms will become permissible with consent anywhere that 'Agriculture' is permissible with consent in NSW from 1 December 2022.

In the Shoalhaven LEP 2014, this means the RU1, RU2 and RE1 zones. In addition to this, the NSW Government has also confirmed that the land use 'Agritourism' and its sub terms will also become permissible with consent in the RU4 Primary Production Small Lots zone in Shoalhaven LEP 2014 sometime in February 2023. Whilst not explicitly mandating these uses as permissible with consent, the NSW Government has advised that Council is likely to be unable to prohibit these land uses in these zones. This is directly contrary to Council's March 2022 resolution.

As such, come 1 December 2022 (or February 2023 for the RU4 zone), Council could be required to consider development applications for 'Agritourism', and its sub terms in the respective zones, however the flow on concern in this regard, Council will not have any contemporary supporting development controls in place for these uses. Any development applications received would then need to be assessed on merit by Council.

Work is progressing on a largescale review and possible future amendment to Chapter G15: Tourist and Visitor Accommodation of Shoalhaven DCP 2014 (Tourism Review) in accordance with Council's adopted Strategic Planning Works Program. A deferral from the commencement of the Agritourism Reforms until February 2024 would potentially allow the Agritourism Reforms to be adequately considered in the Tourism Review, in a more suitable/realistic timeframe. It is noted that a similar deferral was put in place for the Low Rise Housing Diversity Code amendments to the Codes SEPP around 2018/2019, which enabled Council adequate time to get supporting development controls in place. Other NSW Councils, such as Byron Shire, are considering opportunities to request deferrals as well.

It is noted that Local Government NSW has written to the Hon. Anthony Roberts, NSW Minister for Planning and Minister for Homes, outlining a range of concerns regarding the proposed new agritourism rules. The advocacy on behalf of NSW Councils includes a request to postpone the commencement of the reforms.

Recommendation: That Council:

- *Note its objection to the quasi mandating of 'Agritourism' and its sub terms as permissible with consent in Shoalhaven LEP 2014.*
- *Should the NSW Government persist with quasi mandating 'Agritourism' in certain zones in Shoalhaven, request a deferral from the commencement of the Agritourism Reforms until February 2024, to enable the preparation, exhibition and finalisation of appropriate development controls and guidance to support the agritourism land uses in Shoalhaven's planning scheme.*

'Farm gate premises' and 'Farm stay accommodation' optional clauses

'Farm stay accommodation' is already currently permissible with consent in the:

- RU1, RU2, RU4, C3 Environmental Management zones in Shoalhaven LEP 2014.
- C3 zone in Shoalhaven LEP (Jerberra Estate) 2014.

In accordance with Council's previous resolution, no additional zones were nominated for this use.

'Farm gate premises' is however, a new land use being introduced for the first time into the planning scheme. Council nominated to make this land use prohibited in every zone in Shoalhaven, however the NSW Government have essentially mandated the use in a range of zones across the City.

In March 2022, Council also resolved to opt out of the optional clauses for these uses. The optional clauses have been prepared to provide additional rigour and support for these land uses. As such, there is merit in opting in to the optional clause as the 'Farm stay

accommodation' term already exists in our LEPs and it is apparent that the 'Farm gate premises' use will be included in due course.

There has been some concern in the community that if Council does not opt in to the optional clauses, the exempt and complying provisions would be used in the assessment of development applications instead. To clarify, these optional clauses relate to development applications only, and in the absence of any specific LEP or DCP provisions, any applications would be considered on merit only.

It is noted that the optional clauses will commence in Standard Instrument LEPs from February 2023 (where a Council has opted in), however, the notified versions no longer include the suggested detailed or set development standards that Council had previously considered. The notified documentation does, however, specify that development standards can be added by Councils as required. Whilst this provides Council with greater flexibility and opportunities to tailor these clauses specifically for Shoalhaven, the inclusion of additional provisions will need to be undertaken as part of a future planning proposal initiated by Council (not as part of the February 2023 NSW Government managed process). This change in approach has the potential to have resourcing impacts on Council.

It appears abundantly clear however, that the NSW Government intends to progress the Agritourism Reforms, which presents a current and urgent need to prepare appropriate supporting development controls for these land uses in Shoalhaven DCP 2014. Should Council wish to opt in to the 'Farm gate premises' and 'Farm stay accommodation' optional clauses, Council will also need time and commit resources to consider and progress a Planning Proposal to set additional development standards for these uses.

There is significant merit in pursuing Shoalhaven specific development standards for these uses, especially 'Farm stay accommodation'. For example, the Agritourism Reforms have amended the number of bedrooms for this type of accommodation to 7 (existing in Shoalhaven LEP 2014), but now refined to in buildings. This means that whilst there will be a limit of 7 'Farm stay accommodation' bedrooms in buildings, it appears that there would be no limit on the number of manufactured homes/moveable dwellings and the like that could be considered as part of a development application.

Recommendation: That Council:

- *Given what it appears is highly likely to occur irrespective of representations, opts-in to the 'Farm gate premises' and 'Farm stay accommodation' optional clauses for Shoalhaven LEP 2014 and the Farm stay accommodation optional clause for the Shoalhaven LEP (Jerberra Estate) 2014.*
- *Formally request a deferral from the commencement of the Agritourism Reforms until February 2024, to enable the preparation, exhibition and finalisation of a Planning Proposal and detailed DCP provisions (as required) that will establish additional Shoalhaven specific development standards for the 'Farm gate premises' and 'Farm stay accommodation' land uses.*

Conclusion

Whilst there is merit in continuing to strongly advocate that the Agritourism Reforms do not apply to Shoalhaven, it appears highlight likely (or there is a significant risk) that the reforms will progress regardless NSW wide. As such, there is merit in also progressing a range of alternative measures to help protect the interests of the Shoalhaven community includes, including:

- Opting in to the optional clauses for 'Farm stay accommodation' and 'Farm gate premises' (as appropriate to the relevant LEP).
- Seeking a deferred commencement until February 2024 to enable the preparation, exhibition and finalisation of amendments to Shoalhaven LEP 2014 and Shoalhaven

DCP 2014 that will provide additional rigour and guidance regarding these amended and new land uses.

Community Engagement and Policy Implications

Council has continued to receive representations from Community Consultative Bodies (CCBs) and community members about the need for rural and agricultural tourism/visitor uses to be restricted or regulated.

Destination Sydney Surrounds South (DSSS) have also continued to advocate for a more certain planning framework for rural and agricultural tourism/visitor opportunities.

The Shoalhaven Local Strategic Planning Statement (LSPS) that was adopted by Council in October 2020 includes the following action:

*A7.1 Review planning and development controls for tourist and visitor accommodation and temporary uses to balance the support of tourism activity and manage impacts on communities and sensitive locations. **Short-term** (Note: this means between 2022-2024).*

The recommended approach includes the continued progression of the Tourism Amendment to Shoalhaven DCP 2014 and a Planning Proposal to provide specific development standards to support the 'Farm stay accommodation' and 'Farm gate premises' optional clauses. Any amendment to Shoalhaven DCP 2014 or Shoalhaven LEP 2014 (including Jerberra Estate) would be exhibited for a period of at least 28 days. Community and industry engagement will be encouraged during the public exhibition period.

Financial Implications

The process of amending Shoalhaven's LEPs and DCP would be resourced as much as possible via the existing Strategic Planning budget but may require specific funding if external or other assistance is needed to advance the work in a timely manner.

The insertion of the optional clauses (without the additional development standards) will be managed by DPE. As such, there will be minimal financial implications for Council.

Risk Implications

Without specific provisions in Shoalhaven LEP and DCP that guide agritourism development, development applications for these uses will need to be assessed individually on merit. This provides a level of risk and uncertainty for the community and Council and may result in undesirable built form and operational outcomes.

Without a deferred commencement arrangement in place, Council will not be able to get appropriate development standards and controls in place for the commencement of the Reforms in December 2022 and February 2023 respectively.

CL22.548

ORDINARY MEETING

28/03/2022

Related Report D22/66892
Item Number CL22.148

RESOLVED (Clr White / Clr Wells)

MIN22.200

That Council:

1. Not Opt-in to the proposed new 'Farm stay accommodation' and 'Farm gate premises' optional clauses for inclusion in the Shoalhaven Local Environmental Plan (LEP) 2014.
2. Nominate the new 'Agritourism', 'Farm experience premises' and 'Farm gate premises' land use terms to be prohibited across all zones in the Shoalhaven LEP 2014, including in the RU1 Primary Production and RU2 Rural Landscape zones.
3. Not nominate additional zones where 'farm stay accommodation', 'cellar door premises' and 'roadside stalls' would be permitted with consent at this point (i.e. retain status quo).
4. Advise the NSW Department of Planning & Environment (DPE) of Council's resolution by 31 March 2022 and request further meaningful consultation and dialogue with DPE on the current proposal and broader agritourism reforms, where relevant.
5. Receive future reports, if required, to:
 - a. Enable further comment on the detail (or adjustment) of the proposed agritourism planning reforms.
 - b. Consider how a Shoalhaven appropriate version of the optional clauses, emerging land uses ('Agritourism', 'Farm experience premises' and 'Farm gate premises') and other clauses, as required, could work for Shoalhaven.
6. Advise CCBs, Industry Representatives and those who made a deputation, of this resolution.

FOR: Clr Findley, Clr Kotlash, Clr Norris, Clr Butler, Clr D'Ath, Clr Copley, Clr Ell, Clr Christen, Clr White, Clr Wells, Clr Watson and Clr Gray

AGAINST: Nil

CARRIED

CL22.548 - Attachment 1

CL22.549 Natural Disaster Recovery - Change to CEO Delegation of Authority

HPERM Ref: D22/446806

Department: Works & Services

Approver: Craig Exton, Manager - Technical Services

Reason for Report

To allow Council to consider the recommendation, to give the CEO authority to accept tenders and approve variations, on Council's behalf, under the joint Australian Government-State Disaster Recovery Funding Arrangements 2018 related to the funding of asset restoration resulting from Natural Disasters.

Recommendation

That:

1. Council resolves to give the CEO authority to accept tenders and approve variations, on Council's behalf, for projects funded under the joint Australian Government-State Disaster Recovery Funding Arrangements 2018, related to the funding of asset restoration resulting from the March and July 2022 severe weather events.
2. This delegation be revoked in December 2025 upon completion of the asset restoration from the March and July 2022 severe weather events.

Options

1. That Shoalhaven City Council resolve that the CEO be given authority on Council's behalf to approve all current and future Capital Expenditure under the joint Australian Government-State Disaster Recovery Funding Arrangements 2018.

Implications: This will ensure that capital projects for the restoration of public assets following declared Natural Disasters are delivered in the shortest program possible.

2. Council could choose to not accept the recommendation.

Implications: Delivery programs may be extended which will could create undue stress for the community.

Background

Shoalhaven City Council is currently undertaking a large program of Capital Projects to repair assets damaged by recent natural disasters in the Shoalhaven in the March and July 2022 severe weather events.

Procurement procedures determine that tenders above the threshold of \$1M (including GST) must be reported to Council for approval. This also applies to approving payment of variations to contracts that may have initially been awarded for a value below \$1M, but changes in scope have resulted in costs exceeding \$1M.

Due to the nature of work under natural disaster funding, which needs to commence and be completed in the shortest timeframes possible, the current procurement process has inherent delays associated with the timeframe to include approval reports at scheduled Council

CL22.549

meetings. These delays can add several weeks to delivery programs and as a consequence could contribute to undue stress for the community which is experiencing restrictions to their access to suitable infrastructure, resulting in numerous related issues.

Considering the scale of the damage in recent weather events and impact upon the community, options for expediting delivery timeframes have been reviewed to enable these works to be undertaken as soon as possible.

Delegating authority to the CEO to accept tenders and approve variations, on Council's behalf, under the joint Australian Government-State Disaster Recovery Funding Arrangements 2018, exclusively related to the funding of asset restoration resulting from the March and July 2022 severe weather events, will eliminate the inherent delay of seeking a Council resolution for approval of works. The standard procurement processes will otherwise be undertaken to demonstrate value for money.

For context, some current examples of Natural Disaster recovery works exceeding the \$1M approval threshold include:

1. Basin Pavement Rehabilitation Package Round 1

The original awarded contract value of \$643,292.38 (excluding GST) has extended to a final contract value of \$987,690.04 (excluding GST) due to additional damages identified from time of tender to delivery. The works were undertaken as the additional scope in its current condition posed a risk to commuters and could be undertaken by the contractor on site. The inclusion of the additional work then exceeded the tendering threshold for reporting to Council. Value for money had already been determined via the tendering process for the original contract sum.

2. Central Pavement Rehabilitation Package Round 1

The inclusion of additional work has exceeded the tendering threshold for reporting to Council. The original awarded contract of \$848,681.22 (excluding GST) included a provisional sum of \$269,535.99 so that Council could take the opportunity to improve repairs and extend the scope of works for Callala Beach Road. In consultation with the Roads Asset Manager, the opportunity was taken to include the addition scope and resulted in an improved standard of works on this road in an expedited timeframe. The inclusion of the provisional sum has subsequently exceeded the tendering threshold for reporting to Council.

3. Major Landslip Package

Early estimates indicate that the Major Landslip Package tender, that was released to the market on 31 October 2022, could have a contract value more than \$40M. The Contract award is expected to occur over the Christmas period between Council meetings. The ability to obtain approval from the CEO without waiting for the Council meeting at the end of January would avoid delays in awarding the Contract and subsequent commencement of works on the ground.

Community Engagement

Community sentiment received to date clearly demonstrates a desire to expedite the works and minimise delays.

Policy Implications

In practice this resolution will result in the following change to policy

1. For the period to 31 December 2025 (or until otherwise revoked by Council resolution), the CEO shall have unlimited authority to accept tenders specific to the Joint Australian Government-State Disaster Recovery Funding Arrangements 2018.

CL22.549

2. For all other matters, the CEO delegation to accept tenders will remain limited to <\$1M
3. For all other matters resolution of Council will be sought for tenders >\$1M and where recommendation is to not accept any tender or to take a particular path under Regulation 178(3).

The Delegation to the CEO to deal with Tenders is limited by the following provisions:

- Section 178(3) of the *Local Government (General) Regulation 2021* which requires a Council resolution not to accept tenders, invite fresh tenders and enter into negotiations:
 - “178(3) A council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract must, by resolution, do one of the following:*
 - (a) Postpone or cancel the proposal for the contract*
 - (b) Invite, in accordance with clause 167, 168 or 169, fresh tenders based on the same or different details,*
 - (c) Invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract,*
 - (d) Invite, in accordance with clause 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,*
 - (e) Enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,*
 - (f) Carry out the requirements of the proposed contract itself.”*
- S377(u) of the *Local Government Act 1993* which states that council cannot delegate:
 - “(u) any function under this or any other Act that is expressly required to be exercised by resolution of the council.”*

Should it be identified that additional emergency arrangements are required to deal with Tenders limited by the above provisions during the Christmas period, a further report will be provided to the Council.

Financial Implications

Nil. Funding model remains the same. Funds will be approved prior to going to tender.

Risk Implications

Reduces risk as it expedites the program for delivery.

CL22.549

CL22.550 Policy - Tree Management Policy - Public Land

HPERM Ref: D22/356784

Department: Works & Services

Approver: Stephen Dunshea, Chief Executive Officer

Attachments: 1. Tree Management Policy - Public Land - 2022 (under separate cover) [⇒](#)

Reason for Report

This policy review is presented to Council in accordance with the recommendations for all policies to be reviewed within the first 12 months of the election of a new council.

This report summarises proposed updates to the Tree Management Policy – Public Land.

Recommendation

That Council adopts the revised Tree Management Policy – Public Land (POL22/181)

Options

1. Adopt the policy recommendation as written.

Implications: The revised policy will ensure that Council continues to implement decisions for public trees, for arboriculture and public risk management consistent with existing requirements.

2. Not to adopt the recommendation.

Implications: Council can request further details, seek further community input, or make other changes. Implications will depend on the resolution(s) of Council.

Background

The Shoalhaven Tree Management Policy – Public Land Policy was first adopted by Council 6 March 2015 (MIN D14/328051, D14/331539).

Only minor editorial changes have been made that reflect organisational changes that have occurred over the last two years.

It should be noted that Council is concurrently considering its approach to the 45-degree rule that is primarily aimed at providing tree safety on private land. Once a decision has been made on this, the policy may need to be reviewed to reflect the Council decision.

Community Engagement

None required, as amendments are administrative.

Policy Implications

No substantial policy changes are proposed within the recommended changes to the policy.

CL22.550

CL22.551 Policy - Rural Fire Services Stations - Community Use

HPERM Ref: D22/408283

Department: Building Services
Approver: Craig Exton, Manager - Technical Services

Attachments: 1. Draft Policy Review - Rural Fire Service Stations - Community Use - POL22/114 [↓](#)
2. Council DPOP 2022-23 Charges (Community Halls) [↓](#)

Reason for Report

This policy review is presented to Council in accordance with the recommendations for all policies to be reviewed within the first 12 months of the election of a new council.

This report summarises proposed updates to the Rural Fire Services Stations – Community Use Policy (POL22/114).

Recommendation

That Council adopt the revised Rural Fire Service Stations - Community Use policy (POL22/114).

Options

1. Resolve as recommended.

Implications: The revised policy will ensure that any agreed use of RFS Stations by the community do not impact on the operation of RFS Stations.

2. Resolve not to adopt as recommended and rely upon the existing Policy POL16/158.

Implications: The current policy is unclear in some areas and does not provide framework around potential charges between RFS and the community.

Background

Building Services have reviewed the existing policy (POL16/158) as the Asset Custodian of RFS Stations. Minor changes have been made to ensure the policy is clear for all parties and to provide some framework regarding potential charges to the community.

The Policy provides a clear position to RFS and the community should RFS Stations be requested for use by the community where a Council hall does not exist. It also provides for Council to review matters where there is a dispute to ensure the efficient operation of RFS Stations to the community.

The key clause changes are as follows:

1. The Purpose and Statement have been updated to provide clear guidance as to the responsibilities of RFS, and the community, should RFS Stations be requested for use by the community (where a Council Hall does not exist).

CL22.551

2. Provisions 3.1.2 and Implementation 4. now includes “Operational Officer” as a responsible party for administering the policy and implementation of any occupation by the community groups.
3. Provisions 3.1.4 provides clearer advice for the Council’s responsibilities in reviewing matters where there is a dispute with respect to the protection of interests and efficient running of RFS Stations.
4. Provisions 3.1.6 includes clear advice on the applicable hire fees that may be charged for using the RFS Station. Fees are consistent with the Council’s yearly Delivery Program Operational Plan and Budget for Community Halls.
5. Implementation 4. has been updated to reflect recent re-structuring within Council. The administering party (formally “Asset and Works Group”) has been replaced with “Council’s Building Services, City Services”.

The Lake Tabourie RFS Station is the only agreed facility in the Council portfolio used by the community for meetings. The community in Lake Tabourie have approached Council regarding a separate community facility. Community Planning and Projects are managing the community request.

Community Engagement

Due to the minor nature of the changes, which do not materially impact the intent of the policy, community engagement is deemed to be not required. The Policy and proposed amendments, however, were discussed with Ross Smith, Operational Officer, Shoalhaven District, NSW Rural Fire Service who advised there were no concerns.

Policy Implications

The policy is due for review within one year of the election of a new Council. No substantial policy changes will result from the recommended changes.

Risk Implications

No risks identified.

CL22.551

Rural Fire Service Stations – Community Use

Adoption Date:	26/04/2005
Amendment Date:	21/09/2009, 23/11/2012, 21/02/2017
Minute Number:	MIN05.420, MIN09.1283, MIN12.1266, MIN17.104
Review Date:	01/12/2020
Directorate:	City Services
Record Number:	POL22/114

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1. Purpose

To ensure that any agreed community use of Rural Fire Service (RFS) stations does not impact RFS routine operations, emergency response, RFS members or public safety.

