

Ordinary Meeting

Meeting Date: Monday, 22 May, 2023
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.

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<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 - 8 May 2023
 - Extra Ordinary Meeting - 15 May 2023

6. Declaration of Interests	
7. Presentation of Petitions	
8. Mayoral Minute	
<u>Mayoral Minute</u>	
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10. Call Over of the Business Paper	
11. A Committee of the Whole (if necessary)	
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Nil	
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15. Confidential Reports

Nil

MM23.14 Mayoral Minute - Callala Bay Bio-Certification Application

HPERM Ref: D23/185891

Recommendation

That Council take the necessary steps to formally withdraw the Callala Bay Bio-certification application given the widespread community opposition to the potential development it is associated with.

Details

The then NSW Government finalised Planning Proposal PP-2021-406 for land at Callala Bay, Wollumboola and Kinghorne Point (the Halloran Trust Lands Rezoning) and completed the associated rezoning on 14 October 2022.

The NSW Department of Planning & Environment's own 'What We Heard Report' regarding the PP noted that of the 1029 community submissions, 1002 or 97% objected to it. Most opposition was to the 38 hectares of land zoned R1 General Residential at Callala Bay and associated biodiversity or environmental impacts, particularly on threatened species such as the Greater and Yellow Bellied Gliders.

Despite the overwhelming community opposition to the PP, the NSW Government proceeded to finalise the rezoning after it had earlier taken the matter out of Council's hands.

The community remain extremely concerned about this proposal and it is noted that the associated Biodiversity Certification Application, for which Council, by necessity, is the applicant given legislative settings, is yet to be finalised by the NSW Government.

Thus, I believe that Council should take the necessary steps to withdraw this application as a show of support for the community concern around this matter. This will not necessarily stop the possible future development of the R1 zoned land, but it will ensure that the concerns of the community about biodiversity and environmental impacts are reflected in the actions of the Council.

MM23.14

CL23.153 100% LED Street Lighting Upgrade - Update

HPERM Ref: D23/127329

Approver: Carey McIntyre, Acting Director - City Performance

Reason for Report

Council previously resolved (MIN22.522) on 8 August 2022 to capital fund a \$2.45M Council-funded model for Endeavour Energy to replace all residential streetlights with energy savings LEDs. Upon review, it was identified that the consultants business case evaluation on the total project costs underestimated the projected capital costs and Endeavour have also since increased their project costs to cover new lighting models.

This updated report is for Council to consider approving the additional capital costs of around \$200,000 to commence this project at the revised total estimated capital cost of \$2,646,743 (ex GST).

Recommendation

That Council:

1. Rescind MIN22.522.
2. Enter into an agreement with Endeavour Energy to implement a Council-funded accelerated street lighting program to change approximately 4,435 residential class streetlights to energy efficient LED technology at a capital cost to Council of approximately \$2.65M (exc. GST).
3. Note that the recommended project will result in around \$790,000 (market variable) of revenue back to Council from the sale of Energy Savings Certificates to offset the total cost of this project.
4. Delegate to the Chief Executive Officer the authority to negotiate, finalise and execute the contract and any other documentation required to give effect to this resolution.
5. Authorise an internal loan estimated at \$2.65M from Council's Water Communication Towers Reserve (internally restricted) to be repaid over five (5) years for the implementation of this program.
6. Note that to ensure financial integrity of the Reserve, interest on this internal loan will be equal to the return-on-investment rate for each year of the five (5) year term of the internal loan.

Options

1. As recommended.
2. Retract the previous Resolution MIN22.522 and Do Nothing: Continue with the current approach of spot replacement of failed streetlights with LEDs, accepting the higher ongoing tariff charges because Endeavour funds the capital cost of spot LED replacements.

Implications: This option results in a slower rollout of energy efficient lighting and will ultimately cost more in tariff and energy charges compared to the preferred up-front Council-funded option.

CL23.153

Background

Refer to Council Ordinary Meeting report on 8 August 2022 (CL22.348).

In its recently adopted Sustainability and Climate Policy, Council has committed to implementing its 2020-2025 Sustainable Energy Strategy targeting a reduction in energy consumption and greenhouse gas emissions. Under the Strategy, Council will work in collaboration with Endeavour Energy (Endeavour) to further upgrade Shoalhaven LGA street lighting to 100% energy saving Light Emitting Diode (LED) lighting by 2025. Endeavour offered to replace Shoalhaven City Council's then remaining 4,661 non-LED streetlights with energy efficient LED lighting, under their own proposed funding scheme.

In response, Council engaged public lighting consultants, Ironbark Sustainability, to evaluate an alternative Council self-funded option for this project. Based on Ironbark's evaluation and business case, Council rejected the Endeavour-funded model on the grounds that it did not offer long-term value for money, and instead resolved (MIN22.522) on 8 August 2022 to accept the Council-funded model to replace all streetlights with LEDs, delivering ongoing savings to Council both in terms of maintenance fees, greenhouse gas emissions and electricity charges.

Upon review, it was identified that the consultants business case evaluation on the total project costs underestimated the projected capital costs by around \$100,000. Endeavour have also increased the project cost by another \$92,000 since their initial quote, to cover the additional costs of a new LED light model now available. Ironbark re-ran their evaluation model to include these cost adjustments and factored in Council's latest electricity charges and other updated parameters - see Table 1. The business case for a Council-funded model is still very favourable over the Endeavour-funded model and the payback period has actually reduced from 5-7 years down to 3-4 years, making the project even better value for money.

Previous resolution MIN22.522 with out-dated costs

RESOLVED (Clr White / Clr Norris)

MIN22.522

That Council:

1. *Enter into an agreement with Endeavour Energy to implement a Council-funded accelerated street lighting program to change approximately 4,661 residential class streetlights to energy efficient LED technology at a capital cost to Council of up to \$2.45M.*
2. *Note that the recommended project will result in up to \$780,000 (market variable) of revenue back to Council from the sale of Energy Savings Certificates to offset the total cost of this project.*
3. *Delegate to the Chief Executive Officer the authority to finalise and execute the contract and any other documentation required to give effect to this resolution.*
4. *Authorise an internal loan of up to \$2.45M from Council's Water Communication Towers Reserve (internally restricted) to be repaid over ten (10) years for the implementation of this program.*
5. *Note that to ensure financial integrity of the Reserve, interest on this internal loan will be equal to the return-on-investment rate for each year of the ten (10) year term of the internal loan.*

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

AGAINST: *Nil*

CARRIED

Timeline

CL23.153

8 August 2022 – initial report to Council Ordinary Meeting (CL22.348). Resolution MIN22.522 to fund the LED upgrade at a capital cost to Council of up to \$2.45M.

May 2023 – revised updated report to Council (**this report**) seeking an additional \$200,000 to cover extra charges missed in the initial project costings and increased market costs of new LED lights to be used by Endeavour. Table 1 below shows the revised estimated project outcomes and business case:

Table 1 - Total estimated project outcomes for Endeavour and Council-funded models

	Endeavour-Funded Model	Council-Funded Model
Average Annual Costs (old technology, electricity and SLUoS)	\$2,070,000	\$2,070,000
Average Annual Costs (new LED, electricity and SLUoS)	\$1,580,000	\$1,350,000
Average Annual Savings (over 21 years)	\$496,000	\$724,000
First Year Savings	\$387,000	\$565,000
Total Savings (21 years)	\$10,440,000	\$15,230,000
Capital Cost¹	-\$229,695	\$2,647,000
Capital Income (ESCs)	\$0.51m to \$0.95m	\$0.51m to \$0.95m
Net Capital Income	\$0.29m to \$0.72m	-\$2.12m to -\$1.68m
Payback	Immediate	3 - 4 years
Annual Greenhouse Savings (tCO₂-e)	1,460 to 1,591	1,460 to 1,591

¹ For the Endeavour-funded model, Council capital costs consist only of TC5 charges. For the Council-funded model, Council capital costs include TC5 charges and installation costs for Endeavour. It is also important to note Ironbark ESC support costs are accounted for in the expected ESC revenue calculation. The estimates for the Council-funded model presented above do not take into account interest expenses payable on the internal loan which amount to an estimated \$300,000 over the life of the loan.

Community Engagement

Council staff have been in contact with Endeavour Energy during the formulation of this program. The program is a one for one replacement of Council’s existing Class P lighting stock. Because of this, and the widespread nature of the replacement program, it is intended to undertake notification of this program to the Shoalhaven community via media announcements and social media. This was achieved during the first phase of the LED street lighting upgrade throughout 2020/21, with minimal disruption to the community.

Policy Implications

This initiative would contribute to the delivery of Shoalhaven’s Community Strategic Plan themes ‘Build inclusive, safe, and connected communities’, which includes street lighting, as well as the ‘Protect and showcase the natural environment’ theme, by reducing carbon emissions by at least 1,460 tonnes of CO₂-e per year.

Council’s current Sustainable Energy Strategy has a target to ‘upgrade all street lighting to energy savings LEDs by 2025’. Even under the delayed Council-funded option this target would still be attainable.

CL23.153

Financial Implications

Conversion of the remaining 4,435 non-LED streetlights to energy savings LEDs will save Council around \$500,000 per year on electricity costs alone. The upgrade to energy savings LED luminaires is also eligible for Energy Savings Certificates (ESCs) to be created and sold by Shoalhaven Council via an Accredited Certificate Provider (in this case Ironbark Sustainability). The price of ESCs that are sold has a big impact on the overall business case for Council, as it relies upon the sale of ESCs to pay some or all the residual value of the existing lighting assets (TC5 charges). Council cannot be certain of the price of ESCs until the project has been completed and the ESCs are sold. Ironbark Sustainability modelled the potential ESC income revenue for Council based on a low market spot price of \$21 and then a higher spot price of \$37 per ESC. This would result in a total ESC revenue for Council in the range of \$518,591 to \$955,300, respectively.

Under the recommended Council-funded model, the capital cost that Shoalhaven Council would need to pay Endeavour for the new LED lighting stock, installation labour, plus the residual lighting TC5 charges, is around \$2.65M total. ***This is around \$200,000 more than the estimated budget approved by Council in August 2022 (MIN22.522).***

It is proposed to fund this project by internal loan of an estimated \$2.65M from Council's internal reserve fund – Water Communications Towers Reserve. The purpose of the Water Communication Towers Reserve is to accumulate funds for renewals of communication towers and there is sufficient balance in the reserve to cater for \$2.65M internal loan and planned renewal works.

The loan is to be fully repaid over a maximum 5-year period using budget savings on electricity and proceeds from the sale of ESCs. To ensure financial integrity of the Reserve, interest on this internal loan will be paid. Annual interest on the loan will be equal to the return-on-investment rate for a given year. As such, this arrangement will be cost-neutral to the Communication Towers Reserve.

Due to uncertainty of the timing of the project, the internal loan repayment schedule will be presented to Council upon commencement of the project.

Risk Implications

The replacement of lights must be undertaken by Endeavour Energy who own the assets and are experienced in this type of work and have completed Stage 1 already. The program is assessed as low risk to Council.

CL23.154 Investment Report - April 2023

HPERM Ref: D23/170772

Department: Finance

Approver: Carey McIntyre, Acting Director - City Performance

Attachments: 1. Shoalhaven Monthly Investment Report - April 2023 (under separate cover) [⇒](#)

Reason for Report

The reason for this report is to inform the Councillors and the Community on Council's investment returns and also to ensure compliance with Section 625 of the Local Government Act 1993 and Clause 212 of the Local Government (General) Regulation 2021, that requires 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 April 2023.
2. Note that Council's total Investment Portfolio (excluding the Long-Term Growth Fund) returned 4.56% per annum for the month of April 2023, outperforming the benchmark AusBond Bank Bill Index (3.77% pa) by 79 basis points (+0.79%).
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 April 2023 be received for information.

Implications: Nil

2. Further information regarding the Record of Investments for the period to 30 April 2023 be requested.

Implications: Nil

3. The report of the record of Investments for the period to 30 April 2023 be received for information, with any changes requested for the Record of Investments to be reflected in the report for the period to 31 May 2023.

Implications: Nil

Background

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

Portfolio Return

The investment returns (excluding growth fund) were a stable 4.56% p.a., outperforming the benchmark AusBond Bank Bill Index (3.77% p.a.) by 79 basis points (+0.79%).

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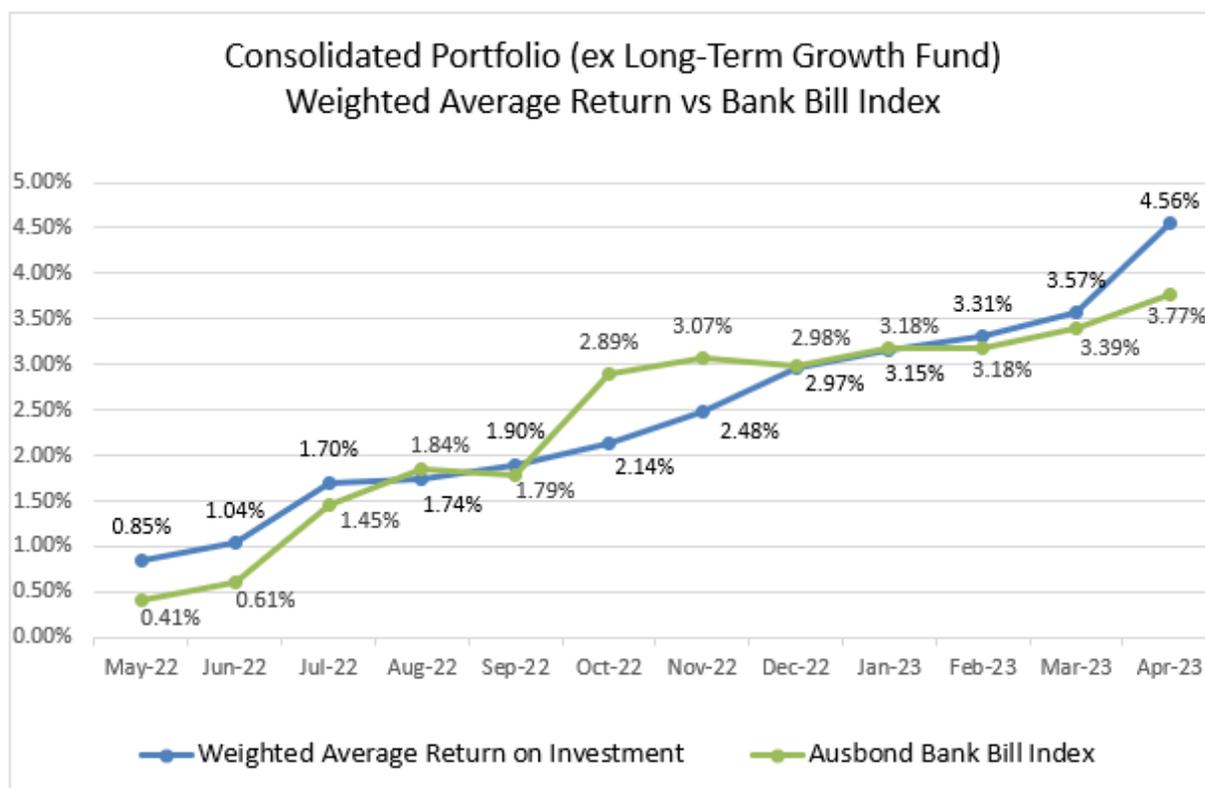
The overall portfolio (excluding cash) returned a positive 5.90% p.a. for the month of April 2023, outperforming the benchmark Ausbond Bank Bill Index return of +3.77% p.a.

The Reserve Bank of Australia has lifted the cash rate by 25 basis points on 2 May 2023 to the official interest rate of 3.85% marking the 11th increase in the space of a year. The RBA has also warned that “further tightening of the monetary policy” might be necessary signalling further rate hikes in the future. When surplus funds are available and cash flows are in a better position, Council will be able to capitalise on higher rates by investing across 3-5 years thereby locking in rates closer to 5% p.a. It will provide some income protection if RBA decide to cut rates in future years.

Investments (Excluding Long-Term Growth Fund)

Graph 1 below, shows the performance of Council’s Investment Portfolio (excluding Long-Term Growth Fund) against the benchmark on a rolling 12-month basis.

Graph 1 - Performance of Council’s Investment Portfolio against the benchmark on a rolling 12-month basis



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Long-Term Growth Fund

Council’s investment in the Long-Term Growth Fund outperformed and returned a positive \$240,381 or +15.68% (annualised) for the month of April 2023.

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.

Investment Interest Earned – April 2023

Table 1 below, shows the interest earned for the month of April 2023.

Table 1- Interest Earned for the Month of April 2023

Fund	Monthly Revised Budget \$	Actual Earned \$	Difference \$
General	155,238	202,882	47,644
Water	95,014	137,125	42,111
Sewer	55,068	61,705	6,637
Total excluding Long-Term Growth Fund	305,320	401,712	96,392

The interest earned for the month of April, excluding changes in the fair value of the TCorp Long-Term Growth Fund was \$401,712 compared to the monthly revised budget of \$305,320.

Investment Interest Earned - Year to Date

Table 2 below, demonstrates how the actual amount of interest earned year to date has performed against the total budget.

Table 2 - Amount of interest earned year to date, against the total budget.

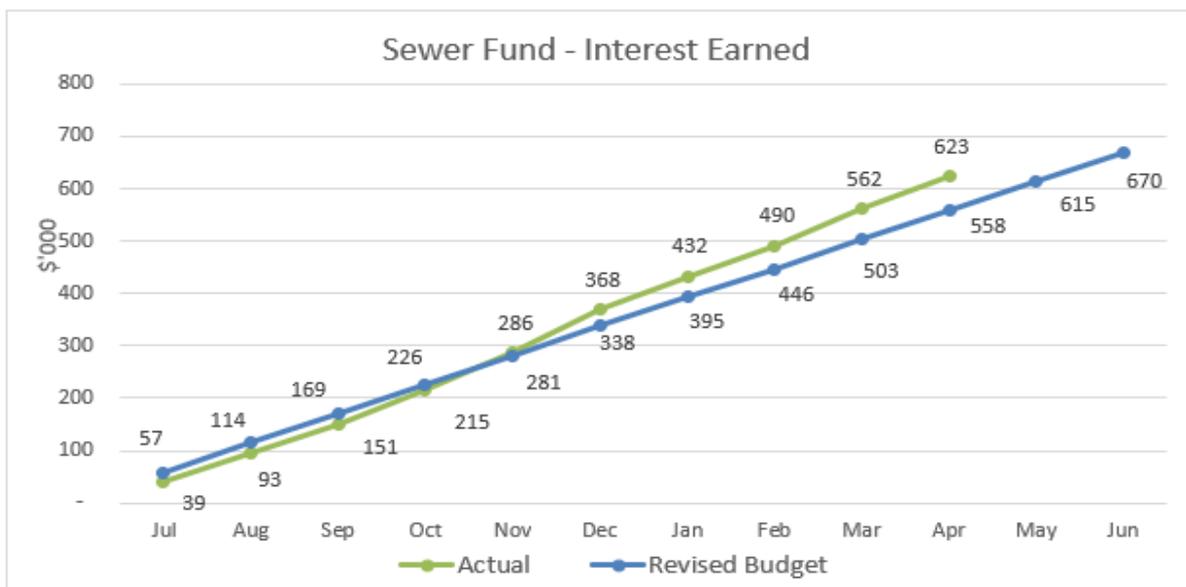
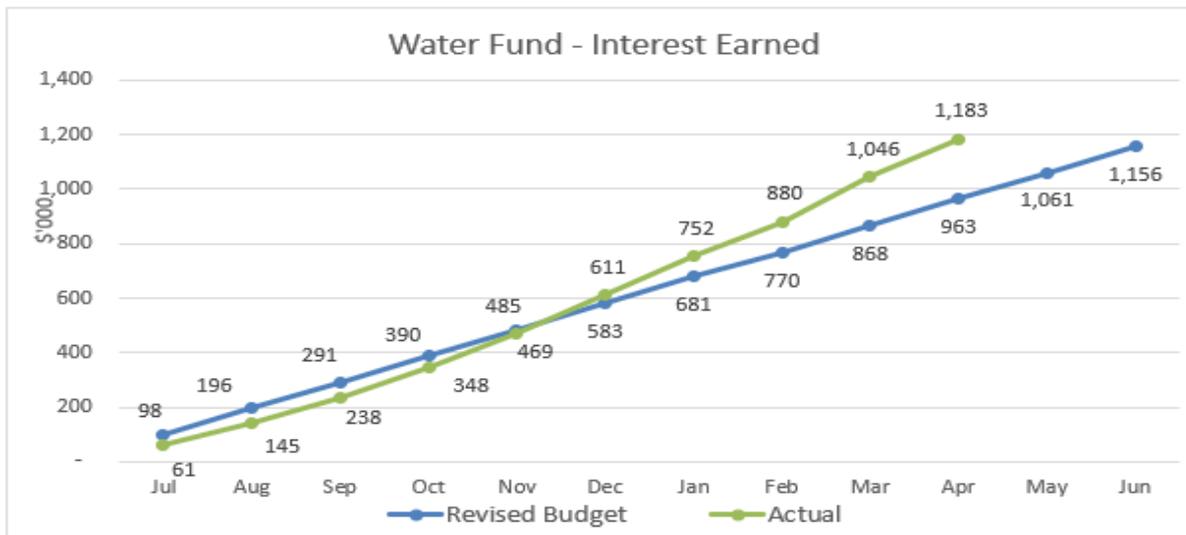
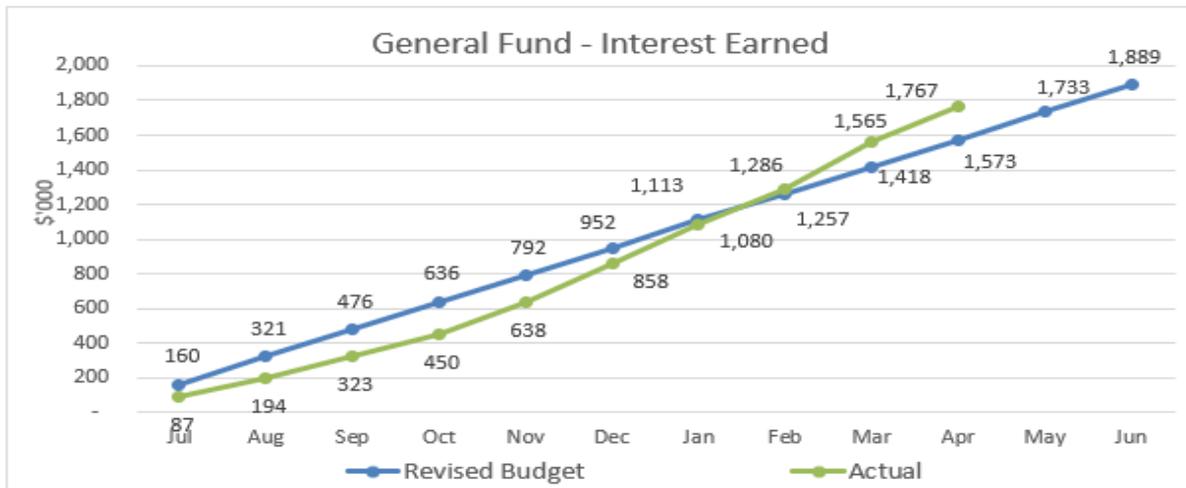
Fund	Revised Total Annual Budget \$	Actual YTD \$	% Achieved
General	1,888,724	1,767,397	93.58%
Water	1,156,000	1,182,791	102.32%
Sewer	670,000	623,443	93.05%
Total excluding Long-Term Growth Fund	3,714,724	3,573,631	96.20%

The cumulative interest earned for the year (July to April), excluding the change in fair value of TCorp Long-Term Growth Fund was \$3,573,631 which is 96.20% of the current full year revised budget.

Graph 2 below, illustrates the cumulative interest earned for the year for each fund (General, Water and Sewer) against budget:

Graph 2 - Cumulative interest earned for the year for each fund against budget.

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Cash and Restricted Assets

Table 3 below, shows a record of investments for the last two months.

Table 3 – Cash and Investment Balances

Record Of Investments		
Cash and Investment Balances		
	\$ April 2023	\$ March 2023
Cash and Investments Held		
Cash at Bank - Transactional Account	7,942,380	5,140,891
Cash on Hand	21,708	21,708
Other Cash and Investments	152,800,113	170,520,996
	160,764,201	175,683,595
Fair Value Adjustment	(157,438)	(99,932)
Bank Reconciliation	203,026	106,951
	45,588	7,019
Book Value of Cash and Investments	160,809,789	175,690,614
Less Cash & Investments Held in Relation to Restricted Assets		
Employee Leave Entitlements	5,880,448	5,880,448
Critical Asset Compliance	404,888	404,610
Other Internal Reserves	2,011,928	2,266,705
Section 7.11 Matching Funds	39,350	61,828
Strategic Land Development Reserve	3,932,954	5,347,382
Plant Replacement	168,750	135,329
S7.11 Recoupment	181,685	521,054
Water Communication Towers	4,821,139	4,821,606
Commitment To Capital Works	1,091,144	1,139,782
Property Reserve	611,510	629,285
Total Internally Restricted	19,143,796	21,208,029
Loans - General Fund	28,084,162	29,579,306
Self-Insurance Liability	3,689,484	3,774,722
Grant reserve	3,820,201	10,046,432
Section 7.11	17,155,680	17,291,916
Special Rate Variation	1,423,425	2,239,614
Storm Water Levy	262,036	447,715
Trust - Mayors Relief Fund	111,316	110,040
Trust - General Trust	4,803,328	4,678,110
Waste Disposal	12,869,584	13,335,214
Sewer Fund	16,818,456	18,778,500
Sewer Plant Fund	4,993,113	5,125,110
Section 64 Water	19,160,818	19,569,866
Water Fund	23,176,355	24,389,858
Water Plant Fund	4,094,955	4,339,337
Total Externally Restricted	140,462,913	153,705,740
Total Restricted	159,606,709	174,913,769
Unrestricted Cash Balance - General Fund	1,203,081	776,845

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Restricted Asset Movements

Table 4 below shows the major movements in cash reserves increase/(decrease).

Table 4 - Major movements in cash reserves increase/(decrease)

Total Cash	(14,880,825)	April is not a rate instalment month. Expenditure on various capital projects
Strategic Land Development Reserve	(1,414,428)	Flinders Roadworks - Stage 10 (1.2), Placemaking for Vincentia Village BBRF (0.21) & various other projects
Loans - General Fund	(1,495,145)	Artie Smith (0.3), Lk Tabourie Amenities Build (0.2), SCARP Croquet (0.2), Materials Recovery Facility (0.2), Ulladulla Civic Centre Imp (0.1) and various other projects
Grant Reserve	(6,226,231)	Major Natural Disaster Projects, Far North Collector Road D & C (1.0), FCB- Yarramunmun CK Culvert – Yalwal Rd (0.3), Placemaking for Vincentia Village BBRF (0.2), Stage 2 Road Reserve Clearing – Natural Disaster (0.2) and various other capital projects
Special Rate Variation	(816,188)	Various projects including Island Point Rd & Basin LRRP
Sewer Fund	(1,960,044)	Various Capital Projects
Water Fund	(1,213,504)	Various Capital Projects

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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.

The unrestricted cash ratio is stable above the benchmark.

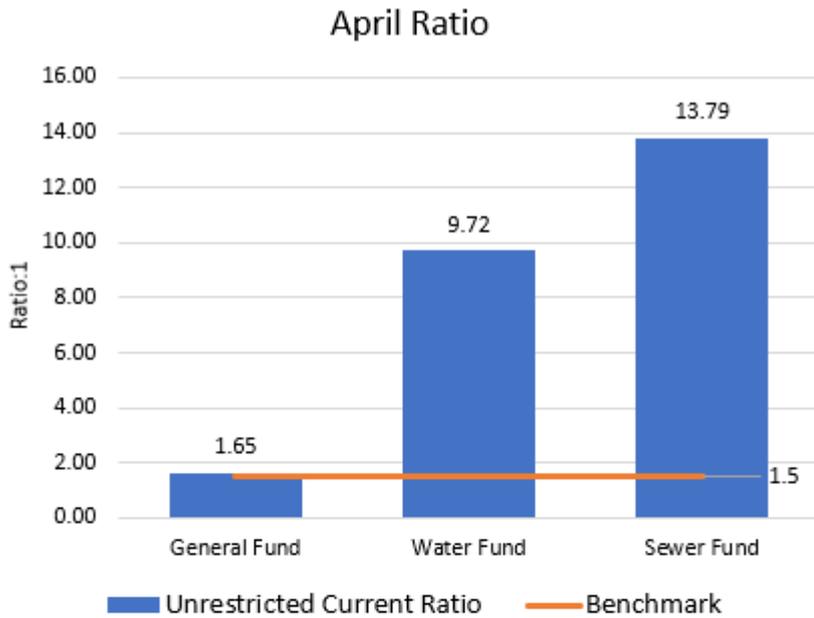
All liquidity ratios are above their respective benchmarks.

Historically, Council has represented the General Fund Ratios in two columns i.e., General Fund and Consolidated. It was considered that due to the scaling of the graph the consolidated column was not particularly informative. Accordingly, this column has now been removed due to repetitive information.

Graph 3 below, indicates Council's unrestricted current ratio for the month of April against the benchmark and on a rolling 12-month basis against the benchmark.

