

## Ordinary Meeting

**Meeting Date:** Monday, 14 August, 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.

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

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

### Statement of Ethical Obligations

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

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

## Agenda

1. **Acknowledgement of Country**
2. **Moment of Silence and Reflection**
3. **Australian National Anthem**
4. **Apologies / Leave of Absence**
5. **Confirmation of Minutes**
  - Ordinary Meeting - 31 July 2023
6. **Declaration of Interests**
7. **Presentation of Petitions**
8. **Mayoral Minute**

**9. Deputations and Presentations**

**10. Call Over of the Business Paper**

**11. A Committee of the Whole (if necessary)**

**12. Committee Reports**

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Notices of Motion / Questions on Notice

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## 15. Confidential Reports

### Reports

- CCL23.22 Modification Application No. DS21/1353 – 76 West Cr Culburra  
Beach – Lot 298 DP 11892

*Local Government Act - Section 10A(2)(g) - Advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.*

*There is a public interest consideration against disclosure of information as disclosure of the information could reasonably be expected to prejudice any court proceedings by revealing matter prepared for the purposes of or in relation to current or future proceedings or prejudice the fair trial of any person, the impartial adjudication of any case or a person's right to procedural fairness.*

## **CL23.259 Report of the Natural Area Volunteers Group - 18 July 2023**

HPERM Ref: D23/315841

### **NA23.3 Bushcare Procedures**

HPERM Ref:  
D23/218640

#### **Recommendation**

That Council as recommended by the Natural Area Volunteers Group;

1. Endorses the Bushcare related aspects of the draft Bushcare/Park Care Procedures.
2. Request that fact sheets be produced in collaboration with Bushcare Volunteers to ensure the procedures are understandable and provide a means for volunteers to provide feedback to Council.

### **NA23.5 Additional Item - Central District Bushcare Officer**

#### **Recommendation**

That Council consider filling the Central District Bushcare Officer role to maintain function, morale, supervisory responsibilities particularly from a Work, Health and Safety legislative obligation perspective (as volunteers are defined as workers under the Work, Health and Safety Act 2011) and equity across the Bushcare districts.

### **NA23.7 Additional Item - Thank you to Bill Pigott**

#### **Recommendation**

That Council as recommended by the Natural Area Volunteers Group

1. Accept the resignation of Mr Bill Pigott
2. Send Bill Pigott a formal letter thanking him for his contribution to the Shoalhaven environment.

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## **CL23.260 Report of the Inclusion & Access Advisory Committee - 24 July 2023**

HPERM Ref: D23/312153

### **IA23.13 Inclusion Initiatives - Current and Future Spending and Resourcing**

HPERM Ref:  
D23/241299

#### **Recommendation**

That Council:

1. Note that the Inclusion and Access Advisory Committee received this report on current and future spending and resourcing for disability and inclusion projects and the implementation of Council's Disability Inclusion Action Plan.
2. Considers a future budget during quarterly reviews for implementation of unfunded actions within the Disability Inclusion Action Plan.

#### Note by the CEO:

*At the next IAAC Meeting in October 2023 staff will provide the Disability Inclusion and Action Plan (DIAP) Annual Report for review. This will identify progress and incomplete and unfunded actions. Advice will be sought from IAAC on the priority and importance of unfunded / uncompleted actions to guide future actions. Staff will confirm the costings for these actions to enable funding to be considered by Council through the quarterly budget review process.*

### **IA23.16 Additional Item - Terms of Reference Update**

#### **Recommendation**

That Council updates the Inclusion and Access Advisory Committee ToR with:

1. One Councillor or voting committee member to be nominated as the Chairperson at the end of each meeting to be in place for the next meeting
2. A member of Council staff (Community Connections) will be available to meet with the nominated Chairperson one week prior to each meeting to coach them for the role of Chairperson; talk them through how the meetings are run, explain the Agenda and answer any questions they may have.

#### Note by the CEO:

*At the IAAC meeting the Committee considered having other voting members as chairperson. The Committee were supportive of this approach to rotate the role of chair, however shared concerns around lacking confidence and/or experience in chairing meetings.*

*It was suggested that, commensurate with the practice in place for the Youth Advisory Committee meetings, chairpersons would be supported to build their capacity and confidence and would spend time with staff prior to meetings to develop their skills in chairing meetings; Code of Conduct training, and understanding the Committee's delegations and Terms of Reference (ToR).*

*Staff would be available to sit with the nominated Chairperson during the meeting to guide the chair when needed, enabling the Advisory Committee to function within delegations and Terms of Reference, additionally, Governance Officer would also be available to guide the Chair through forming legal resolutions.*

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## **CL23.261 Report of the Shoalhaven Motor Sports Working Group - 26 July 2023**

HPERM Ref: D23/306936

**MS23.9 Motor Sports Complex Working Party**

**HPERM Ref:  
D23/150201**

### **Recommendation**

That Council commits to representatives of the Committee meeting with potential developers of a Motor Sports Complex with a view to enable development of the business case and investigation of potential sites leading to the development of a Motorsports complex.