2. Statement

RFS stations have historically been made available for community use in several village locations where no public hall or venues suitable for local meetings and other community activities exist. An increasing focus on risk management and health, safety and wellbeing issues have highlighted areas of potential conflict between the community and the RFS during the use of these stations. This policy is aimed at avoiding such conflict.

3. Provisions

- 3.1.1. The community use of RFS stations will not be permitted in localities where public halls or other suitable venues are available.
- 3.1.2. Negotiations and agreements must be reached between the community group(s), the District Manager/Operational Officer and local Rural Fire Brigade (RFB) members on a brigade-by-brigade basis where community use is proposed.
- 3.1.3. Where permission for community use is allowed, a nominated community member must be placed in charge of the activity, and the community group must accept responsibility for adherence to any protocols that the RFS has established for the co-use of the station.
- 3.1.4. Where any dispute over an existing or new community use arises, Council will make the final decision on if the use of the community is agreed to after considering each case on its merits. The determining factor is whether the use of the facility can be managed in such a way that routine RFS operations, emergency response and member/public safety will not be compromised.
- 3.1.5. Use of RFS stations by community groups will be subject to the same “casual hirers” insurance policy requirements applicable to other public halls and buildings owned by Council.
- 3.1.6. The local brigade may charge a reasonable hire fee for using the RFS Station consistent with the Council’s Delivery Program Operational Plan and Budget 2022/2023.

4. Implementation

Council’s Building Services, City Services group administers this policy. The local RFS District Manager/Operational Officer, together with the affected RFB Captain(s), is responsible for implementing any occupation by the community groups.

5. Review

This policy will be reviewed within one year of the election of every new Council or earlier if circumstances warrant.

COMMUNITY FACILITIES - BUILDINGS, PARKS, SPORTSGROUNDS

Fee Description	Purpose	Pricing Policy	Recovery	GST Incl.	2022/2023 Amount
MEDIUM MEETING ROOM, SPORTSGROUND CLUBHOUSE, LARGE SHED					
Private Functions					
Medium Meeting Room / Sportsground Clubhouse / Large Shed	Hire Fee	Partial cost recovery	N/A	Y	\$24.00 per hour
Medium Meeting Room / Sportsground Clubhouse / Large Shed	Hire Fee	Partial cost recovery	N/A	Y	\$166.00 per day
Medium Meeting Room / Sportsground Clubhouse / Large Shed	Hire Fee	Partial cost recovery	N/A	Y	\$24.00 per hour
Medium Meeting Room / Sportsground Clubhouse / Large Shed	Hire Fee	Partial cost recovery	N/A	Y	\$166.00 per day
Commercial Casual					
Medium Meeting Room / Sportsground Clubhouse / Large Shed	Hire Fee	Partial cost recovery	N/A	Y	\$16.00 per hour
Medium Meeting Room / Sportsground Clubhouse / Large Shed	Hire Fee	Partial cost recovery	N/A	Y	\$111.00 per day
Commercial Regular					
Medium Meeting Room / Sportsground Clubhouse / Large Shed	Hire Fee	Partial cost recovery	N/A	Y	\$12.00 per day
Medium Meeting Room / Sportsground Clubhouse / Large Shed	Hire Fee	Partial cost recovery	N/A	Y	\$83.00 per day
Community Casual					
Medium Meeting Room / Sportsground Clubhouse / Large Shed	Hire Fee	Partial cost recovery	N/A	Y	\$12.00 per hour
Medium Meeting Room / Sportsground Clubhouse / Large Shed	Hire Fee	Partial cost recovery	N/A	Y	\$83.00 per day
Community Regular					
Medium Meeting Room / Sportsground Clubhouse / Large Shed	Hire Fee	Partial cost recovery	N/A	Y	\$56.00 per day
Medium Meeting Room / Sportsground Clubhouse / Large Shed	Hire Fee	Partial cost recovery	N/A	Y	\$8.00 per hour

CL22.552 Policy - Management of Mobile Food Vending Vehicles on Council Owned or Managed Land

HPERM Ref: D22/437347

Department: Technical Services

Approver: Craig Exton, Manager - Technical Services

Attachments: 1. Food - Management of Mobile Food Vending Vehicles on Council Owned or Managed Land - LAP (under separate cover) [↗](#)

Reason for Report

This policy review is presented to Council in accordance with the recommendations for all policies to be reviewed within the first 12 months of the election of a new council.

The purpose of this report is to present the Draft Management of Mobile Food Vending Vehicles Policy to Council to be endorsed for public exhibition.

Recommendation

That Council:

1. Endorse the Management of Mobile Food Vending Vehicles Policy (POL22/106) for public exhibition.
2. Note that following this period of public exhibition, a summary of community feedback and recommendations will be reported to Council along with the final draft Policy.

Options

1. Resolve as recommended:

Implications: This option will see the Management of Mobile Food Vending Vehicles Policy be released for public exhibition and community consultation for one month. Once this period is complete, a summary of feedback and any recommended changes to the Policy will be presented to Council.

2. That Council request further changes to the Policy before endorsing the policy to be released for public exhibition.

Implications: This will depend on the extent of any changes/approaches. Further changes will delay the finalisation of the Policy

Background

Following a Notice of Motion in 2015, Council issued an Expression of Interest (EOI) seeking submissions for interested entities who wished to conduct mobile food vending vehicles within the Local Government Area. The Policy was introduced to assist in future management and positive outcomes for the traders and the community.

The initial EOI resulted in the issue of two permits. From 2015 to 2018 there was a slow increase in mobile food vendors with numbers dropping in 2019. 2020 onward has seen a resurgence due to Covid 19 with 13 permits issued for 2020/2021. Currently Council has issued 9 permits for this financial year.

CL22.552

In addition to considerations detailed in the Community Engagement section of this report, the revision of this policy has sought to address items 1, 2 and 3 of Council resolution MIN22.55:

That Council:

- 1. Undertake a full review of the Mobile Food Vending Vehicles on Council Land or Managed Land Policy within the next 6 months.*
- 2. A draft Review of the Policy be reported to Council prior to public exhibition and to provide policy options for flexibility for exemptions*
- 3. The draft Policy Review be placed on public exhibition for a period of 28 days and reported back to Council following the exhibition.*
- 4. Investigate Surfers Avenue as an alternate location for “Hello Huey”.*

To address Item 2, clause 9.2 has been added to the policy to detail the process for which a request for an exemption to the proximity to other premises condition may be considered.

Other amendments to the Policy include updates to reference current legislation, rationalisation of duplicated content, and clarification of information relevant to making an application.

Community Engagement

No community consultation has been undertaken as part of this review process.

Council has received a number of emails within the past 4 years that has led to discussion between internal stakeholders to improve the current Policy and resolve conflict and misunderstanding between a Mobile Food Vending Vehicle with a LGA Section 68 issued approval and a Mobile Food Vending Vehicle issued with a permit in accordance with Policy POL16/77.

Issue 1 - The existing Policy does not allow a new Permit to be issued outside May each year.

The amended policy retains the annual renewal in May, however, has been updated to reflect the traders concerns when a new purchase or commencement of trade is outside the May deadline.

New applications will be accepted year-round and a permit issued until 30 June for that financial year. This new application will then be subject to the renewal in May for the coming financial year.

Issue 2 – Mobile Food Vending Vehicles only permitted to trade so long as not within 1km of an existing takeaway that offers similar products.

This remains as stated in the policy. The 1km distance was introduced at the request of community concerns and supported by Councillors in 2017. The change supported the removal of “approved locations (7)” and therefore the operating distance increased from 500m to 1km to limit impact on fixed small local commercial enterprise.

This provided support for fixed small local commercial entities who incur additional overheads and also removed the location of where the mobile food vending vehicles can operate, allowing a greater opportunity for trade.

Removing the approved location also assisted with mobile food vending vehicles trading in locations where fixed small local commercial entities cannot.

It should be noted that the 1km distance only applies when fixed small local commercial entities are open for trade.

Policy Implications

The policy is due for review within one year of the election of a new Council. The amended policy aligns with current legislation and has taken into account concerns raised since 2016.

Financial Implications

Associated fees and charges have been adopted by Council.

Risk Implications

The amended Policy will improve management of mobile food vending vehicles by Council staff and clearer direction for the community.

No risks are identified.

CL22.552

CL22.553 Proposed Acquisition - Lot B DP 367157 - 49 Meroo Street Bomaderry

HPERM Ref: D22/383205

Department: Technical Services

Approver: Craig Exton, Manager - Technical Services

Reason for Report

To provide Council with an opportunity to consider a confidential report for the proposed Acquisition - Lot B DP 367157 - 49 Meroo Street Bomaderry.

In accordance with 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.

Recommendation

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

Options

1. Accept the recommendation

Implications: Consider a separate confidential report on the matter

2. Not accept the recommendation.

Background

Council previously considered the purchase of 49 Meroo Street Bomaderry in 2018, instigated by the 'Pride of Bomaderry'. In accordance with MIN18.887C dated 31 October 2018, Council staff approached the landowner and issued a formal offer to purchase. Both Council's offer and the landowners' counteroffer was rejected by each party. No further correspondence was entered into at that time.

Following consideration of a Notice of Motion, it was resolved on 31 August 2021 (MIN21.607) that:

Council enter into negotiations to acquire number 49 Meroo Street, Bomaderry, a lot known as 'Waratah Park', being Lot B DP367157.

Property Negotiations

Council Officers instructed a current market valuation for the property to commence negotiations. Council staff initially approached the landowner to enquire if there was an appetite to sell, followed by a formal offer.

CL22.553

The owner rejected Council's offer and advised it was unacceptable as they had received a market appraisal (not a valuation) exceeding Council's offer.

As the market appraisal was not undertaken by an accredited registered valuer, Council continued to negotiate an offer in line with the valuation report held by Council.

The owner again rejected Council's offer and provided a counteroffer based on the previously supplied Market Appraisal as a minimum sum for the purchase of the property.

Related Matters

Council is working with Southern Cross Housing to progress an affordable housing development in Coomea Street, Bomaderry (The land is highlighted in red in the figure below). The Shoalhaven Affordable Housing Strategy site has 6.5m common property boundary to the subject land. The possible acquisition of the subject land may allow additional options for consideration to compliment the affordable housing development. Any future review of the DCP Chapter related to the Bomaderry Town Centre may provide future opportunities for 49 Merroo St Bomaderry.



Aerial view of 49 Merroo St Bomaderry in yellow

Shoalhaven Affordable Housing Strategy "Coomea St Project" in red.

The existing DCP Chapter for the Bomaderry Town Centre indicates a possible 'pedestrian link / paved area / inter allotment drainage involving part of 49 Merroo Street, Bomaderry, please refer to **Attachment 2**.

Community Engagement

The purchase is an operational matter and does not require community engagement. There is considered to be a level of community support for the subject land to be brought into Council's ownership.

The current Shoalhaven Community Infrastructure Strategic Plan (CISP) and Shoalhaven Contributions Plan do not identify the need for additional parks or open space in Bomaderry or requirement for a park in this location.

CL22.553

Policy Implications

Nil

Financial Implications

This information is contained within the confidential report.

Risk Implications

Nil

CL22.553

CL22.554 Tenders - Bitumen Spray Sealing of Pavements - July 2022 to June 2024

HPERM Ref: D22/398134

Department: Works & Services

Approver: Craig Exton, Manager - Technical Services

Reason for Report

To inform Council of the tender process for Bitumen Spray Sealing of Pavements - July 2022 to June 2024.

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.

Recommendation

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

Options

1. Accept the recommendation

Implications: Consider a separate confidential report on the matter.

2. Council make a different resolution

Implications: This is not recommended as an extensive evaluation process has been undertaken by the tender evaluation team in accordance with the tender evaluation plan.

Details

Council called tenders for Bitumen Spay Sealing of Pavements – July 2022 to June 2024 on 11 August 2022 which closed at 10:00am on 8 September 2022. Seven tenders were received at the time of closing. Tenders were received from the following:

Tenderer	Location
State Asphalt Services Pty Ltd	Prestons, NSW 2170
Stabilised Pavements of Australia Pty Ltd	Somersby, NSW 2250
Rural Bitumen Services Pty Ltd	South Nowra, NSW 2541
Roadworx Surfacing Pty Ltd	Unanderra, NSW 2526
NA Group Pty Ltd	Padstow, NSW 2211
Downer EDI Works Pty Ltd	Mogo, NSW 2536

CL22.554

Tenderer	Location
All Pavement Solutions Pty Ltd	Bella Vista, 2153 NSW

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

Policy Implications

Nil. The tender process has followed the requirements under the provisions of the Local Government Act 1993.

Financial Implications:

Sufficient funds have been allocated in the roads maintenance budget for 2022/23. Funding is available to cover the tender amount.

Risk Implications

Details relating to the Risk Implications are contained in the confidential report.

CL22.554

CL22.555 Variations to Development Standards - September Quarter 2022

HPERM Ref: D22/415901

Department: Development Services

Approver: James Ruprai, Director - City Development

Attachments: 1. Variations Report - 3rd Quarter - September 2022 [↓](#)
2. Planning Circular - Variations to Development Standards - May 2020 [↓](#)

Reason for Report

This report is submitted to the Ordinary Meeting due to the requirement (Department of Planning and Environment) that the information contained in the report is to be reported to the full elected Council and to the Department on a quarterly basis. All reports to the Department must be submitted through the NSW Planning Portal.

Council is required to consider variations to development standards (contained in an environmental planning instrument such as the Shoalhaven Local Environmental Plan) which exceed 10%, with lesser variations able to be dealt with by staff, under delegation.

Council is also required to publish the variations in addition to reporting the variations to the full Council and the Department of Planning, Industry and Environment.

This is a regular information report.

Recommendation

That Council receive the Variations to Development Standards – September Quarter Report 2022 for information.

Options

1. Receive the report for information.

Implications: Council will be complying with the reporting provisions as detailed in *Circular PS20-002 Variations to development standards*. (Attached.)

2. Resolve an alternative and provide details to staff.

Implications: Depending on what is resolved, the Council would need to ensure compliance observing that the Department undertakes periodic audits.

Background

Procedural and reporting requirements

To ensure transparency and integrity in the planning framework, the Department requires monitoring and reporting measures.

- A written application (by an applicant) must be made to support a variation.
- An online register of all variations to be maintained. (Council's website.)
- A report must be submitted through the Portal.
- A report of all variations from a Council must be provided to a meeting of the Council at least once a quarter. (This report.)

CL22.555

Summary of reportable variations

The table below is based on the spreadsheet but is simplified for easier reading. The spreadsheets are viewable on Council's webpage and are published quarterly as soon as possible after the last day of the month.

There were five (5) reportable variations for the September Quarter.

Table – Variations September Quarter 2022

DA	Lot	DP	Street Name	Suburb	Post Code	Description	Stand ard Varied	Extent Of Variation	Decision	Date
SF10931	147	10209	Fleet Way	CALLALA BAY	2540	Torrens subdivision of approved dual occupancy	Lot size	8.46%	Assumed concurrence. Delegation.	08/07/2022
DA22/1310	30	1267172	Beach St	HUSKISSON	2540	Flat Building	Height	6.15%	Assumed concurrence. Delegation	11/07/2022
DA22/1041	12	264461	Augusta Place	MOLLYMOOK BEACH	2539	Dual occupancy	Lot size	2.3%	Assumed concurrence. Delegation	20/07/2022
DA22/1163	2	1269899	Gumtree Lane	KANGAROO VALLEY	2577	Dwelling	Lot size	8%	Assumed concurrence. Delegation	31/07/2022
SF10934	13	1194919	Red Gum Drive	ULLADULLA	2539	Subdivision	Lot size	7%	Assumed concurrence. Delegation	11/08/2022

SF10931 approved a Torrens title subdivision of an existing approved and under construction dual occupancy.

The parent lot is of an irregular shape with the two resulting 'child' lots containing a dwelling on each lot. The development appears as two dwelling houses. The subdivision does not affect the outward appearance of the development with the impacts of the development largely known as a result of the built form.

DA22/1310 - approved a residential flat development consisting of 14 apartments over 4 storeys and basement parking. The maximum height limitation was 13 metres. The height penetration (0.8m) was attributable to a small portion of skillion roof which incorporated a lift overrun.

DA22/1041 – approved a double storey dual occupancy on land zoned R3. Development consent must not be granted to development for a dual occupancy on R3 land unless the lot is less than 800 square metre, and the consent authority is satisfied that lot amalgamation is not possible. The lot was 819 square metres (19 square metres over the numeric requirement). However, the applicant has clearly demonstrated amalgamation is not possible. The land on either side is already developed and in different ownerships. The land behind the site is the golf course.

DA22/1163 – approved an in-principle dwelling site – that is a concept approval requiring a future DA for the dwelling. The lot was originally created in a manner to retain all prime agricultural land in another lot, in a previous subdivision.

SF10934 – approved a six (6) lot subdivision. One of the lots was smaller than the minimum lot size. The variation was supported as the subdivision pattern was consistent with the

CL22.555

adjoining lots, the variation relatively minor, the size of the lot will fit a modern dwelling. Further a pathway between the lot and adjoining development will provide further separation between developments.

Conclusion

- The variations and applications approved during the September quarter have been uploaded to the Department of Planning and Environment Portal site and published on Council's website.
- This report to Council, combined with the report (via the Portal) to the Department and website publication satisfies the requirements for the Department's reporting regime for clause 4.6 matters.

CL22.555

Council DA reference number	Lot number	DP number	Apartment/ Unit number	Street number	Street name	Suburb/Town	Postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Concurring authority	Date DA determined dd/mm/yyyy
SF10931	147	10209		22	Fleet Way	CALLALA BAY	2540	13: Subdivision only	SLEP2014	R2 Low Density Residential	4.1 Minimum subdivision lot size	Torrens Title Subdivision of previously approved Dual Occupancy, under a previous version of SLEP2014 clause, which can no longer be used. If the Dual Occupancy application was approved under the current version of the SLEP2014 the subdivision could be approved without a variation. The lot is suitable for the proposed subdivision. The variation will not set an undesirable precedent for a departure of this development standard in the locality. The proposal meets the objectives of the zone.	8.46%	Council under assumed Secretary's concurrence. Determined under staff delegation.	8/07/2022
DA22/1310	30	1267172			Beach Street	HUSKISSON	2540	4: Residential - New multi unit	SLEP2014	B4 Mixed Use	4.3 Height of buildings	The contraventions to the building height limit are limited to the skillion roof design which has been designed to incorporate the lift overrun and other mechanical and fire sprinkler infrastructure, as well as provide additional light opportunity and ventilation to south facing unit 13. The contraventions are minor in terms of the overall design of the proposed building and still ensure that the proposed building is compatible with the height, bulk and scale of the existing locality and objectives of Clause 4.3. The environmental planning grounds are sufficient in that the proposal would support north facing highlight windows to be installed which improves the solar access to the development.	6.15%	Council under assumed Secretary's concurrence. Determined under staff delegation.	11/07/2022
DA22/1041	12	264461		24	Augusta Pl	MOLLYMOOK BEACH	2539	3: Residential - New second occupancy	SLEP2014	R3 Medium Density Residential	4.1B Dual Occupancy Development in Zone R3	The variation is to the lot size requirement for dual occupancy development which is <800m2. The lot is 819m2 so minor variation, no impacts on amenity. Applicant has demonstrated that the lot is unable to be amalgamated with any adjoining lot.	2.3%	Council under assumed Secretary's concurrence. Determined under staff delegation.	20/07/2022
DA22/1163	2	1269899		28	Gumtree Lane	Kangaroo Valley	2577	2: Residential - Single new dwelling	SLEP2014	RU1 Primary Production	4.2D	The lot was deliberately created undersized to site all prime agricultural land on a lot at the min size. The 4.6 to create the lot was supported with the intention of approving a DA for a dwelling house under cl. 4.D via a 4.6 request	8%	Council under assumed Secretary's concurrence. Determined under staff delegation.	31/07/2022
SF10934	13	1194919			Red Gum Dr	ULLADULLA	2539	13: Subdivision only	SLEP2014	R1 General Residential	4.1	One of the lots is 467.4m2 which is less than the 500m2 MLS Map. No amenity impacts to neighbouring development, lot is of a size that will be able to accommodate a dwelling house, and is consistent with the existing subdivision pattern.	7%	Council under assumed Secretary's concurrence. Determined under staff delegation.	11/08/2022



Planning circular

PLANNING SYSTEM

Varying Development Standards

Circular	PS 20-002
Issued	5 May 2020
Related	Revokes PS 18-003 (February 2018), PS 19-005

Variations to development standards

This circular is to advise consent authorities of arrangements for when the Secretary's concurrence to vary development standards may be assumed (including when council or its Independent Hearing and Assessment Panel are to determine applications when development standards are varied) and clarify requirements around reporting and record keeping where that concurrence has been assumed.