Graph 3 – Unrestricted current ratio for the month and rolling 12-month basis against the benchmark

Unrestricted Current Ratio

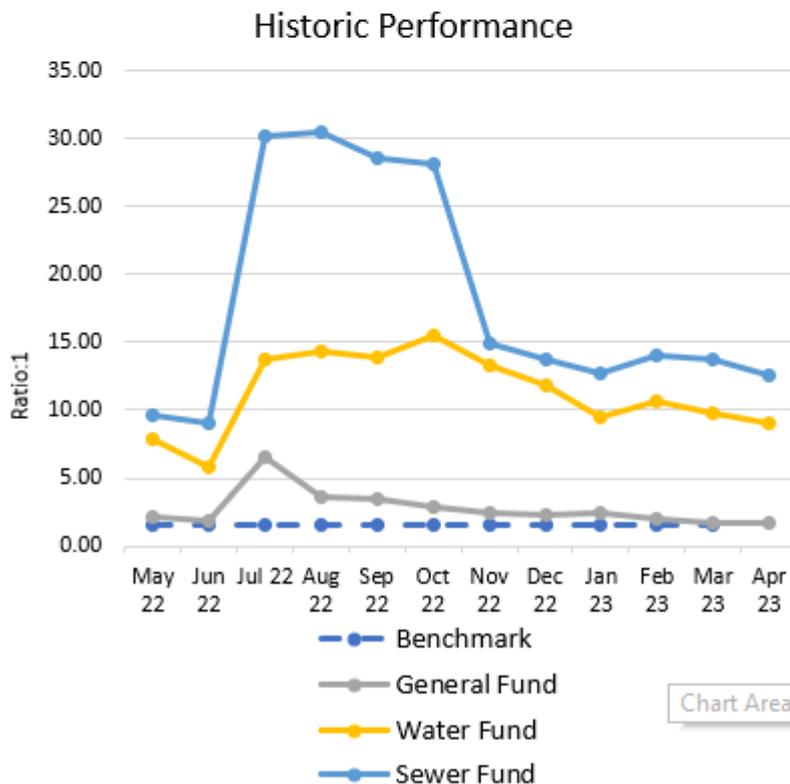


The **Unrestricted Current Ratio** is an indicator used to assess the adequacy of working capital and its ability to satisfy obligations in the short term for the unrestricted activities of Council.

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

The ratio remains above the benchmark for all funds.

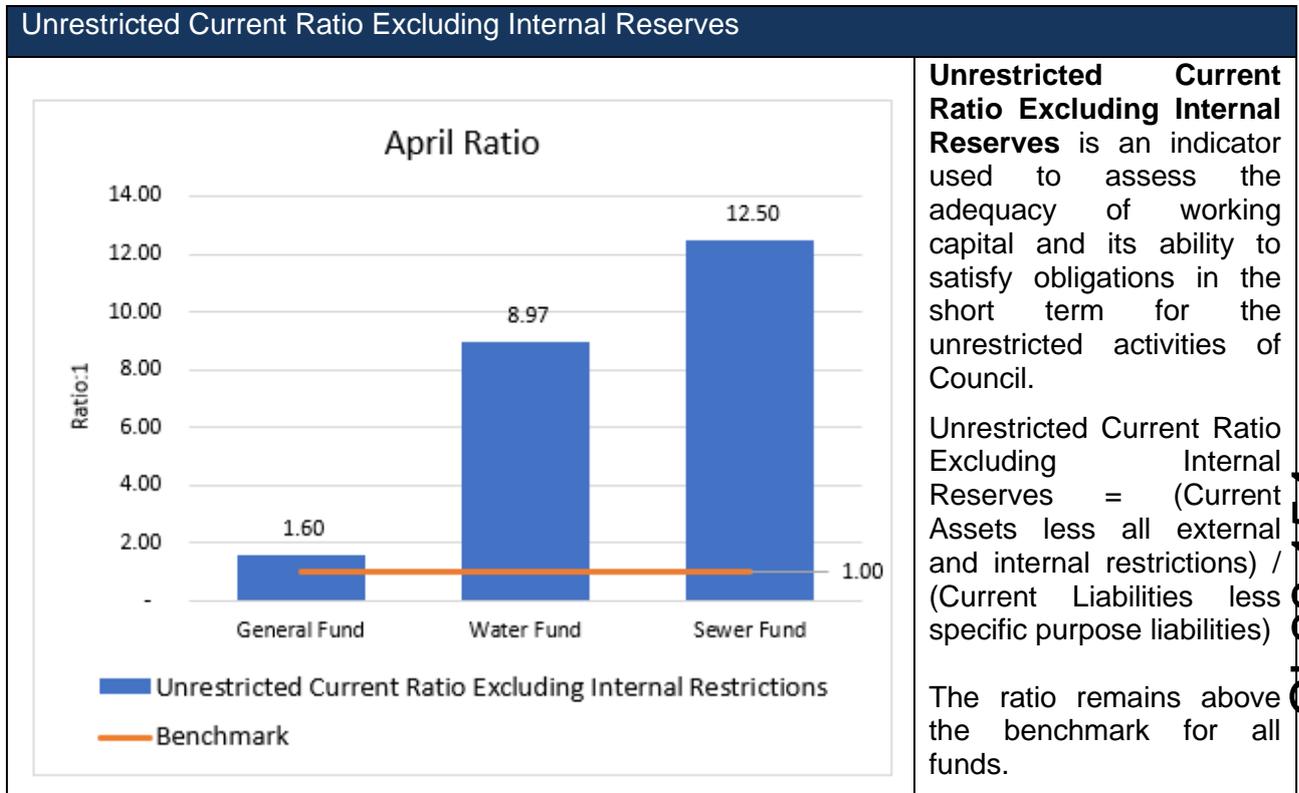
The first graph displays the April 2023 Unrestricted Current Ratio and, the second graph displays the previous rolling 12-months Unrestricted Current Ratio by fund.



CL23.154

Graph 4 below, indicates Council’s unrestricted current ratio (excluding internal reserves) for the month of April against the benchmark.

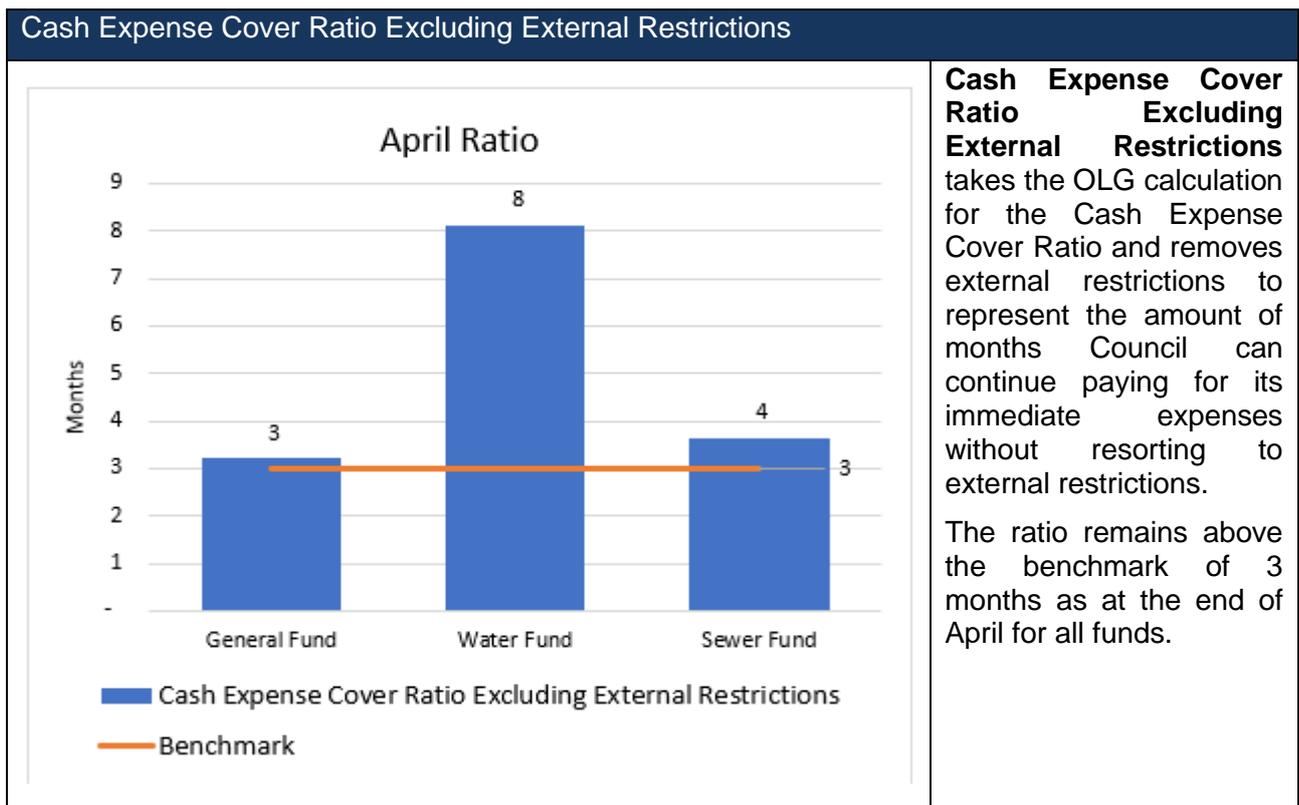
Graph 4 – Unrestricted current ratio (excluding internal reserves) for the month



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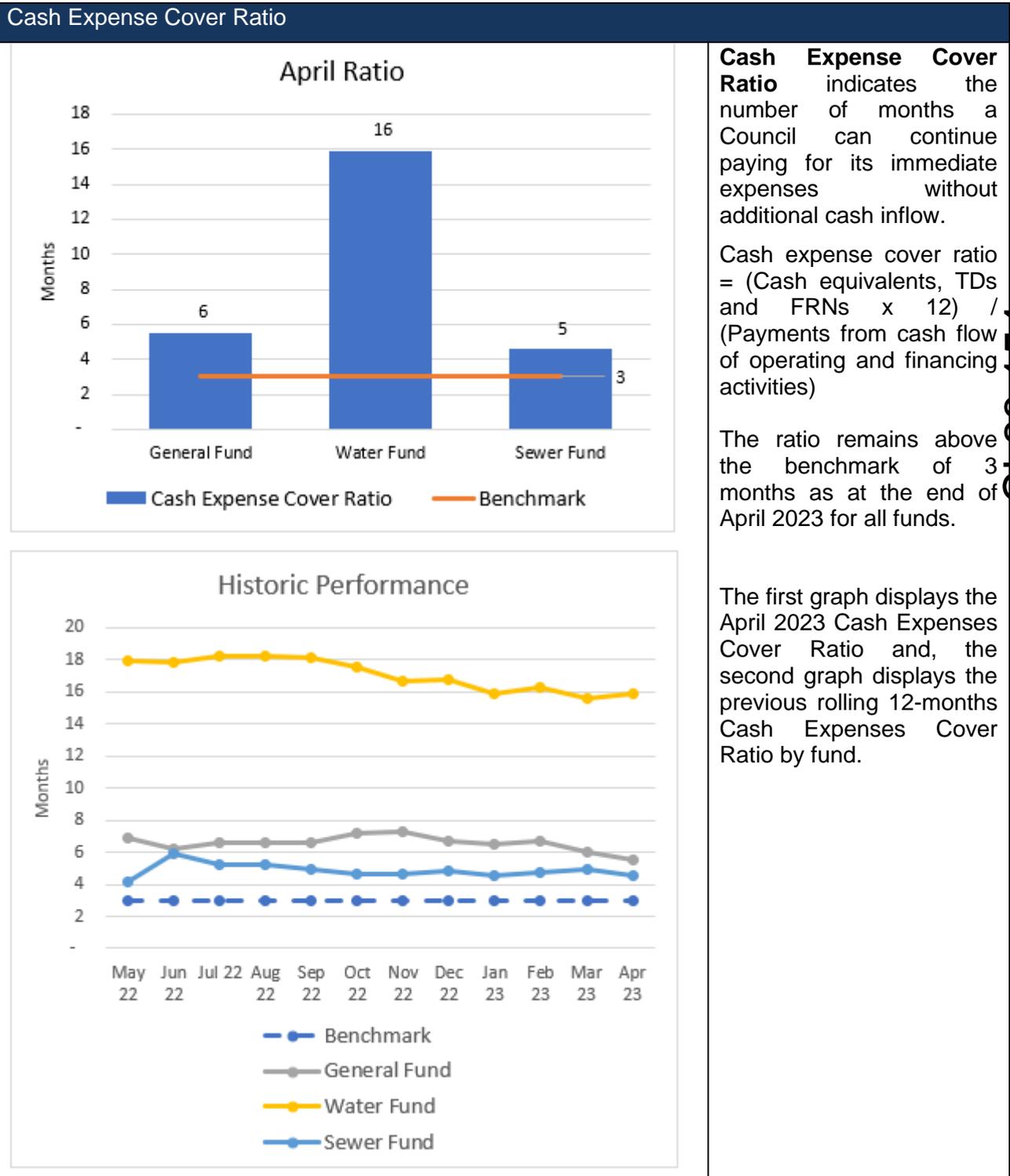
Graph 5 below, indicates Council’s cash expense cover ratio (excluding external restrictions) for the month of April against the benchmark.

Graph 5 – Cash expense cover ratio (excluding external restrictions) for the month



Graph 6 below, indicates Council’s cash expense cover ratio for the month of April against the benchmark and on a rolling 12-month basis against the benchmark.

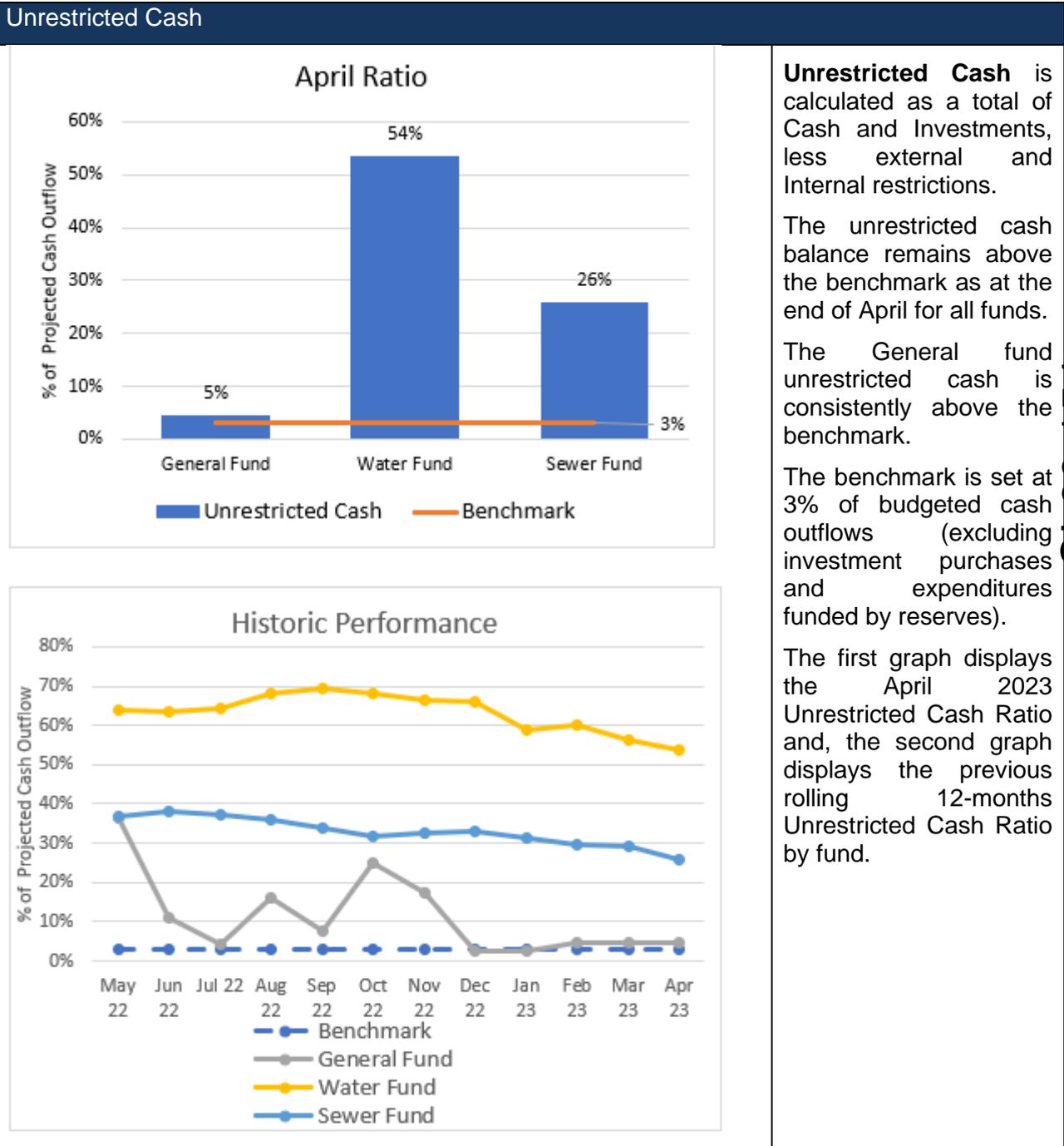
Graph 6 – Cash expense cover ratio for the month and rolling 12-month basis against the benchmark



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Graph 7 below, indicates Council’s unrestricted cash percentage for the month of April against the benchmark and on a rolling 12-month basis against the benchmark.

Graph 7 – Cash expense cover percentage for the month and rolling 12-month basis against the benchmark



CL23.154

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.

Katie Buckman *KBuckman*

Date: 8 May 2023

CL23.155 Ongoing Register of Pecuniary Interest Returns - April 2023

HPERM Ref: D23/132286

Department: Business Assurance & Risk

Approver: Carey McIntyre, Acting 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 April to 30 April 2023 as required under Section 440AAB of the Local Government Act 1993 and Part 4.26 of the 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 April to 30 April 2023 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
Nowra CBD Revitalisation Strategy Committee	Jessica Bromley	13/02/2023	03/04/2023
Nowra CBD Revitalisation Strategy Committee	Jason Cox	13/02/2023	03/04/2023
City Development	Bryanee Jarrett	01/02/2023	06/04/2023
City Development	Glenn Shaw	08/03/2023	11/04/2023

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City Lifestyles	Cathryn Burns	20/03/2023	17/04/2023
City Development	Vaughan Judd	27/03/2023	24/04/2023
Shoalhaven Arts Board	Clive Freeman	02/02/2023	21/04/2023
City Development	Tim Bransgrove	24/04/2023	27/04/2023

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.

CL23.156 Australian Circular Economy Forum 2023

HPERM Ref: D23/190403

Department: Business Assurance & Risk

Approver: Carey McIntyre, Acting Director - City Performance

Reason for Report

To consider Councillor attendance at the Australian Circular Economy Forum 2023 scheduled for Monday 26 June 2023 in Sydney, NSW.

Recommendation

That Council

1. Notes the details of the Australian Circular Economy Forum 2023 scheduled for Monday 26 June 2023 in Sydney, NSW.
2. Authorises available Councillors to attend the conference and such attendance be deemed Council Business.
3. Travel, registration fees, accommodation and all reasonable out-of-pocket expenses be met in accordance with its adopted policy.
4. Request Councillors attending the conference to provide a written report within 30 days of returning from the conference.

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Options

1. As per the recommendation.
2. That Council limit the number of Councillors attending the Conference and such attendance be deemed Council Business.
3. That Council not approve Councillor attendance at the Conference as Council Business.

Background

The Australian Circular Economy Forum 2023 is considered relevant to local government, Information in relation to the conference via the link below:

[Australian Circular Economy Forum 2023, Kensington, Mon 26 Jun 2023, 9:00 am - 6:00 pm AEST | Humanitix](#)

Costs associated with the conference are estimated as follows:

- Registration : \$149 - \$749 AUD + GST
- Travel, accommodation and out of pocket expenses : not yet determined.

An option available to Council is to define the number of Councillors attending the conference and for Council to determine the appropriate Councillors authorised to attend. This option is presented having regard to the increase in Councillor expenses in recent years, so that Council may pro-actively control this area of expenses when appropriate.

The Conference commences at 9:00am and concludes at 6:00pm and following Council Business is scheduled within the period of the conference:

Policy Implications

The Council Members – Payment of Expenses and Provision of Facilities Policy limits attendance at conferences to three per annum per councillor exclusive of any conference arranged by either the State or National Local Government Associations.

Financial Implications:

Funds are available for Councillors to attend this conference.

CL23.157 2023 Circularity Conference

HPERM Ref: D23/190444

Department: Business Assurance & Risk
Approver: Carey McIntyre, Acting Director - City Performance

Reason for Report

To consider Councillor attendance at the 2023 Circularity Conference scheduled for Monday 20 – Tuesday 21 November 2023 in Grand Hyatt Melbourne, VIC.

Recommendation

That Council

1. Notes the details of the 2023 Circularity Conference scheduled for 20 – 21 November 2023 in Grand Hyatt Melbourne, VIC.
2. Authorises available Councillors to attend the conference and such attendance be deemed Council Business.
3. Travel, registration fees, accommodation and all reasonable out-of-pocket expenses be met in accordance with its adopted policy.
4. Request Councillors attending the conference to provide a written report within 30 days of returning from the conference.

Options

1. As per the recommendation.
2. That Council limit the number of Councillors attending the Conference and such attendance be deemed Council Business.
3. That Council not approve Councillor attendance at the Conference as Council Business.

Background

The 2023 Circularity Conference is considered relevant to local government, Information in relation to the conference via the link below:

[About - Circularity Live](#)

Costs associated with the conference are estimated as follows:

- Registration : TBC
- Travel, accommodation and out of pocket expenses : not yet determined.

An option available to Council is to define the number of Councillors attending the conference and for Council to determine the appropriate Councillors authorised to attend. This option is presented having regard to the increase in Councillor expenses in recent years, so that Council may pro-actively control this area of expenses when appropriate.

The Conference commences Monday 8:00am – 4:30pm and concludes on Tuesday 8:00am – 4:30pm and following Council Business is scheduled within the period of the conference:

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Policy Implications

The Council Members – Payment of Expenses and Provision of Facilities Policy limits attendance at conferences to three per annum per councillor exclusive of any conference arranged by either the State or National Local Government Associations.

Financial Implications:

Funds are available for Councillors to attend this conference.

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CL23.158 Report Back - Review of Planning Options - Taylors Lane, Badagarang

HPERM Ref: D23/134590

Department: Strategic Planning

Approver: Coralie Bell, Acting Director - City Futures

Attachments: 1. Preliminary Concept Plan - Option W4 [↓](#)
2. Concept Plans - Options E3 and E1 [↓](#)

Reason for Report

The purpose of this report is to formalise Council's position on the preferred outcome for Taylors Lane and proceed with the necessary work to finalise.

Recommendation

That Council:

1. Endorse Option W4 For Taylors Lane West as generally shown in **Attachment 1**, with further design revisions as needed to support the long-term retention of as many trees as possible including:
 - a. Single lane (eastbound) alongside the trees, transitioning to dual lanes either end;
 - b. Widening of the road reserve to 20m (+5m either side);
 - c. a shared pedestrian/bicycle path
2. Commence required detailed designs and resulting required draft amendment to Shoalhaven DCP 2014 Chapter NB3: Moss Vale Road South URA and receive a further report to consider the draft DCP amendment, a possible funding mechanism and/or budget allocation to deliver Option W4.
3. For Taylors Lane East retain the existing trees and endorse the upgrade Taylors Lane in accordance with Option E3 (with E1 as a backup option) as generally shown in **Attachment 2**, subject to revisions arising from further design investigation and commence negotiations for a possible joint funding and delivery arrangement with the landholder/developer of DA SF10898.
4. At the appropriate point, determine DA SF10898 consistent with the intent of retaining the existing trees along Taylors Lane in the long term.
5. Notify those who made submissions during the public exhibition period of this decision.

Options

1. As recommended.

Implications: Council will adopt a policy position on Taylors Lane and bring the review to a conclusion. This will enable the required road upgrade to proceed and resolve the ongoing uncertainty for local landholders, developers and community. The recommendation is consistent with Council's desire to retain as many of the existing trees as possible. This will also enable the adjacent development application SF10898 to be determined/resolved consistent with the intent of retaining the existing trees.

2. Adopt an alternate recommendation.

Implications: This will depend on the nature of the alternate resolution. The review needs to be drawn to a conclusion and a policy position formed on the future of Taylors Lane to resolve the ongoing uncertainty for local landholders, development and community. As such this is not the preferred option.

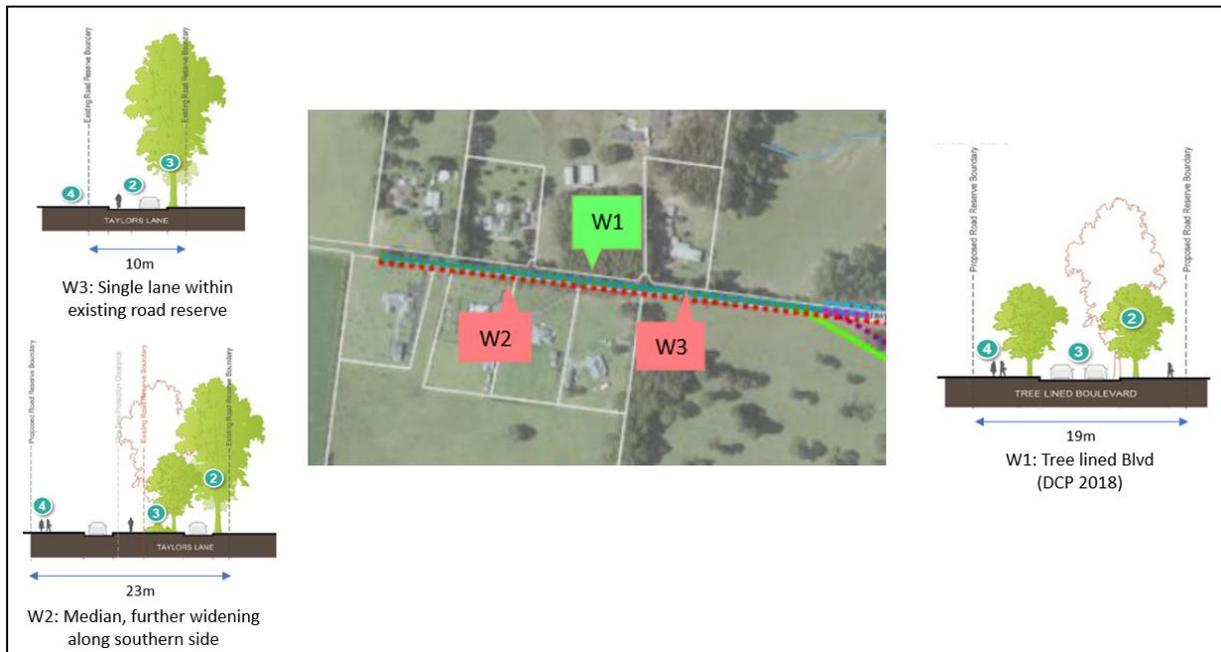
3. Do not adopt the recommendation.

Implications: Council will not adopt a policy position on Taylors Lane and the current review will not be finalised. This will create ongoing uncertainty for local landholders and developments, delay the release of new housing supply, and delay the required upgrade of Taylors Lane. As such this is not the preferred option.

Background

Planning options for Taylors Lane, Badagarang, were publicly exhibited from 5 October to 4 November 2022. The exhibited options were divided into 'West' (area within Moss Vale Road South Urban Release Area (URA)) and 'East' (area between the URA and Moss Vale Road).

The exhibited options for 'West' and 'East' are shown in **Figure 1** and **Figure 2**.



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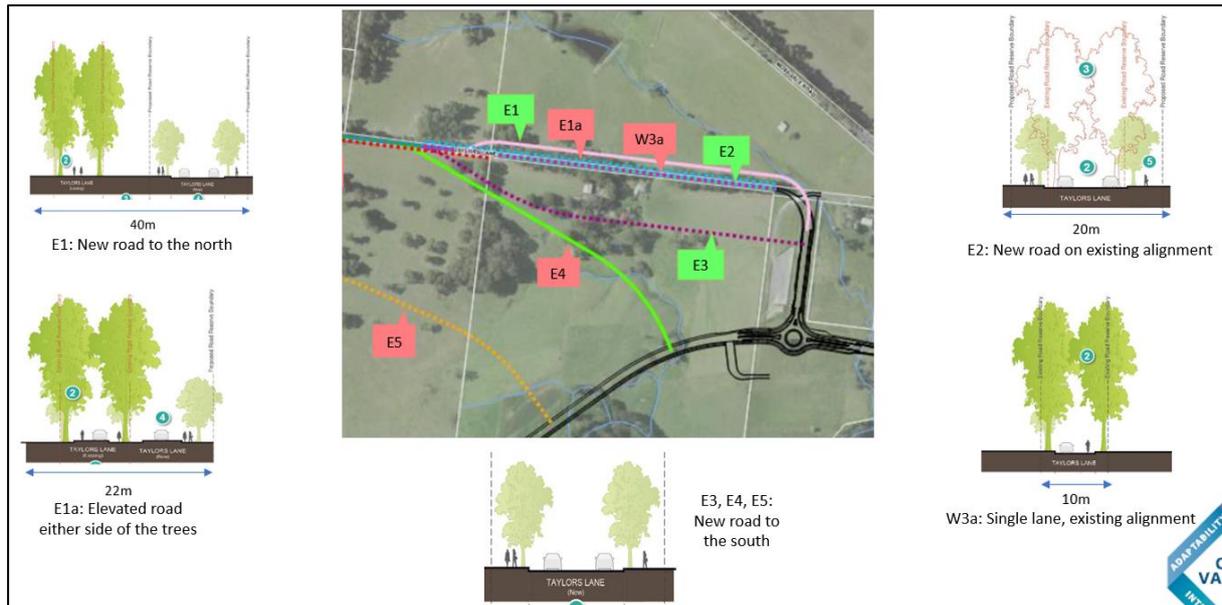


Figure 2: East options

Council considered a report on the public exhibition outcomes and submissions received on 5 December 2022 ([CL22.636](#)). As part of this, the options which were recommended to Council to progress were:

- West: **Option W1** (Tree lined boulevard and removal of existing trees)
- East: **Option E3**, followed by **E1** (if Council wishes to retain the existing trees)

Council resolved (MIN22.933) to 'defer' a decision on the matter and receive a briefing to consider alternative options that were raised in a deputation.