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## CL23.262 Annual Australia Day Awards

**HPERM Ref:** D23/688

**Department:** Business Assurance & Risk  
**Approver:** Kerrie Hamilton, Director City Performance

**Attachments:** 1. Australia Day Awards - Guidelines and Criteria - POL18/65 [↓](#)

### Reason for Report

At the Ordinary Meeting held on 25 July 2022, the following was resolved MIN22.469 as follows:

*That Council:*

1. *Acknowledges the reduction in participation in nominations for the Annual Shoalhaven Australia Day Awards as outlined in the report.*
2. *Proceed with the 2023 Australia Day Awards as previously planned for past years.*
3. *Receive a report outlining possible changes to the awards in early 2023 for the 2024 Awards which addresses the identified need to promote outstanding individuals and groups who have contributed to the Shoalhaven which align with community expectations and values.*
4. *Be provided a briefing to discuss the Communications Plan for the Awards.*

This report addresses part 3 of the above resolution and seek Council consideration and direction on how to proceed.

### Recommendation

That Council provides direction on how to proceed with the future annual Australia Day Awards.

### Options

1. Continue with the Australia Day Awards in its current format for 2024 and the Australia Day Awards – Guidelines and Criteria be endorsed without amendment (attached)

Implications: Council will commence the application process and promote the Awards as detailed within the report.

2. Adjust the Shoalhaven Australia Day Awards for 2024.

Implications: Council will need to provide direction within the resolution of any changes / amendments to be made. Corresponding amendments will be made to the Australia Day Awards – Guidelines and Criteria.

### Background

The Shoalhaven Australia Day Awards have been running for the past 50 years, taking various forms throughout this period. Early years of the awards received hundreds of nominations, this has slowly decreased with a record low number of nominations submitted for the 2020 and 2021 awards, despite increased focus and resourcing on advertisement and consultation.

The previous report provided to Council noted that in 2019, the number of Australia Day Award categories increased to 8, these categories included: Citizen, Young Citizen, Sports,

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Young Sports, Environment, Inclusive, Arts & Culture and Emerging Artist. This was the result of an approach to combine separate award ceremonies/categories to achieve greater interest.

The report is provided in response to Recommendation 3 of the previous resolution to allow Council to consider and adopt any alternative arrangements that may be made to the Awards and to provide direction to staff on the way forward for the Awards.

The following options were discussed during a recent Councillor Briefing including alternative approaches that Council could consider:

- The title of the awards could be changed to the “Shoalhaven Awards” for example (or similar).
- The timing of the award ceremony could be moved to align with Volunteers week or another period.
- The categories of the awards could be reviewed and decreased, such action may include:
  - Align with the NSW Australia Day Awards which are: Citizen of Year, Environment Citizen of Year and Young Citizen of the Year (School Students Forum) or
  - Aligning with other Councils outlined in this report.

Staff have identified that there is a general trend away from such award nominations, with local awards being overshadowed by the Federal Australia Day Awards campaign. This has also been the experience in other Local Government Areas.

The results of a survey of the key arrangements for such Awards held by other NSW Councils are listed below:

Type of Awards	When	Councils	Categories
Local Hero Awards		Eurobodalla	1 with Highly Commended
Local Hero Awards	May	Waverly	6: Strengthening Community Community Life Community Volunteer Working Together Second Nature Champion Young Local Hero
Citizen of the Year Awards	January	City of Newcastle	4: Citizen of the Year Young Citizen of the Year Senior Citizen of the Year, Community Group of the Year
Lake Mac Awards	March – Gala Event	Lake Macquarie Council	12: <u>Sports</u> Lake Mac Young Sports Star Lake Mac Sports Star

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			<p>Lake Mac Sports Leader</p> <p><u>Arts and creativity</u></p> <p>Lake Mac Artist and Creator</p> <p>Lake Mac Arts Leader</p> <p><u>Volunteering and community contribution</u></p> <p>Lake Mac Young Citizen of the Year</p> <p>Lake Mac Senior of the Year</p> <p>Lake Mac Ambassador</p> <p>Lake Mac Volunteer of the Year</p> <p>Lake Mac Community Group of the Year</p> <p><u>Events</u></p> <p>Lake Mac Community Event of the Year</p> <p><u>Environmental Enhancement</u></p> <p>Lake Mac Environmental Leader</p>
Citizen and Volunteer Awards	July	Inner West	<p>6</p> <p><u>Citizen (3)</u></p> <p>Young</p> <p>Adult</p> <p>Senior</p> <p><u>Volunteer (3)</u></p> <p>Young</p> <p>Adult</p> <p>Senior</p>

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Council also asked all Councils in NSW if they hold / have ever held Australia Day Awards, if:

- They have experienced any trends in relation to participation / nominations
- They have received any feedback
- They have made any changes to their awards
- And how they promote their awards

The following responses were received:

Lake Macquarie Council advised:

They had three awards programs (business, sports and Australia Day) and combined the sports awards and previous Australia Day Awards and created an independent awards program called "Lake Mac Awards".

In 2019 they reviewed their Australia Day Awards and decided separate them from Australia Day to create a flagship Awards program called "Lake Mac Awards". This combined Australia Day Awards and Sports Awards.

The Award themes align with their community's values and reflect the community's strengths across a diversity of sectors. They undertook consultation with internal and external stakeholders to ensure the awards were highly relevant and representative of their community.

This year they received 95 nominations, the highest number since launching the new flagship program.

Lake Macquarie also hold a Citizenship Ceremony on Australia Day itself.