Overview of assumed concurrence

This circular replaces Planning Circular PS 18-003 and issues assumed concurrence, governance and reporting requirements for consent authorities. It also advises that council reports are to come through the Planning Portal, and of the repeal of SEPP 1.

All consent authorities may assume the Secretary's concurrence under:

- clause 4.6 of a local environmental plan that adopts the *Standard Instrument (Local Environmental Plans) Order 2006* or any other provision of an environmental planning instrument to the same effect, or
- *State Environmental Planning Policy No 1 – Development Standards* for land included in an old Interim Development Order (IDO) or Planning Scheme Ordinance (PSO).

However, the assumed concurrence is subject to conditions (see below).

The assumed concurrence notice takes effect immediately and applies to pending development applications.

Any existing variation agreed to by the Secretary of Planning, Industry and Environment to a previous notice will continue to have effect under the attached notice.

Assumed concurrence conditions

Lot size standards for dwellings in rural areas

The Secretary's concurrence may not be assumed for a development standard relating to the minimum lot size required for erection of a dwelling on land in one of the following land use zones, if the lot is less than 90% of the required minimum lot size:

- Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone

RU4 Primary Production Small Lots, Zone RU6 Transition

- Zone R5 Large Lot Residential
- Zone E2 Environmental Conservation, Zone E3 Environmental Management, Zone E4 Environmental Living
- a land use zone that is equivalent to one of the above land use zones

This condition will only apply to local and regionally significant development.

Numerical and non-numerical development standards

The Secretary's concurrence may not be assumed by a delegate of council if:

- the development contravenes a numerical standard by greater than 10%; or
- the variation is to a non-numerical standard.

This restriction does not apply to decisions made by independent hearing and assessment panels, formally known as local planning panels, who exercise consent authority functions on behalf of councils, but are not legally delegates of the council (see section 231).

The purpose of the restriction on assumed concurrence for variations of numerical and non-numerical standards applying to delegates is to ensure that variations of this nature are considered by the council or its independent hearing and assessment panel and that they are subject to greater public scrutiny than decisions made by council staff under delegation.

In all other circumstances, delegates of a consent authority may assume the Secretary's concurrence in accordance with the attached written notice.

Independent hearing and assessment panels

From 1 March 2018, councils in Sydney and Wollongong were required to have independent hearing and assessment panels that will determine development applications on behalf of councils (see section 231).

The attached notice allows independent hearing and assessment panels to assume the Secretary's concurrence because they are exercising the council's functions as a consent authority.

Independent hearing and assessment panels established by councils before 1 March 2018 also make decisions on behalf of councils. The attached notice applies to existing panels in the same way as it applies to panels established after 1 March 2018.

Regionally significant development

Sydney district and regional planning panels may also assume the Secretary's concurrence where development standards will be contravened.

The restriction on delegates determining applications involving numerical or non-numerical standards does not apply to all regionally significant development. This is because all regionally significant development is determined by a panel and is not delegated to council staff.

However, the restriction on assuming concurrence to vary lot size standards for dwellings in rural areas will continue to apply to regionally significant development. The Secretary's concurrence will need to be obtained for these proposals in the same way as it would for local development.

State significant development and development where a Minister is the consent authority

Consent authorities for State significant development (SSD) may also assume the Secretary's concurrence where development standards will be contravened. This arrangement also applies to other development for which a Minister is the consent authority for the same reasons.

Any matters arising from contravening development standards will be dealt with in Departmental assessment reports.

The restriction on assuming concurrence to vary lot size standards for dwellings in rural areas will not apply to SSD or where a Minister is the consent authority for the same reasons.

Notification of assumed concurrence

Under clause 64 of the *Environmental Planning and Assessment Regulation 2000*, consent authorities are notified that they may assume the Secretary's concurrence for exceptions to development standards for applications made under clause 4.6 of the SILEP (or any other provision of an environmental planning instrument to the same effect).

The notice takes effect on the day that it is published on the Department of Planning, Industry and Environment's website (i.e. the date of issue of this circular) and applies to pending development applications.

Procedural and reporting requirements

In order to ensure transparency and integrity in the planning framework the below Departmental monitoring and reporting measures must be followed when development standards are being varied:

- Proposed variations to development standards cannot be considered without a written application objecting to the development standard and dealing with the matters required to be addressed by the relevant instrument.
- A publicly available online register of all variations to development standards approved by the consent authority or its delegates is to be established and maintained. This register must include the development application number and description, the property address, the standard to be varied and the extent of the variation.
- A report of all variations approved (including under delegation) must be submitted through the NSW Planning Portal at <https://www.planningportal.nsw.gov.au/reporting/online-submission-planning-data> within four weeks of the end of each quarter (i.e. March, June, September and December) in the form provided by the Department.
- A report of all variations approved under delegation from a council must be provided to a meeting of the council meeting at least once each quarter.

Councils are to ensure these procedures and reporting requirements are carried out on behalf of Independent Hearing and Assessment Panels and Sydney district or regional planning panels.

Audit

The Department will continue to carry out random audits to ensure the monitoring and reporting measures are complied with. The Department and the NSW Independent Commission Against Corruption will continue to review and refine the audit strategy.

Should ongoing non-compliance be identified with one or more consent authorities, the Secretary will consider revoking the notice allowing concurrence to be assumed, either generally for a consent authority or for a specific type of development.

Repeal of State Environmental Planning Policy No 1 – Development Standards (SEPP 1)

The repeal of SEPP 1 came into effect from 1 February 2020 as part of the SEPP Review Program to update and simplify the NSW Planning system.

SEPP 1 is repealed in circumstances where a standard instrument LEP applies in a local council

Department of Planning, Industry and Environment – Planning Circular PS 20-002

area. The amendments included the insertion of two clauses into the *SEPP (Concurrences and Consents) 2018*. Clause 6 provides for the continued operation of SEPP 1 where an Interim Development Order (IDO) or a Planning Scheme Ordinance (PSO) is in effect. Clause 7 is a savings provision which continues to apply SEPP 1 for applications that were made prior to the repeal but are yet to be determined.

Further information

A Guide on Varying Development Standards 2011 is available to assist applicants and councils on the procedures for managing SEPP 1 and clause 4.6 applications to vary standards.

Links to the Standard Instrument can be found on the NSW Legislation website at:
www.legislation.nsw.gov.au

For further information please contact the Department of Planning, Industry and Environment's information centre on 1300 305 695.

Department of Planning, Industry and Environment circulars are available at:
planning.nsw.gov.au/circulars

Authorised by:

Marcus Ray
Group Deputy Secretary,
Planning and Assessment
Department of Planning, Industry and Environment

Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

Assumed concurrence notice

I, Carolyn McNally, Secretary of the Department of Planning and Environment, give the following notice to all consent authorities under clause 64 of the *Environmental Planning and Assessment Regulation 2000*.

Notice

All consent authorities may assume my concurrence, subject to the conditions set out in the table below, where it is required under:

- clause 4.6 of a local environmental plan that adopts the *Standard Instrument (Local Environmental Plans) Order 2006* or any other provision of an environmental planning instrument to the same effect, or
- *State Environmental Planning Policy No 1 – Development Standards*.

No.	Conditions
1	<p>Concurrence may not be assumed for a development that contravenes a development standard relating to the minimum lot size required for the erection of a dwelling on land in one of the following land use zones, if the variation is greater than 10% of the required minimum lot size:</p> <ul style="list-style-type: none"> – Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition – Zone R5 Large Lot Residential – Zone E2 Environmental Conservation, Zone E3 Environmental Management, Zone E4 Environmental Living – a land use zone that is equivalent to one of the above land use zones <p>This condition does not apply to State significant development or development for which a Minister is the consent authority</p>
2	<p>Concurrence may not be assumed for the following development, if the function of determining the development application is exercised by a delegate of the consent authority:</p> <ul style="list-style-type: none"> – development that contravenes a numerical development standard by more than 10% – development that contravenes a non-numerical development standard <p>Note. Local planning panels constituted under the <i>Environmental Planning and Assessment Act 1979</i> exercise consent authority functions on behalf a council and are not delegates of the council</p> <p>This condition does not apply to State significant development, regionally significant development or development for which a Minister is the consent authority</p>

This notice takes effect on the day that it is published on the Department of Planning's website and applies to development applications made (but not determined) before it takes effect.

The previous notice to assume my concurrence contained in planning system circular PS 17–006 *Variations to development standards*, issued 15 December 2017 is revoked by this notice. However, any variation to a previous notice continues to have effect as if it were a variation to this notice.

Dated: 21 February 2018



Carolyn McNally
Secretary, Department of Planning and Environment

CL22.556 Development Application Fee Reimbursement Request - Southern Cross Community Housing Ltd - RA22/1002

DA. No: RA22/1002/7

HPERM Ref: D22/440041

Department: Development Services

Approver: James Ruprai, Director - City Development

Attachments: 1. Request - DA Fees Waiver / Refund - Lots 19-23 Sec 25 DP 2886 - 44-52 Coomea St Bomaderry - Affordable Housing Development - Southern Cross Community Housing Ltd [↓](#)

Description of Development: Construction of Affordable Housing Development comprising Two (2) Residential Flat Buildings containing 39 Dwellings and associated parking

Owner: Southern Cross Community Housing Ltd

Applicant: Southern Cross Community Housing Ltd c/- Edmiston Jones

Purpose / Reason for consideration by Council

This report is to enable Council to consider a request made by Southern Cross Community Housing Ltd for the reimbursement of fees in relation to Development Application RA22/1002. Details of the development are provided in the 'Background' section of this report.

Recommendation

That Council:

1. Reimburse Southern Cross Community Housing Ltd \$12,032.29 being Development Application (DA) fees in relation to RA22/1002.
2. Fund the reimbursement from the City Development Budget.

Options

1. Adopt the Recommendation.

Implications: Council will be required to reimburse the DA fees paid in relation to RA22/1002, excluding prescribed advertising, notification and archive fees which have already been expended.

2. Not support the request.

Implications: Fees will be retained by Council.

Background

Southern Cross Community Housing Ltd is a not-for-profit registered charity and owner of Lots 19-23 Sec 25 DP 2886 (known as 44-52 Coomea Street, Bomaderry).

CL22.556

Evidence of registration as a charity has been provided to Council, as per Attachment 1.

On 24 March 2022, Council received a DA (RA22/1002) from Southern Cross Community Housing Ltd (c/- Edmiston Jones) in relation to the construction of affordable housing development comprising two (2) residential flat buildings containing 39 dwellings and associated parking.

The total of fees paid was \$12,032.29. The fees were discounted as a result of the discount afforded by the COVID-19 resolution of Council. Total actual fees amounted to \$26,145.89.

The DA was determined by the Southern Regional Planning Panel on 8 July 2022 with prescribed advertising, notification and archive fees expended.

In assessing the DA, it is noted that Council participated in a program referred to as the Regional Housing Flying Squad, initiated by the NSW State government (Department of Planning and Environment).

The Department's Planning Delivery Unit (PDU) engaged with a panel of planning consultants to conduct assessments for DAs for regional housing on behalf of councils. As such, this DA was independently assessed by Mecone. The associated costs were covered by the Department.

Accordingly, only the relevant 'development' fees (being \$12,032.29 of the total fees paid) may be reimbursed.

Section 2.4 of Council's Policy POL22/18 (Waiving of Development Application Fees and Other Fees for Charitable Organisations and Community Groups) states as follows:

'2.4. Reimbursement of fees for DAs

If a reimbursement of the fees is sought, a written request outlining the grounds for reimbursement must be submitted. The matter will then be referred to a meeting of Council. Any donations by way of whole or partial reimbursement determined by the Council will be paid out of the City Development budget or a source identified in Council's resolution.'

The request for reimbursement of fees is in accordance with this provision and would apply to the 'development' fees paid and not to those other fees already expended (being the prescribed advertising, notification and archive fees).

Policy Implications

It is unlikely that the adoption of the recommendation of this report will have any substantial policy implications.

Financial Implications:

Council's support of the request will result in a refund of \$12,032.29 funded from the City Development budget.

Summary and Conclusion

As per Section 2.4 of Council's Policy POL22/18, it is recommended that the application development fees paid (excluding fees for advertising, integrated development and archiving) be reimbursed amounting to \$12,032.29.

CL22.556



Chief Executive Officer
Shoalhaven City Council
PO Box 42
Nowra NSW.2541
Attn: **Andre Vernez**
19 October 2022

Dear Sir,

Re : Request for waiving of Development Application fees for a Charitable organisation. Regional Development - RA22/1002 44-52 Coomea St, BOMADERRY

I am writing to request that Council give consideration to the waiving of Development Application fees for a joint not for profit project.

Southern Cross Housing is partnering with Council in providing an affordable housing project at 44-52 Coomea St Bomaderry.

Fees of \$26,145.89 were paid on 15 March 2022 in respect of the Development Application. (Council File Q109679 Ref 20813356).

Southern Cross Community Housing Limited (ABN# 50307328813) is a charity organisation registered with Australian Charities and Not-for-profits Commission (ACNC)

Under Council Policy 20/68 Southern Cross Housing as a registered Charity wishes to apply to have the fees waived.

Southern Cross would like to formally acknowledge and thank Council for their continued support of this important project.

For any enquiries regarding this matter, please contact Stephen King at email stephen@scch.org.au. Contact telephone no 4421 5145

Yours sincerely


Alex Pontello
Chief Executive Officer
Southern Cross Housing

CL22.556 - Attachment 1

CL22.557 Feasibility Study - Community Infrastructure at Wowly Creek Reserve, Callala Bay

HPERM Ref: D22/380772

Department: Community Planning & Projects
Approver: Jane Lewis, Director - City Lifestyles

Attachments:

1. Excerpt from internal Council email dated 10 February 2014 [↓](#)
2. Callala Bay - Wowly Creek Reserve - Public Toilets - Policy & Resources Committee 17/9/13 - Assets & Works (under separate cover) [⇒](#)
3. Public Toilet Utilisation Survey of Portaloo at Wowly Creek Callala Bay - Friday 30 September 2016 [↓](#)
4. Response to Callala Bay Community Association Wowly Creek Toilet [↓](#)
5. Site images - Wowly Creek Reserve [↓](#)

Reason for Report

This report is to provide Council with information on the feasibility of additional community infrastructure at Wowly Creek Reserve, Callala Bay, in accordance with MIN22.567.

Recommendation

That Council:

1. Accept this report for information regarding the feasibility of additional community infrastructure at Wowly Creek Reserve, Callala Bay.
2. Incorporate the investigations for additional community infrastructure at Wowly Creek into strategic documents such as the Community Infrastructure Strategic Plan and Council's priority ranking for new amenities.
3. Continue to provide a portable toilet at Wowly Creek during peak usage periods.
4. Provide way-finding signage to nearby amenities at the entrance of Wowly Creek Reserve.

Options

1. Adopt the above recommendation.

Implications: By including Wowly Creek Reserve in the review of the Community Infrastructure Strategic Plan, Council will be allowing a more holistic and comprehensive consideration of recreational facility needs within the area, as well as ensuring alignment with Council's broader suite of strategic documents. It will also allow Council to strategically prioritise projects based on need and funding availability.

2. Adopt an alternative recommendation.

Implications: Pending the significance of the alteration, this may result in impacts to Council's existing strategic program of works, capital budgets, and the environment.

CL22.557

Background

Wowly Creek Reserve is situated at the end of Monarch Place, Callala Bay. The reserve is predominantly used as a thoroughfare to the Callala Bay foreshore and Wowly Creek. The reserve currently contains limited infrastructure, including a small gravel car park, bike rack, rubbish bin, and a picnic table.

Wowly Creek Reserve is divided into two lots of Council owned community land. The smaller lot is categorised as *Park*, and the larger lot is categorised as a *Natural Area – Foreshore*. Wowly Creek Reserve is classified as a local level park. An image of the site can be viewed below.



Figure 1: Wowly Creek Reserve - Cadastre Lots

Council has provided a portable toilet at Wowly Creek Reserve during peak visitation periods. There have been ongoing requests for permanent amenities at this site, since the portable toilets were first introduced in 2007.

The towns of Callala Bay and Callala Beach have 6 public toilets provided by Council. The nearest public toilet to Wowly Creek is at the Callala Bay boat ramp, approximately 700 metres (9 minute walk) from this location.

At the Ordinary meeting of Council on 22 August 2022, a Notice of Motion was submitted to Council regarding community infrastructure facilities at Wowly Creek, Callala Bay. As a result, it was resolved (MIN22.567):

That:

1. Council undertakes a scoping and feasibility study into the provision of the following in the Wowly Creek precinct:

CL22.557

- a) Toilets
 - b) An electric barbeque
 - c) Seating and a shade structure
2. *The cost of the report be funded from operation funds to be adjusted in a quarterly review*
3. *The matter be reported back to Council with possible funding options*

Historical Information

The provision of a permanent amenities block at Wowly Creek Reserve, has been raised several times over the years by various community members. The most recent being a letter dated 5 April 2022, from The Callala Bay Community Association, requesting a permanent toilet at the site.

Council has considered this site in its toilet block prioritisation lists over the years. This can be seen in **Attachment 1** (pg. 3) and **Attachment 2** (pg. 3) in which Council has considered the site for a permanent toilet block in 2013/2014, and based on cost and utilisation rates, deemed the site inappropriate.

In response to continued community demand for a permanent toilet at this location, Council undertook a survey in 2015 - 2017 collecting actual usage rates of the portable toilet Wowly Creek Reserve during peak periods.

This data was used to inform the potential future need and use of a possible permanent toilet facilities. The results identified that there were extremely low usage rates of the portable toilets. It was determined that there are public toilets with much higher identified utilisation levels. See **Attachment 3** (Public Toilet Utilisation Survey - raw data).

A summary of the data is below:

- 2 May 2015 between 9.45am and 11.45am – Sunny Weather - 2 patrons utilising amenities
- 30 September 2015 between 8.45am to 12.15pm – cool weather – 0 patrons utilising amenities
- 30 January 2017 between 10:00am to 12:00pm – hot weather – 1 patron utilising amenities

Wowly Creek reserve was considered for a permanent toilet block again in 2018, this was communicated to the wider community and specifically the Callala Bay Community Association. However, utilisation rates, and proximity to another toilet nearby deemed this site not a priority see **Attachment 4**.

As it currently stands Wowly Creek toilet block is not listed in Council's Delivery Program and Operational Plan.

Existing Community Infrastructure at Wowly Creek Reserve

Wowly Creek Reserve currently contains limited infrastructure to cater for public use. The site is situated at the cul-de-sac on Monarch Place, where an informal gravel carpark is located. The car park can hold approximately 8 vehicles.

At the entrance to the reserve there is signage, a bin, dog faeces bag dispenser, and a bike rack. The reserve consists of a gravel access track and steps, to allow access to the nearby beach and Wowly Creek. There is also a small clearing, that contains a single picnic table with views of Wowly Creek. The infrastructure provided to Wowly Creek Reserve is consistent with the Reserve 'category and classification for a local park.