An initial briefing took place at the 15 December 2022 Strategic Planning Working Party meeting, followed by a further briefing on 9 February 2023. The general outcomes were:

- Generally no concerns raised with the recommended potential 'East' options (E3 and E1). Discussion centred around the 'West' options within the URA.
- Staff outlined the difficulties and longer term risks of retaining the trees within the URA. The recommended tree protection zone (13m both sides of the trees) may not be achievable without Council acquiring the adjacent residential zoned land. Trees may need to be selectively removed irrespective of which option is adopted to facilitate connecting streets from approved subdivisions.
- Councillors present ultimately considered Option W1 as not acceptable and expressed a desire to retain as many of the existing trees within the URA as possible.
- An alternate West option based on the sketch at **Figure 3** was agreed as a way forward (single lane (eastbound) alongside the trees, transitioning to dual lanes at either end, within a widened road reserve). Staff were requested to progress design investigations with the aim to retain as many trees as possible, noting that a 13m tree protection zone would not be achieved.
- Noted the potential need for Council to acquire land at the western end of Taylors Lane to ultimately deliver a section of the collector (loop) road.
- Noted that a supporting DCP amendment and related funding mechanism (e.g. Contributions Plan amendment) may require further public exhibition and Council consideration.
- Noted that a decision is also still needed regarding Taylors Lane East. An adjacent development application for subdivision (SF10898) is on hold pending a decision.

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- h) Concluded that Council would receive a report to formalise the decision to progress the alternate West option. Report to include an indicative cost estimate.



Figure 3: Alternate West Option

This report actions item (h) above and also recommends that Council endorse an outcome for Taylors Lane East.

Councillors received a further briefing on 23 March 2023, on housing developments that are affected by the unresolved policy position on Taylors Lane. Developments in the URA have generally been approved with conditions currently preventing access/connection to Taylors Lane until Council has finalised its review and decided on an outcome.

Council has now received formal 'Works in Kind' agreement (WIKA) applications from developers to deliver road and drainage contributions projects to support the release of ~160 residential lots on the southern side of Taylors Lane. Construction of these subdivisions is well advanced. The proposed WIKA includes the future roundabout at the Taylors Lane / Collector Road intersection shown in **Figure 3** and decision on Taylors Lane is now needed to enable this roundabout to proceed in a timely manner and avoid delays to lot releases.

Alternate West Option - 'Option W4'

Council has prepared a preliminary concept plan of option W4 at **Attachment 1** and shown (in part) in **Figure 4**. It features:

- A single lane (eastbound) offset to the south of the trees, transitioning to dual lanes at either end.
- A shared pedestrian/bicycle path.
- Widening of the existing road reserve to 20m (+5m either side). This is a feature of the existing DCP layout for the URA.

Existing trees may be removed at the locations indicated with red arrows:

- Where Option W4 transitions to dual lane and meets existing constructed road at the eastern end.
- Where future streets from approved subdivisions connect to Taylors Lane.



Figure 4: Preliminary Concept plan for option W4

The indicative cost estimate to deliver W4 as shown in the concept plan is \$2.85M as shown in **Figure 5**. This includes sections of road that will potentially be delivered/funded by development. It does not include costs that could be incurred in providing a 13m tree protection zone (e.g. land acquisition). Cost estimates for the other exhibited West options are included for comparison.

Option	Professional Fees	Construction Costs	Land Acquisition	Total
W1	\$250,000	\$2,430,000	\$530,000	\$3,200,000
W2	\$230,000	\$2,300,000	\$870,000	\$3,400,000
W3	\$120,000	\$1,180,000	\$0	\$1,300,000
W4	\$220,000	\$2,120,000	\$530,000	\$2,850,000

Figure 5: Indicative cost estimates, West Options

Taylors Lane East

Councillors received a further briefing on 4 May 2023 where the status and potential determination of a proposed residential subdivision of land directly east of Moss Vale Road South URA (SF10898) was discussed.

The development preserves the existing trees along Taylors Lane. It is reliant on access to, and proposes realignment of, Taylors Lane generally in accordance with Option E3 as shown in **Figure 6**.

The intended connection of the realigned Taylors Lane to the Far North Collector Road (FNCR) is not shown on the development plans. Council’s initial design investigations indicate that the connection in this location may be difficult given adjacent drainage culverts, gas pipeline and electricity transmission lines.

At this stage Option E3 is still the preferred option if Council wishes to retain the trees, noting that design revisions may be needed depending on the results of detailed investigations to establish the actual connection to the FNCR project works.

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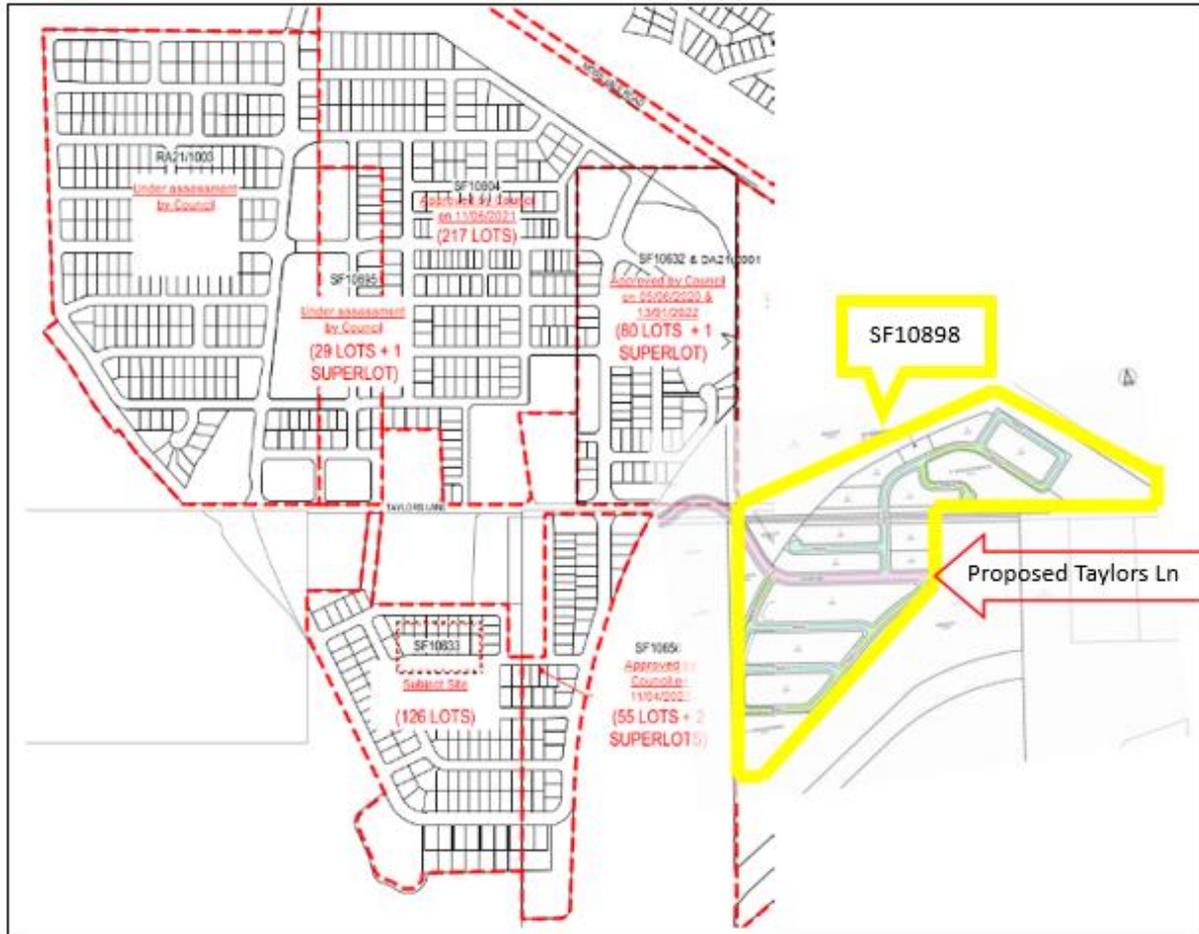


Figure 6: Developments approved and under consideration

Recommendations

It is recommended that Council proceed with Option W4 Taylors Lane West as generally shown in **Attachment 1**. Council staff will commence further design investigations and a supporting draft amendment to Shoalhaven DCP 2014 Chapter NB3: Moss Vale Road South URA. This is consistent with Council's desire to retain as many of the existing trees within the URA as possible and will establish some certainty going forward.

Council will receive a further report to consider the draft DCP amendment, a possible funding mechanism and/or budget allocation to deliver Option W4.

A decision is also needed on Taylors Lane East and in this regard, it is recommended that Council proceed with the recommendation from 5 December 2022 - retain the existing trees and upgrade Taylors Lane generally in accordance with Option E3, with E1 as a backup option, as shown in the plans in **Attachment 2**. This will enable the required connection between Moss Vale Road URA and the Far North Collector (FNC) Road to proceed and the adjacent development application SF10898 to potentially be determined/resolved consistent with the objective of retaining the trees.

Community Engagement

Planning options for Taylors Lane were publicly exhibited from 5 October to 4 November 2022. The results of the exhibition period were considered by Council on 5 December 2022.

Further public exhibition of a draft Development Control Plan amendment and possible funding mechanism (e.g. Contributions Plan amendment) for the adopted options will be required.

Policy Implications

The review of options for Taylors Lane commenced almost three years ago and now needs to be drawn to a conclusion and a policy position finalised regarding the future of Taylors Lane to remove the current uncertainty for landowners, planned housing developments and the community, It will also enable the required connection to be delivered between Moss Vale Road South URA and the FNC Road.

A supporting amendment to Shoalhaven DCP 2014 Chapter NB3: Moss Vale Road South for Option W4 will be prepared for consideration by Council, exhibited and reported back to Council to consider at the appropriate point.

Financial Implications

The indicative costs of the recommended options are:

- Option W4 Taylors Lane West: \$2.85M
- Option E3 Taylors Lane East \$7.06M (possibility to share costs with the developer of SF10898); backup Option E1 \$5.36M

Likely costs will become clearer with further design investigation. Council will receive a further report to consider a potential funding mechanism and/or budget allocation at the appropriate point. Taylors Lane East is partially funded as part of the FNC Road project.

Costs to repurpose the existing Taylors Lane to a shared path and ongoing tree management/maintenance are not included in the cost estimates.

The cost incurred by Council for the review of planning options to date (not including staff time) is approximately \$89,000.

Risk Implications

The difficulties and longer-term risks of retaining the trees within the URA were outlined in the December 2022 and February 2023 briefings. If an adequate tree protection zone cannot be achieved the long-term health and retention of the trees may still be compromised.

The ongoing absence of a Council policy position on Taylors Lane risks further delays to the required upgrade of the road and new housing development in Moss Vale Road South URA.

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CL23.159 Progress Report - Moss Vale Road North Urban Release Area Planning

HPERM Ref: D23/132358

Department: Strategic Planning

Approver: Carey McIntyre, Acting Director - City Performance

Attachments: 1. Background Maps/Images [↓](#)

Reason for Report

Provide a progress update on the finalisation of the land use plans/documents to 'release' and guide the future delivery of the Moss Vale Road North Urban Release Area (URA) at Badagarang.

Recommendation

That Council:

1. Receive the progress report for information.
2. Proceed to finalise the Planning Proposal using its delegation, based on the riparian corridor outcome resulting from the submission received from the NSW Department of Planning & Environment – Water and the subsequent dialogue.
3. Consider future opportunities to provide appropriate additional residential dwelling yield opportunities (possible additional area of smaller lots and a greater diversity of dwelling types/products) as part of a future separate process to make up for yield that may have been lost through the riparian corridor dialogue.
4. Continue to work with the NSW Department of Planning & Environment - Planning to clarify and resolve the flood risk advice that was received post exhibition.
5. Discourage the lodgement of premature applications in this Urban Release Area until the release planning (Zones, Development Control Plan provisions and infrastructure planning provisions) has progressed to at least being finally adopted by Council.
6. Maintain the existing adopted phasing for the 'release' planning work for the remaining Urban Release Areas in the Nowra-Bomaderry area.
7. Advocate to the NSW Government for the immediate funding and commencement of the work required to plan and upgrade the Moss Vale Road Corridor (essential infrastructure to support the Moss Vale Road North and South Release Areas).

Options

1. As recommended.

Implications: Council will continue to work on finalising the detailed planning to deliver the URA and facilitate the development of potentially 2,500 new homes to meet housing demand in the northern Shoalhaven.

Council will retain control of the overarching Planning Proposal (PP), including relevant consideration and finalisation. Once the PP is finalised and the changes known with some certainty or made to the Local Environmental Plan (LEP) applying to the URA, work will resume on finalising the development controls and preparing the local infrastructure contributions framework.

This will involve accepting the agreed riparian outcome arising from the post exhibition dialogue with the government agencies, looking for future opportunities to increase lot yield elsewhere in the URA if appropriate and working to resolve the late flooding concerns that were raised.

If this option is not taken, then Council will most likely lose its 'delegation' for this PP due there being an unresolved objection. It is highly likely that the same riparian zoning outcome will still eventuate as the NSW Department of Planning & Environment (DPE-Planning) finalises the PP and implements the Agency position.

2. An alternative resolution.

Implications: The implications are subject to the nature and content of any alternative resolution. If the PP is handed to the DPE-Planning to finalise then Council loses control over it and this may not be desirable/acceptable given the work that has occurred to date.

Also considering an alternative outcome for the URA now would delay its delivery and could impact further on Council resources and other planning priorities. Alternatively, a recommendation to not proceed would effectively cease work and the controls currently applying to the URA would be maintained, including the requirement to prepare development controls and arrangements for local infrastructure before the area can be developed.

Brief Background Recap

The Moss Vale Road North URA was first identified as a “New Living Area” in the *Nowra-Bomaderry Structure Plan* (2008). It was confirmed with original land use zones and provisions guiding its release in the new City-wide Local Environmental Plan (LEP) 2014. The URA is also recognised as part of the Nowra-Bomaderry Regional Release Areas identified in the *Illawarra-Shoalhaven Regional Plan* (2021).

In 2017, Council prioritised the preparation of the release planning documents for the URA and resulting from this in 2019 a group comprising several of the then major landowners within the URA, submitted its proposed outcome for the URA. This sought to deliver more dwellings than initially envisaged, adjust the size and function of the commercial centre, refine the zoning of the riparian corridors, and adjust several other components of the URA. The then owners group supported its proposal with an indicative layout plan, draft development controls, and a range of technical studies.

Council considered the alternative outcome, its supporting information and resolved to work with the then owners group to use the proposal as the basis for the necessary release planning documents, namely:

- PP recommending adjustments to the existing land use zones and LEP controls applying to the URA.
- New chapter in the Development Control Plan (DCP) providing controls to guide the development of the URA.
- Local Infrastructure Contributions (or similar/related) to fund and coordinate the delivery of the infrastructure required to enable the URA delivery and support its future community.

Between 2019 and 2022 a significant volume of work was undertaken by Council to prepare and exhibit the PP and detailed development controls. This work included:

- Commissioning several technical studies to supplement those provided by the then owners group. The following studies were completed and added to the evidence base informing the planning documents: retail centre, gas pipeline, scenic values,

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community infrastructure, traffic and transport, riparian corridors and water management.

- The commencement of the Gateway process (for making and amending LEP's). The Gateway determination set out further work, directions to consult with NSW Government Agencies, and public exhibition requirements.
- Consultation with a range of NSW Government Agencies.

From mid to late 2022 onward the ownership interests within the URA started to change and new owners or parties with interests in the properties emerged. This change has also brought a range of aspirations which are different to the outcomes proposed by previous owners group.

The PP and proposed DCP controls were adjusted several times to respond to recommendations in the technical studies and to address feedback provided by NSW Government Agencies. These two key documents were then formally publicly exhibited in mid-2022.

At the completion of the exhibition and resulting discussions, two NSW Government Agencies (DPE-Water and Transport for NSW) had unresolved objections/concerns. The results of the exhibition were considered by Council on 26 September 2022, where it was resolved to (MIN22.662):

1. *Proceed to finalise the Planning Proposal and adopt the draft Development Control Plan Chapter guiding the delivery of the Moss Vale North Urban Release Area, as amended in accordance with Attachment 2 of this report.*
2. *Complete consultation with the following NSW Government Agencies:*
 - a. *Department of Planning and Environment – Water Licensing and Approvals*
 - b. *Transport for New South Wales*
3. *Delegate authority to the CEO, or his delegate, to update the Planning Proposal and Development Control Plan chapter and include any appropriate changes resulting from the:*
 - a. *Consultation with NSW Government Agencies.*
 - b. *Moss Vale Road North Urban Release Area Riparian Assessment prepared by Ecological Australia in April 2022.*
 - c. *Updated flood risk modelling.*
4. *Set an effective commencement date for the Development Control Plan Chapter of 27 March 2023.*
5. *Receive a further report on the proposed Development Contributions Framework delivering infrastructure for the Urban Release Area, including arrangements for the public exhibition of the framework.*
6. *Invite parties with a current or future interest(s) in the Urban Release Area who are seeking an alternative development outcome to that facilitated by the final Planning Proposal and draft Development Control Plan Chapter to submit requests for Planning Proposals and alternate development controls for Council's subsequent separate consideration.*

Since this resolution, dialogue has continued with the two government agencies with outstanding objections to clarify and understand how to possibly resolve remaining concerns. DPE-Planning's Regional Team and Planning Delivery Unit have assisted with this dialogue.

In March 2023, a further consideration was presented to the completion of the PP when DPE-Planning issued unsolicited advice (i.e. not a formal submission in response to the

exhibition) on required flooding considerations. The feedback was provided by an independent panel of flooding experts appointed to review PP's affected by Probable Maximum Flood (PMF) events. This Panel was created in response to the recommendations of the 2022 Flood Inquiry.

The delay in finalising a PP has also impacted significantly on the progress and timing of the other related planning document required for 'release', namely the DCP Chapter and development contributions framework that are referenced in Parts 4 and 5 of the above resolution. This related work has stalled pending certainty on resolution of the PP.

The Gateway determination for the PP expired on 31 March 2023. Work on the PP can still continue, and discussions with DPE-Planning about formally extending the timeframe are underway. DPE – Planning is keen to see this matter completed.

Consultation - NSW Department of Planning & Environment – Water (DPE-Water)

The former Natural Resources Access Regulator (NRAR) was initially consulted on the proposed PP and draft development controls in January 2021. It did not respond to this request, despite continued follow up.

To facilitate a response during the formal public exhibition of the PP, Council commissioned a Riparian Assessment Report and exhibited this alongside the PP and draft DCP. The report followed the Agency's published guidelines to classify the existing watercourses on site, identify appropriate corridors, and recommend measures to "offset" any reduction in existing or potential corridors required to facilitate the future development.

The formal public exhibition occurred in mid-2022 and the Agency responded after the close of the exhibition period and about 18 months after the initial request for comments. The agency objected to the PP, disagreeing with the recommendations of the Riparian Assessment. It requested a return to 'first principles' and the application of standard width riparian corridors to the watercourses. It did not consider the existing land use zones, the previous owner groups proposal, or the potential benefits for the (currently poor condition) watercourses resulting from planned restoration activities and dedication into public ownership and management.

Between September 2022 and March 2023, a series of meetings were held with DPE-Water representatives to develop a potential alternative scenario for consideration that would be consistent with its feedback. The impact of this alternative scenario on the exhibited Indicative Layout Plan (identifies a potential development outcome) is the potential loss of approximately 13-hectares of land previously identified as developable (roads and residential development). This loss, if accepted, is due to increased riparian corridor widths, the resultant relocation of drainage infrastructure out of the corridors, and areas which are no longer logical to zone for residential development (small and isolated as result from the remainder of the URA). This impact is calculated to equal a potential loss of between 130-200 dwellings across the URA.

If the alternative riparian scenario reached after dialogue with DPE-Water is accepted as the basis on which the PP is finalised, the possibility of picking up the resulting 'lost' lot yield by adjusting the controls could be investigated/considered. For example, adjusting and expanding the extent of the 'small lot residential' area could be separately investigated and considered so as not to further delay this PP.

Consultation - Transport for NSW (TfNSW)

TfNSW was initially consulted on the PP and draft development controls and the response provided in February 2021 did not object or raise significant concerns with the PP. TfNSW then responded to the formal public exhibition in August 2022. The submission raised ten issues, not all of which were raised in the initial submission, including requests for:

- An updated traffic and transport study analysing:
 - Updated potential dwelling yields.

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- Proposed intersection design for new connections to the release area.
- Other modes of travel (public transport, walking, cycling, and micro-mobility).
- Demand for rail services and improved access to Bomaderry Station.
- Information on the delivery of new and upgraded intersections to the URA, including timing and land reservation and acquisition proposals.
- Preservation of land for TfNSW's future projects, including the Nowra-Bomaderry Bypass and upgrade of Moss Vale Road, impacting the width of the planned visual buffer along Moss Vale Road and location of drainage infrastructure.
- Further information on how subdivision activity will be managed to comply with the proposed development staging.
- An analysis of noise impacts on future residential development from an upgraded/future Moss Vale Road.
- An increase in the width of shared user paths to 4 metres (from 2.5 metres).
- Additional references in the draft DCP to contemporary guidance and best practice for public transport planning.

Between September 2022 and March 2023, a series of meetings were held with TfNSW and some additional analysis was also undertaken in response their requests. This reduced the list of issues to just 1 – essentially the timing and mechanism(s) to secure the desired connection to Pestells Lane. The planned work relating to local infrastructure contributions and associated outcomes/mechanisms will look at and respond to this matter and will identify potential funding, timing, and land reservation and acquisition options.

TfNSW appears focussed on the early delivery of the connection to provide relief for Moss Vale Road (for traffic travelling northbound out of the URA), allowing it to potentially 'defer' an upgrade of Moss Vale Road (a State Road). Although the Nowra-Bomaderry Regional Release Areas were identified in 2008 and have been recognised in Council and NSW Government planning documents since, TfNSW has confirmed there is no current funding or programmed work related to the upgrade Moss Vale Road.

The traffic modelling informing the planning of the URA indicates that Moss Vale Road will require an upgrade to service the URA's and avoid traffic impacts along the road and at the intersection with the Princes Highway. The trigger for these upgrades is when 350 homes are occupied in the Moss Vale Road South and North URA's, which is anticipated to occur within the next 5-years or less.

As such there is a need to advocate further in this regard to the NSW Government for funding and commencement of the work to plan and realise the required Moss Vale Road Corridor Upgrade (essential infrastructure to support URA's in this location).

Flood Risk Advice

Advice provided by DPE-Planning following the exhibition requests:

1. Mapping of flood hazard classifications and flood function for flood events up to and including the PMF.
2. Identification of the duration of a series of flood events up to and including the PMF event.
3. Dam Breach Assessment for a large farm dam located outside the URA to the west.

The potential implications of this include:

- The provision of a flood evacuation route from the URA to the surrounding road network, potentially designed to operate for flood events greater than a 1% annual probability flood event.

This will increase the cost of the road infrastructure servicing the URA and, with the NSW Government imposed cap on local infrastructure contributions, would reduce the amount of infrastructure potentially funded through contributions.

- Adjustment of the Indicative Layout Plan to provide overland flow routes for the PMF and new development controls securing the earthworks to provide the flow routes.
- Mandating 2-storey dwellings in certain locations to enable “vertical evacuation” or shelter-in-place during a flood event.
- Possible alternative development outcomes downstream of the farm dam, delivered through alternative land use zones and/or development controls that could see a restriction on development.

An indicative cost/timeframe for this required additional work is being obtained from Council’s consultants and was not available at the time of writing this report. DPE-Planning has indicated that they may be able to assist with funding for this required piece of work.

DPE-Planning has also provided a ‘letter of comfort’ regarding the farm dam that sits outside the URA to the west and assessing the risk associated with its possible failure. The letter advises as follows:

The purpose of this letter is to advise Council that while the Department agrees this potential risk must be managed, it considers that this matter does not need to be further investigated at this stage in the planning process as:

- *The planning proposal site is already zoned for urban purposes;*
- *The site is identified as an Urban Release Area under Part 6 of the Shoalhaven LEP2014. This ensures development occurs in a logical and cost effective manner, in accordance with a staging plan and only after a development control plan that includes specific controls has been prepared for the land; and*
- *Individual development applications will need to be assessed and approved prior to any development occurring, providing a further opportunity to address risk.*

This advice indicates that if agreeable the issues associated with the farm dam can be considered as part of future development application processes. This would essentially mean including some detail in the DCP regarding what would be required to address/consider this issue as part of relevant development applications. Whilst this is possible, it may be difficult to ultimately resolve, given the dam sits outside the URA in a separate private ownership and it has an unknown (at this point) potential impact on the future residential development downstream of it.

Finalising the Planning Documents

There are several options available to finalise the planning documents, focussing initially on the PP that needs to be substantially completed to provide the certainty for the preparation of updated development controls and local infrastructure contributions.

Planning Proposal

Attempts to finalise this PP have been frustratingly drawn out. Specifically, there has been an inability to obtain a timely ‘whole of government’ position, irrespective of its regional significance, and there is still more work for Council to do to enable its finalisation.

As part of its resolution on the NSW Government’s ‘Rezoning Pathways’ Program, Council resolved on 13 March 2023 (MIN23.97) to:

Request the Department instead applies its considerable power and pressure to assist the state agency blockages that are being experienced for some of the existing Shoalhaven Planning Proposals e.g., Moss Vale Road Urban Release Areas.

Council wrote to DPE in this regard and the response received included the following:

In regard to the Moss Vale Road Planning Proposal, I am informed that with the assistance of the Department's Southern Region and the Planning Delivery Unit, Council has made substantial progress on the planning proposal and the agency objections have now been resolved, enabling Council to use its delegations to finalise the plan. I also understand that Council is working to resolve the flood issues raised by the Departments independent expert. The Department will continue to assist as required to allow finalisation of this important panning proposal that will deliver a substantial number of homes in the Shoalhaven.

The options to complete the PP currently include undertaking the additional work requested in the Agency feedback or submitting the exhibited PP to DPE for it to finalise. An additional option to cease work on the PP and rely on the existing land use zones and planning controls applying to the URA also exists.

Options	Advantages	Disadvantages
<p>Option 1 Do further work to respond to feedback and finalise the PP using delegation.</p>	<ul style="list-style-type: none"> Outstanding Government agency concerns resolved. Provides future certainty for developers about development application requirements. Council maintains control of the planning documents. 	<ul style="list-style-type: none"> Cost of and time required to undertake additional work. Impact on development outcome (loss of 130-200 dwellings). Delays completion of development controls and local infrastructure contributions.
<p>Option 2 Submit the PP as exhibited and request DPE-Planning to finalise.</p>	<ul style="list-style-type: none"> Requires whole-of-government coordination and response, potentially accelerating the resolution of outstanding matters. The cost and time required to undertake additional work potentially transferred to DPE. 	<ul style="list-style-type: none"> Hands control/decisions to DPE-Planning. Unknown outcomes for resultant development controls and local infrastructure contributions. Unknown outcomes for developers, including need for a response to the current matters at development application stage. Delays completion of development controls and local infrastructure contributions work.
<p>Option 3 Cease work</p>	<ul style="list-style-type: none"> Provides immediate land use zones (they exist). Immediate commencement of work to update development controls and plan local infrastructure. 	<ul style="list-style-type: none"> Removes the proposed planning and development controls facilitating a greater diversity of dwellings and smaller lots. Uncertain development outcomes. Resolution of current/known issues postponed to preparation and review of development applications.

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Council staff met with the current major ownership interests in the URA in early April 2023 to discuss their concerns regarding the progress of this matter. The above options were

generally discussed, and the owners committed to providing some more formal feedback in this regard. This feedback, focussing on the impact of the riparian corridor outcome, was received in early May 2023. In summary the letter:

- Expresses disappointment at the late involvement of DPE-Water in the PP process.
- Supports Option 2 (above) as, in their opinion, the most efficient mechanism to complete the PP and for DPE-Planning to better understand the impacts of changes on owners. Request that Council formally advise DPE-Planning of their concerns.
- Riparian Corridor Assessment – being reviewed on their behalf by Martens & Associates, but key findings include:
 - Substantial loss of potential residential zoned land (summarised in letter)
 - Ratio of offset to impact area significantly increases, suggests ‘averaging rule’ may not have been applied appropriately.
 - Updated riparian corridors more aligned with stream order/required width. Contrasts with originally proposed corridors that used ‘averaging rule’. Relying on the rule enabled corridors to be straightened and enable more orderly/economic use of land. New corridors however create irregular boundary outcomes and less efficient layout, impacting further on deliverable housing.
 - Both the original corridor and revised mapping flawed. Believe a midpoint between the two approaches would be more appropriate.
 - Second order watercourse downstream of large farm dam southwest of 191 Bells Lane added back in causing significant loss of yield in vicinity. Is a drainage depression that does not warrant a riparian zone, should be zoned residential and if the potential for dam break can be addressed then land can be developed.
 - The plan of the new corridors does not include analysis of offset and impact area and hand not been able to spatially assess the impact of any averaging on site. The electronic data that has been used has not been made available.
 - Believe the updated corridor proposal does not appropriately use the averaging rule. Some carefully used averaging would reduce loss of developable land while maintaining corridor function.
- Key Riparian Considerations - Group are in consensus re the significant loss of potential yield in response to DPE-Water feedback late on the process after significant economic decisions have been made under the current (not yet amended) framework. At a minimum the following should be implemented to address shortcoming of the planning work to date:
 - Roads – allowed as permissible use in the C2 zone (riparian corridor)
 - Drainage structures - allowed as permissible use in the C2 zone (riparian corridor) and enable related economies for consolidated devices to be considered.
 - Bushfire Asset Protection Zones (APZ's) – must be allowed in the C2 zone (riparian corridor). Revegetation carefully managed so bushfire hazard not reintroduced with resultant reduced dwelling opportunity.
 - Investigate opportunities in the LEP and DCP to offset any lot yield loss to retain intentions of the URA and economic decisions of owners group.
 - Investigate opportunities to equitably address riparian area burden on key landholdings. Suggest an individual Voluntary Planning Agreement may not work, may need more holistic outcome.