Kiama Municipal Council advised:

They have been running Australia Day Awards for quite some time and are also experiencing a decline in nominations. Though this year was the most they had in quite some time.

Byron Shire Council advised:

Byron Shire Council recently reviewed their Australia Day Awards program and subsequently resolved to discontinue the Australia Day Awards in favour of holding a more inclusive community awards event during Local Government Week (1-7 August).

2023 will be the first year for this change they hope that it will encourage greater participation and ensure the focus of the event is on celebrating the achievements of the community.

The report they provided to their Council and the decision is detailed here: [Agenda of Ordinary Meeting - Thursday, 27 October 2022](#)

Singleton Council advised:

They still have the Young Achiever of the Year Award and Citizen of the Year Award which are announced at the official ceremony on 26 January 2023.

They only received 1 nomination for the Young Achiever of the Year Award and 5 for the Citizen of the Year Award this year and noted that this is comparable to the last four years.

In 2018 they introduced a Young Achiever of the Year Learning and Development Program and in addition has the Wambo Coal Singleton Hall of Fame. Nominations are called in October and the Induction Ceremony is in November.

Wollondilly Shire Council advised:

They also consistently see a decline in nominations., and this year only received 16 nominations and similar to our Council, not all categories are covered, and of those 16 nominations, 4 were for the same individual.

They have tried several different strategies, changing dates, extensions, prize incentives etc which tend not to have a huge impact, we have even tried even having nominations open all year yet, no significant impact has been seen.

Lismore City Council advised:

For the past three years the nominations have been relatively low. They also have 8 categories and noted that in some years haven't had any nominations.

This year they promoted via a sponsored Facebook ad and did see a considerable increase.

Inner West Council advised:

They have never had Australia Day Awards, and only hold an Australia Day Citizenship ceremony.

Bega Valley Shire Council advised:

They have awarded the Citizen of the Year Awards on Australia Day for over 30 years, ever since Council became involved in running an event on the day with an Australia Day Ambassador and various other activities.

For about 10 years 2008 to 2018, they also similarly noticed a decline in nominations for the Citizen of the Year awards.

A few years ago, they consolidated many awards into one nomination process, Citizen of the Year, Junior Citizen, Senior Citizen (had been presented in Senior's week) and the "Bega Valley Medallion" which is a community service award, originally created in 2020 to recognise those in the community who may not be nominated for the higher "shire wide" awards. The medallions had been presented during volunteer week for about 5 years and was noted that they had generally had more nominations for those that the Citizen awards.

Although this was well received and worked well it was noticed that the crowd was a bit smaller than in the past and the event itself was also downsized. It is unknown whether this is a flow on from COVID or a 'sign of the times'. As well as the Council run event, there are also a number of community run events in other towns and villages on Australia Day in Bega Valley.

The following are the nominations received for each of the categories for the 2023 Shoalhaven Australia Day Awards:

Award category	Nominations	Commentary
Citizen Award	12	Two nominees declined to accept. One previously received this award and therefore were considered ineligible.
Young Citizen	2	
Outstanding Contribution to an Inclusive Shoalhaven Award	11	One nominee declined to accept. One previously received this award and therefore was considered ineligible.
Outstanding Contribution to Environment Award	1	
Outstanding Emerging Artist Award	1	
Outstanding Contribution to Arts & Culture Award	2	
Sports Person Award	0	
Junior Sports Person	3	
Total:	28	

## Community Engagement

The process of administering the Awards generally commences in July, when the information on the application forms is updated for the upcoming year and the information is sent out to Council's Committees and various Council networks promoting the awards.

The awards are promoted across social media platforms (paid advertising) and advertised in the Milton Ulladulla Times and South Coast Register as well as in paid advertisements on Power FM/2ST radio networks.

All applications are acknowledged on receipt.

Once applications close, a panel meeting is arranged for the review of the applications and winners are determined. The event, trophies, certificates, invitations are arranged, and the

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event is held in January close to Australia Day. Each year the awards ceremony location alternates between Nowra and Ulladulla.

The results of the Community Engagement from the latest 2023 Australia Day Awards are as follows:

- Total Get Involved page visits: 369
- Document downloads: 14
- FAQ visits: 24
- Nominations received through the Get Involved engagement platform: 18

#### Media contribution

- Social media: 42.9%
- Council newsletter: 19%
- Radio: 14.3%
- Website: 12.8%
- EDM: 9.5%

#### **Policy Implications**

The Australia Day Awards Guidelines and Criteria in their current format are attached to this report (POL18/65).

The report is provided in response to Recommendation 3 of the previous resolution to allow Council to consider and adopt any alternative arrangements that may be made to the Awards.

Such changes may include the following which were discussed during a recent Councillor Briefing on this topic:

- Changing the title of the awards to the “Shoalhaven Awards” for example (or similar).
- Changing the timing of the award ceremony to align with Volunteers week or another period.
- Review categories of the awards, such action may include:
  - Align with the NSW Australia Day Awards which are: Citizen of Year, Environment Citizen of Year and Young Citizen of the Year (School Students Forum) or
  - Aligning with other Councils outlined in this report.

Any amendments that are made with a view to improve participation, will be reflected in the Australia Day Awards Guidelines and Criteria prior to nominations opening.