Photographs of the site can be viewed in **Attachment 5**. The image below depicts the location of the existing infrastructure within the reserve.

CL22.557



Figure 2: Wowly Creek Reserve - Site Layout

Colour	Infrastructure
Red	Gravel car park
Blue	Bin
Purple	Bike rack
Green	Picnic Table
Orange	Access Path

Portable Toilet Installation

Public amenities are normally provided in conjunction with other facilities to increase their utilisation and are provided in areas of high activity.

Best practice asset management principles require that the replacement of existing public amenities should be prioritised prior to the construction of any new amenities. For this reason, portable toilets are a viable interim option for areas with fluctuating usage rates, associated with high seasonal usage during the holiday period.

In order to understand the current volume of users, further investigations could be completed at Wowly Creek Reserve using smart technology or the Internet of Things. This option (if

CL22.557

suitable for a portable installation) would provide an evidence-based approach for Council to consider the need for amenities outside of the times where a portable toilet is installed.

Environmental Implications

A suite of National and State legislation and Council policies (listed in the recently drafted *Foreshore Reserves Policy*) relate to the environmental protection and conservation of foreshore reserves, all pertaining to best practice management to enhance biodiversity and mitigate risk of impacts on foreshore reserves.

The Natural Area classified portion of Wowly Creek Reserve comprises two protected Endangered Ecological Communities – *Saltmarsh* and *Bangalay Sand Forest*. The Wowly Creek environs is recognised as a *Sanctuary Zone* within the *Jervis Bay Marine Park*.



Figure 1: Endangered Ecological Community – Salt Marsh

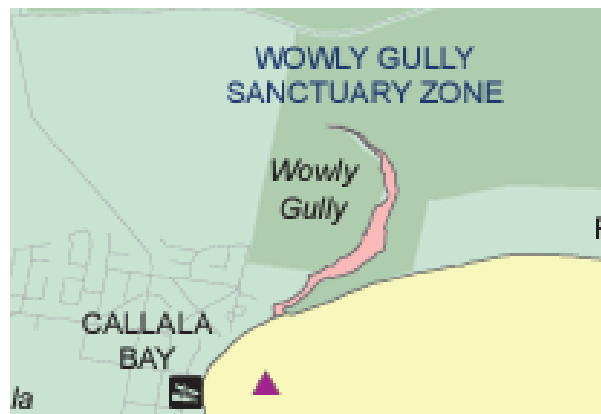


Figure 2: Endangered Ecological Community - Bangalay Sand Forest

Further development of recreational facilities within the reserve would potentially negatively impact on the environmental values of the reserve through necessary site disturbance, including vegetation clearing and excavation during construction activities, plus soil disturbance and site denudation over time due to increased visitor activities relating to the developments.

The accumulation of these impacts can cause siltation and pollution of the adjacent waterway, foreshore erosion, degradation of significant vegetation communities and habitat values, both terrestrial and aquatic. The current seasonal higher visitation to the reserve is already having an impact on the health of the environmental assets of the natural area reserve.

The protection and enhancement of the foreshore vegetation and habitat is critical to maintain the environmental integrity of the reserve and to enable it to function as a buffer zone to mitigate environmental threats to the integral aquatic sanctuary zone.

CL22.557

Policy Implications

Community Infrastructure Strategic Plan

Council's Community Infrastructure Strategic Plan (CISP) makes recommendations for the future provision, priorities, and funding of community infrastructure at local, district and regional levels.

Wowly Creek Reserve is not identified in the CISP, therefore there are no future recommendations at the site. Under the CISP, Wowly Creek Reserve is identified as a local level park.

Local parks provide a range of recreation opportunities for local residents. These parks contain limited infrastructure yet offer local community benefits. Local passive recreation parks are intended to offer residents a complementary open space to their backyards. They are likely to attract users from a small catchment area and generally cater for short visits by small groups.

The provision of amenities and electric barbecues within local parks is not recommended under the CISP.

Master Plan Priority List

A Councillor briefing and subsequent report was presented to Council regarding prioritising upcoming Master Plans throughout the Shoalhaven Local Government Area. At the Ordinary Council Meeting on 27 June 2022, it was resolved (MIN22.443):

That Council:

1. *Adopt the following priority list of Master Plans for Council owned or managed land for upcoming budget expenditure:*
 - a. *Parramatta Park, Nowra*
 - b. *Rannoch Reserve, West Nowra*
 - c. *Crest Park, North Nowra*
 - d. *Edwards Avenue Reserve, Bomaderry*
 - e. *Depot Farm, West Nowra*
 - f. *Greenwell Point Foreshore Reserve*
 - g. *Francis Ryan Reserve, Sanctuary Point*
 - h. *Culburra Beach Community Centre*
 - i. *Wool Lane Sporting Complex, Sanctuary Point*
2. *Receive a future workshop and report at the completion of the above Master Plans, to re-prioritise other additional Master Plans that remain outstanding*

Wowly Creek Reserve was not identified as an area on the Master Plan priority listing. The provision of major infrastructure or upgrades to a reserve generally would not occur in the absence of a recent Master Plan.

10 Year Capital Plan – Public Amenities

Shoalhaven City Council holds a priority list for the upgrade, decommission, or creation of public amenities within the Local Government Area. The first 10 priorities on this list include:

1. Upper Cyrus St Reserve, Hyams Beach
2. Myola Breakwall, Cathrine St, Myola
3. Boat Ramp, Lower Cyrus St Reserve, Hyams Beach

4. Surf Club (Gumley Reserve), Shoalhaven Heads
5. Davis Park, Nowra
6. Boree Carpark, Ulladulla
7. Green Street, Ulladulla
8. Fire Brigade Park, Erowal Bay
9. Adj Lake Entrance, Narrawallee
10. Sussex Inlet Road (Marine Rescue), Sussex Inlet

Wowly Creek Reserve is not identified in the 10-year capital plan. It is to be noted that there was no budget allocated in the 2022/23 financial year to progress any of the above projects.

Community Engagement

Extensive community consultation has been conducted to inform Council's CISP and the 10-year capital plan for public amenity upgrades/installations.

Further community consultation would be required to inform any proposed upgrades to Wowly Creek Reserve.

The CISP review will be undertaken across 2022/23 and 2023/24 and this may present an opportunity to reconsider any further development and investment at Wowly Creek.

Financial Implications

The provision of portable toilets over peak periods is currently budgeted for by Council's Building Services Team. Currently, the cost for weekly rent of a portable toilet is approximately \$54 per week, and pump outs cost approximately \$72 (ex GST). Further budget is required for delivery and ongoing maintenance/cleaning of the portable toilets.

Since upgrades to Wowly Creek Reserve have not been identified in any of Council's strategic plans or forward planning working documents, there is no capital or operational budget for the provision of any additional infrastructure that is not already provided at the site.

Funding options for potential upgrades at Wowly Creek Reserve include seeking grant funding, or the redistribution of funding for capital projects.

Risk Implications

Upgrades to community infrastructure at Wowly Creek Reserve has not been identified in any of Council's strategic or forward planning documents. Any further progression into investigations, planning, or budgeting for potential improvements will require a shift in budgets and resourcing from other projects, potentially putting these at risk.

This presents a possible reputational risk to Council, as approved projects awaiting budget or resources will be further delayed and impacted. Potential impacted projects in the 2022/23 financial year could include Master Plans for Kangaroo Valley and Milton Showgrounds, Crookhaven amenities, Boongaree stages 4 and 6, and pump track consultation and design for Bomaderry, Sanctuary Point, Sussex Inlet, and Ulladulla should Council decide to reallocate resources away from these projects towards improvements at Wowly Creek Reserve.

It is proposed that the provision of community infrastructure is guided by Council's strategic documents, to ensure a considered and justifiable distribution of facilities across the Shoalhaven Local Government Area.

Any additional development to this area may have significant environmental impacts to the sensitive ecological environment surrounding this area and appropriate due diligence investigations would first need to be undertaken.

An alternative approach would be to install way-finding signage to direct patrons to nearby permanent public toilets amenities at Callala Bay Boat Ramp, this could resolve the demand whilst having minimal environmental and financial impact.

CL22.557

Excerpt from internal Council email dated 10 February 2014 2:37pm

1. How many years has Council been providing port-a-loos to the reserve in holiday periods.

Council has provided a portaloos since the summer of 2007. In July 2006 Council commissioned a new public amenity at Bicentennial park, Callala Bay and had provided a port-a-loo at Bicentennial park. The Community Consultative Body requested that the port-a-loo for Bicentennial park be transferred to Wowly Creek.

2. The average cost of providing the port-a-loo facilities including hire, pump out, etc

As per report to Council in Nov 2013 attached
Costs of a Port-A-Loo are for Southern area are

- Fixed costs
 - Weekly hire \$30
 - Delivery cost \$66
 - Weekly pump out and clean by contractor \$66
- Variable costs
 - Increase cleaning
 - Contractor \$50 per visit
 - Council while undertaking cleaning of other public amenities \$20 per visit
 - Council special request \$50 per visit

Total cost of hire for a 10 week period from 29 November 2013 till 7 February 2014 if:

Supply, weekly pump out, contractor clean	\$1,026
Supply, weekly pump out, weekly Council clean	\$1,226
Supply, weekly pump out, contractor 2nd clean or Council special request clean	\$1,526

Currently the cost of Port-A-Loos for Wowly Creek, Callala Bay and Myola break wall, Myola for three school holiday periods except winter is \$2,400 per site each financial year. The hire costs are slightly more for the northern towns.

3. Any current data available from 2013 Christmas period

Port-a-loos where pumped out fortnightly – the holding tank is 190 litres. Fresh water was supplied weekly- tank is 100 litres

The pump out was never near full even with one event of a request to top up fresh water and toilet paper received. Chemicals were placed in holding tank during clean and no complaints were received in relation to smell.

Parkes Crescent, Callala Beach commissioned in April 2011 has an average water use of 81 litres per day **over the whole year** or 1140 litres for a fortnight which is 6 times the maximum holding capacity of the port-a-loo over the peak times. An allowance must be made as the port-also is not as inviting to use.

4. Any further information available – (I have the Sept 2013 report to Council)

A weighting methodology has been developed for the purpose of a public amenity this strategies the need to:

- Replace
- Renovate
- Decommission
- Extend
- New
- Request receive and not prioritised
- Parks/ reserves
 - Icon/ District/ Local & distance to
 - Playground – Large/ medium/ small and distance to
 - BBQ facilities – number and distance to
 - Shelter – size & distance to
 - Shared use e.g. sporting field
- CBD – Business zoning
 - Very large > 60 shops, large 30 to 60, medium 16 to 30, small 3 to 15, very small < 3 & distance to
- Waterway & distance to
 - Beach access,
 - not beach (estuary & other),
 - boat ramp,
 - Wharf/ jetty
- Car parking & distance to
 - Large, medium, small
- Other users e.g. Kioloa Marine rescue use public toilets
- Other factors e.g. viewing platforms e.g. Cambewarra lookout
- Next available public amenity and private amenity
- Safer by design principles – Surveillance, access control, territorial reinforcement & space management/ maintenance)

Monarch Place provides beach access through a small public reserve adjacent to Wowly Creek. The nearest public amenity is located at the Callala Bay boat ramp about 1 km away.

The replacement/refurbishment or extensions of the following public amenities are considered higher priorities:

- Huskisson - Moona Moona Creek;
- Ulladulla - Boree street, Sea Pool & Green Street;
- Milton - Mick Ryan reserve;
- Berry - CBD;
- Bendalong - Boat Ramp; and
- Callala Beach - adjacent to community centre.

The Resourcing Strategy emphasises the need to increase asset renewal and focus less on new capital works so there are **no new amenities** included as 'high' priority,

Utilisation of infrastructure - Survey for Shoalhaven City Council

Suburb CALLALA BAY
Reserve name WOLLEY CREEK
Who undertook survey? Johanna, Daniela
Date 30.09.16 Time From 9.45 To 12.15
Day Friday Weather conditions Hot/ Warm/ Cool/ Cold/ Rain
Location

Utilisation of beach access points - Survey

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44
45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66
67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88
89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110
111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132
133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154
155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176
177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198
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331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352
353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374
375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396

Location/ facility

Utilisation of Toilet - Survey

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44
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67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88
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375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396



Bridge Rd, Nowra NSW 2541 02 4429 3111
Deering St, Ulladulla NSW 2539 02 4429 8999

Address all correspondence to
The General Manager, PO Box 42, Nowra NSW 2541 Australia
DX5323 Nowra Fax 02 4422 1816

Council Reference: 7677E (D17/38747)

Callala Bay Community Association Inc
PO Box 14
CALLALA BAY NSW 2540

By email only: [REDACTED]

Attention: The Secretary, Margaret Duncan

Dear Ms Duncan

Public Amenity (Toilet) – Wowly Creek Callala Bay

Thank you for your letter received on 6 January 2017 regarding a permanent toilet to be constructed at Wowly creek, Callala Bay.

The request has previously been raised and is on the [list of 35 requested locations for a public toilet](#).

Shoalhaven City Council has **119 public toilets** which are provided in areas of high demand associated with the use of other services such as:

- commercial/shopping centres
- parks or
- waterway facilities

Callala Bay/ Callala Beach has 5 public toilets provide by Council. The nearest public toilet to Wowly Creek is at the Callala Bay boat ramp, a distance of approximately 700 metres.

Council currently provides a port-a-loo for school holiday periods except for winter. Council's resourcing strategy is to increase asset renewal prior to new capital works. The current strategy for public toilets is to replace *existing* highly utilised public toilets. To determine the high utilisation areas Council undertakes surveys of utilisation levels of the public toilets and has done this with international interns. Surveys have been undertaken at Wowly Creek on:

- 2 May 2015 between 9.45am and 11.45am – Sunny Weather - with "2" patrons utilising in 2 hours

- 30 September 2015 between 8.45am to 12.15pm – cool weather – with “0” patrons utilising in 2 ½ hours
- 30 January 2017 between 10am to 12 pm – hot weather – with “1” patron utilising in 2 hours

There are public toilets with higher identified utilisation levels.

Whole of life costing is also a determination for new assets and asset replacement. That is the capital cost and ongoing operating costs (cleaning, electricity, water, sewer, insurance, repairs and maintenance)

If you need further information about this matter, or wish to discuss options in relation to the service you have requested, or to organise a meeting, please contact me on (02) 4429 3148. Please quote Council's reference 7677E (D17/38747).

Yours faithfully

Brad Davis
Asset Strategy Manager
7/02/2017

Wowley Creek Reserve – Callala Bay

Site images – September 2022



Image 1 – Aerial image



Image 2 – View from Monarch PI



Image 3 – Gravel parking area



Image 4 – View exiting the reserve



Image 5 – Bike rack, signage, and access path



Image 6 – Picnic area



Image 7 – View and Marine Park mapping



Image 8 – Access to beach



Image 9 – Wowley Creek and access path

CL22.558 Policy - Shoalhaven City Council Art Collection - Acquisition and Management

HPERM Ref: D22/402783

Department: Arts & Culture

Approver: Jane Lewis, Director - City Lifestyles

Attachments: 1. City Art Collection - Acquisition and Management Policy [↓](#)

Reason for Report

The *City Art Collection – Acquisition and Management Policy* is presented for adoption. Council Policy requires that all Council public policies should be reviewed within 12 months of an election of a new Council.

Recommendation

That Council adopt the revision of the Shoalhaven City Council Art Collection – Acquisition and Management Policy (POL22/49).

Options

1. Adopt the recommendations.

Implications:

- Updated Policies will be adopted within the 12-month timeframe of a newly elected Council
- This will allow the inclusion of changes to make the relevant policy appropriate

2. Not adopt the recommendation.

Implications:

- Council can request further details, seek further community input or make other changes
- This may delay or impact Council's ability to meet the requirement for review of policies within twelve (12) months of the election of a new Council
- This may result in loss of provision and controls for the relevant Policy.

Background

The purpose of the Policy is to define Council's provisions for the management of *Shoalhaven City Art Collection – Acquisition and Management Policy*

There are no significant changes recommended in the revised Policy, which does include a number of minor amendments or updates.

The City Art Collection – Acquisition and Management Policy was first adopted in 2004, replacing an older policy that covered both the Guidelines for the Shoalhaven Arts Board and collection acquisition.

Since adoption in 2004, it has been regularly updated and revised to ensure it remains current to museological standards and best practise for collection management.

A copy of the recommended changes to the policy are detailed in Attachment 1 - POL22/49 - Shoalhaven City Council Art Collection – Acquisition and Collection Management - Draft Changes' and summarised below:

- Updated background information.
- Updated position titles
- Clarification of information related to items acquired and conditions or provenance obligations
- Clarification of requirements for loans in and out as required for exhibitions or research purposes.

Community Engagement

The reviews of the City Art Collection – Acquisition and Management Policy are considered minor policy changes that do not warrant community engagement.

Policy Implications

All Councils public policies should be reviewed within twelve (12) months of the election of a new Council.

Reaffirmation of the above policy will make it relevant and up to date.

Financial Implications

There are no additional financial implication resulting from reaffirming the above policy.

Risk Implications

The City Art Collection – Acquisition and Management Policy is central to the ability to continue to collect and grow the City Art Collection. If the policy lapses or is rescinded, continuing to collect works will become difficult and there is a risk to Council's reputation as a collector of artworks. This may result in artists and collectors refusing to consider donations or acquisitions by Council.

CL22.558



Shoalhaven City Council Art Collection – Acquisition and Collection Management

Style Definition: TOC 1
Style Definition: TOC 2

Adoption Date:	12/05/2009
Amendment Date:	21/05/2013, 18/02/2014, 27/06/2017, 15/05/2018
Minute Number:	MIN09.612, MIN13.522, MIN14.121, MIN17.586, MIN18.351
Review Date:	01/12/2020
Directorate:	City Lifestyles
Record Number:	POL22/49

CL22.558 - Attachment 1

Shoalhaven City Council Art Collection – Acquisition and Collection Management

Contents

1. Purpose	1
2. Statement	1
2.1. Scope.....	1
2.2. Background.....	1
3. Provisions	2
3.1. General.....	2
3.2. Gifts and Donations	332
3.3. Loan Items	3
3.4. Conflict of Interest.....	443
4. Procedures.....	443
4.1. Selection Procedure.....	443
4.2. Accession.....	554
4.3. Deaccessioning.....	5
5. Implementation	6
6. Review	6

Shoalhaven City Council Art Collection – Acquisition and Collection Management

1. Purpose

The aim of this Policy is to establish administrative guidelines for a purposeful, consistent approach to acquisition of works and management of the Shoalhaven City Art Collection.

2. Statement

The title shall be the “Shoalhaven City Art Collection – Acquisition and Collection Management Policy” and will be owned and managed by Shoalhaven City Council.

The Shoalhaven City Art Collection has been established to:

- Collect contemporary and historical works of visual art of demonstrable excellence by artists of significance with an emphasis on Australian artists and artists who have a connection to the Shoalhaven.
- Enrich, educate and inform the community of Shoalhaven City and its visitors in quality visual arts practice in Australia,
- Stimulate awareness and appreciation of the visual arts
- Strengthen an historical, social and locally relevant visual arts resource
- Establish a valuable collection of Regional significance and National interest

2.1. Scope

The Policy for acquiring art is to further develop the present strengths of the Collection, especially by seeking works that are of local, national and international significance. All artworks selected, acquired or commissioned by Council will contribute towards the development of a unique and distinctive collection and will give priority to acquiring works of art that satisfy one or more of the following scoping statements:

- 2.1.1. Relate to the Shoalhaven region, by Australian artists, particularly those who have a proven record of practice and development of their art form and who are represented in public collections or who have received recognition through awards and prizes
- 2.1.2. Build upon strengths and fill gaps in the current holdings of the Shoalhaven City Art Collection, as well as develop the representation of artists already held, in order to create a comprehensive, though specifically oriented, collection.
- 2.1.3. Artworks by local Indigenous artists, particularly those who have proven development and commitment to their art form or represent a significant group or time
- 2.1.4. To consider exceptions where the works are significant and relate to the current policy

2.2. Background

The Art Collection of Shoalhaven City Council has been gradually acquired over many years. The Shoalhaven Arts Board, after its inauguration in 1998, created Guidelines and a single Policy to inform acquisition. With the establishment of the Shoalhaven City Arts Centre in 2004, the Policy was amended to recognise the significant loans and donations added to the organisations collection.