In addition to the above points, the group also requests ongoing consultation/engagement with the government agency.

The following staff comment is provided on the above feedback provided by the current owners group:

- If Option 2 is pursued, this essentially maintains an unresolved agency objection and Council will lose delegation. DPE-Planning will finalise the LEP amendment, most likely in accordance with the position put forward by DPE-Water.
- Agreed that Option 2 might lead to the quicker finalisation of the PP, but possibly at the cost of moving required work to a later process and still something that Council has to handle/deal with when finalising detailed development controls and assessing development application.
- The frustrations under the “Riparian Corridor Assessment” are shared re the situation:
 - The new (2023) corridor scenario includes minimal use of the averaging rule, and standard widths (and irregular boundaries).
 - Previously removed watercourse added back in at request of DPE-Water. Noting that land is also likely to be affected by dam breach - a consideration independent of the work setting riparian corridors.
 - Previous mapping was based on work prepared by the earlier landowner group and the approach to favour some landholdings over others was not a result of Council work. A more even distribution ensures equity across the release area.
 - The riparian corridors drawing files were provided to the group.
 - Further negotiations were held with DPE-Water and DPE-Planning regarding the use of the ‘averaging rule’ and this did not result in much flexibility. As such the potential for this to be reconsidered is minimal.
- Some of the “Key Riparian Considerations are repeating exhibition/submission issues:
 - Roads are permissible in the C2 zone, but as a principle for this new urban area, the current (exhibited) indicative layout plan and draft DCP identify they run parallel and outside of the riparian corridor. If roads are proposed that reduce width of riparian corridor, developers will need to negotiate with DPE-Water for use of ‘averaging rule’/identify provision of offsets elsewhere as part of future application.
 - Some drainage infrastructure can be located in the riparian corridor and there are two options in this regard: developers will need to increase the width of the corridor around the drainage device or will need to negotiate with DPE-Water for use of ‘averaging rule’/identify provision of offsets elsewhere.
 - APZs are intended to be provided by public roads and be a clean break between revegetated corridors and front boundary of lots. This approach is being pursued as it presents the preferred approach in the hierarchy of management measures. Developers proposing reduction in riparian corridors to provide APZs will need to negotiate with DPE-Water Team for use of ‘averaging rule’/identify provision of offsets elsewhere.
 - The current proposed planning and development controls provide opportunities for smaller lots and a variety of dwelling types. If the opportunity is taken by developers to progress these, it will increase the yield substantially on what was originally intended/planned when the area was first zoned in 2014. The potential yield is already proposed to be increased and if yield is ultimately limited by constraints there is no guarantee whether additional yield can be found elsewhere in the URA or an ownership that may be appropriate. If supported, it could be appropriate to have a closer look at what may be possible as part of a separate process so as not to delay the current PP.

- The ability to come up with a mechanism to spread the riparian burden is uncertain – an area wide response, not a site response, may be difficult to achieve and negotiate.
- Irrespective of which option is pursued to finalise the PP it is essential that consultation and engagement continues with the owners group.

Recent meetings were held with DPE-Planning and they have indicated a desire to see the PP resolved as soon as practically possible. It was noted that if the position (Option 1) resulting from the DPE-Water feedback on the riparian corridors and their zoning is not accepted then it will be difficult for Council to keep its delegation to finalise this PP. It was also indicated that they are unlikely to go against or overrule DPE-Water. As such, it is likely that, irrespective of which option (1 or 2) is taken that the same outcome will result regarding the riparian corridors and their zoning.

The other issue that also still needs to be navigated and resolved is the late flood risk advice. DPE-Planning indicated in the recent meetings that they will work through this with Council, including how to manage the issue associated with the farm dam to the west of the URA. DPE-Planning has provided Council a letter of comfort regarding the possible deferral of the farm dam assessment to the development application stage and are willing to help procure the required additional flood assessment work if it assists to reduce timeframes. Ideally the issues associated with the farm dam should be resolved at the zoning stage so as to enable certainty, however given the lateness of this issue arising it may be appropriate in this instance, but it is noted that the approach suggested could lead to issues at the development application stage and the inability to realise residential zoned land.

Development Controls

The update and re-exhibition of draft DCP will need to occur once the PP is finalised (or at least its outcome is certain) and ultimate land use zones and an indicative final development outcome are known.

Local Infrastructure Contributions

Detailed work on the infrastructure required to support this URA has also been paused until relevant matters are resolved with the relevant Agencies.

The preparation and public notification of local infrastructure contributions can occur once work is completed on the PP or there is greater certainty re the likely outcomes.

Next Steps

It has taken over two years and additional resourcing to confirm NSW Government Agency positions on the PP. DPE-Planning has assisted but has not necessarily been able to accelerate the provision of advice from the Agencies or provide a coordinated ‘whole-of-government’ position on the planning and priorities for this URA. This is particularly frustrating given the NSW Government’s focus on increased housing supply in response to the current housing situation. More time and resourcing are now potentially needed to finally settle the Agency feedback.

The delay in confirming Agency feedback has also meant that new flood risk advice needs to be considered and as a result may impose contemporary requirements on the planning of the URA, for which work originally commenced in 2019.

Whilst handing the PP to DPE to finalise (Option 2 above) is attractive in terms of potentially bringing this matter to a timely conclusion, helping reach a ‘whole of government’ position and limiting further impacts on Council (staffing and funding), **it is not recommended** given the work Council has done to date and how close it relatively is to finalisation. Council would also effectively lose control of the final outcome despite all the work it has done to date, and it is expected that the same outcome (DPE-Water position) will result regarding the riparian corridors and their zoning. There is also the potential for DPE-Planning to defer consideration

of several issues to the preparation of development controls or assessment of development applications. This would create additional work for Council as it negotiates suitable outcomes in the development controls and with proponents, instead of settling them upfront in the PP which is the preference.

Council continuing to manage and work on the PP and its finalisation (Option 1) is thus recommended, however DPE will still need to help with the timely progression of the PP to finalisation of this long running matter.

Community Engagement

No additional community engagement on the land use planning documents has occurred since the public exhibition in mid-2022. The need to exhibit any updated Planning Proposal is currently unknown and will need to be considered in discussion with DPE.

Any updated draft DCP will need to be re-exhibited and the local infrastructure contributions framework will need to follow a public notification process.

Requests for changes from new ownership interests in the URA (different development outcome from the original Owners Group) were received in response to the 2022 public exhibition. Not all the matters requested have been resolved. If necessary, the parties can submit requests for adjusting changes once the PP and Development Controls are settled. This would require the preparation, as necessary or appropriate, of amending PP's and changed draft development controls, supported by technical studies.

Policy Implications

Completing this work is a 'high priority' project, confirmed by Council's earlier decisions (Local Strategic Planning Statement and Strategic Planning Works Program). As such it will continue to be a priority focus for the Strategic Planning Team.

Other related issues of a 'policy' nature that require consideration as this point include:

Phasing of URA's

Under the current provisions of Part 6 of the Shoalhaven LEP 2014 land in a URA is not able to be subdivided until the requirements of this part (site-specific DCP, infrastructure planning arrangements etc) are completed and adopted by Council.

Council adopted the following phasing plan for the URA's in the Nowra-Bomaderry in 2017 when the release planning for this area was brought forward:

- Phase 1: Mundamia – completed and continuing.
- Phase 2: Moss Vale Road South and North – completed and continuing.
- Phase 3: Cabbage Tree Lane – not yet started.
- Phase 4: Crams Road – not yet started.

Council staff continue to be fully committed to resolving and finalising the detailed release planning for the Moss Vale Road North URA. The same staff are also still heavily involved and committed to assisting with the actual realisation of the Mundamia and Moss Vale Road South URA's.

Requests continue however to be received regarding commencing the release planning for the Cabbage Tree Lane URA and also the Crams Road URA (area covered by the Warrah Road PP).

Previous requests to bring forward the planning of the Cabbage Tree Lane URA were discussed with Councils Strategic Planning Working Party in early 2021, where it was generally concurred as follows:

- Still committed to the current adopted phasing.

- Need to consider the overall Cabbage Tree Lane URA to ensure that relevant matters are holistically considered.
- Infrastructure planning will need close consideration at the appropriate point.
- No desire to bring the area or part of it forward at this point.

Resolving the Moss Vale Road North URA remains the highest focus and should be completed before work on any additional URA's commence. As such it is recommended that Council reinforce the phasing plan adopted in 2017.

Management of early Development Applications

Despite the 'release' planning for the Moss Vale Road North URA not being settled with any confidence enquires are continuing to be received re the lodgement of early subdivision development applications in this area. This is a significant a concern given that the zones are not actually resolved, the draft DCP will need to be adjusted and re-exhibited and the infrastructure planning work needs to be re-commenced.

Part 6 of the LEP does not stop applications being lodged, but they cannot however be determined until the relevant planning is finalised and in place. As such if applications are submitted early they may remain unresolved for a long period of time and be substantially inconsistent with the eventual planning, thus requiring modification or even possibly refusal.

For certainty, it is recommended that Council support a position of discouraging the lodgement of premature applications in the URA area until the release planning (zones, DCP provisions and infrastructure planning provisions) has progressed to at least a position of being finally adopted by Council.

Financial Implications

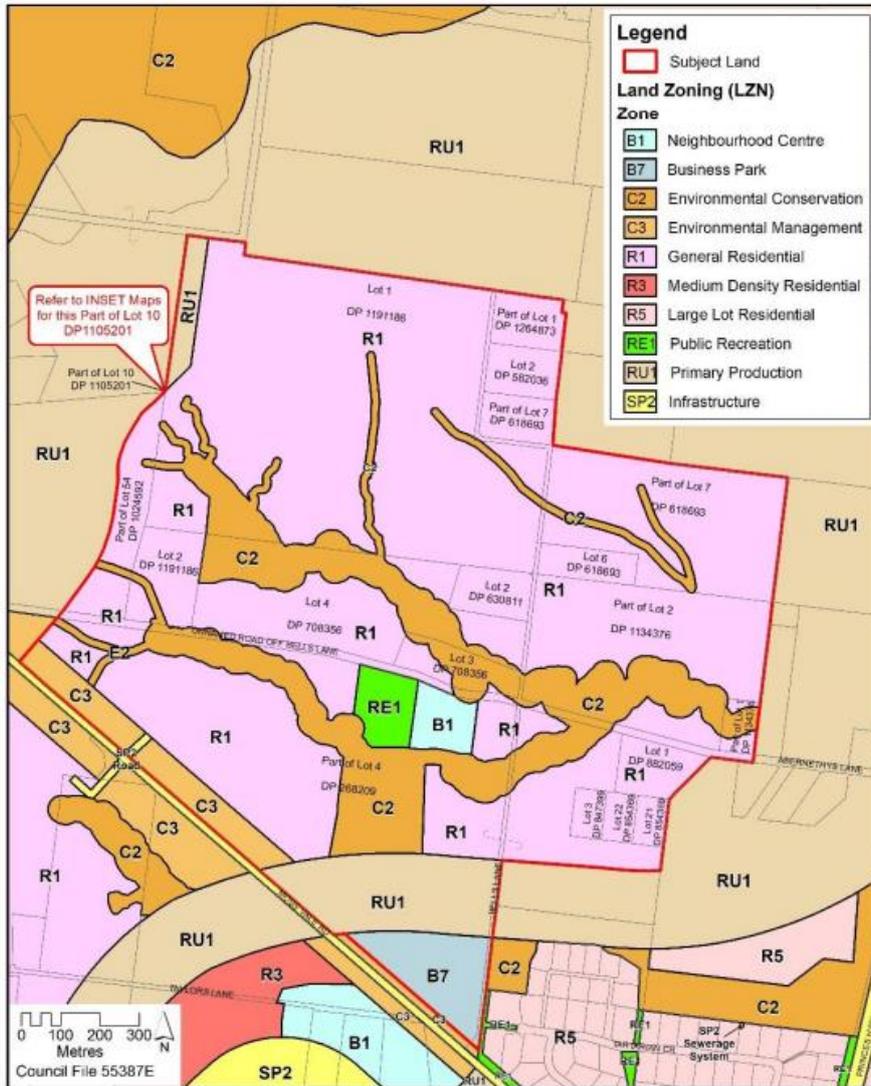
In addition to earlier work supporting work funded by Council, two additional Riparian Assessment Reports were commissioned at a cost of \$40,000 (the exhibited Report and the alternative scenario meeting Agency requirements). The additional flood risk assessment work is estimated to cost between \$50k - \$80k.

The delays to finalising the planning documents and the time required to respond to new flood risk requirements are impacting investment decisions critical to delivery of the URA and additional planned housing supply in an identified regional growth area.

The opportunity for the new owners and/or DPE-Planning to assist with funding or similar to progress and resolve this matter will also be pursued as appropriate.

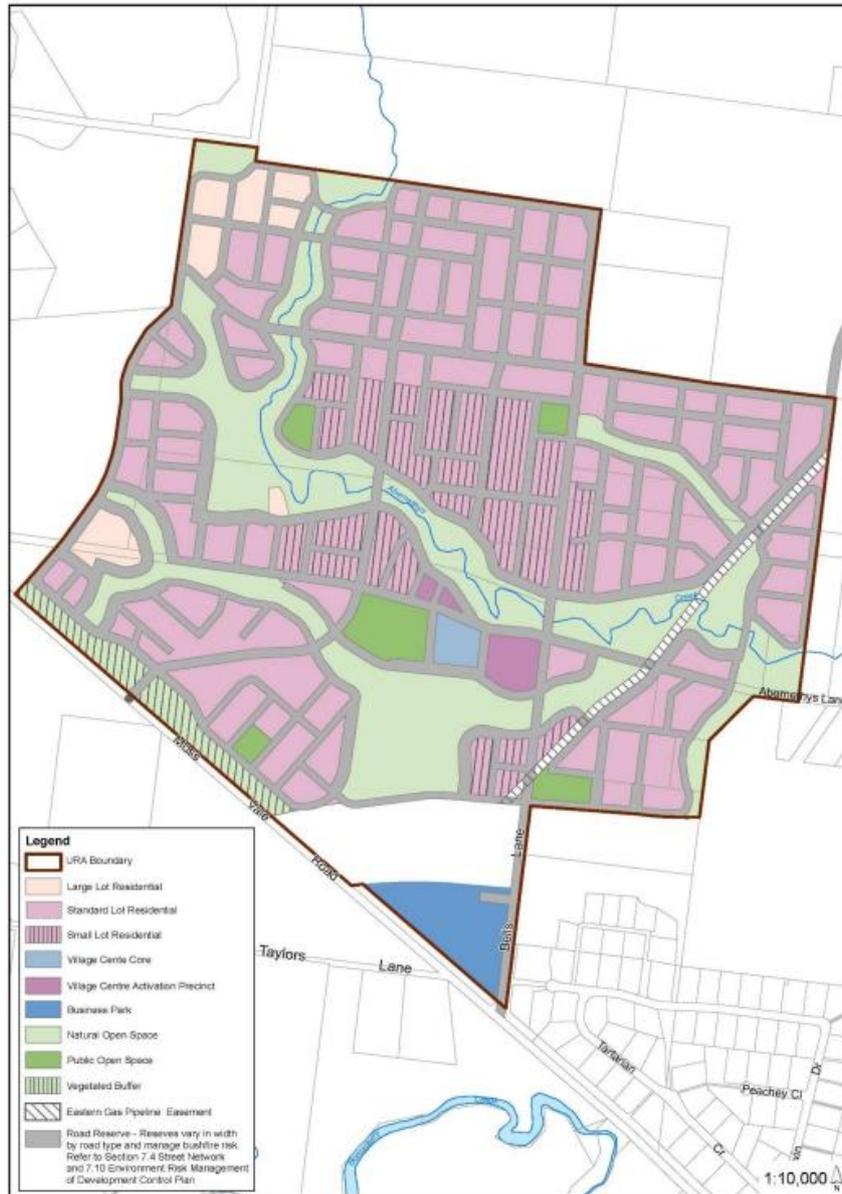
CL23.159

Attachment – Relevant Background Maps/Images



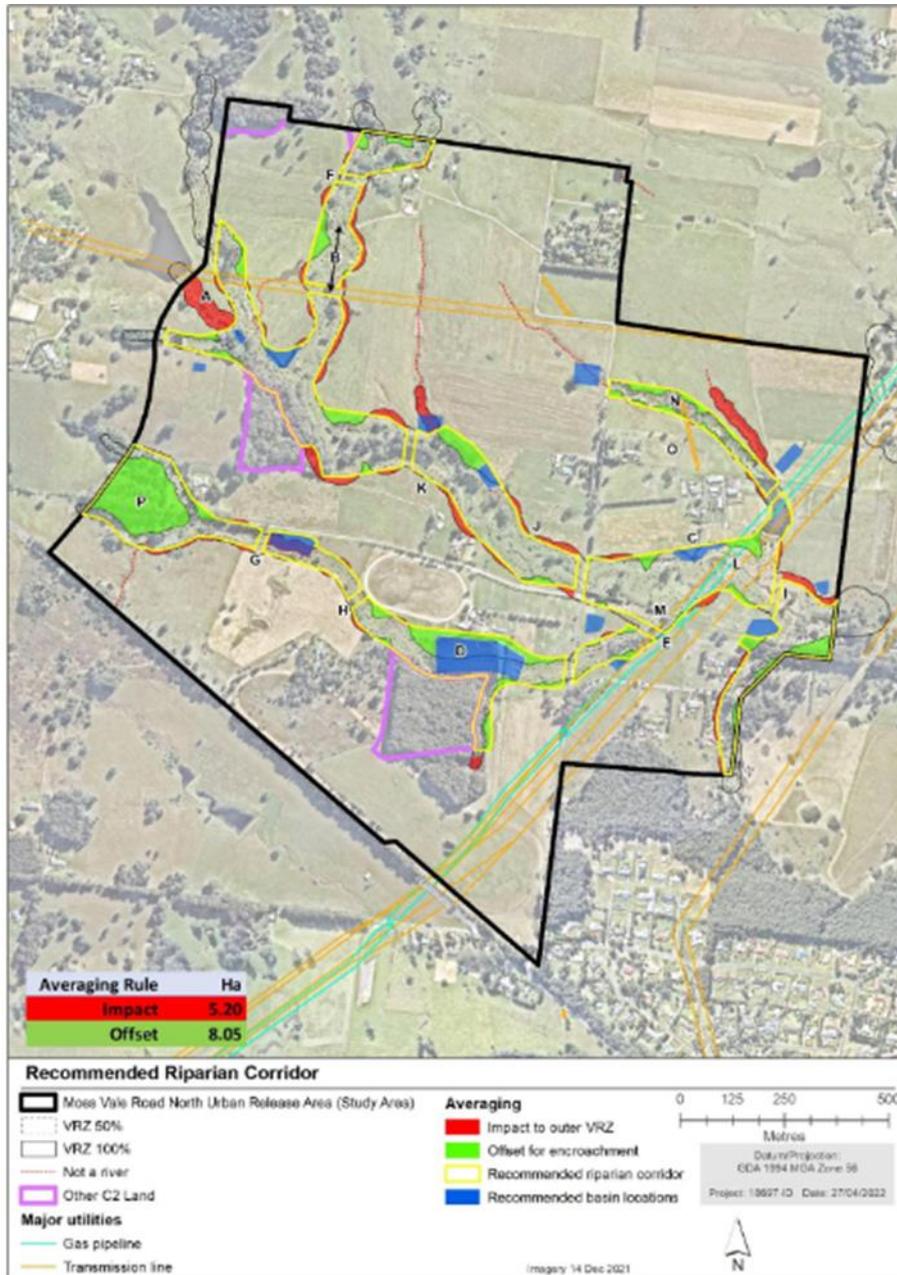
Existing Land Use Zones (introduced 2014)

CL23.159 - Attachment 1

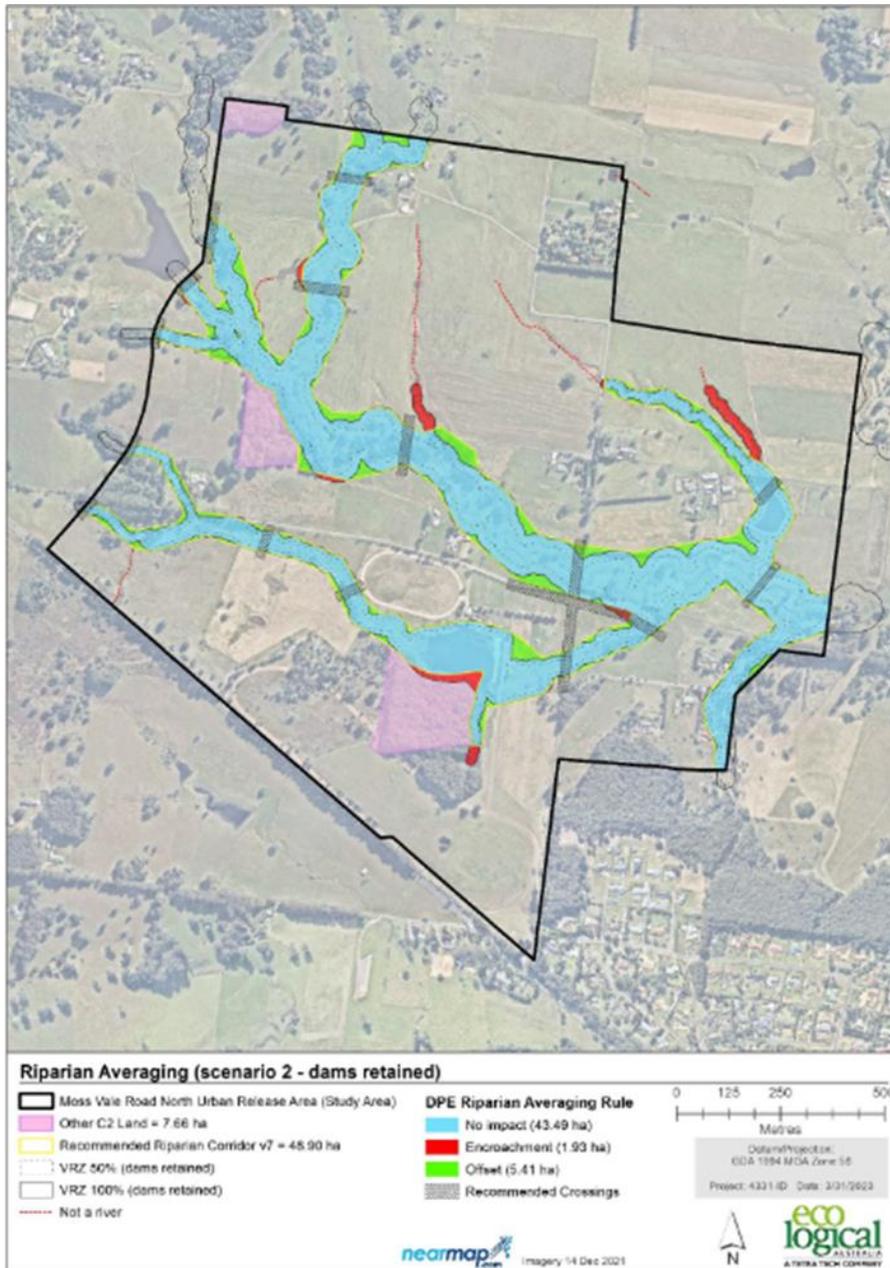


Exhibited Draft Indicative Layout Plan

CL23.159 - Attachment 1



Exhibited Recommended Riparian Corridor Outcome (averaging rule)



Alternative Riparian Corridor Outcome (March 2023)

Arising From Engagement with DPE-Water

CL23.160 Community Survey 2023 Final Report

HPERM Ref: D23/160302

Department: Corporate Performance & Reporting
Approver: Carey McIntyre, Acting Director - City Performance

Attachments: 1. Shoalhaven City Community Satisfaction Survey 2023 Final Report (councillors information folder) [⇒](#)

Reason for Report

The purpose of this report is to provide elected Councillors with the final report of the independent Community Survey 2023.

Recommendation

That:

1. Council receive the Community Survey 2023 Final Report.
2. The Final Survey Report be made available on Council's website and that the results be used to inform future engagement processes and planning for improvements to services and facilities.

Options

1. As recommended.

Implications: There are no specific implications. The intention of the report is to ensure transparency of the results and to communicate to Council the survey outcome.

2. Adopt an alternative option.

Implications: Nil.

Background

Council has run a Community Satisfaction survey annually between 2014-2018 and again in June 2020. The 2023 survey was completed by Taverner Research via 401 random telephone interviews between 14-21 February 2023. The data set is then weighted to bring it back to the ideal age/sex distribution for the LGA. Over 70% of surveys are collected by mobile phone numbers.

Project objectives:

- Measure and track the performance of Council in delivering services and facilities.
- Uncover Council's areas of improvement and priorities for the near future.
- Understand community perceptions regarding Council's customer services, communications and community engagement.
- Understand community perceptions regarding liveability and personal wellbeing.

Councillors were presented with the outcome of the survey at a Councillors briefing on **Thursday, 11 May 2023.**

Summary of key findings

- The overall satisfaction mean score (3.04) was only slightly above a neutral (3.0) result and fell out of the range of 3.30-3.43 held between 2014 and 2020.
- Note that the concern with roads, and their impact of this on overall satisfaction, are common factors among all NSW regional councils surveyed since the start of 2022. As evidence of this, the mean overall satisfaction score of regional NSW Councils surveyed in 2022 and 2023 has fallen 10%, from 3.34 to 3.01. And this has been accompanied by a 21% decline in satisfaction with the quality of sealed roads over the same period.
- The elected Council seemed to have the biggest impact on overall satisfaction, though (post-2022 flooding) road maintenance concerns were also top-of-mind.
- There were no significant increases in 2023 mean scores for any of the 42 services and facilities measured.
- 20 out of the total 48 services and facilities were below a neutral mean score of 3.0 in 2023. Their broad themes were: Development/Environmental control; Transport Infrastructure; Council decision-making and engagement.
- 37% of residents aware of community engagement projects in 2023 actively participated, an improvement on the 2020 result of 26%.

A copy of the survey report is included as **Attachment 1** in the Councillors Information Folder.

Personal Wellbeing Index

The Personal Wellbeing Index of Shoalhaven residents is 81.8, which has decreased since 2020 (84.6), but remains higher than the national standard (75.7). Five of the eight Wellbeing statements showed statistically significant declines – your standard of living; how safe you feel; your future security; your health; feeling part of your community.

Community Engagement

Ongoing communication and engagement about the survey results will occur via media and digital platforms.

Policy Implications

The survey results are utilised by senior management to determine areas for service improvement. Areas which are not showing improvement over time may be addressed through specific resource allocations in the annual development of the Operational Plan and Budget.

CL23.161 Bioelektra Update

HPERM Ref: D23/191524

Department: Waste Services

Approver: Paul Keech, Director - City Services

Reason for Report

The purpose of this report is to update Council on the Shoalhaven Resource Recovery Facility following Bioelektra's announcement that it was going into voluntary administration.

Recommendation

That Council:

1. Note the update on the Shoalhaven Resource Recovery Facility following Bioelektra's announcement that it was going into voluntary administration, in particular:
 - a. The facility is to be fully funded, built, and operated by Bioelektra Australia.
 - b. Bioelektra is NOT managing Council's domestic waste collection contract.
 - c. Council is not party to the commercial dispute between Bioelektra and its contractor and subcontractors.
 - d. During the operational phase of Bioelektra's facility, Council will pay Bioelektra, as the operating contractor of the facility, a fee for each tonne of household waste deposited at the facility. This fee will be less than the cost to landfill Council's waste.
 - e. The collection of the kerbside red lidded bin, provided by Veolia, continues as business as usual. There will be no disruption to the kerbside collection process.
 - f. On 9 May 2023, Council was advised by the Bioelektra Managing Director that the company had been placed into voluntary administration. On 11 May 2023 Councillors received a briefing on this development and the fundamentals of the administration process from Maddocks Lawyers (the firm that assisted Council develop the contract with Bioelektra).
 - g. On a best-case scenario, Bioelektra will continue to trade and Council will not be required to take any contractual steps.
 - h. On a worst-case scenario Council could terminate the contract and retender.
 - i. Council has committed some funding for the initial infrastructure including site clearing, roadworks, fencing and fire and water control infrastructure.
 - j. Council held extensive discussions with the EPA during and since the tender process and is satisfied that the Bioelektra process is best practice and will assist Council in exceeding the relevant targets specified in the Waste and Sustainable Materials Strategy (WASM) for 2041.
2. Continue to receive briefings in relation to developments that are pertinent to the administration process, and Council's website will be updated with relevant information as it comes to hand.

Options

Nil at this stage. Once the intentions of the administrator become clear a further report will be provided to Council.

Background

Shoalhaven City Council (**Council**) is party to an agreement with Bioelektra Australia (**Bioelektra**) for the West Nowra Resource Recovery Park.

A comprehensive explanation of the project and technology can be found on Council's website via the following link;

Advanced Recycling Technology for the Shoalhaven Funded, built and operated by Bioelektra. [Shoalhaven Resource Recovery Facility \(RRF\) | Get Involved Shoalhaven \(nsw.gov.au\)](#)

Under the terms of that agreement, the facility is to be funded, built and operated by Bioelektra Australia. Council has committed some funding for the initial infrastructure including site clearing, roadworks, fencing and fire and water control infrastructure. During the operational phase, Council will pay Bioelektra, as the operating contractor of the facility, a fee for each tonne of household waste deposited at the facility.

Bioelektra is NOT managing Council's waste contract.

Council has been advised by Bioelektra that it is in dispute with its contractor and subcontractors in relation to payments relating to the construction works required for the facility. Council is not party to these disputes as these are commercial issues between Bioelektra and its contractor and subcontractors. Council can therefore not offer any comment on these matters.

In November 2022, Bioelektra advised that their contractor EQ Constructions were being taken over and that this take over was not likely to significantly impact on the works.