#### **Financial Implications**

The promotion campaign for the 2023 Awards ran from 5 September to 25 November 2022. The details and financial cost of the campaign was as follows:

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Platform	Audience	Exposure	Result	Cost
Print Media	South Coast Register Milton Ulladulla Times Shoalhaven and Nowra News	3 x 1/4 page adds 70,000+	Undefined	\$1,357.50
Digital marketing	South Coast Register Milton Ulladulla online	14,994 (No. of times add displayed)	7 clicks to the website	
Radio	Power FM, 2ST and 2UUU	50,000+	Undefined	\$5,921
Social media	Facebook Instagram Twitter LinkedIn Community Facebook	4 posts x 50,000+	89 clicks to the website	\$100
Digital	Community newsletter Website	3,560 35,000/ month	3.4% click rate	Nil
Email	CCBs, sport and art groups, advisory committees	100+	Undefined	Nil
Internal comms	Staff newsletter intranet and posters	1,500	Undefined	Nil
			Total cost:	\$7,078.50

The total cost of the 2023 event was:

Item	Cost
Trophies	\$610.00
Venue hire	\$500.00
Catering	\$5,117.00
Technical support	\$250.00
Entertainment	\$700.00
Guest Speaker and Elder gifts	\$310.55
Photographer	\$600.00
Frames, paper etc	\$100.65
Event staff	\$231.46
<b>Total</b>	<b>\$8,417.41</b>

Total spent for the 28 Nominees for the Australia Day Awards 2023 - \$15,495.91

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**AUSTRALIA DAY  
AWARDS**  
GUIDELINES / CRITERIA



Each year the people of Shoalhaven City Council are invited to nominate fellow citizens for the NSW Local Government Australia Day Awards.

The purpose of the Australia Day Awards Program is to acknowledge outstanding individuals and groups who have made a valuable contribution to the City of Shoalhaven.

**AWARD CATEGORIES – (Subject to amendment of the Mayor/Committee)**

Citizen of the Year - A person who has made a noteworthy contribution during the current year and/or given outstanding service to the local community over a number of years.

Young Citizen of the Year - A person, who must be 24 years and younger, who has made a noteworthy contribution during the current year and/or given outstanding service to the local community over a number of years.

Sports Person of the Year - For contribution to Sport in the local area. The nominee's approach and efforts to advance in their chosen activity and their performance over the past year are considered. To be eligible, the person must be 19 years or older.

Junior Sports Person of the Year - For contribution to Sport in the local area. The nominee's approach and efforts to advance in their chosen activity and their performance over the past year are considered. To be eligible, the person must be 18 years or younger.

Outstanding Contribution to an Inclusive Shoalhaven - This category is for nominees who have made an outstanding contribution to making the Shoalhaven a more inclusive community for people of all abilities, ages and/or cultures.

Outstanding Contribution to the Environment – This category is for nominees who have made an outstanding contribution to making the Shoalhaven a more inclusive community for people of all abilities, ages and/or cultures.

Outstanding Emerging Artist – This category is open to artists of any age, practising any art form including writer, visual/ digital artist, performer etc

Outstanding Contribution to Arts and Culture – This category is open to both artists and non-artists contributing to the arts in any capacity

**WHO IS ELIGIBLE?**

- Residents who permanently live in the Shoalhaven. If residing out of the area, the service provided must largely contribute or significantly benefit the City of Shoalhaven Local Government Area.
- Persons who have previously been nominated but have not been awarded a Shoalhaven Medal or Australia Day Award (in the same category) are eligible to be nominated again.
- Individuals cannot nominate themselves.
- Individuals, associations or clubs may nominate a Candidate.
- Only individuals may be nominated.
- The nomination of a club or association or any other organisation will not be accepted.

**CRITERIA INCLUDE BUT NOT LIMITED TO:**

- Contribution to the community
- An inspirational role model for the community
- Demonstrated excellence in their field
- Personal, academic and professional achievements
- Contribution in the relevant field (how has the nominee 'put back' into their field to benefit others)
- Demonstrated leadership, innovation and creativity
- Personal interests and community involvement
- Contribution to development of regional community and/or economy
- Degree of difficulty of the achievement and sacrifices made
- Previous awards and recognition
- Voluntary work beyond paid employment
- Nature and length of activity or service
- Achievements as an individual or as part of a group or organisation

**FORMAT OF JUDGING PANEL**

- Panel members are appointed each year in March by the Mayor
- The meeting is in a 'round table discussion' format with each award category being discussed separately.
- The meeting will be convened by an elected member of the Panel. Staff will record votes and take notes as required for Council's record keeping purposes.
- At the close of the meeting, judges are to return their folder and all nomination forms.

**The Judging Panel can:**

- Only select one winning recipient per award category.
- Only select a recipient to receive one award or certificate per year.

**The Judging Panel cannot:**

Members of the judging panel should be free from conflict of interest and thereby:

- Not Nominate
- Not be a referee
- Not vote in relation to nominees to which they have a close association or relationship

#### **PANEL MEMBERSHIP**

Panel members are appointed and/or reappointed each year in March by the Mayor

The Australia Day Panel must be an odd number and not exceed 9 members. The membership will consist of the following:

5 Community Representatives

1 Aboriginal Community Representative

1 Sports Community Representative (Currently – Bernie Regan Representative)

2 (Maximum) Shoalhaven Arts Board Representatives

Panel members must comply with Council's Code of Conduct.