In early 2008, Shoalhaven City Council's Art Collection was divided into two (2) separate Collections to distinguish between a primary Collection with works of significance titled “The

Shoalhaven City Council Art Collection – Acquisition and Collection Management

Shoalhaven Regional Gallery Collection” and a secondary Collection with works of significance titled “The City Collection” which included gifts to the City of lesser artistic, historic or monetary value (as identified at the time of the audit).

The collection was brought back together in 2014 as the ‘Shoalhaven City Art Collection’ and following the purchase of Vernon Collection management system in 2016, the Collection is documented and available through the online collection platform on the Regional Gallery website.

Collecting activities are often cost prohibitive, however, the Collection does not seek to cover a complete range of art. Following an audit of both Collections conducted by external art consultants in 2012/13, the objective to define the focus of the Collection has led to the merger of both Collections and determined six (6) primary collecting areas:

1. Australian Landscape
2. War and Peacekeeping
3. Australian Contemporary
4. Indigenous
5. Secular and Religious
6. Ceramics

3. Provisions

3.1. General

- 3.1.1. The Collection is managed by Council's ~~Arts Manager~~Manager – Arts and Culture.
- 3.1.2. Council will contribute an annual budget allocation for adequate maintenance and acquisition of new works in the Shoalhaven City Art Collection. Unexpended annual funding will be accumulated in a suspense reserve to form a growing resource.
- 3.1.3. All works shall be placed on a database and insured in accordance with Council's asset management plans and catalogued with details including title, image, size, and medium, artist, and provenance, date of acquisition, acquisition status, value, location and description.
- 3.1.4. The services of professionals in the field will be obtained for conservation, valuation, restoration and museum standard pest treatment.
- 3.1.5. “The Shoalhaven City Art Collection” will be stored at the Shoalhaven Regional Gallery, Nowra or as permanent exhibition throughout Council's City Administrative Centre, Nowra, or in a separate suitable location as deemed necessary.
- 3.1.6. Acquisition of artworks will be directed by this Policy and the following considerations:
 - The artwork's current and future relevance to the Collection
 - Local significance
 - Significance of the artist
 - Historical and/or cultural value
 - Cost and/or value for money
 - Available funding
 - Advantageous opportunities

Shoalhaven City Council Art Collection – Acquisition and Collection Management

- Current and future conversation and storage needs against the resources available for the Collection.

3.1.7. Vendors / Donors will be informed that conditions or constraints applied to the donation which would affect the management and use of the object will not be accepted as part of the donation or bequest and that the artwork/s becomes the property of Shoalhaven City Council and subject to its prevailing Policy.

3.1.7.

•3.1.8. Council will ensure that the provenance of any works, whether purchased or donated, is fully established and that the vendor/donor is legally entitled to convey full title of the works to the Shoalhaven City Art Collection.

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3.2. Gifts and Donations

- 3.2.1. Artworks can be accepted into the Collection in the form of donations and bequests. The works must correspond with the details of the Collection Policy as part of acquisition procedure.
- 3.2.2. With consideration to insurance and risk requirements, artworks may be temporarily accepted by Council for the purposes of consideration of a donation or purchase, formal assessment of a work or to seek valuation of a work prior to acquisition.
- 3.2.3. The Shoalhaven Arts Board will accept donations and bequests under the Cultural Gifts Program which fulfil the requirement of the Collection Policy.
- 3.2.4. Objects outside the scope of this Policy and gifted to Council through national and international relations will be registered as Council assets in place of being accessioned.

3.2.5. Donors will be informed that neither conditions nor provenance will be accepted as part of the donation or bequest and that the art work/s becomes the property of Shoalhaven City Council and subject to its prevailing Policy.

3.2.6. On behalf of the Shoalhaven City Art Collection, Council will obtain clear and valid title to all purchases, bequests, gifts, donations or loans.

3.2.7-3.2.5. On rare occasion, when a unique bequest, which falls beyond the general guidelines is offered, the Shoalhaven Arts Board may deliberate over the acceptance of such a bequest and its capacity to honour any stated provenance. In this event, the Shoalhaven Arts Board will make a special recommendation to be ratified by Council.

3.2.8-3.2.6. Donations of money, grants or art works will be receipted within the convention and standards of the Australian Taxation Act.

3.3. Loan Items

- 3.3.1. Council's formal Artwork Loan Agreement is to clearly and contractually specify the conditions of any loan to or from the Collection and to be signed by relevant parties. The Agreement outlines detail relating to the term of loan, ownership, responsibilities, conservation, security, maintenance, insurance and date of return.
- 3.3.2. Items offered for loan are subject to the selection criteria and procedure contained in this Policy and do not warrant automatic inclusion into the Collection.
- 3.3.3. No loan of artworks will be accepted into Council's custody until such time as the matter has been formally considered and resolved by the Shoalhaven Arts Board to accept the works. Works accepted on loan will be maintained, insured and administered as

Shoalhaven City Council Art Collection – Acquisition and Collection Management

collection items, however, Council does not own the items. Any valuation of the Art Collection should delineate between the value of the Collection owned as distinct from the value of the Collection administered. [Works on loan for specific exhibition purposes are not included in this clause.](#)

[3.3.4.](#) Works on loan should not be lent to other institutions or individuals without the written consent of the owner of the work.

[3.3.4.3.3.5.](#) [Requests for loans of works from the Shoalhaven City Art Collection by other institutions for the purposes of exhibitions, research or other short-term projects are to be considered and approved / rejected by the Manager – Arts and Culture. The request, decision and rationale are to be reported to the Arts Board at the next available meeting.](#)

3.4. Conflict of Interest

3.4.1. Acquisition of works for the Shoalhaven City Art Collection will be in accordance with this Policy. At all times, Council and Shoalhaven Arts Board members are to declare any conflict of interest prior to deliberations on the acquisition of artworks.

3.4.2. Purchase or acceptance of donations from current full-time Council officers or Shoalhaven Arts Board members will not ensue without first obtaining an independent valuation of the work and ratification from the responsible delegated Council authority.

4. Procedures

4.1. Selection Procedure

4.1.1. All proposed acquisitions, whether by purchase, gift, exchange or loan will be appraised by an Acquisition Sub-Committee comprising:

- [Aa](#) Councillor member as nominated by Council
- Manager – Arts and Culture, Shoalhaven City Council
- Two Shoalhaven Arts Board representatives (one with visual arts background) as nominated by the Board and
- An invited/co-opted member of the arts community who possesses knowledge of Australian Art

4.1.2. Acquisition appraisals will be consistent with this Policy.

4.1.3. Works not accepted into the Shoalhaven City Art Collection may be considered for inclusion and registration as a Council asset without being accessioned as part of the Collection.

4.1.4. The Sub-committee may present the opportunity for specialist outside expert comment on proposed acquisitions.

4.1.5. All proposals and recommendations shall be in a written report and will include details of:

- The artist's name
- Residential status
- The title and image of the work
- Date of execution
- Medium and size
- Method of acquisition

Shoalhaven City Council Art Collection – Acquisition and Collection Management

- The vendor or donor
- The provenance of the work
- Price, valuation or insurance value if a gift or a loan
- Current condition

as well as a statement setting out the reasons for acquisition, its place in the collection and its merit as a work of art in its own right.

- 4.1.6. The ~~Arts Manager~~Manager – Arts and Culture, on the advice of the Arts Acquisition Sub-Committee, will present a recommendation to the Shoalhaven Arts Board for its consideration and adoption
- 4.1.7. Acknowledging that some artwork is sacred and restricted, only works intended for public display or approved for display in consultation with appropriate representatives and communities will be considered for acquisition.
- 4.1.8. No acquisition will be made which compromises or jeopardises the financial viability of the Collection budget.
- 4.1.9. The Shoalhaven Arts Board will not accept any work which bears any unreasonable or inappropriate restrictions on its display, storage, maintenance and provenance.
- 4.1.10. The Board will be mindful of Australian or international laws or covenants that restrict or govern the acquisition of cultural material.

4.2. Accession

- 4.2.1. Newly acquired works are to be registered in the Collection Management System on receipt by the Shoalhaven Regional Gallery. Registration and catalogue data include:

- Issue of a unique identifier number
- Photographic image of work
- Information regarding materials, technique and provenance

- 4.2.2. File and document numbers of related documents such as Acquisition Agreement, Loan Agreement, Maintenance Schedule and Condition Report must also be entered into the database.

4.3. Deaccessioning

- 4.3.1. The process of removing or disposing of works in the collection, otherwise known as deaccessioning, will not be undertaken for any reason apart from:

- Lack of relevance to the Collection
- Duplication of another object in the collection
- Requirement of prohibitive conservation work and/or the work is beyond repair
- The work has already been destroyed, lost or stolen
- Cannot be suitably stored
- Should be returned as restitution of cultural property
- Subject to legislation which prevents Council holding title to it

- 4.3.2. For deaccessioning to proceed, the Board must receive written recommendation and formally determine to deaccession the work. The report will clearly state the reason for disposal and include:

- Object unique identification number;

Shoalhaven City Council Art Collection – Acquisition and Collection Management

- Description;
- Photos; how to photograph;
- Advice on legal status (if available);
- Any written specialist advice;
- Impact the action would have on the collection; and
- Suggested method of disposal

4.3.3. Where deaccessioning is approved the order of priorities for removing the work from the collection shall be:

- Donated works returned to the original donor / artist or next of kin
- Donated works offered as a donation to another cultural institution, or works that were purchased are offered for sale to another cultural institution based on current valuation.
- Works sold at auction and the proceeds of the sale reinvested into the collection acquisition fund.

4.3.4. For items that have already been destroyed, lost or stolen, the deaccessioning process must also be completed. The Board will then determine whether reasonable steps, if economically viable, have been taken to locate/recover /restore the work.

4.3.5. After a ~~2-month~~2-month interval (cooling off period) works which have previously been presented to the Arts Board for deaccessioning and rejected, may be re-submitted for consideration and further determination by the Arts Board.

4.3.6. Where artworks have been donated to the collection, the donor, or where feasible the next of kin, should be offered the opportunity to have the work returned to them. All reasonable effort should be made to contact the donor or next of kin to discuss the deaccessioning of the work. Works purchased via a collective (group) donation do not fit this category.

4.3.7. Procedural guidelines for each method of disposal and/or removal of artworks must be clearly defined, implemented and proceed in full public knowledge. Evidence of compliance should be attached to deaccessioning documentation.

4.3.8. Archived records documenting deaccessioned work will be permanently stored within Council.

5. Implementation

The ~~Finance, Corporate & Community Services Group~~City Lifestyles Directorate of Council will administer this policy.

6. Review

To be reviewed within 1 year of the election of a new Council.

CL22.559 Policy - Shoalhaven Entertainment Centre Sponsorship

HPERM Ref: D22/417074

Department: Shoalhaven Entertainment Centre
Approver: Jane Lewis, Director - City Lifestyles

Attachments: 1. Draft Shoalhaven Entertainment Centre Policy (under separate cover) [↗](#)
2. Current Shoalhaven Entertainment Centre Sponsorship Policy (under separate cover) [↗](#)

Reason for Report

The *Shoalhaven Entertainment Centre Sponsorship Policy* is presented for adoption. Council Policy requires that all Council public policies should be reviewed within 12 months of an election of a new Council.

Recommendation

That Council adopt the revised Shoalhaven Entertainment Centre Sponsorship Policy.

Options

1. Adopt the recommendation as written

Implications: Updated Policies will be adopted within the 12-month timeframe of a newly elected Council.

This will allow the inclusion of changes to ensure the policy is appropriate and current.

2. Not adopt the Recommendation

Implications: Council can request further details, seek further community input or make other changes.

This may prevent Shoalhaven Entertainment Centre from seeking external funding or sponsorship to support its activities.

Background

Shoalhaven Entertainment Centre's Sponsorship Policy was first adopted in 2010 and has been regularly updated to best meet the needs of the Venue as a Category 2 Business Activity of Shoalhaven City Council.

The policy identifies the importance of a transparent, equitable and effective guide to attracting and evaluating sponsorship opportunities with clearly identified advantages and potential conflicts-of-interest for the Venue and sponsors.

This policy is intended to ensure all sponsorship arrangements are consistent across Council, compliant with legislation and the Independent Commission Against Corruption's guidelines.

CL22.559

It has been prepared as a guide for Council staff to objectively determine sponsorship applications, plus professionally manage and service sponsorship agreements with clearly identified responsibilities and accountabilities for both parties.

Community Engagement

The proposed changes to Shoalhaven Entertainment Centre's Sponsorship focus on attracting commercial support to leverage Council's investment in the Venue and its programmes.

The policy has largely been prepared based on the Independent Commission Against Corruption Guidelines in relation to sponsorship. Both the current Sponsorship Policy (Attachment 2) and the proposed revised Sponsorship Policy (Attachment 1) have been attached under separate cover.

The changes to the policy are considered minor in nature and are based on the Independent Commission Against Corruption Guidelines in relation to sponsorship and therefore it is not proposed to place them on public exhibition.

Policy Implications

Confirmation of the Policy will ensure it is relevant and reflects contemporary best practice within Local Government owned and operated performing arts venues.

Financial Implications

The Policy guidelines have been prepared to assist in eliminating financial risks associated with sponsorships and assist in diversifying and growing the Shoalhaven Entertainment Centre's revenue.

Risk Implications

The Policy guidelines have been prepared, based on the Independent Commission Against Corruption Guidelines which address financial and reputational risk.

CL22.559

CL22.560 Policy - Shoalhaven Arts Board Terms of Reference

HPERM Ref: D22/428109

Department: Arts & Culture

Approver: Jane Lewis, Director - City Lifestyles

Attachments: 1. Shoalhaven Arts Board - Terms of Reference - Draft changes [↓](#)

Reason for Report

The *Shoalhaven Arts Board Terms of Reference* is presented for adoption. Council Policy requires that all Council public policies should be reviewed within 12 months of an election of a new Council.

Recommendation

That Council adopt the revisions to the Shoalhaven Arts Board Terms of Reference.

Options

1. Adopt the recommendation

Implications:

- Updated Policies will be adopted within the 12-month timeframe of a newly elected Council
- This will allow the inclusion of changes to make the relevant policy appropriate

2. Not adopt the recommendation

Implications:

- Council can request further details, seek further community input or make other changes
- This may delay or impact Council's ability to meet the requirement for review of policies within twelve (12) months of the election of a new Council
- This may result in loss of provision and controls for the relevant Policy.

Background

All Council policies should be reviewed within twelve (12) months of the election of a new Council.

The Shoalhaven Arts Board is an Advisory Committee of Council, the purpose of the Policy is to define Council's Terms of Reference for the Shoalhaven Arts Board, including the delegated authorities for this committee under Section 355 of the NSW Local Government Act.

The *Shoalhaven Arts Board Terms of Reference* policy was first adopted in 2015, replacing an older policy that was no longer fit for purpose.

Since adoption in 2015, it has been regularly updated and revised to ensure it remains current and meets the needs of Council and the community representation through the Arts Board.

CL22.560

A copy of the recommended changes to the policy are detailed in Attachment 1 - POL22/69 - Shoalhaven Arts Board – Terms of Reference- Draft Changes' and summarised below:

- Removal of Authority to establish a Shoalhaven Arts Foundation as this has been achieved by the Board and Council through a strong strategic partnership and focus.
- Updated position titles
- Updated reference to the Shoalhaven Economic and Growth Advocacy Group

The policy is being presented at this stage with no major changes, however, there is an internal review of Terms of Reference templates being undertaken in consultation with relevant staff and Governance, with a view to developing a new template which will provide greater consistency across all Advisory Committees.

The *Shoalhaven Arts Board – Terms of Reference* policy will be re-presented to Council once the new template is introduced in early 2023. This will allow for ongoing consultation with members of the Arts Board to identify if further changes need to be made.

Community Engagement

The proposed changes to the format and content of the Policy are considered minor policy changes that do not warrant being placed on public exhibition.

Policy Implications

There is a requirement that all Council policies should be reviewed within twelve (12) months of the election of a new Council.

Reaffirmation of the above policy will make it relevant and up to date.

Financial Implications

There are no additional financial implication resulting from reaffirming the above policy.

CL22.560

Shoalhaven Arts Board – Terms of Reference

Adoption Date:	17/03/2015
Amendment Date:	23/06/2015, 27/06/2017, 20/09/2019, 26/09/2022
Minute Number:	MIN15.147, MIN15.426, MIN17.565, MIN19.654, MIN22.673
Review Date:	01/12/2024
Directorate:	City Lifestyles
Record Number:	POL22/69

CL22.560 - Attachment 1

Shoalhaven Arts Board – Terms of Reference

1. Statement

Council recognises the value and place of creative expression, cultural facilities, innovative arts activities and embraces a strategic direction to facilitate progressive cultural development across the City. To guide this development each Board member will be responsible for maintaining and reporting on a specific portfolio.

2. Purpose

- a) To contribute to and develop strategy and policy both for the Shoalhaven City Council as well as in alignment with the Region.
- b) To develop and implement policy, planning and vision for the broad arts within existing resources and use a co-opted panel of peers for professional advice. They include:
 - Visual Arts
 - Heritage and Museum Sector
 - Literature
 - Performing Arts
- c) Advocate and maintain specific arts related portfolios.
- d) Advocate and promote Board recommendations.

3. Terms of reference

3.1. Relationship to Council

The Shoalhaven Arts Board is a Section 355/377 Committee of Council (Local Government Act 1993). It is a strategic advisory committee to advocate for and inform Council's decision making process.

3.2. Delegated Authorities

- Act within adopted budgets aligning with Council's strategic plans and document, and make recommendations on the arts to Council
- Appoint suitable representatives to fill casual vacancies on a set term basis
- Inform and recommend policy for arts related funding programs, and where required by Council, vote on related matters
- Establish a peer panel of professionals, experts and practitioners across art forms, heritage and cultural platforms to be co-opted as needed for input and advice to the Shoalhaven Arts Board
- Establish a Shoalhaven Arts Foundation:
 - To support the development and enrichment of broad arts across the Shoalhaven including visual, heritage, literature & performing arts
 - To ensure that the Foundation in its governance, membership and charter are independent/ and at arms-length from Council yet works in concert with the Shoalhaven Arts Board, Council and the community needs
 - To fundraise and develop a sustainable principal investment to generate ongoing grant funds

Relevant staff will work collaboratively with the Shoalhaven Arts Board to:

- Develop and implement activities to achieve objectives in line with the Shoalhaven Arts Board recommendations, the Council's policies and corporate plan

Shoalhaven Arts Board – Terms of Reference

3.3. Membership

- The membership of the Shoalhaven Arts Board to be twelve (12) members in total and to include:
 - Seven (7) community member representatives from Health & Well-being, Education, Arts Institutions, Artists and Corporate/Business with a range of strategic capabilities, expertise and advice from within the arts;
 - A maximum of three (3) skills based Councillors (one from each of the three (3) wards); (Note: Any non-voting Councillor in attendance at a meeting may act as an alternate voting member in circumstances where achievement of a quorum is required.)
 - One (1) designated Aboriginal Local Member. A nomination for this position will be made by the Aboriginal Advisory Committee when the position comes vacant or the member term expires. The nominee need not be a member of that committee;
 - One (1) representative from the Shoalhaven Tourism Advisory Group (STAG). A nomination for this position will be made by STAG when the position comes vacant or the member term expires.
- Community member representatives of the Board are appointed through an Expression of Interest process with the exclusion of casual vacancies should they arise.