In February 2023, Bioelektra advised that EQ Constructions were in administration and that Bioelektra were in a dispute with them over payments. It was decided to remain at arm's length to this process to protect Council from inadvertently being caught up in the dispute. Council's legal advisers have endorsed this course of action.

On 12 April 2023, WIN TV reported the EQ Constructions administration.

On 13 April 2023, Bioelektra issued the following statement, Councillors were briefed that afternoon and Council's webpage was updated;

The principal contractor to Bioelektra, EQ Constructions, has advised they are no longer available to complete Stage 1 Works at the West Nowra site.

This development has Bioelektra re-tendering to finish the Stage 1 construction works, which are largely complete.

Bioelektra Australia's Managing Director, Fred Itaoui, released the following statement:

"The construction works at our West Nowra Resource Recovery Facility are currently at a standstill due to the collapse of the builder EQ Constructions. Bioelektra has put out a tender to appoint another builder to complete the construction works of the facility. This unfortunate event has regrettably hindered the construction programme by at least 3 months."

Once the new contractors are appointed, Council looks forward to watching this exciting development take shape.

On 4 May 2023, Fred Itaoui briefed Councillors on the current status of a very fluid situation. Mr Itaoui expressed to Councillors that he was confident that once the dispute with EQ Constructions was resolved the project would commence with a new subcontractor. Mr Itaoui advised that the production of the autoclaves in Poland had been progressing as planned and that as their completion has timed to coincide with the completion of the West Nowra facility work on the autoclaves had paused until the dispute was resolved.

On 9 May 2023, Council was advised by Fred Itaoui that the company had been placed into voluntary administration in an effort to resolve the dispute with EQ Constructions in a formal and timely manner. Contractors and subcontractors of Bioelektra will need to address any claims to the administrator. Payments between Bioelektra and its contractor and subcontractors are not the responsibility of Council.

Councillors received a briefing on this development and the fundamentals of the administration process from Maddocks Lawyers (the firm that assisted Council develop the contract with Bioelektra) on 11 May 2023.

Council is not aware at this stage of the intentions of the administrator. The fate of the company will be decided by its creditors. Possible outcomes of the administration include a deed of company arrangement (DOCA) (which is an agreement between the company and its creditors) or, if there is no proposal for a DOCA, the liquidation of the company. An initial meeting with the administrator and Council staff is scheduled for 17 May 2023. It is expected that additional information will be provided by the administrators in respect of the affairs of the company and the possible direction of the administration at that meeting.

Liza Butler MP briefed the Minister for Local Government – The Honourable Ron Hoenig MP on 24 April 2023.

Consideration

On a best-case scenario, Bioelektra will continue to trade and Council will not be required to take any contractual steps.

On a worst-case scenario, if the creditors of Bioelektra decide to liquidate the company or Bioelektra is otherwise unable to fulfil its obligations to Council, Council could terminate the contract and retender. A recent review of the market revealed that there are now at least three companies providing similar autoclave treatment as follows;

1. Thermowaste
2. Juno Waste
3. Estec USA

Council will not make any decision in relation to these matters until additional information is provided in relation to the future of Bioelektra.

As outlined above Council has committed some funding for the initial infrastructure including site clearing, roadworks, fencing and fire and water control infrastructure, however, the essence of the tender with Bioelektra is one where Council will become a customer to Bioelektra upon successful commissioning of the facility. Until this occurs it is business as usual for Council's red lidded collections and landfill services.

During the Shoalhaven Resource Recovery Facility tender assessment process Council consulted extensively with the NSW EPA on the two shortlisted proposals. This consultation assisted in Council's decision and Bioelektra were awarded the tender to process Council red lidded bin and thus divert waste from landfill to the "Circular Economy".

A few years after Council resolved to award the tender to Bioelektra, in June 2021, the NSW EPA issued their Waste and Sustainable Materials Strategy (WASM) for 2041. Council held extensive discussions with the EPA during and after the development of this strategy, believing that the Bioelektra process will assist Council in exceeding the relevant targets specified in the strategy. The EPA confirmed that exceptions will be permitted if they exceed targets.

Community Engagement

Nil at this stage. Once the intentions of the administrator become clear a further report will be provided to Council, a media release issued and Council's webpage will be updated.

Until Bioelektra becomes operational it is business as usual for Council's red lidded bin and landfill service.

Policy Implications

Nil at this stage. Once the intentions of the administrator become clear a further report will be provided to Council.

Council's current objective to divert as much waste from landfill and support the circular economy is still guiding Waste Management actions.

Council have reengaged with Maddocks Lawyer (the firm that assisted with the Bioelektra Contract to date) and will be following their advice in relation to official statements and actions on this matter in order to protect Council's interests.

Financial Implications

Nil at this stage.

Council have contracted with Bioelektra as a service provider to build and operate a resource recovery facility for processing mixed waste (red lid bin).

- Bioelektra are funding the building construction and the supply and installation of processing equipment (approximately \$100 million). **Council is not funding this work.**
- Council have budgeted to provide performance incentive payments at specific milestones, which are only paid when the milestones are achieved, as follows:
 - Milestone 1 – Final design documentation and development consent - \$1 million.
 - Milestone 2 – Ancillary activities completed - \$1 million.
 - Milestone 3 – Practical completion of the building- \$5 million.
 - Milestone 4 – Installation and Operational readiness - \$2 million.
 - Milestone 5 – First time Contractor achieves quarterly diversion target averaged across two quarters - \$400,000.
 - Milestone 6 – First occurrence achieving yearly diversion level in any operating year - \$300,000.
 - Milestone 7 – First occurrence of contractor achieving yearly diversion level averaged across 2 operating years - \$300,000.
- For Bioelektra to fund the capital works they charge a gate fee for each tonne of waste delivered to the facility. During the 20-year operational period Council will pay Bioelektra the gate fee plus an annual technology licence fee. The total cost per tonne is less than the current landfill gate fee at West Nowra.
- At termination of the contract the buildings, plant and equipment revert to Council ownership.

Risk Implications

Milestone 1 and Milestone 2 referred to as Stage 1. These stages are now complete, and the milestone payments have been made.

Milestone 3 and Milestone 4 form Stage 2. Council will be protected during this stage via a Bank Guarantee to the value of \$2 million and the fact that milestone payments will be held until practical completion as the West Nowra Facility is built, (to be clear Council will not be making progress payments for the work). Work on this stage is yet to commence due to the administration process.

As explained above under the terms of that agreement, the facility is to be funded, built and operated by Bioelektra Australia.

At this stage there is no cause for concern for the future of Waste Management in the Shoalhaven. As outlined above Council has committed some funding for the initial infrastructure including site clearing, roadworks, fencing and fire and water control infrastructure, however the essence of the tender with Bioelektra is one where Council will become a customer to Bioelektra upon successful commissioning of the facility. Until this occurs it is business as usual for Council's red Lidded collections and landfill services.

The Bioelektra tender will assist Council exceed the relevant target specified in the NSW EPA's Waste and Sustainable Material Strategy for 2041.

CL23.162 Completion of Licence Plate Recognition Trial

HPERM Ref: D23/93792

Department: Certification & Compliance

Approver: James Ruprai, Director - City Development

Reason for Report

To provide an update and information in relation to the 3-month trial of the Licence Plate Recognition Technology with Database Consultants Australia (DCA) supplied equipment.

Recommendation

That Council:

1. Receives and notes the report Completion of Licence Plate Recognition Trial; and,
2. Does not continue with the usage of Licence Plate Recognition technology for parking regulation activities at this point in time.

Options

1. Council receives the report for information.

Implications: Nil

2. Council receives the report and provides additional direction.

Implications: Any changes or additional matters will require staff consideration on budgets, resourcing implications, service delivery and statutory responsibilities.

Background

On 17 December 2022, Shoalhaven City Council Rangers commenced a 3-month trial for a new vehicle-mounted licence plate recognition camera system. This was aimed at identifying illegally parked vehicles.

The licence plate recognition technology uses in-vehicle mounted cameras to take pictures of cars with GPS location and timestamping. It then alerts the system Operator to potential breaches with regard to overstayed vehicles in timed carparks. The trial was intended to be used during routine parking patrols to take photos of vehicles that may have been identified to be parked illegally.

Scope of areas patrolled.

The trial of the new technology was scheduled to take place in the Berry, Nowra, Huskisson, Milton, Ulladulla and Hyams Beach areas. These are recognised as areas where identified safety risks exist, and vehicle turnover is needed.

Implementation reasoning

Our holiday and peak seasons on the Shoalhaven are loved by residents and visitors alike. With over 3 million visitors annually, we see an increase of up to 400% in vehicles in the region, making parking a big issue. Keeping vehicle turnover in key areas allows equal access to our local businesses and beautiful public open spaces in times of high demand.

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The program aimed to trial whether this system could assist Council in its regulatory parking functions to help us all to support our local businesses, as well as give everyone the chance to take in our parks and beaches.

Further, the technology aimed to measure any marked improvement to officer safety by removing the need to be physically located in moving traffic, reduce physical stress and minimise instances of violence and aggression towards parking rangers.

The technology purported to allow Rangers to cover larger areas of Shoalhaven, detecting more offences in areas of higher risk, such as no stopping, no parking and school zones. This will help increase productivity, and free up resources for urgent and critical incidents.

The Licence Plate Recognition Technology system trial additionally aimed to achieve the following:

- (a) remove existing safety issues that exist with manually undertaking such tasks by Rangers. This included adverse interactions with members of public, adverse incidents involving vehicle movements in and around car parks and streets and reducing fatigue on Rangers having to walk large distances and often in hot or cold conditions.
- (b) to streamline the overall operation of marking up and checking off. This would provide time savings for Rangers with the vehicle covering wider areas in less time. Rangers could then be deployed in other areas.

Overview / Results of Trial

The system was only in use for a period of 6 weeks. The remainder of the trial incurred down time due to identified issues needing to be rectified by the supplier. The system was used in Berry, Nowra, Huskisson and Hyams Beach however was not trialled in Milton or Ulladulla due to issues experienced that limited its intended roll out.

A total of 3,242 parking penalty notices were issued in the period. The total parking fines issued as a result of the Licence Plate Recognition System was 89. This equates to 2.75% of total parking fines issued during that period.

The following comments are made as a result of the trial:

- (a) The system certainly delivered on the safety aspects of the program. Rangers were not exposed to the elements, and they did not need to negotiate vehicle movements.
- (b) The system only dealt with overtimed offences and could not be used for illegal parking and other offences such as “No Parking” and “No Standing”. Functionality was limited in practice.
- (c) The system failed to integrate with Council’s IT systems and required manual adjustment to allow the issuing of penalties to offenders.

Feedback on Trial

Feedback received from the public on social media, customer call backs and local business chambers were generally not supportive throughout the trial period. Key themes arising from community feedback conveyed a perception that the trial was predominantly a revenue raising strategy rather than its intended purpose of providing staff and road safety and vehicle turnover in the busy commercial areas.

Future Considerations

There are other alternate and more robust systems being utilised by other Councils in Australia. Whilst this technology has future merit, the system chosen and outcomes

measured for the Shoalhaven trial appears to still be in its infancy and is not suitable for ongoing consideration at this stage.

As technology evolves and dependent upon parking pressures experienced, consideration may be given to looking at other systems in the future. However, robust investigation will be needed with other Councils trialling the systems to ensure it meets with our Council's and communities expectations together with integration into Council's Computer network system.

Conclusion

The Licence Plate Recognition trial was aimed at providing better staff and road safety, supporting local businesses through appropriate means of parking turnover. The intention of the trial had merit, but it failed to deliver on outcomes that would warrant consideration for ongoing implementation.

It is recommended Council not continue with the usage of the Licence Plate Recognition System moving forward.

CL23.163 Quarterly Review for Compliance Matters

HPERM Ref: D23/106646

Department: Certification & Compliance
Approver: James Ruprai, Director - City Development

Attachments: 1. Penalty Notices & Warnings Issued & Patrols - Quarterly Review - City Development - January to March 2023 [↓](#)

Reason for Report

At Council's Ordinary meeting held on 13 November 2018 it was resolved to receive a detailed quarterly report on compliance activities (MIN18.907).

At Council's meeting of 23 May 2022, it was resolved for all future reports to provide an analysis of trends, effectiveness and current and arising areas of risk (MIN22.348).

This report provides information on the period from 1 January 2023 to 31 March 2023 (third quarter 2022/2023).

Recommendation

That Council receive the 1 January 2023 to 31 March 2023 quarterly report on compliance matters for information.

Options

1. Council receives the report for information.

Implications: Nil

2. Council receives the report and provides additional direction for future reports.

Implications: Any changes or additional matters can be added to future reports.

Report

Compliance activities are completed by the following Teams within City Development:

- (a) Compliance Team: Development compliance matters including unauthorised development, development not in accordance with development consent, land use issues and swimming pool safety issues.
- (b) Environmental Health: Pollution incidents (noise, water and sediment control), environmental incidents, food shops and the operation of on-site sewage waste management facilities.
- (c) Rangers: Parking, animal management, unauthorised camping, littering, rubbish dumping, unattended vehicles, and other environmental offences.
- (d) Fire Safety: Fire Safety relating to commercial buildings.

This report provides Councillors with an update on the penalties issued (number, type, and ticket value) and any Local or Land and Environment Court matters determined or progressing.

This report relates to January to March 2023 (third quarter).

Penalties issued during the period.

A combined total of 2,942 penalty notices were issued by the Teams during the period. These penalties have a face value of \$620,069. Historically, Council stands to receive approximately 70% of this ticketed figure.

A total of 42 warnings were issued during the period.

Attachment 1 to this report provides a breakdown of the penalties and warnings issued.

The following is a summary of the penalties issued for each team:

Table 1:- Penalty notices issued for the 3rd quarter 2022/2023

Team	Number Issued	Total Amount	% of total amount	Warnings issued
Compliance	24	\$53,600	8.7	13
Fire Safety	0	0	0.0	0
Compliance – Pools	22	\$8,910	1.4	0
Environmental Health	17	\$53,000	8.5	1
Rangers – Animal issues	97	\$49,935	8.1	18
Rangers – Environmental issues	28	\$13,280	2.1	1
Rangers – Parking	2,754	\$441,344	71.2	9
Sewer Management Facility	0	0	0	0
Total	2,942	\$620,069	100	42

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Penalties related to Compliance issues

The following details are provided in relation to the 24 compliance penalty notices issued during the period:

1. North Durras (\$1,500):- One Penalty notice was issued to the owner of a premises for the conversion of a shed to a detached habitable room.
2. Vincentia (\$4,500):- Three penalty notices were issued to the owner and contractor for unauthorised building works at a residential dwelling.
Three warning notices were also issued which would have equated to \$4500 if issued as penalty notices.
3. Bewong (\$4,500):- Three penalty notices were issued to the owner and contractor for unauthorised building works at a residential dwelling on bushfire and flood prone land.
Three warning notices were also issued which would have equated to \$4500 if issued as penalty notices.
4. Coolangatta (\$3,000):- One penalty notice was issued to the owner for failing to comply with a development control order and continuing to use the land for camping grounds.
One warning notice was also issued which would have equated to a further \$3000 if issued as a penalty notice.
5. Nowra (\$12,000):- Two penalty notices were issued to a property owner for breaches of a development consent relating to a heritage listed commercial building.

One warning notice was also issued which would have equated to a further \$6000 if issued as a penalty notice.

6. Culburra Beach (\$9000):- Three penalty notices were issued to a property owner for breaches of three separate development control Orders relating to prohibited land uses.
7. Callala Beach (\$1100):- Two penalty notices were issued to a licensed plumber for breaches of the Plumbing and Drainage Act relating to unauthorised development in a commercial building.

One warning notice was also issued which would have equated to a further \$1100 if issued as a penalty notice.

8. Manyana (\$1500):- One penalty notice was issued to the owner of a premises for building without a construction certificate.

One warning notice was also issued which would have equated a further \$1500 if issued as a penalty notice.

9. Culburra Beach (\$3000):- Two penalty notices were issued to the owners of a premises for the installation of a swimming pool without development consent.
10. Nowra (\$1500):- One penalty notice was issued to the owner of a premises for the installation of a swimming pool without development consent.
11. Shoalhaven Heads (\$1500):- One penalty notice was issued to the tenant of a rental premises for the installation of a swimming pool without development consent.
12. Bendalong (\$7500):- Three penalty notices were issued to the owner and builder for construction of a timber deck and internal alterations to a dwelling.

Two warning notices were also issued which would have equated to a further \$4500 if issued as penalty notices.

13. Sanctuary Point (\$3000):- One penalty notice was issued to a property manager for the letting of a garage on bushfire and flood prone land for short term rental accommodation.

One warning notice was also issued to the owner which would have equated to \$1500 if issued as a penalty notice.

Penalties relating to Compliance – Swimming Pools

The following is provided in relation to the 22 Compliance – Swimming Pools penalty notices issued this quarter:

1. Burrill Lake (\$550):- One penalty notice was issued to a property owner for failing to comply with a written direction to comply under the Swimming Pools Act 1992.
2. Culburra Beach (\$1760):- Six penalty notices were issued to owners of a premises for an unfenced and unregistered pool without a CPR warning notice present.
3. Milton (\$770):- Two penalty notices were issued to the owner of a premises for failing to register a pool and for not complying with a written direction to comply under the Swimming Pools Act 1992.
4. South Nowra (\$660):- Two penalty notices were issued to the tenant of a rental property for failing to erect a CPR warning notice and failing to maintain a child resistant barrier.
5. Nowra (\$660):- Two penalty notices were issued to the tenant of a rental property for failing to erect a CPR warning notice and failing to maintain a child resistant barrier.
6. Shoalhaven Heads (\$660):- Two penalty notices were issued to the tenant of a rental property for failing to erect a CPR warning notice and failing to maintain a child resistant barrier.

7. Nowra (\$550):- One penalty notice was issued to the owner of a premises for failing to maintain a child resistant barrier.
8. Nowra (\$550):- One penalty notice was issued to a property owner for failing to comply with a written direction to comply under the Swimming Pools Act 1992.
9. Culburra Beach (\$550):- One penalty notice was issued to an owner for not having a complying barrier.
10. Sanctuary Point (\$550):- One penalty notice was issued to an owner for not having a complying barrier.
11. Nowra (\$550):- One penalty notice was issued to an owner for not having a complying barrier.
12. Berry (\$1100):- Two penalty notices were issued to an owner for not having a complying barrier.

Warnings related to compliance issues

A total of thirteen warning notices were issued for compliance matters in the period and these have no dollar value. There were no warning notices issued for swimming pool offences. Potentially the Compliance Team could have issued a further \$26,000 in penalties for the period. The caution rate is approximately 32.6% of the total potential.

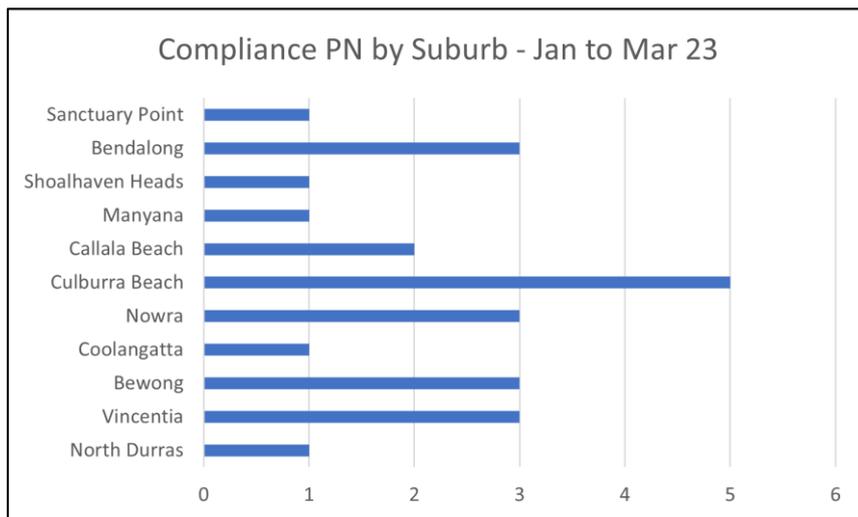
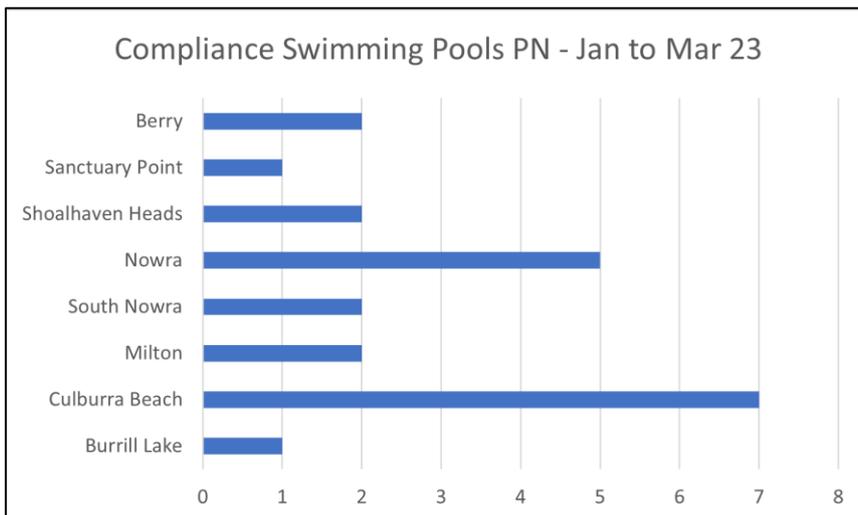


Figure 1:- Compliance penalties issued for the period by suburb.



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Figure 2:- Compliance Swimming Pools penalties issued for the period by suburb

Compliance customer requests received this quarter

The Compliance Team received 238 Customer Requests in the quarter and these are represented in Figure 3 below.

Type of customer requests received	Number Received	Percentage of total
Development Concern	122	51.3
Stormwater	44	18.5
Swimming Pool Inspection requests	72	30.2
TOTALS	238	100

Figure 3:- Customer requests by type received.

The figures have recently migrated from Merit to One Council. The One Council system has reduced the “Type” of customer requests to the three categories of Development Concern, Stormwater and Swimming Pool Inspection Requests.

The following additional comments are made:

- (a) Development concerns:- This represents the highest percentage of customer requests and includes development without consent, development not in accordance with consent and land safety issues such as landslides and fire damaged dwellings.
- (b) Stormwater:- Compliance are continuing to work through a significant backlog of stormwater complaints from the persistent weather events experienced in 2022. A high number of these complaints are unable to be actioned due to insufficient supporting information.
- (c) Swimming pool compliance:- This includes concerns raised by members of the public and referrals from private certifiers. Councils Compliance team continue to enforce swimming pool legislation in accordance with the Council resolution (MIN22.946) to take a zero-tolerance approach to swimming pool breaches and have attended a high volume of unauthorised pools during the quarter.

Court Elected Penalties

The owner of a property at Huskisson, Court elected a penalty that was issued to him for development without consent. This matter was heard in the Nowra Local Court on 01/02/2023. The Court convicted the Owner on the charge of development without development consent for the change of use of a garage to tourist and visitor accommodation.

The Court upheld the penalty amount of \$1500 and ordered the Owner to pay costs to Council in the amount of \$800.

Penalties relating to Environmental Health

The following details are provided in relation to the 17 Environmental Health penalty notices issued during the period:

1. Kangaroo Valley (\$21,000):- Seven penalty notices were issued to the owner for development without consent for tree clearing, road construction, the construction of a dam in an Environmental Zone, failure to comply with a development control order and transporting waste to an unlawful facility.

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2. Kangaroo Valley (\$18,000):- Six penalty notices were issued to contractor for development without consent for tree clearing, road construction, construction of a dam in an Environmental Zone and transporting waste to an unlawful facility.
3. Shoalhaven Heads (\$3,000):- One penalty notice was issued for unauthorised tree removal.
4. Tomerong (3,000):- One penalty notice was issued for unauthorised tree removal.
5. Culburra Beach (\$4,000):- One penalty notice was issued for failing to comply with an Environmental Protection Notice.
6. Falls Creek (\$4,000):- One penalty notice was issued for a pollution of waters incident.

Ranger Activities

Of the penalties issued by Ranger Services, there are trends for animal management and environmental offences. Ranger Services are working on media programs including responsible pet ownership, tree vandalism and illegal dumping to address the main risks.

- (a) Rangers attended 551 environmental and parking complaints and 536 animal management complaints for the quarter.

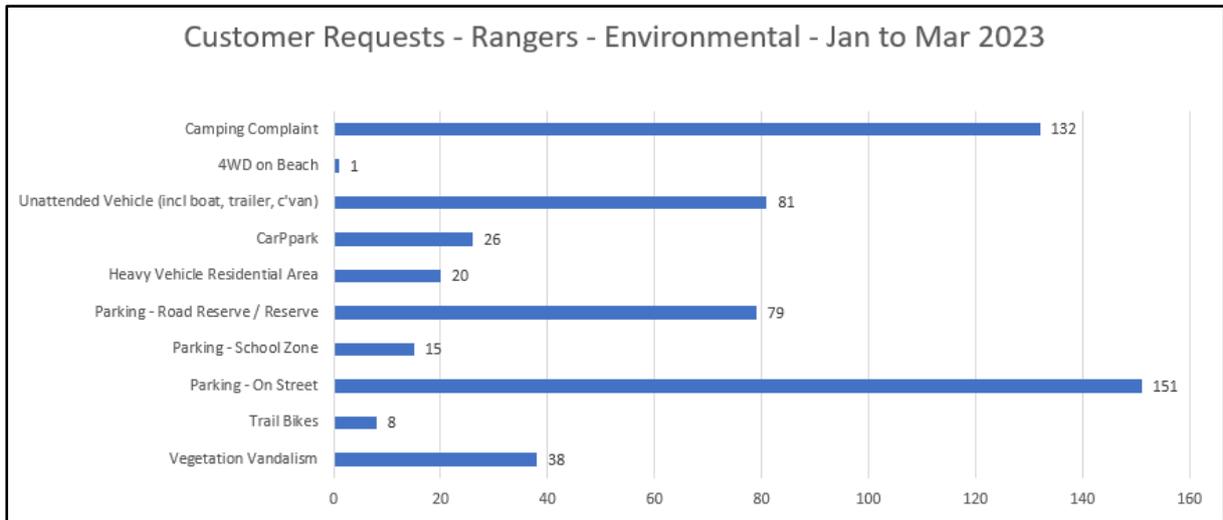


Figure 4:– Customer requests for environmental and parking issues.

- (b) Parking – Print and Post:- Council introduced Print and Post on 12 July 2022 and the website has been updated to include information about this system along with guidance for the public to better understand the enforcement of timed parking. [Link to Print and Post.](#)

A total of 2754 parking tickets were issued in the period with a value of \$441,344. The breakdown of the tickets issued by suburb is provided in Figure 5.