#### **SELECTION AND JUDGING PROCESS**

- The Selection Criteria/s are as stated above.
- Judges should make their own decisions prior to the meeting.
- All judges will be given the opportunity to discuss their opinions.
- Final decisions are made by majority consent.
- The decisions of the judges are final.

#### **EXEMPTIONS**

There is no obligation for the Judging Panel to allocate an award each year if it is the opinion of the panel that there is no nomination satisfactory to meet the criteria. The Judging Panel also has the right to:

- Award 'High Achievement' or 'Highly Commended' certificates for each category with exception to the Citizen of the Year Award. Certificates are not a requirement of each category and should only be utilised when there is an exemplary candidate to be recognised.
- Consider nomination in another category for additional consideration and/or alter a category for a nomination or combine a nominated category, if deemed relevant.

## CL23.263 Considerations - Contract with Bioelektra Australia Pty Ltd for West Nowra Resource Recovery Facility

**HPERM Ref:** D23/314713

**Department:** Business Assurance & Risk  
**Approver:** Kerrie Hamilton, Director City Performance

**Attachments:** 1. CONFIDENTIAL Legal Advice - Project Agreement - Bioelektra (Confidential - under separate cover)

### Reason for Report

That Council consider its position with respect to the West Nowra Resource Recovery Park Stages 1 & 2 Project Agreement with Bioelektra Australia Pty Ltd (Bioelektra Australia) dated 23 December 2020 (the Contract).

### Recommendation

That Council

1. Resolve to terminate, effective immediately, the West Nowra Resource Recovery Park Stages 1 & 2 Project Agreement with Bioelektra Australia Pty Ltd dated 23 December 2020 (the Contract) pursuant to Clause 54.3.1(a) of the Contract.
2. After the issuance of the Termination Notice, publish a copy on the Council website.

### Options

1. Pursuant to Clause 54.3.1(a) of the Contract, Council exercises its right to terminate the Contract on the grounds that there have been a number of Contractor Default Events.

Implications: This would return the site to the care and control of the Council and provide the Council opportunity to progress consideration of options with regard to future waste management strategies.

2. Choose to take no further action at this time.

Implications: Further consideration would need to be taken by Council on receipt of advice of winding up or otherwise by the liquidator. This option is not recommended as advice from the liquidator may be delayed creating uncertainty with regard to the management of the site and delays in considering future waste management strategies.

### Background

Council received a report entitled 'CL23.161 Bioelektra Update' at the Ordinary meeting of the Council held on 22 May 2023 which outlined information with respect to Bioelektra Australia appointing Trent Andrew Devine as Voluntary Administrator.

On 16 June 2023, Creditors of Bioelektra Australia voted to place the company into liquidation. Trent Andrew Devine is the appointed Liquidator.

Work on the project site ceased on or about February 2023.

As at 7 August 2023, no proposal has been received from the Liquidator of a potential purchaser of Bioelektra Australia or of any expression of interest in the assignment of the Contract.

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Confidential legal advice has been received with respect to the options available to the Council. The legal advice is confidential in accordance with Section 10A (2)(g) of the *Local Government Act, 1993*. The has been provided to Councillors under separate cover for consideration.

It is recommended that the Council terminate the contract on the grounds that there have been a number of Contractor Default Events which entitle Council to exercise its right to terminate under the Contract. Termination would have the effect of returning the site to the care and control of the Council and provide the Council the opportunity to promptly consider options with regard to future waste management strategies.

It is important that the Council considers its options with a view to mitigating any potential future losses on this project and to take steps in the protection of Council's commercial interest.

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## CL23.264 Modification Application No. DS21/1353 - 76 West Cr Culburra Beach - Lot 298 DP 11892

**DA. No:** DS21/1353/4

**HPERM Ref:** D23/311725

**Department:** Development Services

**Approver:** James Ruprai, Director - City Development

**Attachments:** 1. Report to Council - Ordinary Meeting 28 March 2022 (under separate cover) [⇒](#)

**Description of Development:** S4.55(1A) Modification Application seeking to delete Condition 19 from the development consent relating to the construction of kerb and gutter across the frontage of the site.

**Owner:** C Phillips & S Vidler

**Applicant:** C Phillips

**Notification Dates:** 20 October to 5 November 2021

**No. of Submissions:** One (1) by way of objection.

### Purpose / Reason for consideration by Council

Modification Application No. DS21/1353 was called in for determination by the Ordinary Council at the Development and Environment Committee Meeting held on 5 October 2021 [MIN21.708].

In accordance with MIN22.201 arising from 28 March 2022, Modification Application No. DS21/1353 was deferred for further advice regarding permissible road verges and the potential review of the Council Policy.

The application is put to Council in light of additional information being obtained, in order to resolve this outstanding application, and also at the request of the applicant.

### Recommendation

That Council consider the separate confidential report on this matter in accordance with section 10A(2)(g) of the NSW *Local Government Act 1993*, and refer the application back to staff for determination.

### Options

1. That Council consider the separate confidential report on this matter in accordance with section 10A(2)(g) of the NSW *Local Government Act 1993*, and refer the application back to staff for determination.