3.4. Election/AppointmentIndustry Representatives

- Appointment to the Board can be for a maximum four (4) years with a set commencement and finish date
- Vacancies will be advertised locally via media, Council communication channels and industry networks
- Applications will be actively sought from appropriately skilled industry representatives,
- Council will manage the application process,
- An interview panel will consist of a Council staff member, the Chairperson of the Board and one (1) suitably qualified independent representative to assess the applications and make recommendations for appointments to the Board and Council.

Councillors

Council will advise Shoalhaven Arts Board of its appointed representatives. Council at its discretion can replace representatives at a time of its choosing.

3.5. Casual Vacancies

Should there be a casual vacancy; the Shoalhaven Arts Board will seek applications by appropriate means to fill these vacancies to align with finish dates.

3.6. Term of Appointment

- Appointments will be for a term of two (2) years
- If representative is terminated or resigns an early substitute will be appointed only until the fixed finish date as a casual vacancy

Shoalhaven Arts Board – Terms of Reference

3.7. Sub Committees/Working Groups/Portfolios

The Board will have the right to establish sub groups as deemed appropriate to assist in fulfilling their role and purpose.

3.8. Board Meeting Practice and Procedures

- The administrative provisions of Council's adopted Code of Meeting Practice shall apply subject to any amendments by the Terms of Reference.
- Formal Board Meetings will be held quarterly in a form and format as determined by Shoalhaven Arts Board
- To hold Arts/museum/culture industry forums for feedback and ideas that might inform the Annual strategic plan will be held
- Agenda and minutes from previous meetings will be circulated to members at least seven (7) days prior to the meeting
- Members must declare in writing any interest in any report tabled at the meeting covered by the Code of Conduct and Pecuniary Interest
- Informal Board meetings, special meetings will be held as and when required or set by the Board
- Planning and costs associated with conducting meetings will be borne by Council and funded from a line item in the Arts & Culture budget.
- The Chairperson will be appointed by the Board, the position will be limited to a two (2) year term and is open to all members of the Board.
- The Quorum will consist of at least half plus one (1) of the members. Note: Any non-voting Councillor in attendance at a meeting may act as an alternate voting member in circumstances where achievement of a quorum is required.
- Voting and Recommendations are made by consensus and all decisions must be stated precisely for the inclusion of the minutes
- Where a consensus cannot be reached at two (2) consecutive meetings, then the majority of 60% of those present can adopt a recommendation
- Alternative views are to be minuted
- The Board shall ensure that an agreed written record of each of their meetings is forwarded to Council.

3.9. Code of Conduct

- All members of the Board are to abide by Council's Code of Conduct.
- Board members should act in a professional and responsible manner with the information they obtain as a member, as the Board requires openness and honesty to function well.
- Board members should feel free to express their opinions and views without fear of recrimination
- It is essential for Board members to accept collective responsibility, remain loyal to decisions of the Board, even where they may not have agreed with the final decision.

3.10. Confidentiality and Privacy

Members may have contact with confidential or personal information retained by Council. If so, members are required to maintain the security of any confidential or personal information and not access, use or remove any information, unless the member is authorised to do so.

Shoalhaven Arts Board – Terms of Reference

3.11. Communication

- All issues must be clearly communicated including priorities, limitation and benefits to the community
- Members of the Board are not permitted to speak to the media as Committee of Council representatives of the Board unless approved by the Chairperson
- Where approval has been given by the Chairperson, views and opinions expressed are those of the Board and not of Shoalhaven City Council
- Where endorsement is required from Shoalhaven City Council, approval must be sought through the formal processes
- The Chair of the Board is the point of contact for communication between Board members and Council staff.

3.12. Parent Advisory Group

Ordinary Council

3.13. Staff Attendance

Executive staff are normally required to attend the meetings of the Board. Other staff at the Directors' discretion or at the Board's request can attend meetings as required. Staff have no voting privileges.

3.14. Expectation of Board Members

- Board members will undertake the prescribed Induction process
- Pecuniary Interest Returns are required on appointment and annually as required by the Office of Local Government and Council

3.15. Responsibility of Council

Council will provide secretarial support to arrange meetings and take minutes and provide professional officer support where required.

Council at its discretion may review and change the Terms of Reference, Role and Structure of the Board.

4. Implementation

The City Lifestyles Directorate of Council is allocated responsibility for the administration of the policy.

5. Review

To be reviewed within one (1) year of the election of a new Council, or earlier at the discretion of Council.

CL22.561 Tenders - Park Road Netball Court Resurfacing

HPERM Ref: D22/421529

Department: Community Planning & Projects
Approver: Jane Lewis, Director - City Lifestyles

Reason for Report

To inform Council of the tender process for Park Road Netball Court Resurfacing.

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.

Recommendation

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

Options

1. Accept the recommendation

Implications: Consider a separate confidential report on the matter

2. Council make a different resolution

Implications: This is not recommended as an extensive evaluation process has been undertaken by the tender evaluation team in accordance with the tender evaluation plan

Details

Project Description

The proposed upgrade works would be undertaken at Park Road Netball Courts, 24 John Purcell Way, Nowra. All works would occur within Council freehold Lot 1 DP 390432 and the Park Rd road reserve, for which Council is the road authority. Lot 1 DP 390432 is classified as Community Land – Sportsground (Council reserve CEN354).

Inefficient drainage has created cracking with 6 of the upper-level courts, and they are not useable. The remaining 6 courts have deteriorated surface conditions and require resurfacing. This puts immense strain on the Netball Association when trying to provide adequate courts for play.

The contracted works are to include upgrades to playing surfaces at Park Road Netball Courts inclusive of drainage, footpaths, lighting infrastructure and fencing.

Tendering

Council engaged New South Wales Public Works Advisory (PWA) for the design finalisation, tendering and project management of the construction for the Park Road Netball Court Resurfacing. Tenders were called on Friday 19th August 2022 and closed at 10:00 am on

CL22.561

Tuesday 27th September 2022. One tender was received at the time of closing. Tenders were received from the following:

Tenderer	Location
Jirgens Civil Pty Ltd	South Nowra NSW 2540

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

Community Engagement:

This project has had extensive consultation with current user groups including Netball and surrounding schools. All stakeholders agreed to the final design as part of the project consultation. This sign-off and agreement from key stakeholders will ensure that the facility will meet the current and future needs of local and potential state sporting events.

The consultation process to get the project to the detailed design stage has been thorough and well received by the community, user groups and key stakeholders

Policy Implications

Nil. The tender process has followed the requirements under the provisions of the Local Government Act 1993.

Financial Implications:

Details relating to the Financial Implications are contained in the confidential report.

Risk Implications

Details relating to the Risk Implications are contained in the confidential report.

CL22.561

CL22.562 Acquisition for Easement of Water Supply - Lot 129 DP 3060 and Lot 110 DP 131219 - Moss Vale Rd Bomaderry

HPERM Ref: D22/378557

Department: Technical Services

Approver: Robert Horner, Executive Manager Shoalhaven Water

Attachments: 1. Water Supply Easement Plan - Lot 129 DP 3060 [↓](#)
2. Water Supply Easement Plan - Lot 110 DP 131219 [↓](#)

Reason for Report

This report provides Council with an opportunity to consider the acquisition of an Easement for Water Supply 5 metres wide over part Lot 129 DP 3060 and part Lot 110 DP 131219 Moss Vale Road Bomaderry, from Bomaderry Bowling Club Ltd.

The easements are marked (W1) and outlined blue on the attached survey plans.

Recommendation

That Council:

1. Acquire an Easement for Water Supply 5 metres wide over part of Lot 129 DP 3060 and Lot 110 DP 131219 Moss Vale Road, Bomaderry identified as "W1" in the attached Water supply easement;
2. Pay compensation of \$51,000 (plus GST if applicable) and reasonable costs associated with the acquisition, in accordance with the provisions of the Land Acquisition (Just Terms Compensation) Act 1993;
3. Fund all costs associated with the acquisition of the water easement from the Water Fund;
4. Delegate authority to the Chief Executive Officer (Executive Manager, Shoalhaven Water) to make minor adjustments to the purchase price, if necessary, in accordance with the settlement figure determined by Council's Solicitor;
5. Authorise the Chief Executive Officer (Executive Manager, Shoalhaven Water) to sign any documentation required to give effect to this resolution and to affix the Common Seal of the Council of the City of Shoalhaven to all documentation required to be sealed.

Options

1. Resolve as Recommended

Implications: The easement is needed for infrastructure required for the Moss Vale Road Urban Release Area. It will provide Council with legal rights to the access, operation & maintenance of the infrastructure.

2. Not resolve as recommended and provide further directions to staff.

Implications: Failure to acquire the easement will lead to a delay in the delivery of the required infrastructure for the Moss Vale Road Urban Release Area.

CL22.562

Background

The easement is required to facilitate construction and future operation/maintenance of a water main to service the residential subdivisions within the Moss Vale Road Urban Release Areas.

A valuation report undertaken on behalf of Council by Poulton Property Valuers assessed compensation for the water easement in Lot 110 DP 132219 at \$17,500 (plus GST if applicable) and in Lot 129 DP 3060 at \$33,500 (plus GST if applicable).

An offer of \$51,000 (plus GST if applicable) was made to the landowners' representative and was agreed by both parties.

Community Engagement

Community engagement is not required for operational purposes such as an easement acquisition.

Policy Implications

Nil.

Financial Implications

Compensation and all costs associated with the acquisition are to be funded from Council's Water Fund.

Risk Implications

Acquisition of the easement is necessary to secure Shoalhaven Water's legal rights to access, operation and maintenance of essential public infrastructure. The proposed action is administrative only and has no environmental impact.

Failure to acquire the easement identified for water supply may lead to a delay in the delivery of required infrastructure as part of the Moss Vale Road URA.

CL22.562

NOTE:

This plan was prepared for Shoalhaven City Council as an indicative Proposed Easement Plan only. The information shown on this plan is not suitable for any other purpose.

The proposed easement dimensions and location have been provided to Allen Price and Scarratts by Shoalhaven City Council and have not been verified by field survey.

All property boundary dimensions and locations have been compiled from the Digital Cadastral Database (DCDB) obtained from the NSW Government, Spatial Services Portal via the Clip and Ship function on 02.08.2021 and compiled with existing information that has not been verified by field survey.

The dimensions, area and location of the proposed easement shown on this plan are subject to field survey and also to the requirements of Shoalhaven City Council and any other authority which may have requirements under any relevant legislation.

In particular, no reliance should be placed on the information on this plan for detailed design or for any financial dealings involving the land.

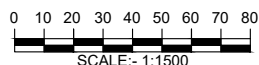
Existing easements are only shown within the vicinity of proposed easement.

Allen Price & Scarratts Pty Ltd therefore disclaims any liability for any loss or damage whatsoever or howsoever incurred, arising from any party using or relying upon this plan for any purpose other than as a document prepared for the sole purpose of accompanying an indicative Proposed Easement Plan and which may be subject to alteration for reasons beyond the control of Allen Price & Scarratts Pty Ltd.

Unless stamped by Shoalhaven City Council, this plan is not a plan of an approved plan.

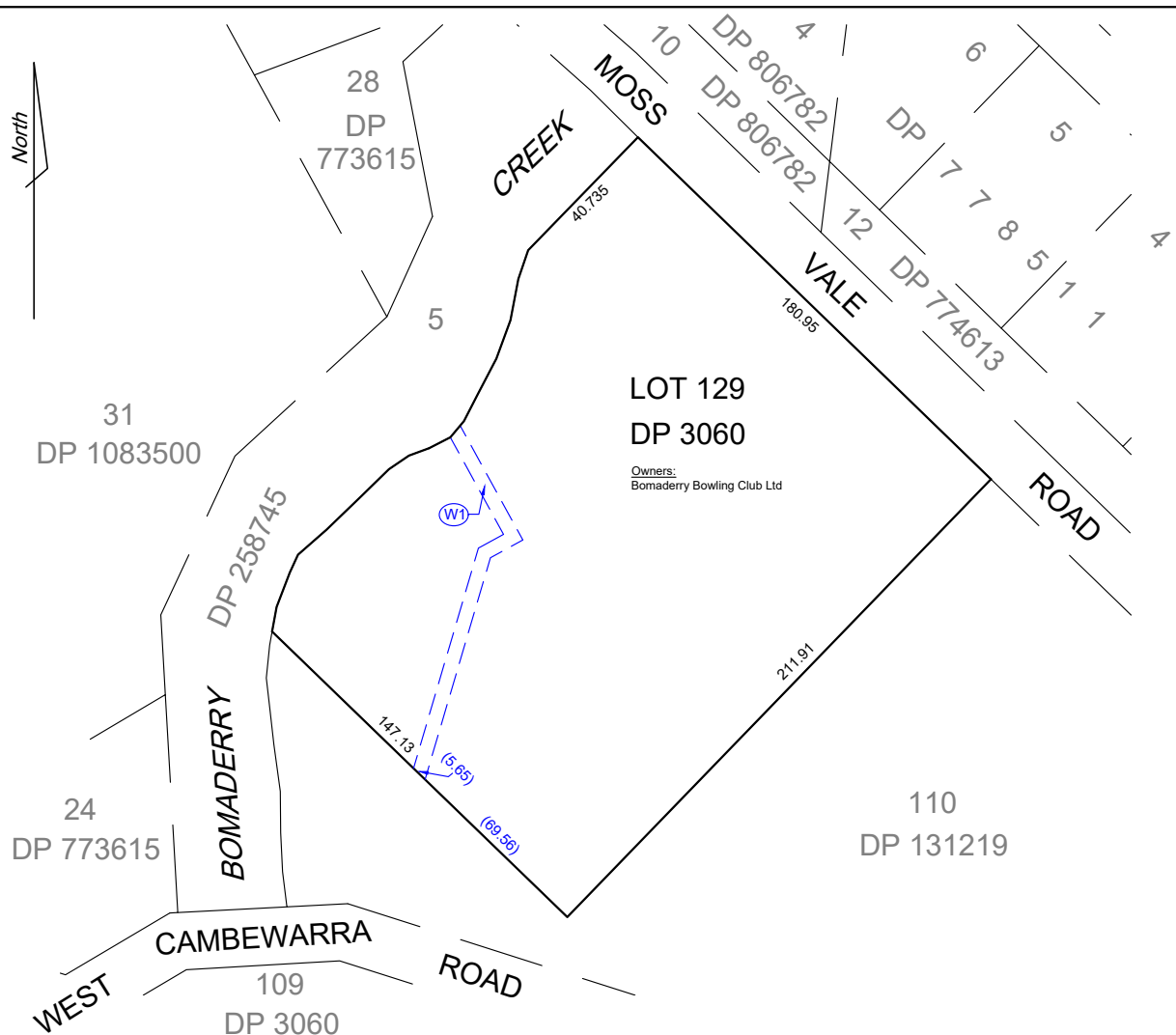
This note is an integral part of this plan.

(W1) PROPOSED EASEMENT FOR WATER MAIN (5 WIDE)
280.8m²



Liability limited by a scheme approved under Professional Standards Legislation

DIMENSIONS, AREAS AND EASEMENTS ARE SUBJECT TO SURVEY AND COUNCIL APPROVAL



REV	DESCRIPTION	BY	DATE
A	CHANGE OF WATER MAIN LOCATION	GW	14.02.2022

allen price & scarratts pty ltd
land and development consultants
Nowra Office: 75 Plunkett Street, Nowra NSW 2541
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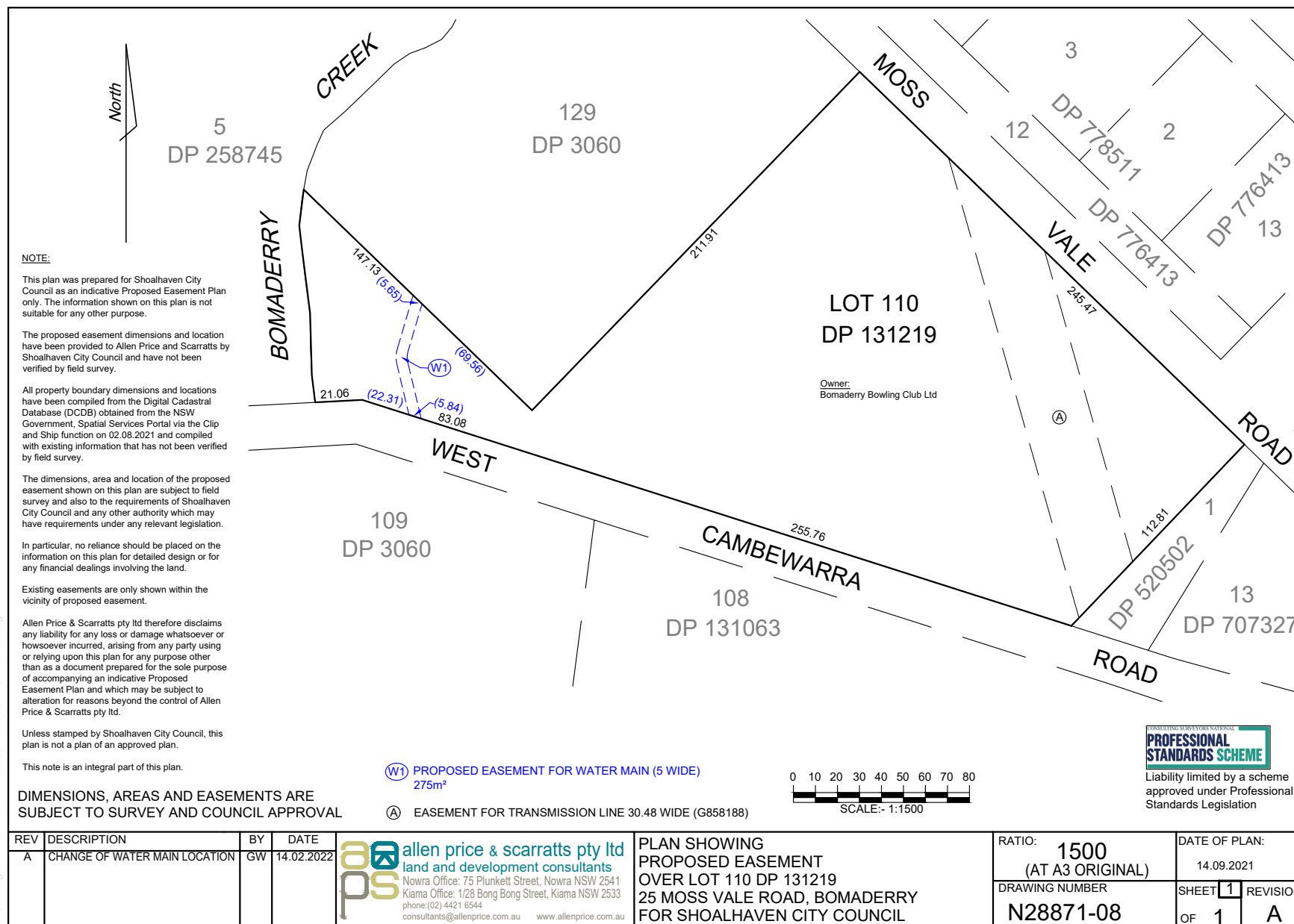
PLAN SHOWING
PROPOSED EASEMENT
OVER LOT 129 DP 3060
25 MOSS VALE ROAD, BOMADERRY
FOR SHOALHAVEN CITY COUNCIL

RATIO: **1:1500**
(AT A3 ORIGINAL)

DRAWING NUMBER
N28871-12

DATE OF PLAN:
14.09.2021

SHEET **1** REVISION
OF **1** **A**



CL22.563 Connection to Conjola Sewerage System - Lot 320 DP 788391 - 24 Coolibah Ave, Conjola Park

HPERM Ref: D22/419411

Department: Water Asset Planning & Development

Approver: Robert Horner, Executive Manager Shoalhaven Water

Reason for Report

Council is in receipt of an application for the connection of Lot 320 DP 788391 – 24 Coolibah Ave, Conjola Park to Council's sewerage system. The Lot is zoned R5 (Large Lot Residential) and as such must be considered by the Council following assessment under its Non-Urban Wastewater Connection Policy (POL22/135)

Recommendation

That

1. Council approve the connection of Lot 320 DP 788391, 24 Coolibah Ave, Conjola Park to the Conjola Sewerage Scheme via a gravity connection
2. The applicant pay a Separate System Connection Fee in accordance with Council's Fees and Charges, and
3. The applicant undertake all necessary works to connect the internal sewer drainage lines to the existing gravity sewer at the terminal maintenance shaft C1A in accordance with Shoalhaven Water's requirements.