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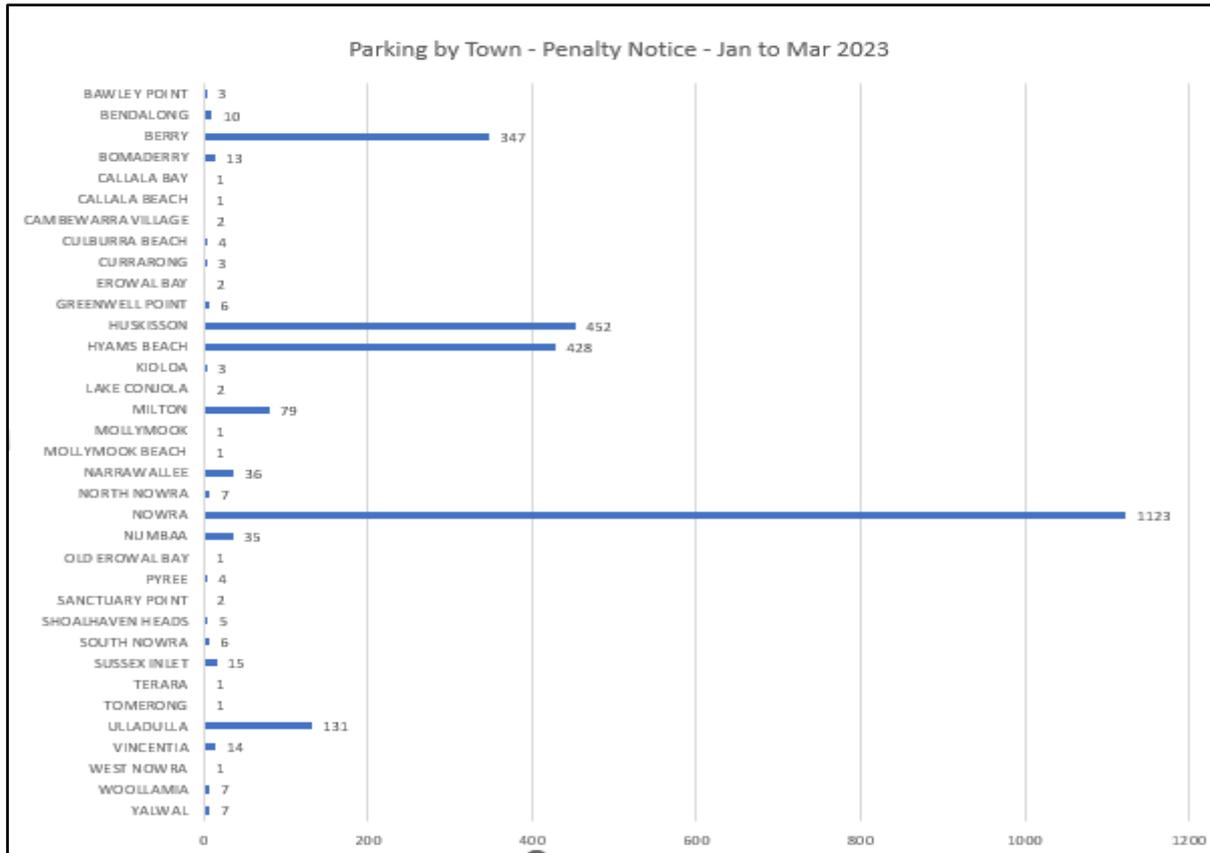


Figure 5:- Parking penalty notices issued by suburb

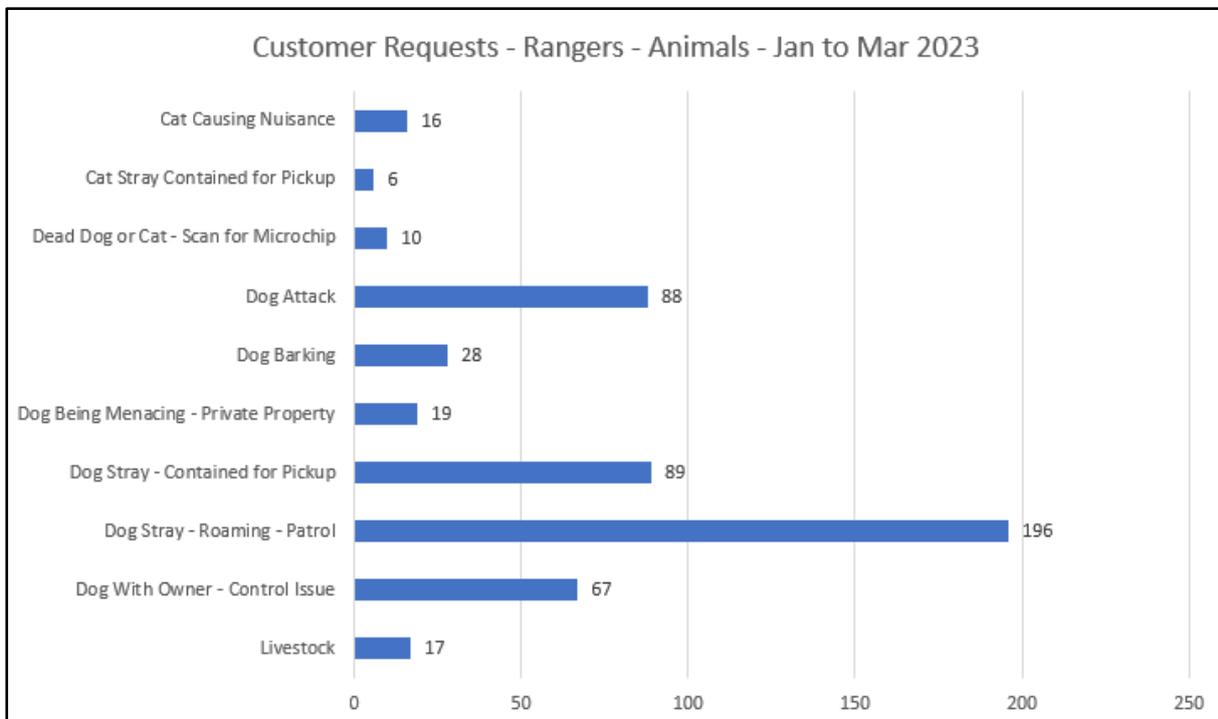


Figure 6:- Customer requests for animal management issues

- (c) Dog attacks - Rangers received and attended 88 reports of dogs attacking during the period. Of these reports, 34 investigations have been completed with 20 penalty notices issued (i.e. 20 x \$1,320 = \$26,400). A further 54 matters remain under investigation.

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Although the penalty is high, dog attacks remain a major risk. Whilst there is more awareness in the community, there may still be a number of unreported dog attacks. Rangers continue to apply Council’s resolution of 21 April 2020 for zero tolerance and issue penalty notices for all substantiated dog attacks regardless how minor.

There was a total of 54 dog related penalty notices issued for the period (not including registration offences). Figure 7 provides information on the penalty notices issued by suburb for the period. For context, the last quarterly report identified 69 penalty notices for dog related issues.

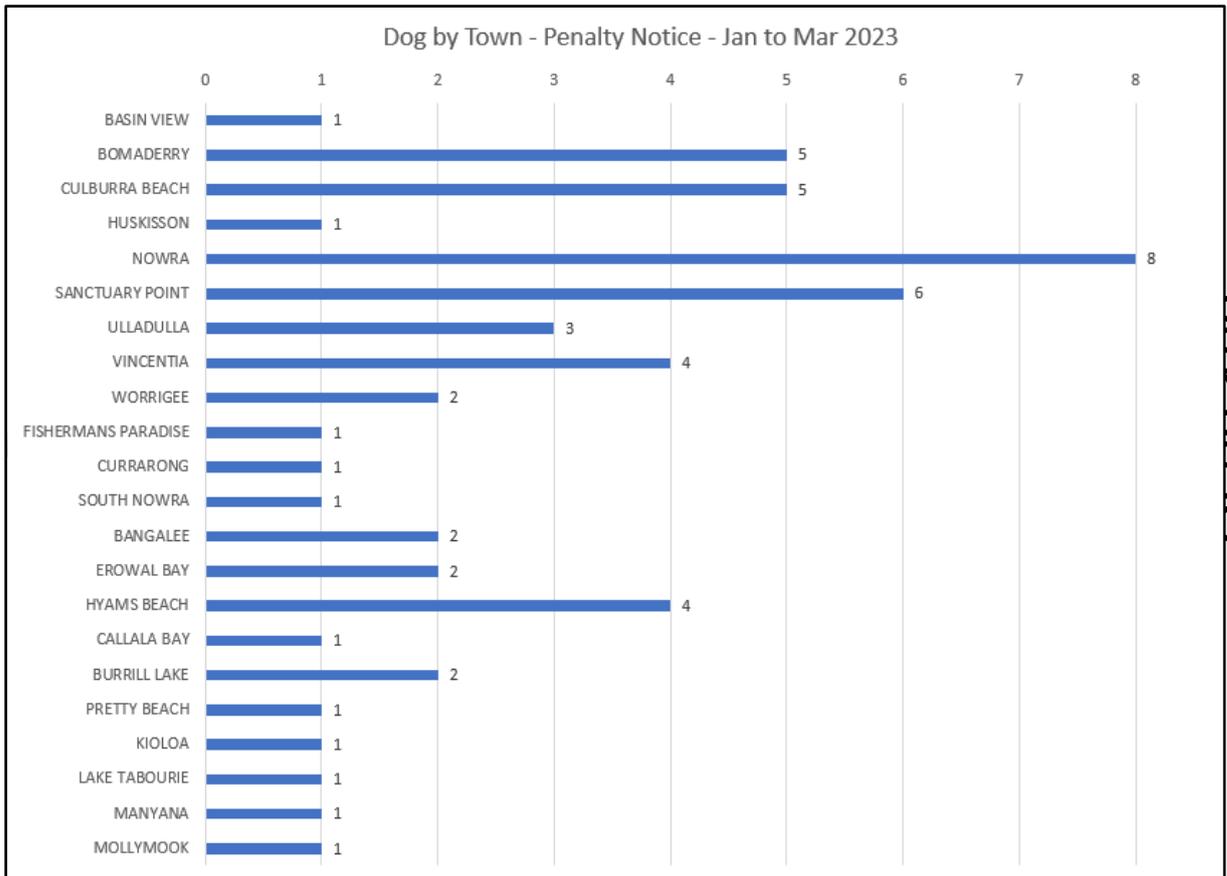


Figure 7:- Dog related penalty notices by town for the period

- (d) Responsible dog ownership project:- In November 2022, Power FM commenced its “Pet of the month” interviews with Jodie from the Animal Shelter. This program will continue monthly for 12 months, and it also includes information from the Responsible Dog Ownership project.
Media releases and social media messaging occur alongside these radio broadcasts. Plans are underway for educational videos targeting dog bite prevention and other key components for controlling dogs when in public places and at home.
- (e) Keeping cats safe at home project:- the RSPCA and Council messaging has focused on kitten season this quarter. A total of 15 Desex vouchers were given to cat owners during the period.
- (f) Companion Animals Register:- the following figures were obtained from the NSW Companion animals register (Note:- the accuracy of this data is dependent on pet owners keeping details current).

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Animal category	Total animals in Shoalhaven		
	ID Only	Registered	Total
Cats	2514	12955	15469
Dogs	9500	48336	57836
Total	12014	61291	73305

Figure 8:- Companion animals in Shoalhaven LGA

Incoming Companion Animal forms from the public are processed at the Animal Shelter. Pet owners can manage their own data via NSW Pet Registry, but the option exists to utilise Council for this service. The number of forms entered onto the NSW Companion Animals Register by Shelter staff this quarter are listed in Figure 9 below:

Function	Number
Change of owner	1,201
Change of address	15
Permanent identification	225
Lifetime Registration	543
Total	1,984

Figure 9:- Companion animal forms processed by Council

A total of 511 registrations totalling \$34,017 were received via Council and 38 penalty notices were issued for non-compliance with the lifetime registration requirements.

When the Companion Animals Act 1998 was introduced, there were only four registration categories. Numerous categories now exist with many identified in Figure 10 below.

Registration Categories	Number	Total \$ Value
Assistance Animal	1	0
Cat - Desexed (Pensioner)	9	261
Cat - Desexed (sold by Pound/Shelter)	146	0
Cat - Desexed or Not Desexed	19	1121
Cat - Desexed or Not Desexed with Late Fee	3	234
Desexed (sold by Pound/Shelter)	46	0
Dog - Desexed (by relevant age - Pensioner)	48	1392
Dog - Desexed (by relevant age)	89	6141
Dog - Desexed (by relevant age) with Late Fee	26	2288
Dog - Not Desexed (Breeder)	12	828
Dog - Not Desexed (Breeder) with Late Fee	1	88
Dog - Not Desexed (Not Recmd - Pensioner)	5	145
Dog - Not Desexed (Not Recmd)	16	1104
Dog - Not Desexed or Desexed (after relevant age)	84	19656
Dog - Not Desexed or Desexed (after relevant age) with Late Fee	3	759
Working Dog	3	0
Grand Total	511	34017

Figure 10:- Registration income by registration type.

- (g) Beach patrols:- Rangers completed 664 beach patrols during this quarter. A number of dog owners were spoken to during this period with Rangers identifying 762

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compliant dogs and 97 non-compliant dogs. Enforcement action and education is undertaken when offences are detected.

- (h) Shorebirds:- Rangers and Environmental Services Staff have collaborated with National Parks and their volunteers to protect shorebirds along the coastline over the season. A separate report is currently being prepared for Council to detail the results of the program over last breeding season.

Positive feedback from stakeholders has been received about the advertising on buses and ongoing Ranger patrols. Pre-planning has already commenced for the 2023/24 season.

- (i) Vegetation vandalism:- Rangers received 38 reports of vegetation vandalism and twelve are still under investigation. Rangers continue surveillance of these vandalised areas in accordance with Council’s Vegetation Vandalism Prevention Policy.
- (j) Animal Shelter: The Shelter currently has over 21,000 followers on Facebook. This platform provides an effective means of advertising adoptions, lost dogs and the promotion of responsible pet ownership.

Kitten numbers remained low during this period which has decreased income substantially. This quarter \$20K compared to last year \$28K

- i. Animal desexing vouchers:- The Shelter collaborated with external organisations, obtaining continued support for the animal desexing program. This resulted in 48 desexing vouchers being supplied to cat owners including 15 free vouchers relating to the RSPCA keeping cats safe at home project.
- ii. Contributions to the shelter:- The Shelter received \$1,239 in contributions from the public and businesses in the last quarter.

The Shelter would like to acknowledge the generosity of the public and these businesses. The Shelter will be using these donations to create friendly and bright spaces in the exercise yards.

- iii. Data for incoming and outgoing animals: -

Cats	Number	Dogs	Number
Cats incoming M/C	27	Dogs incoming M/C	82
Cats incoming not M/C	53	Dogs incoming not M/C	52
TOTAL	80	TOTAL	134
Cats incoming - Ranger	4	Dogs incoming - Ranger	38
Cats incoming - Public	56	Dogs incoming - Public	65
Cats Surrendered	19	Dogs Surrendered	31
Emergency Boarding	1	Emergency Boarding	0
TOTAL	80	TOTAL	134
Cats Reclaimed by Owner	6	Dogs Reclaimed by Owner	59
Cats Adopted	63	Dogs Adopted	58
Cats Euth'd Feral	8	Dogs Euth'd aggressive	5
Cats Euth'd medical	7	Dogs Euth'd medical	1
TOTAL	84	Transferred to rescue	4
		TOTAL	127

Figure 11:- Data on incoming and outgoing Cats and Dogs.

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Attachment to Report – D23/106646 - 60029E
Quarterly Review for Compliance Matters - Ordinary Meeting 8/5/2023

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Penalties Issued by Team and Offence Code

Offence Code by Team	Number Issued	Offence Value	Total Amount
Compliance	24		\$53,600
Development without development consent - class 1a or 10 building - Corporation	2	3000	6000
Development without development consent - class 1a or 10 building - Individual	10	1500	15000
Fail to comply with terms of development control order - Individual	4	3000	12000
Not provide notice of work to plumbing regulator	1	550	550
Not provide work plan to plumbing regulator - sanitary drainage system	1	550	550
Carry out building work without required certificate-class 1a or 10 building - Individual	3	1500	4500
Development not accord consent - any other case - Corporation	2	6000	12000
Carry out building work without required certificate-class 1a or 10 building - Corporation	1	3000	3000
Compliance Pools	22		\$8,910
Fail to maintain child-resistant barrier effective and safe	4	550	2200
Not comply with written direction - Owner	3	550	1650
Residential pool not have complying barrier - Owner	7	550	3850

Fail to erect prescribed warning notice - Occupier	5	110	550
Fail to ensure registration information entered on Register	3	220	660
Enviro Health	17		\$53,000
Development without development consent - any other case - Individual	13	3000	39000
Fail to comply with prevention notice - class 1 officer - Individual	1	4000	4000
Fail to comply with terms of development control order - Individual	1	3000	3000
Development not accord consent - any other case - Individual	1	3000	3000
Pollute waters - class 1 officer - Individual	1	4000	4000
Ranger Animal	97		\$49,935
Companion animal (other) not registered as prescribed - first offence	20	330	6600
Fail to prevent dog from escaping - not dangerous/menacing/restricted dog	20	220	4400
Fail to state full name/residential address	2	330	660
In charge of dog not under control in public place	1	330	330
In charge of dog which rushes at/attacks/bites/harasses/chases any person/animal	2	1320	2640
Not identify companion animal as prescribed - not dangerous/menacing/restricted dog	1	180	180
Owner of dog not under control in public place	10	330	3300
Owner of dog which rushes at/attacks/bites/harasses/chases any person/animal	18	1320	23760
Fail to comply with menacing dog control requirements	1	1760	1760
Companion animal (other) not registered if required by regulations - first offence	4	305	1220
Former owner not notify change of ownership	1	180	180
Not notify change in registration/identification information - not dangerous/menacing/restricted dog	1	180	180
Not immediately remove dog faeces from public place	1	275	275
Dog not wear collar and name tag - not dangerous/menacing/restricted dog	1	180	180
Not comply notice to register companion animal - first offence	14	305	4270
Ranger Environment	28		\$13,280
Aggravated deposit litter excluding cigarette and from vehicle - Individual	4	450	1800
Deposit litter excluding cigarette and from vehicle - Individual	1	250	250
Deposit litter from vehicle no exclusions - Individual	1	250	250
Development not accord consent - class 1a or 10 building - Individual	2	1500	3000
Fail to comply with terms of notice erected by council	16	110	1760
Owner transport etc waste to unlawful facility - class 1 officer - Individual	1	2000	2000
Transport etc waste to unlawful waste facility - class 1 officer - Individual	2	2000	4000
Unlawfully remove plant/animal/rock/soil from public place	1	220	220

Ranger Parking	2,754		\$441,344
Disobey motor bike parking sign	33	120	3960
Disobey no parking sign	66	120	7920
Disobey no stopping sign	166	283	46978
Disobey no stopping sign (in school zone)	48	362	17376
Double park	8	283	2264
Fail to comply with terms of notice erected by council (driving/parking/use of vehicle)	21	110	2310
Not angle park as on parking control sign or road marking	13	86	1118
Not parallel park in direction of travel	88	283	24904
Not park wholly within parking bay	12	86	1032
Not position front/rear of vehicle correctly - 90 degree angle parking	145	86	12470
Not position rear of vehicle correctly - 45 degree angle parking	351	86	30186
Not stand vehicle in marked parking space	43	86	3698
Park continuously for longer than indicated	486	86	41796
Park vehicle for longer than maximum period allowed	632	86	54352
Stop at side of road with continuous yellow edge line	297	283	84051
Stop in bus zone (clearway or transit/bus lane)	19	283	5377
Stop in bus zone (in school zone)	40	362	14480
Stop in bus zone (not clearway or transit/bus lane)	19	283	5377
Stop in disabled parking area without current permit displayed	62	603	37386
Stop in loading zone	7	201	1407
Stop in taxi zone	34	201	6834
Stop on path/strip in built-up area	38	283	10754
Stop on/across driveway/other access to/from land	16	283	4528
Stop within 10 metres of an intersection (no traffic lights)	28	362	10136
Stop in loading zone longer than 30 minutes	2	201	402
Not parallel park near left	1	120	120
Stop heavy/long vehicle longer than 1 hour	3	120	360
Disobey no parking sign (in school zone)	8	201	1608
Stop near postbox	20	120	2400
Stop on painted island	1	120	120
Wilfully contravene/disregard notice/barrier	47	120	5640
Grand Total	2942		\$62,0069

Warnings Issued by Team and Offence Code

Compliance	13
Carry out building work without required certificate-class 1a or 10 building - Individual	3
Development not accord consent - any other case - Corporation	1
Development without development consent - any other case - Individual	1
Development without development consent - class 1a or 10 building - Individual	1
Fail to give notice required under section 6.6-class 1a/10 building - Corporation	1
Fail to give notice required under section 6.6-class 1a/10 building - Individual	5
Not notify plumbing regulator when work ready for inspection	1
Enviro Health	1
Pollute waters - class 1 officer - Individual	1
Ranger Animal	18
Fail to prevent dog from escaping - not dangerous/menacing/restricted dog	9
In charge of dog in prohibited public place	2
Not identify companion animal as prescribed - not dangerous/menacing/restricted dog	1
Owner of dog in prohibited public place	6
Ranger Enviro	1
Aggravated deposit litter excluding cigarette and from vehicle - Individual	1
Ranger Parking	9
Fail to comply with terms of notice erected by council (driving/parking/use of vehicle)	2
Not park wholly within parking bay	1
Not position front/rear of vehicle correctly - 90 degree angle parking	1
Park continuously for longer than indicated	1
Park vehicle for longer than maximum period allowed	1
Stop in bus zone (clearway or transit/bus lane)	2
Stop in bus zone (in school zone)	1
Grand Total	42

Proactive Patrols - Dogs Beaches & Reserves

Beach / Reserve	# Beach / Reserve	# Compliant Dogs	# Non-compliant Dogs
Bawley Beach	13	8	2
Bawley Point North Beach	2	0	0
Bendalong Boat Harbour Beach	6	2	1
Bendalong Flat Rock Beach Prohibited	7	0	0
Berrara Beach Spit Prohibited	17	2	1
Burrill Lake Burrill Beach	4	0	0

Callala Bay	7	8	0
Callala Bay Bicentennial Park	1	1	0
Callala Bay Wowly Creek	7	21	8
Callala Beach East End	10	7	2
Callala Beach Prohibited Area	1	0	0
Callala Beach West End	4	5	4
Cudmirrah Beach - North	3	0	0
Cudmirrah Beach - South	2	0	0
Culburra Beach North On Leash	3	0	2
Culburra Beach South Off Leash timed	10	32	7
Culburra Beach Tilbury Cove	6	25	12
Culburra Lake Wollumboola Prohibited	42	25	9
Culburra Warrain Beach	1	0	0
Cunjarong Beach	2	0	0
Currarong Abrahams Bosom Beach	15	14	3
Currarong Beach Off Leash timed	2	1	0
Currarong Rock Pool	4	0	0
Dolphin Point	1	3	0
Greenwell Point Foreshore Reserve	12	25	0
Huskisson Beach Off Leash timed	33	225	3
Huskisson Moona Moona Beach / Creek	60	14	6
Huskisson Shark Net Beach Prohibited	1	0	0
Hyams (Seamans) Beach	29	41	0
Hyams Beach Chinamans Beach - NPWS	9	0	1
Hyams Beach Little Hyams Beach	11	9	0
Kioloa Beach	10	9	3
Lake Conjola Conjola Beach	1	2	0
Lake Conjola Ocean Beach Spit Prohibited	9	2	0
Lake Tabourie Tabourie Beach	2	1	2
Lake Tabourie Wairo Beach	1	0	0
Manyana Beach	1	3	3
Mollymook Beach North Prohibited	21	0	0
Mollymook Beach On Leash 24 hrs	5	20	2
Mollymook Beach South Prohibited	9	5	0
Mollymook Bogey Hole	1	0	0
Mollymook Colliers Beach Off Leash 24 hrs	2	10	0
Myola Breakwall NPWS	1	0	0

Myola Spit Prohibited	7	0	0
Narrawallee Beach North Prohibited	23	0	0
Narrawallee Beach Off Leash timed	5	21	7
Narrawallee Beach South Prohibited	19	7	0
Narrawallee Spit Prohibited	6	0	0
Shoalhaven Heads River Road Reserve Off Leash 24hr	3	4	0
Shoalhaven Heads Seven Mile Bch Off Lsh 24hr/OnLsh	34	125	5
Shoalhaven Heads Spit Prohibited	73	24	10
Sussex Inlet Waterfront Reserve	1	3	0
Ulladulla Rennies Beach	3	1	0
Vincentia Barfleur Beach	1	0	0
Vincentia Blenheim Beach Prohibited	4	0	0
Vincentia Collingwood Beach Prohibited	50	0	0
Vincentia Nelsons Beach Off Leash timed	8	28	2
(blank)			
Inyadda Beach	5	2	0
Bendalong Washerwomans Beach Off Leash 24 hrs	3	10	0
Milton Showground	1	0	0
Bawley Point Gannet Beach	2	0	0
Huskisson Currumbene Creek Prohibited	4	5	0
Merry Beach	2	0	0
Nowra Riverview Road	4	9	2
Vincentia Plantation Point	2	3	0
St Georges Basin Blackett Park	1	0	0
Bawley Point Murramarang Beach	2	0	0
Vincentia Greenfield Beach	2	0	0
Lake Conjola Cunjurong Beach Shore Birds	10	0	0
Sanctuary Point Ray Brooks Rsrv (BTRMP - STR) PRHB	1	0	0
Grand Total	664	762	97

Proactive Patrols - Other Categories

Patrol Type	# Patrol Type	Additional Information
Asset Protection	84	
Camping	104	
Illegal Dumping	142	Rubbish found = 49
Parking	396	
Schools	88	
Vegetation Vandalism	2	

Water Flow Restrictor Check	1	
Grand Total	817	

CL23.164 DA22/1847 – 31 Currambene Street Huskisson – Lot 3 Sec 1 DP 758530

DA. No: DA22/1847

HPERM Ref: D22/430478

Department: Certification & Compliance

Approver: James Ruprai, Director - City Development

Attachments: 1. DRAFT Notice of Determination (under separate cover) [⇒](#)
2. s4.15 Assessment Report (Class 1 & 10) (under separate cover) [⇒](#)

Description of Development: Staged Development involving demolition of existing dwelling house and detached shed (Stage 1), Torrens title subdivision of 1 lot into 2 lots (Stage 2) and construction of a two-storey dwelling house and in-ground swimming pool on each lot (stage 3)

Owner: N H Hamam & A R Arab

Applicant: Kalyan Raju Gaddiraju

Notification Dates: 29 August 2022 – 14 September 2022

No. of Submissions: Six (6) were received

Purpose / Reason for consideration by Council

On 26 September 2022, Council resolved to call in development application DA22/1847 for determination citing public interest (MIN22.729).

Recommendation

That Development Application DA22/1847 for demolition of existing dwelling house and detached shed (Stage 1), Torrens title subdivision of 1 lot into 2 lots (Stage 2) and construction of a two-storey dwelling house and in-ground swimming pool on each new lot (stage 3) be determined by way of approval subject to the recommended conditions of consent provided at Attachment 1.

Options

1. Approve the application in accordance with the recommendation

Implications: This would enable the development to proceed according to the recommended conditions of consent.

2. Refuse the Application

Implications: Council would need to determine the grounds on which the application is refused, having regard to the section 4.15(1) considerations. The applicant would be entitled to seek a review and / or pursue an appeal in the Land and Environment Court.

3. Alternative Recommendation

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Implications: Council will need to specify an alternative recommendation and advised staff accordingly.

Location Map

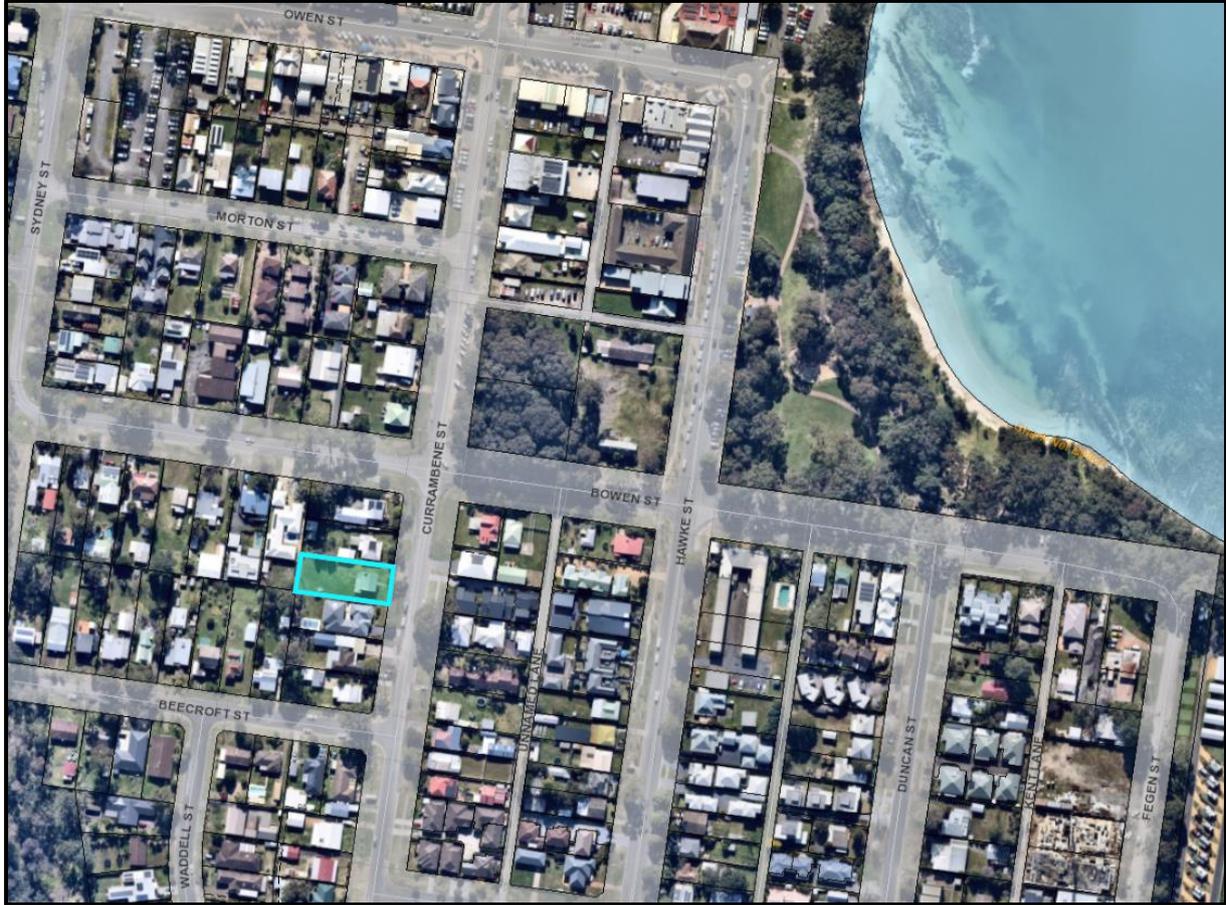


Figure 1: Location Map - Locality

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Figure 2: Location Map - Subject Site

Background

Proposed Development

The development application proposes staged development involving demolition of the existing dwelling house and detached shed, Torrens title subdivision of 1 lot into 2 lots and construction of a two-storey dwelling house and an in-ground swimming pool on each new lot.

Proposed Stage 1:

Proposed stage 1 is for the demolition of the existing dwelling house and detached shed. This will result in a vacant allotment of land.

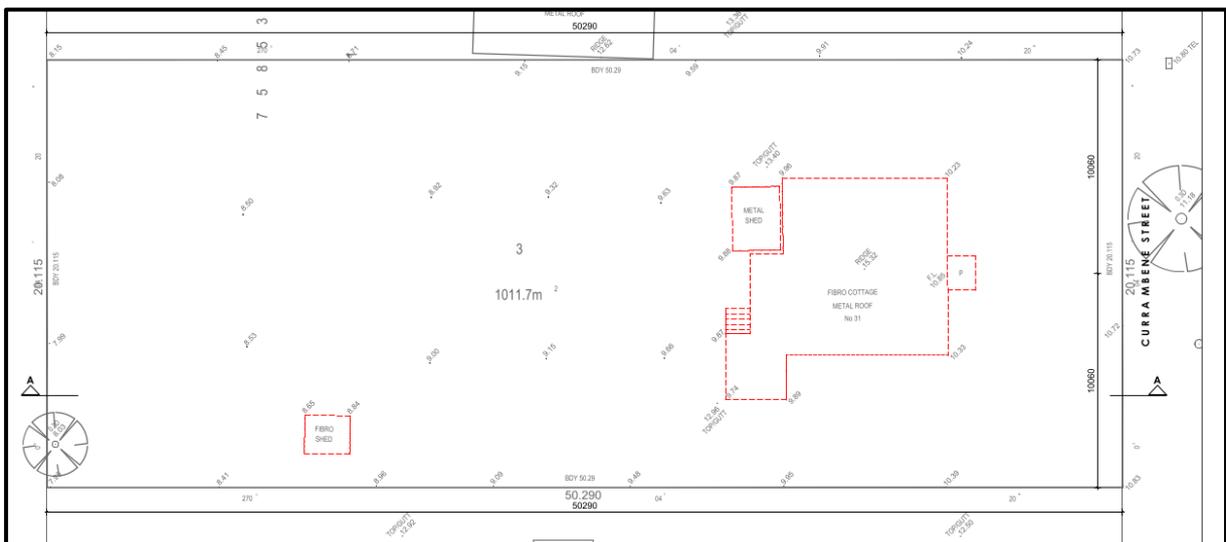


Figure 3: Demolition Plan (stage 1)

Proposed Stage 2:

Proposed stage 2 is for the Torrens title subdivision of 1 lot into 2 lots. The proposed subdivision will result in Lots A and B each with an area of 505.85 m²: Each lot will be accessed from Currumbene Street.