As Council has granted delegated authority to the Director and his nominee to determine applications by way of approval and or refusal. This matter is able to be determined under such delegated authority.

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## Location Map



Figure 1: Aerial Photography – Subject Site

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## Background

### Proposed Development

Development Application No. DA20/1809 was approved under delegation on 7 October 2020 for 'Relocation of Dwelling to create Detached Dual Occupancy' ('the consent'). It is also noted for completeness that Torrens Title subdivision of the approved dual occupancy is approved under Development Consent No. SF10849 (dated 19/02/2021).

An application to modify the consent was submitted by the applicant in accordance with the provisions of section 4.55(1A) of the *Environmental Planning and Assessment (EP&A) Act 1979*.

The application proposes to delete condition 19 of the consent. Condition 19 presently states as follows:

### **Road Design Standards**

*Concrete integral kerb and gutter with either a minimum 30mm thick 10mm asphaltic concrete on a primer seal or 2 coat bitumen seal with 14mm & 7mm aggregate surfaced shoulder (to match the existing seal) and associated drainage must be designed across the frontage of the proposed new lot(s).*

- a. *The kerb and gutter must have a standard upright profile.*
- b. *The alignment must be 3.5m from the boundary on Wollumbolla Lane and 7.0m from boundary on the West Cr frontage.*
- c. *The shoulder crossfall to the lip of the gutter must be no less than 2% and no greater than 5%. A minimum width of 1m is to be constructed adjacent to the lip of the gutter to facilitate compaction of the new pavement.*



- d. *The shoulder seal is to overlap the existing pavement by a minimum of 300mm with the existing seal to be saw cut and the exposed pavement is to have a tack coat or prime seal if finished with AC.*
- e. *The kerb and gutter must have a minimum grade of 0.5% and the longitudinal design must extend a minimum of 30 metres each end of the development and at least 60m if the grade is <0.5% or ≥ 0.3%. This is to ensure the proposed works will be compatible with the existing longitudinal pavement grade and allow future extension of the kerb without unnecessary modification of existing works.*
- f. *The road shoulder pavement must be designed in accordance with Council's Engineering Design Specifications section D2.04.*
- g. *The road table drain either side of the proposed development is to be reconstructed as required to match the K&G and to prevent ponding of water, including any adjustment or reconstruction of nearby driveways.*
- h. *Subsoil drainage is to be provided behind the kerb line where an outlet to existing underground drainage (or other alternative suitable to Council) is available. Subsoil drainage is to be placed on the high side of the road or both sides if the cross-fall is neutral.*

*Where roadway widening (shoulder construction) is not required, the thickness of the pavement for the new kerb and gutter maybe designed using an adopted CBR of 3.0. If a higher CBR value is used, it must be determined by geotechnical testing in accordance with Council's Engineering Design Specification.*

This condition was recommended for inclusion in the consent by Council's Development Engineer as a standard engineering condition as it is a requirement for both dual occupancy development and subdivision of land under Shoalhaven Development Control Plan (DCP) 2014 Chapters G11, G13 and G21. This requirement has been consistently applied in accordance with the DCP 2014.

Modification Application No. DS21/1353 was called in for determination by the Ordinary Council at the Development and Environment Committee Meeting held on 5 October 2021 [MIN21.708].

In accordance with MIN22.201 of the Ordinary Meeting held on 28 March 2022, Modification Application No. DS21/1353 was deferred for further advice regarding permissible road verges and the potential review of the Council Policy.

### **Subject Land**

The site was formerly described as Lot 298 DP 11892 at 76 West Cr Culburra Beach and is now known as follows (per Figure 1 above):

- 76 West Cr Culburra Beach – Lot 1 DP 1285296; and
- 3 Wollumboola Ln Culburra Beach – Lot 2 DP 1285296.

### **Site & Context**

The development site:

- Is located at the corner of West Crescent (to the south) and Wollumboola Lane (to the east).
- Contains an existing single storey dwelling located in the southern part adjacent to West Crescent (on land now known as Lot 1).
- Contains a new single storey dwelling located in the northern part adjacent to Wollumboola Lane (on land now known as Lot 2). The new dwelling was constructed

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following an approval for 'Relocation of Dwelling to create Detached Dual Occupancy' given as part of DA20/1809 and CC20/1797 and is now occupied following the Final Occupation Certificate being subsequently issued on 11<sup>th</sup> October 2022.

- Is now split into two separate lots following the approval of a two lot Torrens title subdivision (SF10849) on 19<sup>th</sup> February 2021 and subsequent issue of the Subdivision Certificate permitting registration with Land Registry Services.
- Is zoned R2 Low Density Residential in accordance with the Shoalhaven Local Environmental Plan (SLEP) 2014 (see Figure 2 - Zoning Map).
- Has a total combined area of 992.74m<sup>2</sup>.
- Adjoins properties zoned R2 Low Density Residential and RE1 Public Recreation pursuant to the SLEP 2014.
- Is located within a predominantly residential area, with surrounding properties consisting largely of detached dwellings and dual occupancy developments.