Options

1. Adopt the recommendation

Implications: This is recommended as there is sufficient capacity in the Conjola Sewerage Scheme and the proposal is considered a minor connection.

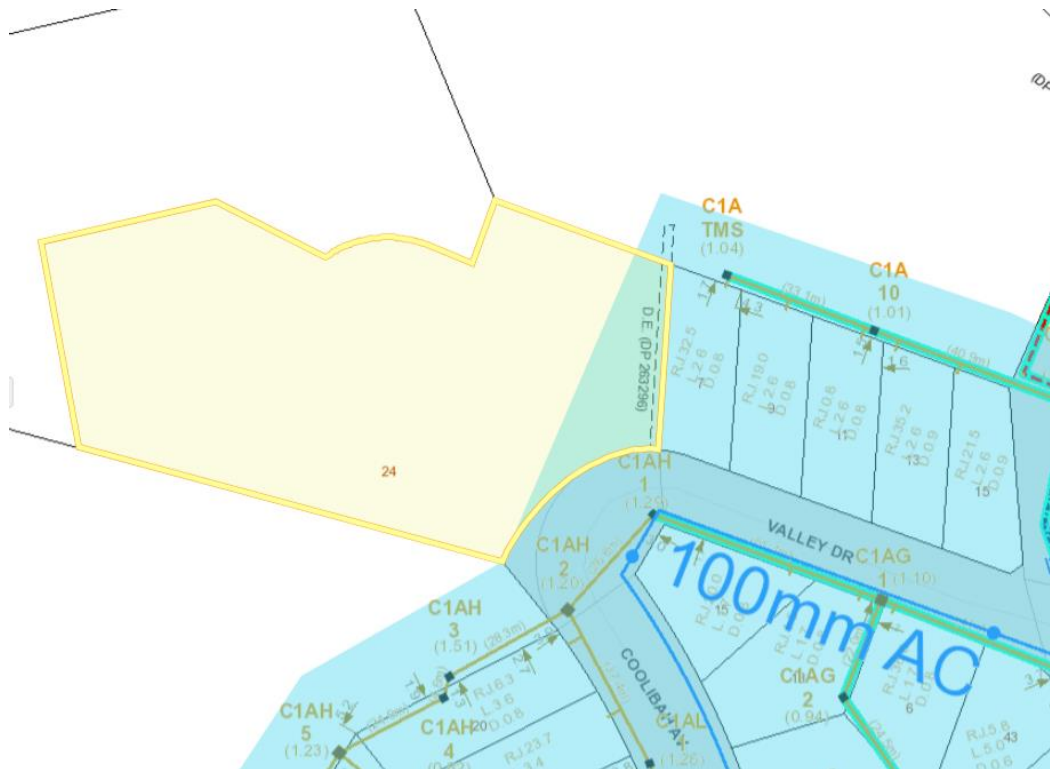
2. Council may choose not to permit the connection to the town sewerage

Implications: This site has been investigated by Council's Environmental Services team and it was deemed that due to a large dam on site and the proximity of the site to Lake Conjola that the on-site detention makes this property a high risk of causing pollution. At the most recent inspection of the property (18 March 2022) the trenches that form part of the current onsite detention were determined as failing.

Background

The subject property is located at the intersection of Coolibah Ave and Valley Dr, Conjola Park and is a single dwelling with a 12m x 12m garage and large dam (approx. 1500m²). This property sits partially on the edge of Lake Conjola Sewerage Scheme.

CL22.563



The only development application for this property since 1990 has been a Detached Garage/ Carport application.

This site can drain to the existing sewerage system via gravity connecting at C1A/TMS.



Community Engagement

No community engagement is required.

CL22.563

Policy Implications

Assessment under the Non-Urban Wastewater Connection Policy (POL22/135)

Council's policy provides for non-urban zoned properties to connect to the town sewerage system subject to compliance with Section 3.3 *Criteria For Determination of an Application for a Rural Property to Connect to Council's Sewerage System*, which states:

"Connection to Council's sewerage system will only be made available to rural properties upon written application in the following circumstances:

- Where capacity exists in the existing system, and*
- Where the current levels of service can be provided, and*
- Where the property is paying the wastewater availability charge.*

Properties not paying the wastewater availability charge will only be considered for connection to Council's sewerage system if it is not possible to manage wastewater by on site treatment. Approval in this situation is subject to Council resolution."

Assessment in accordance with each of these criteria is outlined below:

1. Where capacity exists in the existing system

The residential dwelling is not expected to generate excessive load on the sewer system. The town sewerage system does have capacity to support the existing property now and into the future. The calculated loading would be 1 equivalent tenement (ET).

2. Where the current levels of service can be provided

Council's preferred connection method is via gravity which can be achieved in this situation. The nearest connection point (C1A/TMS) is approx. 14m from the nearest edge of the property. Current levels of service via gravity sewer can be provided.

3. Where the property is paying the wastewater availability charge

The property does not pay the wastewater availability charge.

Properties not paying the wastewater availability charge will only be considered for connection to Council's sewerage system if it is not possible to manage wastewater by on site treatment. Approval in this situation is subject to Council resolution.

The property has been investigated by Council's Environmental Services team and it was determined that the current disposal system is beginning to fail and poses a pollution risk to a nearby dam and Lake Conjola. To alleviate that risk connection to the nearby sewer scheme is recommended.

Financial Implications

There is no negative financial implication to Council. If approval is granted, Council would benefit by way of an ongoing sewer availability charge.

The development will be levied the Separate System Connection fee by way of a condition under a Shoalhaven Water Development Application Notice. The development would be levied based on a loading of 1 equivalent tenement (ETs). The calculated Separate System Connection Fee is \$8,339.00 (2022/23).

Risk Implications

There are no new risk implications to Shoalhaven Water's role in maintaining the new gravity sewer connection to the property.

CL22.563

CL22.564 Notice of Motion - Burton St Mall - Vincentia - Toilet Amenities

HPERM Ref: D22/433437

Submitted by: Cllr Paul Ell
Cllr Greg Watson
Cllr John Kotlash

Purpose / Summary

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

Recommendation

That Council:

1. Acknowledges the Vincentia community's strong desire for an adult change table and ceiling track hoist to be installed in the yet to be constructed accessible toilets as part of the Burton Street Mall upgrade.
2. Notes that the Vincentia Residents and Ratepayers Association (VRRRA) have purchased an adult change table and ceiling track hoist and have generously offered to donate this to Council for installation in the Burton Street Mall project.
3. Directs and delegates to the CEO to make the required modifications to the dimensions of the accessible toilet component of the project to ensure that an adult change table and ceiling track hoist are incorporated into the construction of the new toilets as part of the Burton Street Mall upgrade. Any adjustment to the project budget required to achieve this modification are to be addressed at the next quarterly budget review.

Background

During the consultation process on the Burton Street Mall upgrade, the community asked that an adult change table and ceiling track hoist be inserted into the accessible toilet. The community were initially advised that Council was unable to acquiesce to this request as the space required for the extra features would not comply with the building code. However, at the time of this advice, there was initially only to be a refurbishment of the toilets.

At this point, the toilets have actually been demolished so the community are asking Council to consider this request again. It should be noted that the VRRRA have already generously purchased the desired facilities and offered these as a donation to Council.

This will require a small modification to the size of the accessible toilet, just enough space to fit the adult change table and allow the required circulation space; one extra metre should suffice. This is not a changing place facility but a standard AS1428 compliant toilet with extra features.

The Burton Street upgrade should be made inclusive for all members of the community. Toileting facilities are the most basic requirements and should be available for everybody.

CL22.564

Note by the CEO

Construction for the amenities building within the Burton St Mall has progressed significantly and is currently at a stage where underground plumbing has been installed, the floor slab has been prepared, piers to support the floor slab have been installed and the floor slab is ready for concrete to be poured the week of 31st October. On that basis, the construction works have progressed too far to accommodate any changes to the footprint of the building. The installation of the proposed equipment would require a change to the footprint of the building to create more space to accommodate the equipment.

The building frame and materials to form the walls and roof have already been procured, are bespoke to suit the design of the building, and have not been designed to support the proposed roof-mounted hoist equipment.

Council is very aware of the hardship and impact on trading that the reconstruction works have had on the traders within the Burton St Mall and is actively working to minimise the duration of the project to allow those traders to realise the benefits of the upgrade as quickly as possible. Changing the amenities building at this stage would result in a significant delay to the completion of the project, likely to be in the order of 6 months, would incur a significant variation in cost that is not funded, and would subsequently further prolong the hardship on traders and damage Council's reputation with the community.

CL22.564

CL22.565 Notice of Motion - Provision of Waste Vouchers for Men's Sheds

HPERM Ref: D22/433465

Submitted by: Cllr Paul Ell

Purpose / Summary

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

Recommendation

That Council:

1. Appreciates the important work performed by Men's Sheds throughout the Shoalhaven and notes that they are volunteer run and rely on donations and support from the community.
2. Acknowledges that in completing various projects on behalf of the community, sheds generate significant waste requiring them to undertake several tip runs a year. They often also receive unwanted or unusable items from the community as donations.
3. Resolves to offer to every Men's Shed located in the Shoalhaven, on application to Council, 2x Household Waste Disposal and 2x Green Waste Disposal vouchers per financial year.
4. Directs the CEO to prepare any necessary changes to the No Charge Tipping Vouchers Policy for future adoption by Council to reflect that the policy is now to apply to Men's Sheds.
5. Directs the CEO to write to all Men's Sheds in the Shoalhaven to advise them of this resolution and inviting them to apply to Council for their vouchers.

Background

All Councillors will understand the important role that Men's Sheds play in our community, particularly when it comes to supporting the mental health and wellbeing of men.

We can all acknowledge that waste disposal would represent a significant challenge for sheds given the many projects that they undertake.

This proposal is to simply extend the application of the No Charge Tipping Vouchers Policy to Men's Sheds to provide them with much needed assistance with their waste disposal needs. I hope that all Councillors will see fit to support this motion.

Note by the CEO

Provision already exists within the *DPOP Fees and Charges Volume 1* to provide fee relief to groups such as Men's Sheds, and it is strongly recommended that the Men's Sheds throughout the Shoalhaven be informed of this provision and encouraged to apply in lieu of the proposed voucher system nominated in the NoM.

The provision referred to is the following:

DPOP Fees and Charges Volume 1, page 14:

CL22.565

Other Special Circumstances

There are special circumstances where a person or community group has a valid reason for requesting fee relief. Council's Waste Services Manager will consider these applications on a case-by-case basis, subject to the following conditions:

- The group is a non-profit community organisation or group working on a voluntary basis and the group must provide details of how the activity will benefit the community*
- The person has a specific medical need that produces significant additional domestic waste disposal needs and the need is supported by valid medical certification*
- The financial impact on Council does not exceed \$500 for each application*

CL22.566 Notice of Motion - Call in of Development Application DA22/1614 - 5 Flora St, Sanctuary Point

HPERM Ref: D22/445922

Submitted by: Cllr Paul Ell

Purpose / Summary

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

Recommendation

That DA22/1614 - 5 Flora St, Sanctuary Point be called in for determination by Council due to public interest.

CL22.566

CL22.567 Notice of Motion - Comerong Island Road Closure

HPERM Ref: D22/446041

Submitted by: Cllr Paul Ell

Purpose / Summary

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

Recommendation

That Council:

1. Notes that the residents of Comerong Island Rd were told in April that repairs to their road would be completed by July and that this has not occurred.
2. Directs the CEO (City Services) to meet with residents and business owners impacted by the "road closure / resident access only" signage on Comerong Island Rd to discuss their concerns and options to facilitate regular access.
3. Delegates the CEO (City Services) to engage with residents and business owners who may be in a position to assist with undertaking works on behalf of Council to achieve a full reopening of this road as quickly as possible.

Background

In April residents of Comerong Island and surrounds were advised: "Comerong Island Rd is under a road closed arrangement due to extensive pavement damage with "Road Closed/Local Access Only" signage installed. Residents and businesses are still operating as per usual along this road. Works required are reconstruction and sealing of the granular pavement between Milbank Road and Bryant Street, Terara. The repairs here are planned to be completed during the 3 month IRW (Immediate Reconstruction Work) phase for the current natural disaster which would see completion before the end of July. It has been identified as the second priority following right behind Greenwell Point Road in the Central District of the LGA." To date there are still significant works required on these roads and Comerong Island Rd is still only open to residents. The community is frustrated about this situation, and it has generated media coverage. The purpose of this motion is to bring the matter to the attention of Councillors and to ensure that we engage with the community to try to find a solution.

Note by the CEO

The road reconstruction work for Comerong Island Road, Terara is included within the Natural Disaster Reconstruction Works tender package that is currently being finalised. The tender package is being progressed through the review process with TfNSW and will be advertised for tenders as soon as that process is complete. Current expected timeline for advertising of tenders is sometime in November/December. The programming of the reconstruction work is already on the shortest possible delivery path.

The Road Works project page is being updated regularly, see link below.

[Comerong Island Rd - Terara - Pavement Repair | Shoalhaven City Council \(nsw.gov.au\)](https://www.shoalhaven.nsw.gov.au/roads-transport/comerong-island-rd-terara-pavement-repair)

CL22.567

Comerong Island Rd - Terara - Pavement Repair

Council is calling for tenders to undertake significant road reconstruction works on Comerong Island Road (South St)

Public access	Closed
Reason for closure	Residents only
Where	Comerong Island, Terara 2540
Last updated	22 October 2022

The latest

An open tender to deliver a Central District Pavement Repair Program is expected to be called in December 2022. Road rehabilitation works will be completed along several sections of Comerong Island Road commencing next year.

In the meantime, the Central District are maintaining the road as best they can, but removal of the Local Access Only restriction won't be possible until the major reconstruction works are completed. The Central District are looking at opportunities to enhance the road closure signage to include a detour route to improve awareness of how patrons can access Mr Marshall's business on Comerong Island Road.

Further in relation to timing of road repair works generally, any commitment or indication of timing of works is dependent upon a range of factors and in particular the weather. In this regard, data from the BOM:

<http://www.bom.gov.au/climate/dwo/202209/html/IDCJDW2101.202209.shtml> shows that of 185 days since the end of April 2022, 82 days (or 44%) have been wet weather days which has significantly impacted the timing of delivery for a range of road and other construction works.

CL22.567

CL22.568 Notice of Motion - Lake Tabourie Community Connectivity – Proposed Lake Tabourie Pathway Network

HPERM Ref: D22/445605

Submitted by: Cllr Patricia White
Cllr Liza Butler

Attachments: 1. Lake Tabourie Pathway Network - Draft Plan [↓](#)

Purpose / Summary

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

Recommendation

That Council: -

1. Accept and review the Plans from Lake Tabourie Ratepayers Association (CCB) on the proposed Lake Tabourie Pathway Network attached.
2. Receive a report back to Council regarding: -
 - a. Funding and grant options available for the completion of the proposed pathways.
 - b. Timeframes for stages and completion of the plans.
3. Thank the Lake Tabourie CCB and members for providing the detailed Plans.
4. Consider immediate investigation and construction of priority one (River Road from Highway to Lemon Tree Creek crossing).

Background

The Lake Tabourie CCB has been working with residents and community members in developing a pathway network to provide connectivity of shared user pathways in the Lake Tabourie area. The Plan has been presented to the CCB meeting to ensure residents and members of the CCB have had community input into the plan.

The CCB has provided a detailed plan with stages for completion with the stages being determined by:

- Improved safety on the roads for walkers and cyclists
- Community health benefits from walking and cycling exercise

We would like to personally congratulate the Lake Tabourie CCB and its members in the preparation of the plans to ensure the safety of their residents.

I seek support from all Councillors.

CL22.568

Google Maps

28/7/22, 11:54 am

NETWORK OF PATHS DRAFT PLAN

SEPTEMBER 28, 2022

Google Maps



KEY

Map

- | | | | |
|--|--|--|---|
| | EXISTING PATHS | | PROPOSED PATHS |
| | EXISTING TRACKS | | PROPOSED PEDESTRIAN BRIDGE FROM RIVER RD RESERVE TO BEACH ST. |
| | COUNCIL APPROVED PATH AWAITING BUDGET. PATH OFF CENTRE ST. BRIDGE. | | PROPOSED RAISED BOARDWALK FROM OAK AV. TO PORTLAND WAY |
| | PRIORITY RANKING | | |

<https://www.google.com/maps/@-35.4402769,150.4029746,16z>

Page 1 of 2

CL22.568 - Attachment 1

**CL22.569 Notice of Motion - DA22/1542 - 1 Buchan Street
Mollymook - Lot 14 DP 20321****HPERM Ref:** D22/437245**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 "Call In" DA22/1542 - 1 Buchan Street Mollymook due to the public interest.

CL22.569

CL22.570 Notice of Motion - Review of Policy 22/18 - Waiving of Development Application Fees and Other Fees for Charitable Organisations & Community Groups

HPERM Ref: D22/446120

Submitted by: Cllr Liza Butler

Attachments: 1. Waiving of Development Application and Other Fees for Charitable Organisations and Community Groups [↓](#)

Purpose / Summary

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

Recommendation

That:

1. Council Receive a report in regard to a review of Policy 22/18 - Waiving of Development Application Fees and Other Fees for Charitable Organisations & Community Groups to include draft criteria, at Clause 2.4, to allow Councillors to make well informed and transparent decisions when determining requests for the waving of fees over \$1,500.
2. Council includes additional Criteria at Clause 2.4 to consider, but not limited to:
 - a. Financial position of the organisation
 - b. What services or initiatives will be provided
 - c. If the funds will be held locally
3. The revised draft be presented to Councillors via a briefing prior to Christmas.

Background

The current policy does not have any criteria to allow Councillors to do anything but support any Charitable Organisation obtaining any fees paid to Council receiving a refund.

Shoalhaven City Council is striving to be a gold star organisation and as it stands, the current Policy 22/18 - Waiving of Development Application Fees and Other Fees for Charitable Organisations & Community Groups, does not allow for transparent decision making by Council and the policy needs to be reviewed as a matter of urgency.

CL22.570

Waiving of Development Application Fees and Other Fees for Charitable Organisations and Community Groups

Adoption Date:	18/02/1997
Reaffirmed:	21/12/2004
Amendment Date:	24/07/2007, 14/04/2009, 20/07/2011, 23/11/2012, 19/09/2014, 19/09/2017, 15/05/2018, 12/11/2019, 25/02/2020, 20/09/2022
Minute Number:	MIN97.72, MIN04.1598, MIN07.1041, MIN09.429, MIN12.1280, MIN17.796, MIN18.353, MIN19.842, MIN20.135, MIN22.644
Review Date:	01/06/2023
Directorate:	City Development
Record Number:	POL22/18

Waiving of Development Application Fees and Other Fees for Charitable Organisations and Community Groups

1. Purpose

This policy exempts certain applicants/ organisations from the payment of some fees such as: Development Applications (DAs) and applications under section 68 of the *Local Government (LG) Act 1993* (including sewerage management facility, temporary/ mobile food and street stall approvals), subject to certain exemption criteria.

2. Provisions**2.1 Exemption criteria**

The following exemption criteria apply:

(a) The applicant is a non-profit organisation, such as:

- a registered charity and evidence of registration as a charity has been provided to Council; or
- a local community or sporting group; or
- a Council project of a “community” nature.