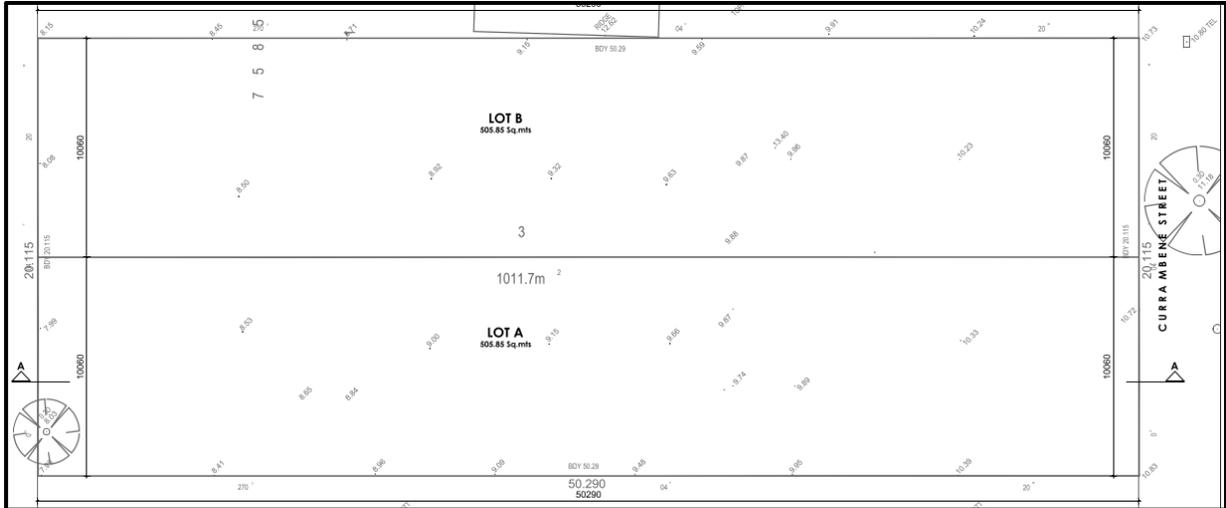


Figure 4: Torrens title subdivision of 1 lot into 2 lots (stage 2)

Proposed Stage 3:

Proposed stage 3 includes the construction of a two-storey dwelling house and in-ground swimming pool on each new lot (Lot A and Lot B). Each new dwelling house will comprise a double car garage, drawing room, bathroom, laundry, open plan kitchen, dining and living area, one bedroom with ensuite and alfresco area at ground level. On the first floor there are three bedrooms, master with ensuite, bathroom and a rumpus room.

The external materials and finishes for the proposed dwelling houses will include rendered fibre cement walls painted Dulux “vivid white” or similar, powder coated aluminium windows and window frames, and a Colourbond “woodland grey” or similar roofing.

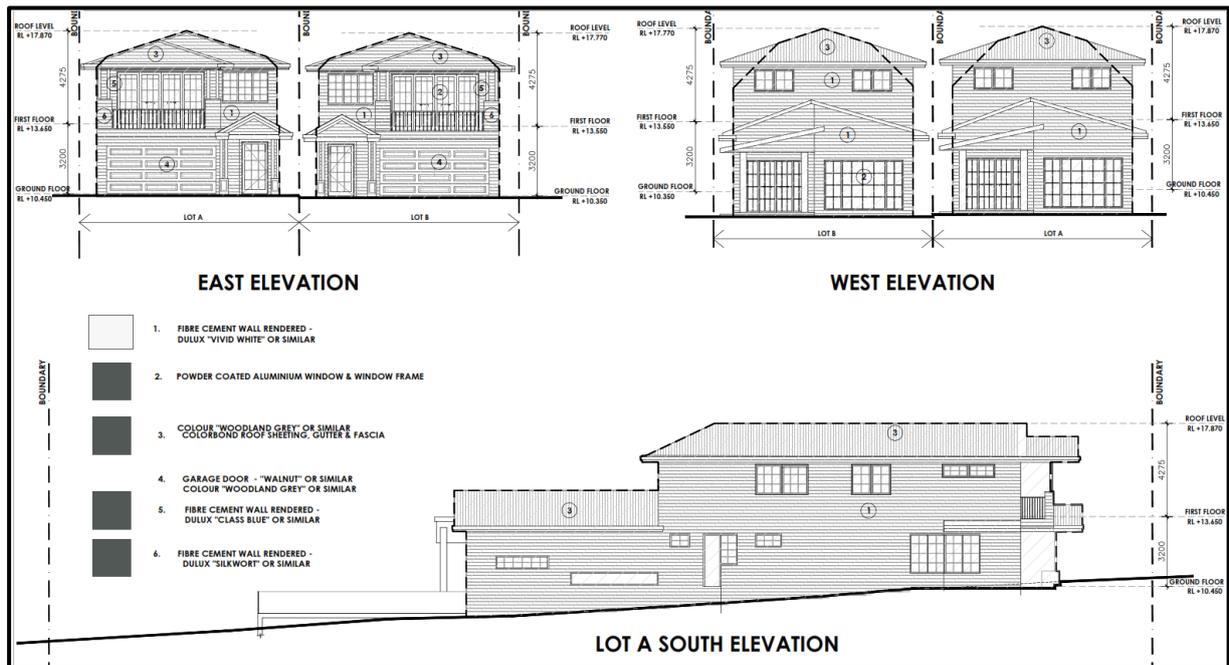


Figure 5: East and West Elevation Plans (Lot A & B) and South Elevation (Lot A)

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Figure 6: North Elevation (Lot A)

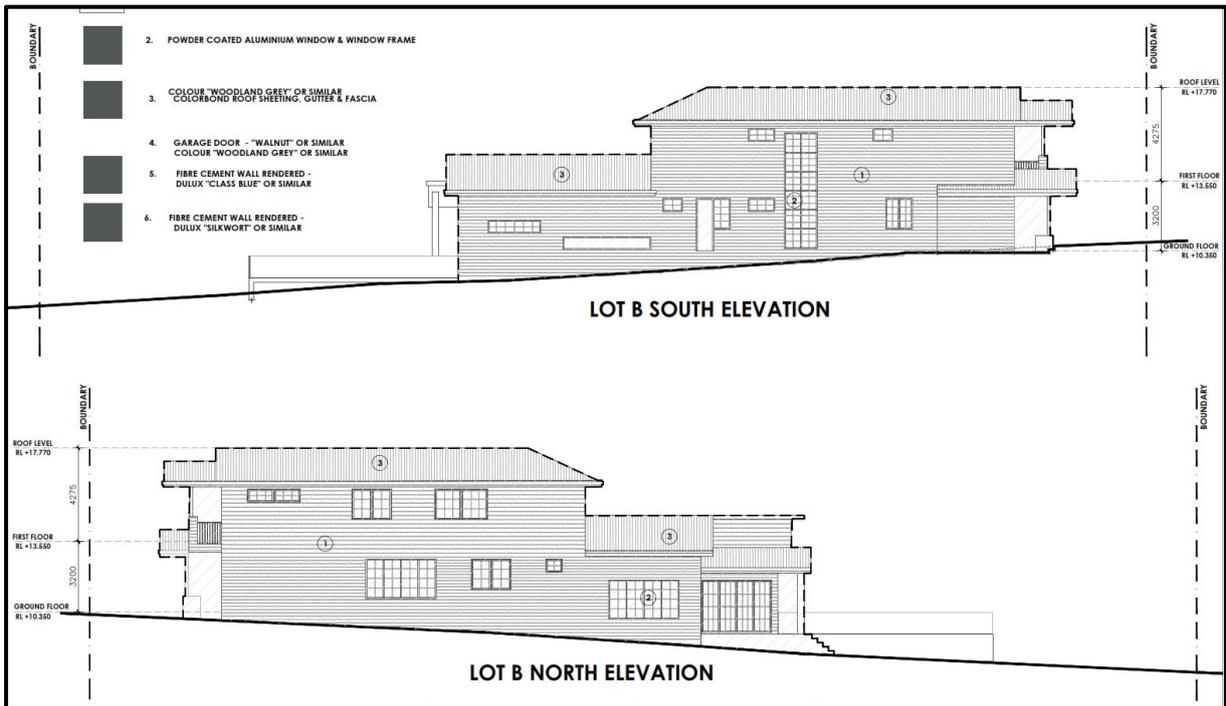


Figure 7: North and South Elevation (Lot B)

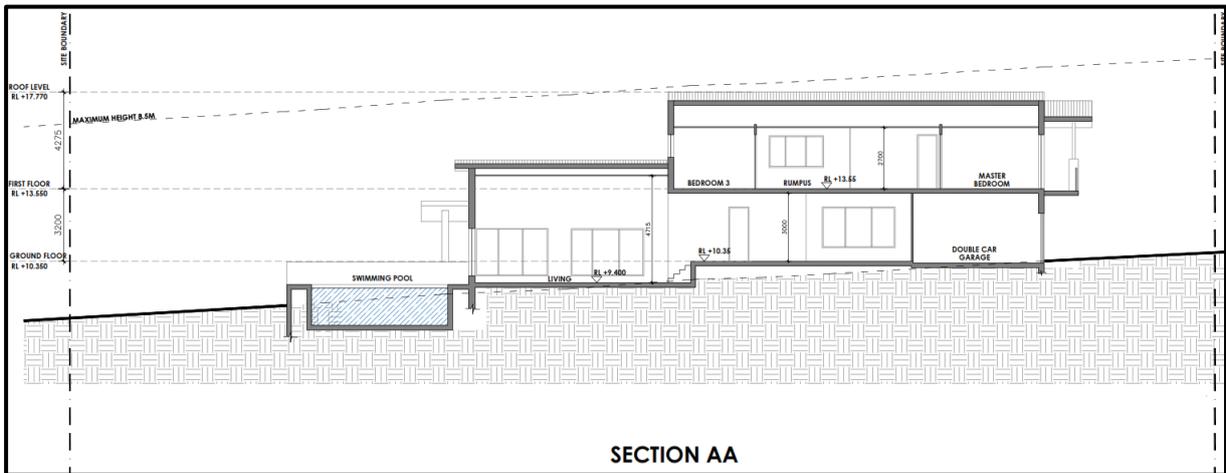


Figure 8: Typical Section plan of new dwelling house and in-ground swimming pool

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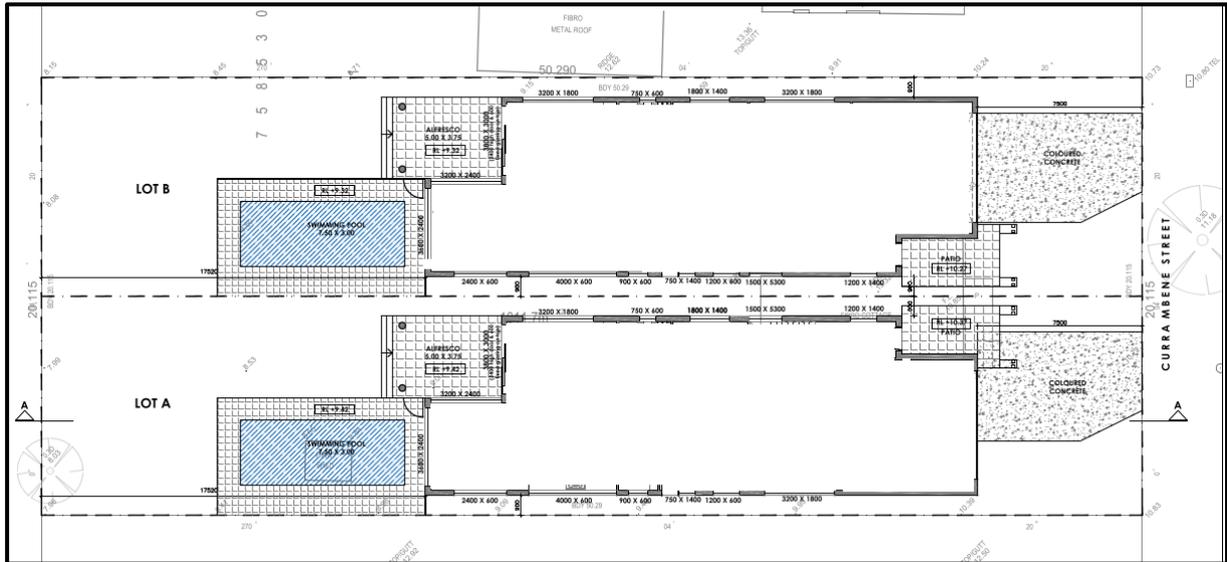


Figure 9: Site Plan

Subject Land

The subject site is located on the western side of Currambene Street. It is legally identified as Lot 3, Section 1, DP758730 and is described as 31 Currambene Street, Huskisson.

Site & Context

The site is a rectangular allotment with a site area of 1,011.7m². The site has connections to reticulated water and sewer.

Existing development on the site consists of a single storey dwelling and detached shed; both of which are to be demolished. The surrounding area is residential in character and the site is adjoined by low and medium density residential development and associated ancillary structures. Under the provisions of Shoalhaven LEP-2014 the subject land is zoned R2 – Low Density Residential.

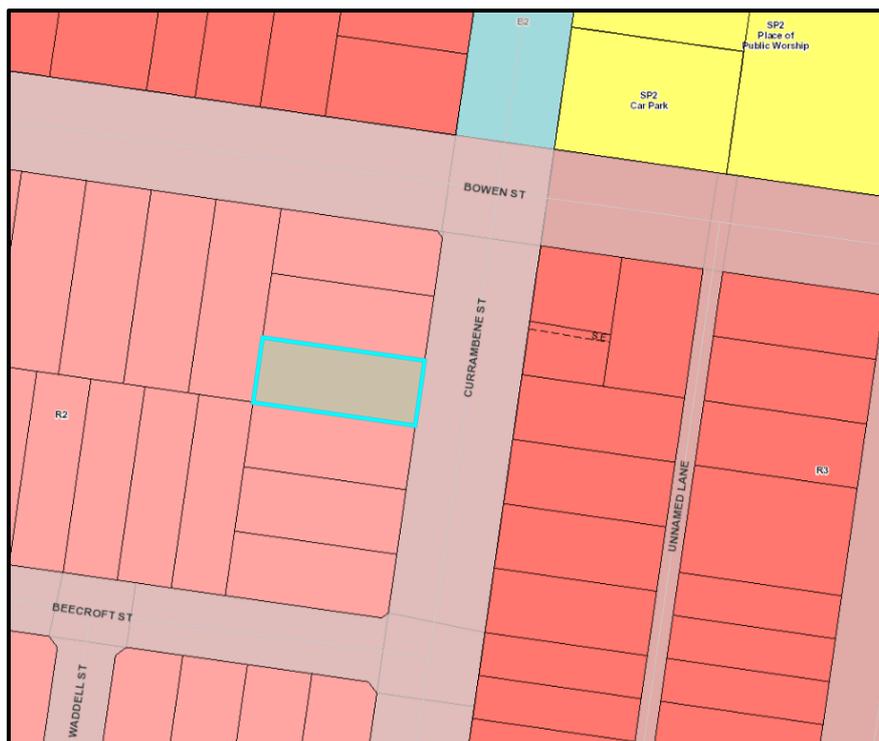


Figure 10: Zoning Map

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Figure 11: Photograph of existing development on the subject site viewed from Currumbene Street

History

After the initial assessment of the application, the applicant was requested to submit revised plans and documentation on 16 August 2022. The following information was requested:

- Amended plans to demonstrate compliance with the maximum building height permitted under the Local Environmental Plan (LEP) 2014.
- Clarification regarding the type of subdivision proposed as part of the development application.
- Plans to identify the proposed stages of development.
- Shadow diagrams in accordance with Chapter G12 of Shoalhaven Development Control Plan (DCP) 2014.
- Stormwater to be considered in accordance with Chapter G2 of Shoalhaven DCP 2014.
- Compliance with the predominant building line in accordance with Chapter G12 of Shoalhaven DCP 2014.
- Identify the extent of earthworks associated with the proposed building works.
- Clarification of the proposed Floor Space Ratio.
- Revised Statement of Environmental Effects to address the applicable chapters of Shoalhaven DCP 2014 and to remove any reference to other Local Government Areas.

On 5 September 2022, additional information was submitted by the applicant. A review of the submitted information revealed a number of items previously requested on 16 August 2022 remained outstanding.

On 12 September 2022, the applicant was advised of the additional information and a further request was made for the same submission on 2 November 2022.

On 26 September 2022 Council resolved to call in development application DA22/1847 for determination citing public interest (MIN22.729).

The applicant provided amended plans and documentation on 12 January 2023. The Development Assessment Officer requested further information on 19 January 2023 and in response the applicant provided further amended plans and documentation on 1 February 2023.

A final request for information was submitted to the applicant on 20 March 2023, requesting amendments to the stormwater engineering design. Amended stormwater plans were provided on 23 March 2023.

There are outstanding issues relating to the driveway location and kerb and guttering, however these can be adequately resolved by conditions of consent requiring the submission of amended plans prior to the issue of a construction certificate.

Planning Assessment

The Development Application has been assessed under s4.15 of the Environmental Planning and Assessment Act 1979. Please refer to Attachment 2.

Consultation and Community Engagement:

Notification was made in accordance with Council’s Community Consultation Policy with letters being sent to property owners within a twenty-five metre buffer of the site. The notification was for a two-week period.

Six public submissions were received in relation to Council’s notification of the development. All of the submissions received were objections to the development.

Key issues raised as a result of the notification are provided below.

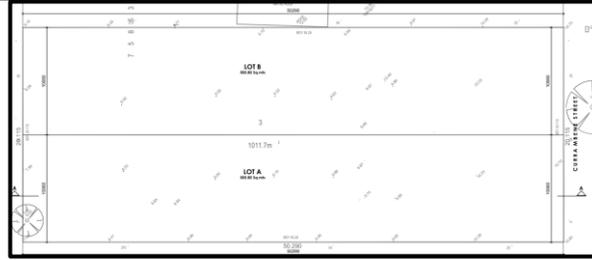
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Summary of Public Submissions	
Objection Raised	Comment
<p><u>Statement of Environmental Effects</u> <i>“The statement of environmental effects submitted is inaccurate (perhaps the same SOE they submitted in Ryde? Has the proponent truly considered the character and streetscape of Huskisson?)”</i></p>	<p>A revised Statement of Environmental Effects was provided by the Applicant to reflect the subject site and local government area.</p>
<p><u>Subdivision</u> <i>“We are concerned that the proposal includes subdivision, especially when two dwellings can be built as compliant development on this site. We are concerned that</i></p>	<p>The proposal includes Torrens Title subdivision of the dual occupancy pursuant to clause 4.1 of <i>Shoalhaven LEP 2014</i>.</p> <p>The proposed Torrens title subdivision will create two residential lots, each with a total area of 505.85m² a depth of 50.29m and width of 10.06m. This is permissible in accordance with clause 4.1 of SLEP-2014.</p>

subdivision brings the risk of denser development in the future.”

“The proposal does not meet the desired future character of Huskisson as defined by the community, and it is not sympathetic to the streetscape of the R2 zoned side of Currambene St, which is single dwelling on large blocks. The subdivision is clearly contradictory to the character of this zone and promotes a design outcome that is not characteristic of the existing low-density housing on the western side of Currambene Street. No other developments in the R2 zoning have subdivided in to narrow, front-to-back blocks. The proposal must be considered in terms of precedence, and we strongly advocate that the entire western side of Currambene street NOT be split in to 10m wide blocks.”

“Initial review of Chapter G11 of the Development Control Plan, item P79 would suggest this proposal does not meet the requirements for minimum lot width, of 16m square width. We would argue that allowing a subdivision to this width does not meet the desired outcomes of low density zoning, or



Clause A79.2 in Chapter G11 of Shoalhaven DCP 2014 states:

Performance Criteria	Acceptable Solutions								
<i>General</i>									
P79 Lots have the appropriate area and dimensions for the siting and construction of a dwelling and ancillary outbuildings, the provision of outdoor space, convenient vehicle access and parking.	<p>A78.1 Minimum standard residential lot size in any residential subdivision is 500m².</p> <p>A79.2 Lot shape and dimension:</p> <table border="1"> <tbody> <tr> <td>Rectangular non-corner lots</td> <td>16m square width minimum 30m minimum depth</td> </tr> <tr> <td>Rectangular corner lots</td> <td>Square width 20 metres Depth 30 metres</td> </tr> <tr> <td>Irregular shaped lots</td> <td>Square width 12m Width at building line 16m Mean width 18 m Depth 30m</td> </tr> <tr> <td>Corner Solays</td> <td>4m minimum</td> </tr> </tbody> </table>	Rectangular non-corner lots	16m square width minimum 30m minimum depth	Rectangular corner lots	Square width 20 metres Depth 30 metres	Irregular shaped lots	Square width 12m Width at building line 16m Mean width 18 m Depth 30m	Corner Solays	4m minimum
Rectangular non-corner lots	16m square width minimum 30m minimum depth								
Rectangular corner lots	Square width 20 metres Depth 30 metres								
Irregular shaped lots	Square width 12m Width at building line 16m Mean width 18 m Depth 30m								
Corner Solays	4m minimum								

The new lots each propose a width of 10.06m, providing a shortfall of 5.94m or a departure of 37.1% in width. Although the new lots do not meet the acceptable solution, the proposal demonstrates the ability for the new lots to allow for the siting and construction of a dwelling, ancillary development and provide private open space and vehicle access in accordance with the performance solution.

Council is satisfied the subdivision and proposed lot size and layout is appropriate, and the proposal is consistent with the development controls and performance criteria set out in Chapter G11 of Shoalhaven DCP 2014.

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is in anyway sympathetic to the current streetscape and existing lots.”

Solar Access

Extract from SEE:
"The proposal ensures that residential amenity is maintained within the locality, as it does not adversely impact upon solar access, internally or externally".

“This is clearly inaccurate as the two storey building will significantly impact solar access for its neighbouring property at 33 Currumbene St as noted in their notification plans. We note that a report on over shadowing has not been provided. There will be overshadowing and loss of privacy as the proposal is to build two storeys. The building will overshadow their neighbour, lot B will also overshadow lot A — this is poor design in an era when we must be requiring our houses to offer more comfort and energy efficiency.”

“The design of the buildings, appearing to meet or exceed the maximum height, will create significant overshadowing of our premises and property on the southern boundary, impeding solar access to the roof and

Shadow diagrams provided by the applicant demonstrate the proposed development will maintain at least 3 hours of direct sunlight between 9am and 3pm on June 21st to at least 10m² of the private open space and 50% of windows and glazed doors of north facing living areas.

The plans also demonstrate maintained solar access to the north facing roofs and existing solar collectors of the adjoining dwelling to the south.

Plan shadow diagrams:

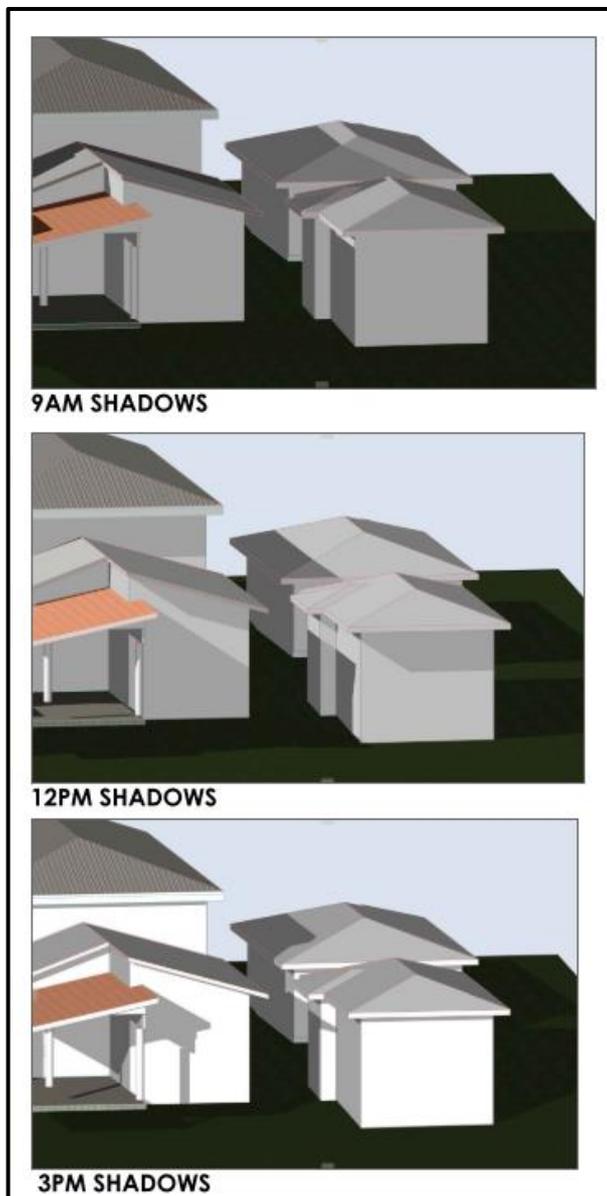


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complete shadowing of the private courtyard space. We would argue the design of the buildings, with the second storey located at the front of the property does not minimise the shading of adjacent private open space, as specified in Chapter 12, P17.1/A17.2, in fact creating the worst possible outcome. Also, the difference in heights between the adjacent buildings is exacerbated by the sloping block which increases the relative height between the proposed development roof line and the adjacent buildings toward the rear of the blocks”



Elevated shadow diagrams were also provided to show any overshadowing on the adjoining property to the south:

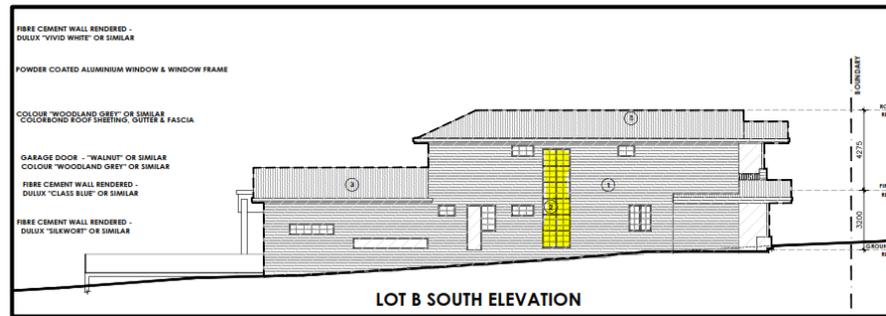
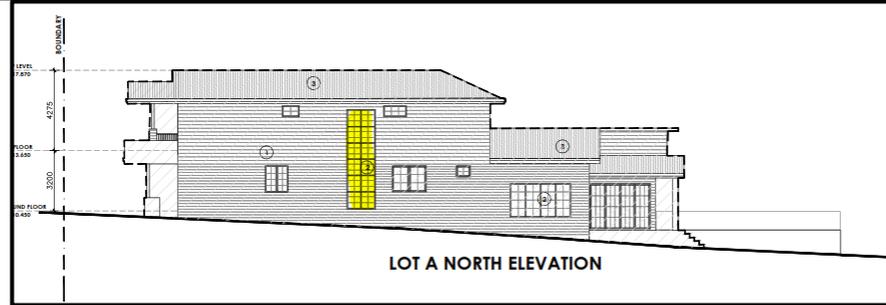


Elevated shadow diagrams demonstrate the existing solar panel on the adjoining property to the south maintains at least 3 hours of direct sunlight during the winter solstice despite the development:

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	 <p>33 CURRAMBENE STREET 12PM SHADOWS</p>  <p>33 CURRAMBENE STREET 1PM SHADOWS</p>  <p>33 CURRAMBENE STREET 3PM SHADOWS</p>	<p>CL23.164</p>
<p><u>Visual Privacy</u></p> <p><i>“because of proposed building height and proximity to neighbours visual privacy is not conserved. Particularly the 2 story (sic) windows on the southern face of the building, and window directly opposite the courtyard.”</i></p> <p><i>“Also, with the elevation of the rear of the property, it will be above our existing 1.8 metre fence and cause considerable disturbance both visually and with</i></p>	<p>Appropriate privacy is maintained to adjoining properties. Most of the openings servicing the first floor are considered “low usage” rooms such as bedrooms, bathrooms and a stairwell.</p> <p>One window on the first floor is servicing a rumpus room, which is not considered a “low usage” room (located on the northern elevation for the new dwelling on Lot B). For this reason, the window will be conditioned to provide a minimum sill height of 1.5m to reduce any potential privacy impacts and ensure direct overlooking of main internal living areas and private open space of other dwellings and adjoining properties is minimised.</p> <p>It is also acknowledged that the internal staircase in each new dwelling will place people in an elevated position along the northern elevation on Lot A and the southern elevation of Lot B.</p>	

noise from not one property but two.”
 “The positioning of the pools and living areas is in close proximity to our own backyard...is of massive concern.”