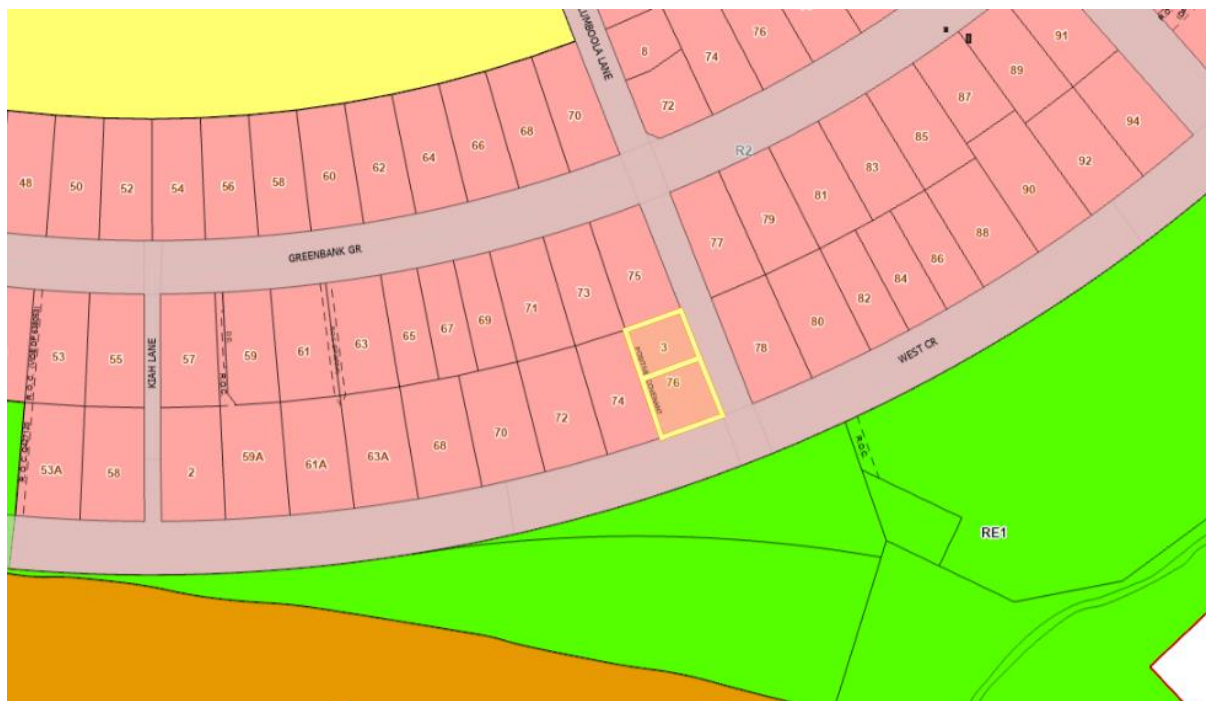


Figure 2: Shoalhaven LEP 2014 Zoning Map

## History

The following provides a history of approvals issued in relation to the subject development and actions / events relating to the subject application:

Action / Event	Date
Development Approval No. DA20/1809 issued for the development (Relocation of Dwelling to create Detached Dual Occupancy) by Shoalhaven City Council.	7 October 2020
Construction Certificate Approval No. CC20/1797 issued by Shoalhaven City Council.	19 October 2020
Section 138 Approval issue for the works within the road reserve. The Section 138 Approval made reference to works including the construction of the kerb and gutter per the approved Section 138 plans.	20 October 2020
Separate development approval issued for a two lot subdivision (SF10849) of	19 February 2021

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the property to permit each approved dual occupancy dwelling to be located on their own lot of land.	
Modification Application No. DS21/1353 lodged with Shoalhaven City Council seeking consent for deletion of Condition 19 of the Dual Occupancy approval (yet to be determined and subject of this Council Report).	29 September 2021
DS21/1353 called in for determination at the Ordinary Council Meeting at a Meeting of the Development and Environment Committee.	5 October 2021
<p>Referral response provided by Development Engineer advising that they do not support the proposed deletion of Condition 19. Specifically, the following comments were provided:</p> <p><i>Both dual occupancy development and subdivision of land require the construction of kerb and gutter under DCP Chapters G11, G13 and G21. This has been consistently applied since implementation of DCP 2014 and any exceptions are a rarity. Developers undertaking dual occupancy development and/or subdivision and their consultants are generally aware of this requirement and factor it into the cost of development.</i></p> <p><i>The subdivision at 98 Greenbank Grove is referenced as evidence of a precedent, however this was approved prior to the implementation of DCP2014 under previous provisions which exempted kerb and gutter on the frontage of the lot containing the existing dwelling. A more recent dual occupancy approved at 34 Greenbank Grove at the corner of Black Swan Way did require full frontage construction of kerb and gutter.</i></p> <p><i>The area has precedent of kerb and guttering nearby (kerb and gutter on Greenbank Grove including kerb returns into Wollumboola Lane) which is likely to continue with future redevelopment.</i></p> <p><i>There is also evidence of stormwater flow and containment issues (such as previous construction of an informal kerb outside the subject property, and recent photographic evidence of stormwater ponding in the road reserve outside the property) which would be improved through the provision of kerb and gutter. Concern has been flagged regarding the discharge of flow from the end of the constructed gutter on West Cres, however the approval requires table drains to be reshaped to accept the flow from the kerb and gutter and levels would prevent any runoff impacting on adjoining properties. It is also noted that a relatively short section of kerb and gutter would not excessively increase peak stormwater flows during a large storm event where the existing grassed table drains would be saturated.</i></p> <p><i>The requirement for kerb and gutter has been correctly applied in accordance with Council's policies. The deletion of the condition is not supported.</i></p> <p><i>It is also noted there are currently construction-ready approved engineering design plans for the kerb and gutter for this development, demonstrating its constructability and ability to comply with Council's standards and the implemented conditions of consent.</i></p>	18 October 2021
Completion of notification undertaken in accordance with Community Consultation Policy (one submission received objecting to the deletion of the condition – further discussion in the Report below).	5 November 2021
<p>DS21/1353 was presented to the Ordinary Meeting on 28 March 2022 recommending refusal of the Modification Application – noting in particular the abovementioned comments provided by the Development Engineer.</p> <p>The D&amp;E Committee opted to defer the Modification Application as follows:</p> <p><i>Deferred for further advice regarding permissible road verges and the potential review of the Council Policy.</i></p>	28 March 2022
The applicant raised the possibility of payment of a bond to secure Condition	April 2022