(b) The application does not involve any ongoing commercial or business type venture such as an event, nursing home, childcare centre, educational establishment, registered club, etc. whether or not they meet the exemption criteria in clause 2.1(a).

2.2 Waiver threshold for DAs

The sum of all DA fees does not exceed \$1,500. This excludes prescribed advertising, notification and archive fees which must be paid. Refer to clause 2.3 regarding any amount above this waiver threshold.

2.3 Payment of fees for DAs

Applicants/ organisations who meet the exemption criteria in clause 2.1 are required to pay upfront any amount above the fee waiver threshold set in clause 2.2. The applicant/ organisation can apply for reimbursement of the amount paid and Council will consider this request on merit in accordance with clause 2.4.

Applicants/ organisations who do not meet the exemption criteria must pay the scheduled fees upon lodgement of an application.

2.4 Reimbursement of fees for DAs

If a reimbursement of the fees is sought, a written request outlining the grounds for reimbursement must be submitted. The matter will then be referred to a meeting of Council. Any donations by way of whole or partial reimbursement determined by the Council will be paid out of the City Development budget or a source identified in Council’s resolution.

2.5 Waiver for applications under S68 of the LG Act 1993**1.5.1 Sewage management facility applications**

For sewage management facility applications, applicants/ organisations who meet the exemption criteria in clause 2.1, may seek to waive the fee for such applications.

Waiving of Development Application Fees and Other Fees for Charitable Organisations and Community Groups

2.5.2 Temporary/ mobile food and street stall applications

For temporary/ mobile food and street stall applications, applicants/ organisations who meet the exemption criteria in clause 2.1, do not need to pay an application fee at the time of lodging such applications.

3. Implementation

City Development administers this policy.

4. Review

This policy statement will be reviewed annually by City Development as part of the overall annual review of Council's Delivery Program and Operational Plan.

CL22.571 Notice of Motion - Development Application Fee Reimbursement Request - Anglican Church Property Trust Diocese of Sydney - DA22/1550

HPERM Ref: D22/428448

Submitted by: Cllr John Wells
Cllr Paul Ell
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 Council:

1. Reimburse the Anglican Church Property Trust Diocese of Sydney \$7,607.48 being Development Application (DA) fees in relation to DA22/1550.
2. Fund the reimbursement from the City Development budget.

Note by the CEO

This item was originally submitted as a Rescission Motion at the previous Ordinary Meeting.

It has been added to the agenda as a Notice of Motion as the original motion was lost and a lost motion cannot be rescinded under the Code of Meeting Practice.

This report reflects the appropriate mechanism for this situation being a new Notice of Motion which has the same effect as the motion that was lost. The relevant provision of the Code of Meeting Practice is 17.6:

A notice of motion to alter or rescind a resolution, and a notice of motion which has the same effect as a motion which has been lost, must be signed by three (3) Councillors if less than three (3) months has elapsed since the resolution was passed, or the motion was lost.

CL22.571

CL22.572 Notice of Motion - Affordable Housing

HPERM Ref: D22/449280

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:

1. Prioritise the envisaged five-year review of its adopted Affordable Housing Strategy (2018) in 2023 to identify and confirm the work Council can undertake to contribute to improving housing affordability and increase the supply of affordable (rental) housing.
2. Concurrently with the review of the adopted Strategy, investigate in detail the potential to establish an "Affordable Housing Development Contribution Scheme". This work should identify the viability of such a scheme, opportunities and mechanisms to apply it, and the work required to implement it in Council's planning documents, including the Local Environmental Plan, Development Contributions Plan, and a new policy governing the use of Voluntary Planning Agreements to achieve this aim.
3. As the work on Parts (a) and (b) proceeds, consider the establishment of a restricted reserve for the provision of various forms of affordable housing, housing for seniors and people with a disability, and crisis and transitional housing. The use of the reserve to provide these types of housing to be in partnership with recognised community housing and homelessness services operating in Shoalhaven.

CL22.572

CL22.573 Question on Notice - Gross Pollutant Traps / Drain Buddies in the Shoalhaven

HPERM Ref: D22/437059

Submitted by: Cllr Moo D'Ath

Question

As the Shoalhaven sits on the East Coast of Australia it is essential we protect our marine environment by decreasing the amount of rubbish / plastic that enters our waterways. There are many ways in reducing the plastics / rubbish entering our Shoalhaven waterways. These questions are proposed to see how effective gross pollutant traps are and if we should be looking at alternative options e.g. drain buddies.

1. How many gross pollutant traps (GPT) are there in the Shoalhaven?
2. How are the GPTs Shoalhaven monitored in the Shoalhaven?
3. Is the rubbish that is collected out of the GPTs recorded? If so, how much rubbish have the GPTs in the Shoalhaven captured?
4. How much do GPTs cost to install and monitor in the Shoalhaven?
5. Are there any drain buddies installed in the Shoalhaven?

Response

1. How many gross pollutant traps (GPT) are there in the Shoalhaven?

There are Currently 39 GPT's registered in the Council Asset Register. This number is increasing as new subdivision and developments are handed over with new GPT's to Council as new areas are developed. Council staff are aware that there may be other GPT's that have not been registered in Council Asset Register and an audit to confirm this has been undertaken during the COVID lockdowns using re-deployed staff from City Lifestyles. The assets captured in the audit process are yet to be registered in the Asset Register.

2. How are the GPTs Shoalhaven monitored in the Shoalhaven?

And

4. How much do GPTs cost to install and monitor in the Shoalhaven?

- *Council is currently undertaking a process, using Grant funds and Development Contribution funds to undertake an audit and stocktake of all Council's Stormwater Quality Improvement Devices, which includes GPT's as well as Bio-retention basins, ponds and Wetlands. There are approximately 70 devices, and this task has been broken down to 3 stages due to suit funding constraints, with 2 of the 3 stages completed. It is anticipated by the end of next FY2023/24 all 3 stages of this audit and stocktake will be completed. At the completion of the task Council staff will know how much will be required to maintain all GPT's in the LGA and identify the current shortfalls in maintenance.*
- *A new guideline for maintaining and operation of GPT's was published in 2020 by the Stormwater Industry Association, Works & Service staff are booked in to be trained in the new specification and guidelines in late October and December 2022.*

CL22.573

- Council staff are currently working on catchment-wide analysis to identify where GPT's may provide greater benefit to the community. Council has engaged Rhelm Consultants to provide a list of potential locations in the Lower Shoalhaven River and Crookhaven River catchments, and engaged Advisian to provide a similar strategy for Millards Creek and Ulladulla Harbour.
- 3 Is the rubbish that is collected out of the GPTs recorded? If so, how much rubbish have the GPTs in the Shoalhaven captured?
- Litter is not logged / recorded.*

- 5 Are there any drain buddies installed in the Shoalhaven?

Council does not permit "drain buddies". It is stipulated within the DCP that "in-pit" type basket systems are not permitted within Council's drainage network. This is due to on-going safety concerns for workers maintaining the devices due to them not being practical to access, particularly adjacent to roads. These devices have frequent intervention intervals that Council cannot currently resource and, based on previous experience, have had durability and longevity issues and have damaged other parts of the drainage network when they fail.

CL22.574 Question on Notice - Youth Week 2022

HPERM Ref: D22/437154

Submitted by: Cllr Moo D'Ath

Question

Shoalhaven City Council held three events during Youth Week 2022 (1-14 April). The three events were the 'Futures Fair' (Friday 1 April), Open-Air Cinema Roadshow (Wednesday 6 April) and 'Futures Fest' (Tuesday 12 April). These questions are proposed to find out if youth in the Shoalhaven enjoyed the events and found them easily accessible. The responses could be very useful for planning of future events.

1. How many people attended each of the three events?
2. What was the average age demographic that attended the events?
3. Was there feedback gathered from people attending these events, if so, can the feedback be sent out to councillors?
4. Were there any young people involved in developing these event ideas?
5. Where and how much in advance were the events advertised?

Response

1. How many people attended each of the three events?

Open Air Cinema Night to showcase 'Shazam!'.

Number of community members in audience: 5

Futures Fair

Number of Service Providers: 20

Number of participants: 10

To note – the Futures Fair and Open Air Cinema were affected by bad weather and ultimately combined. The location was moved from Harry Sawkins Park to an indoor venue 'El Horses', with 24 hours notice which affected attendance.

Futures Fest

Number of community members in audience: 100+

2. What was the average age demographic that attended the events?

75% - high school students

25% - tertiary level

3. Was there feedback gathered from people attending these events, if so, can the feedback be sent out to councillors?

Evaluation of feedback from Youth Week 2022 identified that future Youth Week events should provide opportunities for young people to showcase their talents and skills (through music, art and culture for example). The inclusion of young people in all aspects of the planning and delivery process should be built upon from the youth consultation and engagement that did take place in 2022, and in fact, is the case for Youth Week 2023.

It was identified that including young people specifically in the project management phase, will encourage their peers to participate. Young people reported that they are less inclined to attend events organised by Council exclusively, but more so with service providers and community groups / organisations that have a youth focus.

CL22.574

Feedback suggested that youth events organised in partnership with such organisations provides an avenue for more effective engagement and promotion among young people. They also reported that initiatives that are delivered by schools, should not be replicated during Youth Week, for example, career pathways initiatives. Such feedback has been considered for future Youth Week events. This feedback relates to the Youth Pathway Expo which was, in part, a duplication of other events supported by local schools.

Responses regarding the Futures Fest, where young people were able to showcase their talents, was very positive and most people reported that they would attend a similar event in the future. One young person was quoted as saying, “(this was a) great opportunity for young people to perform and for us as a first-time band, we found it was a brilliant environment”.

4. Were there any young people involved in developing these event ideas?

The Youth Advisory Committee (YAC) were instrumental in developing ideas for Youth Week 2022, and through their learnings on the committee, identified that employment and training pathways were one of the key themes that should be incorporated into the week's events. Some were unaware, however, of the role their schools play in organising similar initiatives in more senior levels at school. The YAC were also regularly consulted throughout the planning phase of Youth Week 2022.

Additionally, partner organisations that support young people, provided opportunities for this demographic to be involved in the planning and delivery of events, including showcasing their own short films and participating in a battle of the band's competition.

5. Where and how much in advance were the events advertised?

The Communications Team at Shoalhaven City Council were engaged on 28 January 2022 prior to the event, to develop a communications strategy that would ensure early, extensive and suitable communication and promotions were distributed for Futures Fair. The plan sought to identify opportunities to increase attendance at the event by young people.

However, due to the Communications and Media Teams needing to pivot their focus due to necessary flood communications being prioritised, the final collateral wasn't made available until 17 March 2022. This provide a shorter lead time than initially planned for an event that taking place on 1 April 2022.

The Future Fair branding worked well, and separated itself well from the Council's corporate branding, thus creating a community feel that was attractive to young people and community members.

Given the short timeline for sharing posters, the media was not shared in enough time prior to the event. Social media was only made live on the day prior to the event and posters delivered in the week prior. This meant the community were not aware of the event.

In future, it will be necessary to provide more general Youth Week promotion, and direct people to event online platforms for updated event details. Future events could include opportunities for more widespread visual communication, with posters in key locations throughout the community.

Other

Concurrently Council ran a Youth Week grant program to encourage organisations across the Shoalhaven to deliver events for youth week.

These other Council funded events were:

- Nowra Youth Centre's Youth Week Events
 - Inspirational Quote Competition
 - Life Skills Information Session

- Art Activity raising awareness of sexual health

Attendees were asked to complete feedback forms regarding the info sessions and here are some responses:

- “I enjoyed this session, I thought it was really helpful”
- “I really like the way they explained it, the people were so nice”
- “Great informative session”
- “I liked the session, it had a relaxed atmosphere and the couches were good”
- “I liked the info session it was really good”
- “I learned about a lot of stuff that I didn’t know”

However, the Centre found it difficult to engage young people during the school holidays and this was reflected in low attendance numbers.

- CWA – Creatives Winning Ways

This event was free for young people aged 13-25 and ran daily, from Sunday 1 April to Thursday 14 April.

The program had 11 young people participate who took part in excursions to Bundanon, the Shoalhaven Regional Gallery and activities including screen printing, drawing and other craft.

- Headspace Nowra – Design your own Tote Bag

This was a pop-up event where young people were invited to attend and design their own tote bag. 16 people attended the event and were able to connect with headspace staff and each other.

- Mission Australia’s Youth and Seniors Intergenerational Morning Tea

35 young people attended as well as 15 seniors. Feedback from all attendees was that they enjoyed meeting people from other generations. The session was targeted at students from Ulladulla High School and local Senior Citizens. The event fostered community connection and reduced isolation as both generations met.

CL22.575 Question on Notice - Conjola Community Recovery Association (CCRA) Transfer of Funds

HPERM Ref: D22/437208

Submitted by: Cllr Moo D'Ath

Attachments: 1. Transfer of Funds - Conjola Community Recovery Association
(Confidential - under separate cover)

Question

The Conjola Community Recovery Association was set up following the fires of 2019/20 with the immediate mission to financially and materially help those in the Conjola and surrounding villages. Can staff provide a:

1. History of Council's relationship with the Association.
2. Summary of the acquittal of the Association and its transfer via an interim committee to the Conjola Community Association and how they helped in facilitating the process.
3. The process of the transfer of funds and the amount and where they are being held.

Response

1. History of Council's relationship with the Association.

The CCRA was an incorporated organisation, separate to Council that was set up by the community and for the community. The CCRA raised funds to support the Conjola Community.

There were significant community tensions being aired on social media regarding the CCRA and the funds that they had raised. Council engaged independent Michael Collins (community facilitator) and Natalie Bramble (governance expert) to support the then current CCRA Executive to work out a way forward. Both Michael and Natalie worked with the Executive who advised that they wished to step down from the role of Executive. Council staff did not participate in these discussions.

During subsequent meetings, Council was advised that an Interim Executive was formed under the CCRA Constitution as a working party. This Interim Executive working party undertook a financial review to clarify and retain the financial contributions made as charitable donations to the CCRA. This Interim Executive working party was supported by two members of the CCRA who were considered subject matter experts due to their knowledge and history of involvement and support of the CCRA from inception.

Following formation of the Interim Executive, Council was contacted by this Executive and discussions were held to progress the management of the donated funds.

2. Summary of the acquittal of the Association and its transfer via an interim committee to the Conjola Community Association and how they helped in facilitating the process.

The work detailed above was delivered by the Interim Committee of the CCRA. Council staff engaged an independent governance expert, Natalie Bramble, to assist the CCRA with this process but otherwise Council staff were not involved.

Meetings with Council staff and the interim committee were held on 16 July 2021 and 30 July 2021 and were followed by the development and signing of a Memorandum of

CL22.575

Understanding (MOU) with the intention that when the CCRA officially ceased operating, funds would be transferred to Council and ring fenced for upgrades to Hoylake Park Reserve.

The MOU was signed in November 2021 to guide the expenditure of transferred funds which are now held in trust by Council pending ongoing community consultation. This MOU was endorsed by the majority of the CCRA members at the CCRA Annual General Meeting held 20 November 2021.

The CCRA members resolved at the AGM that the CCRA distribute donated funds for the intended purpose and to wind up. The MOU encourages community consultation on funds donated for the purpose of improvements to support Conjola Park community together with an opportunity for the community to come together to enjoy some social activities which will help facilitate the consultation process and encourage the community to come together in a positive and inclusive space as part of community healing.

Funds were transferred to Council in February 2022.

Due to lockdowns, floods and inclement weather, the planned community engagement event has been delayed, with planning now occurring to run the community engagement in the next few months.

3. The process of the transfer of funds and the amount and where they are being held?

Council has signed an MOU with the CCRA and now holds the CCRA funds in a Bond ledger (quarantined trust account) named the Conjola Community Recovery Association Bond. The total funds are reported in the confidential attachment to this Question on Notice report. A community engagement event is being scheduled to find out from the Conjola Park community how they would like the funds to be spent. Prior to passing across funding, the CCRA worked with donors to ensure they were supportive of the new approach.

CL22.575

CL22.576 Question on Notice - Huskisson Church

HPERM Ref: D22/445564

Submitted by: Cllr Amanda Findley

Background

Community members are familiar with Conditions 7 and 8 in Part B of this development consent which read as follows:

7. Church Building - No Demolition of Extra Fabric

No approval is given or implied for removal and/or rebuilding of any portion of the existing church building which is shown to be retained and relocated.

Should any portion of the existing church building which is indicated on the approved plans to be retained, be damaged for whatever reason, all the works in the area of this damaged portion are to cease and written notification given to Council. No work is to resume until the written approval of Council is obtained.

8. Submission of Photographic Survey

Prior to the commencement of relocation and demolition works, a photographic survey of the church and hall shall be submitted to Council. The photographic survey shall be prepared in accordance with the guidelines "Archival Recording of Heritage Items Using Film or Digital Capture" published by the NSW Office of Environment and Heritage.

One hard copy and one electronic copy of the Photographic Survey shall be submitted in an unbound report format.

Reason: *This condition is imposed to accurately record the details of the building, its condition and to inform future decision making.*

Questions

1. Is the deterioration of the church building considered a breach of the development consent conditions?
2. If not, what action can be taken by Council to rectify what is considered by the community to be 'demolition by neglect'.
3. Could the CEO please advise how this clause operates under the current approval and whether the clause indicates that there would be a reason for Council to take action
4. Archival quality photographs are required to be provided by the applicant. Are the photographs that have been prepared considered satisfactory in light of the DA conditions on this sensitive site?
5. Have Council been contacted by the NSW Ombudsman in regard to the non-archival photos being 'unreasonable in the circumstances'?

Response

The consent (DA18/2102), via condition 7, does impose restriction on the demolition of any additional fabric of the Church Building. This condition notes that if any elements of the Church Building that are marked on the approved plans for retention, be damaged for whatever reason, Council is to be notified and works cease until such time as written approval of Council is obtained to recommence.

CL22.576

In the event of damage to parts of the structure through relocation, Council would assess whether an offence had been committed in contravention to the approval/consent issued, as part of its review and provision to written approval to recommence being undertaken.

The consent issued (DA18/2102) does not explicitly prevent the wear and tear of the buildings onsite. Given the buildings are not currently identified or listed as Heritage Items in the LEP, deterioration prevention is not a measure that was put in place for these privately owned buildings ('wilful deterioration'). Therefore, there is no immediate action Council can take to evaluate or instigate regulatory action under current regulatory provisions or the issued consent (DA18/2102).

In the event of neglect leading to the exposure of asbestos or lead paint, Council could require information to be provided to ascertain the level of risk and/or remediation needed to be undertaken, however, evidence would be needed to substantiate such a direction. Evidence displaying that the property poses a risk in this regard is not present at this stage.

Council has however, recently written to the owner raising the community concern about the deteriorating nature of the building and requested that maintenance be carried out, as an act of good faith, to help maintain/protect the fabric of the building and ensure it is protected from the elements.

Council has previously confirmed compliance with relevant consent conditions in this respect, including the recording of heritage items for Council's information. Contemporary review notes that Council was satisfied that the recording provided sufficient detail, clarity and information to demonstrate compliance with the guidelines.

Development consent (DA18/2102), condition 8, states:

Prior to the commencement of relocation and demolition works, a photographic survey of the church and hall shall be submitted to Council. The photographic survey shall be prepared in accordance with the guidelines "Archival Recording of Heritage Items Using Film or Digital Capture" published by the NSW Office of Environment and Heritage.

One hard copy and one electronic copy of the Photographic Survey shall be submitted in an unbound report format.

The condition was imposed to provide a guide in assisting the preparation of a record to ensure Council would obtain this information, noting that at that time the Church and Hall (subject to the consent) were not a listed Local, State or Commonwealth Heritage Item.

As the consent condition was deemed to be satisfied, no further direction can be issued at this stage requiring further recording or information. Notwithstanding, a request can be made to the consent holder to undertake further work and submit further information, however, this would be at their discretion.

A review of Council records has not identified correspondence from the NSW Ombudsman on this matter.

LOCAL GOVERNMENT ACT 1993

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.