Although these overlooking impacts from the internal stairs would be only transitory, due to the elevated nature of the development, they are not insignificant. For this reason, translucent/opaque glazing will be required on the window servicing the stairwell to mitigate any potential privacy impacts.

Generally, direct overlooking of main internal living areas and private open space of other dwellings and adjoining properties is minimised by the building layout.

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Floor Space Ratio

“The designs exceed the FSR of 50%. This value is the limit, not a guideline. That the designers have proposed something that is 'just a little bit' over is like travelling at 55km per hour in a 50km per hour zone — it's just a little bit more. Allowing these 'little bits' sets precedence, and the next request is for more.”

The subject land is zoned R2 - Low Density Residential. Chapter G12 of Shoalhaven DCP identifies that a floor space ratio of 0.5:1 is applicable to the proposed development. Each new lot has a site area of 505.85m², therefore the maximum floor area to comply with ratio of 0.5:1 is 252.9m².

The FSR proposed for each new dwelling is 0.51:1 or 254m² (exceedance of 1.1m²). The development exceeds a floor space ratio of 0.5:1 for the site, providing a departure of 2% to the development control. Despite the departure to the DCP control, the proposed buildings are well articulated and considered consistent with development control plan outcomes. Also, the bulk and scale of the development is compatible with the existing development in the locality.

The minor departure to the development control has been assessed on merit and is not considered to cause any greater adverse impacts, than a compliant design. The minor departure to the FSR is considered acceptable in this instance given the proposed works are consistent with the relevant objectives and performance solutions of the development control.

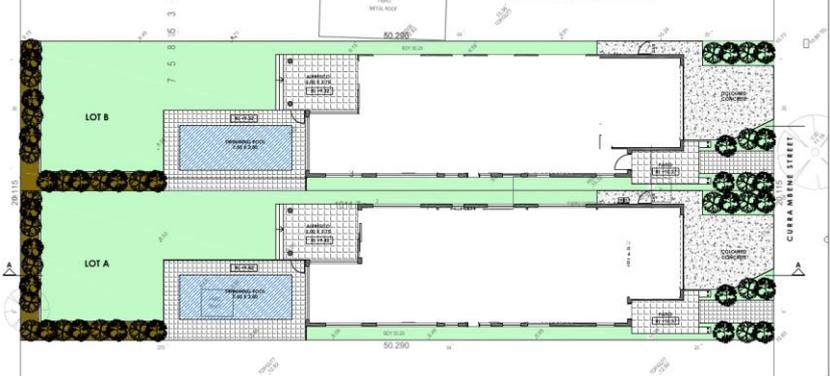
Maximum Building Height

“In addition the buildings propose to go over the maximum height which is 8.5 m,

The applicant has provided amended plans demonstrating compliance with the maximum building height of 8.5m.

<p><i>managing water flow during storms due to a lack of kerb and guttering, old poorly aligned stormwater pipes and maintenance issues.”</i></p> <p><i>“The owners of 16 Bowen Street are currently experiencing heavy run -off and flooding and are concerned that this development may exacerbate this condition. Their property backs onto ours at 15 Beecroft Street.....The owners of 33 Currambene Street developed their block with appropriate sign off from the SCC engineers, but in fact when they had built, run off from Currambene Street poured into our land, creating a significant bog. This was well before the recent seasons of heavy rain. The owners amicably addressed this problem.”</i></p>	
<p><u>Landscaping</u></p> <p><i>“The dwellings (duplex) proposed will cover almost the entire block without room for plants and/or vegetation which would afford some privacy and noise reduction to the surrounding residents and in particular our backyard.”</i></p>	<p>Chapter G12 of Shoalhaven DCP identifies that lots with an area between >450m²–600m² are required to provide a minimum landscaped area of 20% of the lot area. In this instance the lots are 505.85m² which means a landscaped area of at least 101.17m² is needed. The applicant has provided a landscape plan that demonstrates compliance with the abovementioned landscaped area requirements.</p>

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Each lot has 147 m² of landscaping and this is equivalent to 29%.

Car Parking

“Therefore the proposed developments should provide adequate off street parking or at least plan for it in the future. This would prevent developer from building out the whole block and increasing traffic congestion and parking issues in Huskisson. As it is most likely that this property will be used for rental of one, if not both dwellings, is there a requirement for this development to provide off street parking for the tenants using it as a holiday/casual rental??”

Chapter G21 of Shoalhaven DCP provides the car parking guidelines for a variety of development types. The development application proposes a new dwelling house on each new lot. The following extract from chapter G21 identifies the number of car spaces required for a dwelling house:

Land Use Type	Standard
Residential	
Dwelling house	2 spaces.

Each dwelling house proposed has incorporated a double garage into the design. The proposed development is consistent with the development controls for car parking.

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Financial Implications:

There are potential cost implications if Council decide to refuse the application. Such costs would be associated with defending an appeal in the Land and Environment Court of NSW.

Legal Implications

A Section 8.2 review and/or appeal with the Land and Environment Court are possible if the application is refused.

Summary and Conclusion

The proposed development is compliant with the provisions of Shoalhaven LEP 2014 and is consistent with the performance solutions within Shoalhaven DCP 2014.

The application is considered capable of support as there are no substantial planning reasons to warrant refusal. Accordingly, it is recommended it is approved subject to the conditions in the draft consent (Refer Attachment 1).

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CL23.165 Membership Appointment - Natural Area Volunteers Group

HPERM Ref: D23/120015

Department: Environmental Services

Approver: James Ruprai, Director - City Development

Reason for Report

To appoint new members to the Natural Area Volunteers Group (NAVVG) following the recent call for Expressions of Interest (EOI) to allow adequate opportunity to reach quorum for this committee in the future.

Recommendation

That Council appoint the following applicants as members to the Natural Area Volunteers Group for a three-year term to expire in February 2026:

1. Roger Hart
2. Paul Hayden

Options

1. As recommended.

Implications: Appointing the above members will fill some of the membership vacancies and permit quorum at future committee meetings.

2. Provide an alternative recommendation.

Implications: These will depend upon the nature of the recommendation.

Background

Council called for an EOI to seek participation of five local active members of NAVVG (such as Bushcare, Dunecare, etc) from 11 January 2022 to 3 February 2023. Two (2) applications were received – from Wayne Pearce and Siobhan Berkery. Wayne and Siobhan were appointed to the NAVVG by Council in February 2023 (MIN23.85).

Following this initial EOI, a second EOI was distributed with the aim of filling the three-remaining vacant NAVVG positions. The second EOI process closed on 17 April 2023. Two additional applications were received – from Roger Hart and Paul Hayden:

- Roger is the volunteer coordinator of the Huskisson Woollamia Bushcare Group and has been a member of the group since September 2010.
- Paul has been a regular Bushcare volunteer with the Narrawallee Bushcare Group since March 2015.

It is recommended that Council appoint these two applicants as they have both been valuable participants with Bushcare groups and are willing and capable of providing representative input at a strategic level for the NAVVG.

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It has been determined that Council will not go out for a third EOI as NAVG now has adequate membership to reach quorum. The one (1) vacant position will continue to be advertised on Council's [Natural Area Volunteers Group webpage](#).

Community Engagement

The EOI process involved community engagement to seek applications for NAVG membership. This involved dissemination of the membership application via local papers, social media and through direct correspondence with active Bushcare and Dunecare volunteers.

CL23.166 Variations to Development Standards - March Quarter 2023

HPERM Ref: D23/128165

Department: Development Services

Approver: James Ruprai, Director - City Development

Attachments: 1. Planning Circular: PS20-002 Variations to Development Standards [↓](#)
2. Spreadsheet of Reportable DAs with Clause 4.6 Variations [↓](#)

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 2014*) 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 – March Quarter Report 2023 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.)

Summary of reportable variations

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 **5** reportable variations for the March Quarter. The spreadsheet is attached to this report.

1. DA22/2284 – 58 Warrain Crescent, Currarong. New dwelling.

Variation – height – 6.1%. The design responded to irregular topography (a 'dip') in the site and was limited to a small section of the roof.

2. DA22/1567 – 3 Brooks Land, Kangaroo Valley. Alterations and additions.

Variation - height – 7.7%. The design responded to a steeply sloping site. The height protrusion is limited to a small portion of 'roof' at the rear of the dwelling. The new addition is designed to integrate with the existing dwelling.

3. DA22/1710 – 12 Milham Street, Lake Conjola. New dwelling.

Variation – height – 8.9%.

The DA was presented to Council on 5 December 2022.

The proposed dwelling exceeded the height of building limitation under section 4.3, *Shoalhaven Local Environmental Plan 2014* (SLEP 2014) by a maximum extent of 1.083m (being 12.7%). The extent of the contravention required referral to Council for consideration.

Council however resolved at its Ordinary Meeting on 5 December 2022:

'That Council:

1. *Delegate authority to the CEO (Director City Development) to negotiate a revision in the roof design to reduce the overall height of the proposal; and,*
2. *Where a revised overall building height can be agreed within 10% of the height limitation, an approval with conditions be issued for the development under delegation.*
3. *Staff also consider the height of the buildings opposite this property.'* (MIN22.948)

Additional information was requested on 12 December 2022, being a revised roof design to reduce the overall height of the proposal within 10% of the building height limitation. It was also requested any revised design consider the height of the buildings opposite the subject site.

Additional information was provided in response on 17 January 2023, 19 January 2023, 27 January 2023, 22 February 2023 and 1 March 2023.

The height of the roof was reduced from 10.983m AHD (being 9.583m above existing ground level) to 10.657m AHD (being 9.257m above existing ground level), achieved by reducing the pitch of the upper roof from 12.5 degrees to 8 degrees. The height exceedance was measured to be 0.757m or 8.9% - under 10%.

The newer buildings in the vicinity of the subject site have been designed to respond to the flood prone nature of the area by building to two storeys.

In terms of the designs, some of the newer buildings (7 and 8 Milham Street) are of 'regular' and modern designs which contribute to the bulk of the buildings, whereas the proposed dwelling has highly articulated facades which we believe will reduce its apparent bulk.

Further to this, the part of the dwelling that exceeds the height limit has a relatively small footprint and is limited to the pitched roof structure over the upper floor rooms only.

The revised plan with the reduced height was approved under delegated authority accordingly.

4. DA22/1542 – 1 Buchan Street, Mollymook. Residential flat building for 8 units with basement parking.

Variation – height – 2.7%.

This matter was called in by Council due public interest (MIN22.828, 31 October 2022). On 13 March 2023, the DA was considered by Council. Council resolved as follows:

1. *Confirm that it supports the proposed variation, under clause 4.6 of Shoalhaven Local Environmental Plan 2014, to the 11m maximum building height to allow for the development of the residential flat building to a maximum 11.3m in height.*
2. *Approve Development Application (DA22/1542) in accordance with the recommended conditions of the consent (Attachment 7).*

5. SF10948 – 13 Silver Sands Drive, Berrara. 2 lot subdivision of an existing dual occupancy.

Variation – lot size – 29.9 and 36.08%.

This matter was reported to Council on 27 March 2023 given the extent of the variation. The subdivision involved a lawfully approved dual occupancy development. The subdivision did not result in any consequential changes to the development. Council resolved:

1. *Confirm that it supports the clause 4.6 variation of 29.9% for Lot 1 and 36.08% for Lot 2, with respect to the lot size of the proposed subdivision.*
2. *Approve the Development Application SF10954 for a one (1) into two (2) lot Torrens title subdivision of an existing and approved Dual Occupancy development at Lot 6 DP 234796 13 Silver Sands Drive, Berrara, as detailed in the draft conditions of consent (Attachment 1) to this report.*

Conclusion

- The variations and applications approved during the March quarter have been (or will be) 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.



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

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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

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
DA22/2284	29	755903		58	Warrian Crescent	Currarong	2540	2: Residential - Single new dwelling	Shoalhaven LEP 2014	R2	cl.4.3	Irregular topography and variation is not unreasonable	6.1%	Council	7/02/2023
DA22/1567	92	1110020		3	Brooks Lake	KANGAROO VALLEY	2577	1: Residential - Alterations & additions	Shoalhaven LEP 2014	R2	cl.4.3	Steep topography and variation is not unreasonable	7.7%	Council	8/02/2023
DA22/1710	3	515751		12	Milham Street	Lake Conjola	2539	2: Residential - Single new dwelling	Shoalhaven LEP 2014	RU5	cl.4.3	The need to provide a ground floor level that is above the Flood Planning Level.	8.9%	Council	3/03/2023
DA22/1542	14	20321		1	Buchan St	Mollymook	2539	6: Residential - Other - Residential Flat Building	Shoalhaven LEP 2014	R1	cl.4.3	Height exceedence of 0.3m for lift overrun	2.7%	Council	13/03/2023
SF10948	6	234796		13	Silver Sands	Ulladulla	2539	Subdivision	Shoalhaven LEP 2014	R2	CL4.1	There is no utility in maintaining the minimum lot size development standard under cl. 4.1 in this case, as the respective subdivision for the dual occupancy beneath the minimum lot size is permitted under cl. 4.1A (4).	29.9 & 36.08	Council	27/03/2023

CL23.167 Shoalhaven Arts Foundation Update - Proceeding as a Legal Entity

HPERM Ref: D23/131911

Approver: Kevin Norwood, Manager - Shoalhaven Swim Sport Fitness

Attachments:

1. Draft Constitution Shoalhaven Arts Foundation Ltd (under separate cover) [⇒](#)
2. Shoalhaven Arts Foundation Working Statements [↓](#)
3. Review and Comparison of Draft Constitution - Shoalhaven Arts Foundation, Sunshine Coast Arts Foundation, ACNC Guidelines (councillors information folder) [⇒](#)

Reason for Report

The reason for this report is to seek Council's in-principle agreement to proceed with establishing the Shoalhaven Arts Foundation as a legal entity, with an appropriate constitution, in the form of a not-for-profit company limited by guarantee with charitable status and to consider making an application for the Minister for Local Government's consent to establish the Foundation in accordance with Section 358 of the Local Government Act 1993.

Recommendation

That Council:

1. Agree in-principle to the establishment of the Shoalhaven Arts Foundation as a legal entity being a not-for-profit company limited by guarantee with charitable status with the ability to operate and manage its affairs independent of Council.
2. Agree to the draft constitution for the Foundation as attached to this report, as the basis to establish the Shoalhaven Arts Foundation, which includes references to Council as the 'Founding Member'.
3. Note that as the 'Founding Member', Council would have a representative on the Foundation Board and would need to approve any future proposed amendments to the constitution and be consulted in circumstances where the Foundation is to be wound up.
4. In adopting recommendations 1 and 2, receive a further report presented to Council for its approval to make an application for the Minister for Local Government's consent to comply with requirements under the Office of Local Government's guideline *Formation of Corporations and Entities (Section 358) January 2022*.
5. Advise the Shoalhaven Arts Board of the actions proposed to be taken by Council.

Options

1. Accept the recommendation as written.

Implications: Council will be indicating its in-principle agreement to proceed to establish the Shoalhaven Arts Foundation as a not-for-profit company limited by guarantee for charitable purposes with an agreed constitution subject to a further detailed report seeking Council's approval to seek the Minister for Local Government's consent in accordance with Section 358 of the Local Government Act 1993.

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2. Amend the recommendation.

Implications: The Shoalhaven Arts Foundation may not be able to be established to full independent operational capacity in accordance with the model proposed and outlined in the draft constitution.

3. Reject the recommendation.

Implications: The Shoalhaven Arts Foundation will not be progressed further at this time. The Shoalhaven Arts Board would be advised should it wish to consider an alternative approach.

Background

As reported to the Council on 26 April 2022, the proposal to establish a Shoalhaven Arts Foundation has been worked on since 2008 and has been an action in the Arts Board Terms of Reference and Strategic Plans since 2015. There has been considerable progress made on the concept, with a working party established in 2018 to draft up a constitution and consider the reasons for and value of an Arts Foundation.

The working party reviewed similar foundations in New South Wales and Queensland and outlined a series of statements and reasons for an Arts Foundation, which are attached. These working statements helped to form the basis of the draft constitution.

At the meeting of 26 April 2022, Council resolved (MIN22.302) that:

1. *As part of the 2022/23 budget preparations, allocate funding for the establishment of the Shoalhaven Arts Foundation for three years. Funding amounts to be:*
 - a) *\$150,000 in the 2022/23 Financial year*
 - b) *\$150,000 in the 2023/24 Financial year*
 - c) *\$100,000 in the 2024/25 Financial year*
2. *Progress the formal establishment of the Shoalhaven Arts Foundation as a legal entity.*

In late 2022, Council appointed J9 Consulting to facilitate the necessary work to establish the Shoalhaven Arts Foundation as an independent not-for-profit foundation, with suitable charitable status, including developing a legally binding constitution. A Project Control Group was also set up which includes a representative from the Shoalhaven Arts Board - the current Chair.

Briefings on the work of J9 Consulting were arranged with Councillors for 2 February 2023 and the Arts Board Members on 8 February 2023, specifically about the proposed Foundation's constitution and the need to appoint an interim board. As consequence, several questions have been raised about the proposed model and operational arrangements.

Alternative Models

A number of alternative models have been considered including the Foundation being operated and managed through Council's existing functions or being established as a section 355 Committee. Such arrangements allow Council to delegate functions and maintain critical oversight but would not be expected to attract significant philanthropic donations, as community consultation has shown the desire for the Foundation to be independent and arm's length from Council.

Establishing the Arts Foundation as a private initiative within the Shoalhaven region has also been considered. This option has not been pursued as the start-up costs are significant. Advice received from Creative Partnerships Australia is that finding a donor or donors who are

willing to invest in the start-up costs without immediate community benefit is not achievable. On this basis, such an approach was not considered appropriate for the Shoalhaven.

The Proposed Arts Foundation Model

The model currently proposed is a company Limited by Guarantee. This is largely based on the workshops and engagement activities undertaken that recommended to Council that:

- The Foundation is independent of Council for financial and most decision-making processes; and
- The Directors liability will be limited should the company become insolvent.

A working party was established in 2018 to draft up a constitution and consider the reasons for and value of an arts foundation. To realise the ambition to establish an arts foundation for the Shoalhaven, it was considered there would be significant benefits to the region of having a strong and supported arts scene.

As reported to Council on 26 April 2022, the working party reviewed similar foundations in New South Wales and Queensland and outlined a series of statements and reasons for the proposed independent arts foundation. The models that had been reviewed ranged from:

- Council fully maintaining the operational and management functions of the arts foundation to:-
- A model where the foundation is completely independent of Council, with no reserve powers being provided to Council itself and / or Council's board appointed representative.

There have been arts bodies established at other councils based on the model of a public art trust aimed to raise funds for visual arts, and to contribute to an expanding presence and awareness of public art to the benefit of their local residents. Under such a model, the council appoints the trustees, and the Council's ABN is used to endorse the trust as a deductible gift recipient and to be listed on the Register of Cultural Gifts Organisations.

Such a model was not considered suitable for the Shoalhaven Arts Foundation as, in effect, there is no legal separation of the trust from council, with the activities of the trust being seen as the activities of the council. Woollahra Council is one such example.

The working party considered the model adopted for the Sunshine Coast Arts Foundation would be one that would best fit the Shoalhaven Region, ensuring that the Foundation in its governance, membership and charter are independent and at arms-length from Council, yet works in concert with the Council, the Shoalhaven Arts Board, and the community. A comparison between the Sunshine Coast Arts Foundation constitution and the draft constitution for the Shoalhaven Arts Foundation is attached.

The working party recommended that the arts foundation be established as a company Limited by Guarantee with charitable status, ensuring that the foundation is independent of Council for financial and most decision-making process. However, it was proposed that Council retain certain reserve powers under the constitution.

Constitution And Council's Reserve Powers and Application of Section 358 of the Local Government Act 1993

Council staff have been working with J9 Consulting in developing an appropriate draft constitution for the Shoalhaven Arts Foundation, an overview of which was presented to Councillors at its briefing of 2 February 2023. Council staff are aware that J9 Consulting's legal expert had access to a copy of the Sunshine Coast's constitution in developing the draft constitution for the Shoalhaven Arts Foundation.

The general principles that applied to the Sunshine Coast's model have been applied in developing the constitution for the Shoalhaven Arts Foundation, including the 'Founding Member' provision as discussed below.

Following a number of matters that were raised at the briefing session by Councillors, Council staff and J9 had looked at ways to further strengthen any proposed reserved powers

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for Council under the draft constitution, a copy of which is attached. The provisions relating to Council's reserve powers include the following:

- The Shoalhaven City Council is to be listed in the Arts Foundation's constitution as the 'Founding Member'. (defined clause 64)
- As the 'Founding Member', changes to the constitution must be supported by and approved by the Council. (see clause 60)
- Council as the 'Founding Member' will be able to appoint an elected member on the Foundation's board as its representative (board composition clause 31)
- In the event the Foundation is wound up, the approval of the 'Founding Member' must also be obtained (see clause 62)

The constitution contains a number of references to the 'Founding Member' contained within clauses 12, 13, 22, 24, 31, 34, 37, 50, 61, 62 and 64. As a consequence of enhancing Council's role under the draft constitution, it is now expected that Council needs to seek the Minister for Local Government's consent to form the Foundation in accordance with section 358 of the *Local Government Act 1993* relating to restrictions on councils in forming corporations or other entities. They will form the basis of a further report to Council in conjunction with seeking approval of the Arts Foundation's draft constitution.

Budget considerations

The initial budgetary position for the establishment of the Shoalhaven Arts Foundation is reflected in the report to Council of 26 April 2022. Council resolved as part of the 2022/23 budget preparations, consider funding for the establishment of the Shoalhaven Arts Foundation for three years (MIN22.302). Funding amounts to be:

- a) \$150,000 in the 2022/23 Financial year
- b) \$150,000 in the 2023/24 Financial year
- c) \$100,000 in the 2024/25 Financial year

Funds provided in the 2022/23 financial year are being used towards establishing the Shoalhaven Arts Foundation specifically engaging the specialist services of J9 Consulting to develop the Foundation's constitution along with associated project management costs and legal advice where required.

It is considered that seed funding would be required during 2023/24 and 2024/25 in progressing the establishment of the Foundation, including appointment of a skills based board and the engagement of staff. It is expected that initially the Arts Foundation will appoint an Executive Officer to manage operations.

Once the Shoalhaven Arts Foundation is established, key activities will include developing its strategic business plan, policies and procedures, by-laws, communications plan and budget. Part of this work will include putting in place a strategy to fundraise and develop a sustainable principal investment to generate ongoing grant funds and meet the costs to operate the Foundation and staff therein.

Clause 6.1 of the draft constitution is to provide that: "The Foundation must not pay fees to a Director for acting as a Director or for providing professional services to the Foundation."

There is a positive expectation that the Shoalhaven Arts Foundation will be able to self-fund itself after the initial three-year period. The aim is to appoint to the Arts Foundation a skills-based board, and appoint appropriate staff that will have the necessary expertise to make a success of the Foundation's operations and support the development and enrichment of broad arts across the Shoalhaven region.

While it is noted that self-funding after three years has not been the case with the Sunshine Coast Arts Foundation, having been founded in around 2019, Council staff understand that

the COVID-19 pandemic period impacted on the launch and ongoing development and operations of that Foundation.

Social inclusion principles including indigenous representation and gender balance.

Proposed clause 32 in the draft constitution provides for a skills-based board who collectively have the skills, knowledge and experience to effectively govern and direct the Foundation. Sub-clause 32.2 requires a by-law to be developed describing the skills matrix to guide the development of the board membership. Sub-clause 32.4 makes it clear that the board as a whole should also strive to encompass diversity in aspects such as gender, age, social background and different perspectives including First Nations peoples relative to the skills and attributes needed by the Foundation.

Once the interim board is in place, an expression of interest process would commence to recruit members of the Foundation's board. The recruitment process will be required to have regard to requirements under clause 32 of the constitution. When this matter is reported to Council, it would be in order to remind the interim board members that Council supports the inclusion of a First Nations person(s) on the board and in following the principle of gender balance.

Good Governance Principles Including Ethical Sponsorship.

The draft constitution contains a number of provisions to strengthen governance in the constitution including referencing the ASX Corporate Governance principles and recommendations promoted for, and expected of, local councils by the NSW Audit Office, noting that the Audit Office is this councils external auditor. Key aspects of this include:

- Lay sound foundations for management and oversight
- Promote ethical and responsible decision-making
- Recognise and manage risks.

It is the usual practice that an organisation will develop and implement its own policies in relation to ethical conduct consistent with what governs its establishment, the constitution being that for the Arts Foundation. Notwithstanding that local councils in NSW are subject to a Model Code of Conduct, it is expected that the Arts Foundation will consider the need to assess and implement an appropriate Code of Conduct and ethical sponsorship framework.

Community Engagement

A series of community engagements have been undertaken in 2016 and again in 2023 to understand the potential value, perceptions and benefits of the proposed Foundation.

In 2016 representatives from a range of arts organisations and community members engaged in the arts were invited to a workshop to explore the options, models and potential of an Arts Foundation. The workshop was led by Frank Howarth (prior to his acceptance onto the Shoalhaven Arts Board) and noted that the fully independent model was most attractive to potential donors and any perception of undue influence from Council would limit donations and the potential success of the Foundation.

In early 2023, Janine Collins from J9 Consulting undertook detailed discussions with a range of identified stakeholders from arts groups, councillors, independent experts and staff to consider the need and potential for the Foundation and consider the opportunities for the Foundation to make a difference to the region. This consultation noted a significant desire for an Arts Foundation to progress and the understanding of the potential benefits to the region through support long-term, strategic investment in the arts which will create growth and unlock philanthropy in the region.

The Foundation model has been noted as a unique proposal that could set the standards for Place Based Philanthropy in regional Australia. Discussion with stakeholders noted the limited potential for the many small arts organisations to access significant philanthropic gifts due to the perceived risk to donors. The Foundation would be a mechanism to facilitate this support, providing clear governance and assurance for donors and delivering a direct economic benefit to the region.

Policy Implications

The establishment of the Shoalhaven Arts Foundations would meet Council's policy objectives in bringing the arts to the Shoalhaven region. Its establishment is linked to the goals of the Council's Delivery Program, while meeting required standards of governance.

Financial Implications

As resolved by Council on 26 April 2022, as part of the 2022/23 budget preparations, funding to be allocated the establishment of the Shoalhaven Arts Foundation for three years, being \$150,000 in 2022/23, \$150,000 in 2023/24 and \$100,000 in 2024/25.

Risk Implications

As the Shoalhaven Arts Foundation is to operate independent of the Council, including employment of its own staff, it will have minimal risk to the Council. The Council's costs to meet its establishment over three years are not considered significant and is rated as low risk.

Shoalhaven Arts Foundation working statements							
Because	There is no central process to take philanthropic donations / bequests for the arts in the Shoalhaven	We	Will establish an arts foundation	That Leads To	Money coming in from donors / philanthropists	So That	The arts in the Shoalhaven can flourish
Because	There is no ready funding for community arts / artists	We	Ensure the foundation can seek, receive, invest and distribute funds	That Leads To	Funding being available	So That	The foundation can resource the arts
Because	We want to grow arts in the Shoalhaven	We	Increase the resource base through funding and opportunities	That Leads To	Artists and art organisations able to flourish short and long-term	So That	The arts enhance the liveability and well-being of the LGA
Because	We want to grow participation in the arts	We	Ensure there are opportunities across all art forms and throughout the Shoalhaven	That Leads To	Increased audience diversity and engagements	So That	Audience growth and diversity sustains long-term growth of the arts
Because	We are seeking to maintain and sustain excellence over time	We	Need to plan and fund long-term	That Leads To	A secure arts environment	So That	Artists / arts organisations can be bold and exciting and produce works of national significance
Because	There is no leadership or structure to sustain donor engagement	We	Need a qualified board, a suitable constitution and appropriate resourcing (staff, consultant, IT, CRM etc)	That Leads To	A self-sustaining, active and strong board	So That	The foundation is able to achieve its objectives in perpetuity
Because	We want to support local artists and arts organisations	We	Ensure the foundation provides opportunities for creative output across the LGA and all art forms	That Leads To	Diversity, depth and breadth in arts output	So That	The arts in the Shoalhaven can flourish
Because	We want to inspire artists and the community	We	Ensure the actions of the foundation inspire and reward excellence and originality	That Leads To	A foundation cultural / strategic plan	So That	The foundation has a clear direction to build excellence
Because	The arts eco-system of the Shoalhaven needs	We	Fund innovation, collaboration and new	That Leads To	Greater creativity	So That	There is sufficient diversity to develop a

	breadth and depth (multi-arts, collaborations, commissioning new works etc)		commissions across all art-forms				creative and prosperous city
Because	We are not seen as an arts destination or a creative city	We	Provide support and a funding partner for arts / cultural projects and initiatives that drive a point of difference	That Leads To	A change of perception of the city	So That	The Shoalhaven is seen and known as a creative hub
Because	We need an independent cultural network	We	Appoint a board / subcommittees and advisory groups that are representative	That Leads To	an engaged and progressive arts leadership team	So That	We have a vibrant and contemporary arts scene

Foundation Aims

- To be a self-sustaining, engaged and progressive organisation
- To support a culture of philanthropy across the Shoalhaven for the benefit of the arts
- To encourage a diversity of art output across the region that builds excellence
- To provide funding and opportunities that support a vibrant and contemporary arts scene

Case for Support

'By providing support and opportunities to artists and arts organisations across the Shoalhaven we ensure we build excellence through a vibrant and contemporary arts scene. We want all residents and visitors to the Shoalhaven to have the opportunity to engage with a flourishing arts ecosystem that supports bold and exciting works, and contributes to a healthier, happier and more prosperous city.'

CL23.168 Notice of Motion - Call in of DA22/2368 - New RFS Station - 1072 Bendalong Road Conjola - Lot 1 DP 1071258

HPERM Ref: D23/157728

Submitted by: Cllr Evan Christen

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 DA22/2368 for a new RFS station on Bendalong Road due to the public interest.

CL23.168

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.