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19 of the development consent. The offer of payment of a bond was accepted by Council.	
Final Occupation Certificate issued permitting the new dwelling to be installed on the new lot (Lot 2). The new dwelling is now occupied.	11 October 2022
Applicant payment of bond against Condition 19 to satisfy the requirement for the construction of the kerb and gutter. The payment of the bond was required as the Subdivision Certificate could not be issued until Condition 19 has been satisfied.	14 October 2022.
Subdivision Certificate issued by Shoalhaven City Council. The lots were subsequently registered with Land Registry Services	31 October 2022
<p>Noting that Condition 19 has been satisfied, Council subsequently issued of the Final Occupation Certificate and separate Subdivision Certificate, Council requested advice from the applicant as to whether they wished to proceed with the modification.</p> <p>Excerpt of Council's request as follows:</p> <p><b>1. Council's ability to deal with the Modification Application pursuant to section 4.55(1A).</b>  <i>Council does not have the power to approve the Modification. The reasoning for this is:</i>  <i>Condition 19 imposes design requirements, prior to the granting of a Construction Certificate. A Construction Certificate has been issued and a security payment made with respect to the incomplete works (kerb and gutter). Condition 19 has been satisfied as there is no longer anything to do, to satisfy this condition. The modification to the consent by removal of this condition would be retrospective. There is no ability to deal with the matter retrospectively. A Modification Application needs to be prospective. Up until the Court of Appeal's relatively recent decision, Modification Applications were often used to deal with matters retrospectively. The Court's findings in Ku-ring-gai Council v Buyozo Pty Ltd [2021] NSWCA177 has effectively overturned years of law and practice dealing with modifications.</i>  <a href="https://www.cbp.com.au/insights/insights/2021/august/new-south-wales-court-of-appeal-finds-there-is-no">https://www.cbp.com.au/insights/insights/2021/august/new-south-wales-court-of-appeal-finds-there-is-no</a>  <a href="https://www.dentons.com/en/insights/articles/2021/september/1/constraints-on-modifying-consent-conditions">https://www.dentons.com/en/insights/articles/2021/september/1/constraints-on-modifying-consent-conditions</a>  <a href="https://thedevelopmentsite.com.au/2021/08/26/no-mods-of-contribution-conditions-ku-ring-gai-council-v-buyozo-pty-ltd/">https://thedevelopmentsite.com.au/2021/08/26/no-mods-of-contribution-conditions-ku-ring-gai-council-v-buyozo-pty-ltd/</a></p> <p><b>2. Available options</b>  1. The application be withdrawn.  2. The application be determined. Given the case law referenced above, there is no ability to approve the application as Council does not have the power to do so.</p> <p><b>3. Determination</b>  Council resolved:  <i>That in relation to Modification Application No. DS21/1353 for a s4.55(1A) Modification seeking to delete Condition 19 from Development Consent No. DA20/1809 lodged over Lot 298 DP 11892 at 76 West Cr, Culburra Beach the matter be deferred for further advice regarding permissible road verges and the potential review of the Council Policy.</i>  <i>Given the Council resolved to defer a decision on the application pending further advice, the matter requires to be reported to Council for a decision if you wish to pursue resolution of the Modification Application.</i></p> <p><b>4. Bond monies</b>  Section 4.17 (6) of the Environmental Planning and Assessment Act 1979</p>	25 May 2023

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<p>(EPA Act) enables Council to enter into an agreement with an applicant to provide security for the payment of the cost of completing public work in relation to a consent. The Roads Act 1993 consent, issued pursuant to condition 10 of the consent (DA20/1809), means that kerb and gutter works approved under the Roads Act 1993, are required in connection with the consent. Council entered into a Deed and accepted bond monies (security) for completing the kerb and gutter. This arrangement represented security for the works set out in condition 19 of the consent and enabled Council to release the Subdivision Certificate. Condition 30 of the consent also states that an Occupation Certificate must not be issued until all relevant conditions of development consent have been met or other satisfactory arrangements have been made with Council (i.e. a security)...</p> <p>Given the above, Council is able to validly retain the Bond via the Deed.</p> <p><b>5. Where to from here?</b> We are happy for you to consider your position and seek your own advice and respond in due course. If you do not withdraw the application, we will finalise our assessment and a report. We will wait for your advice.</p>	
<p>Applicant advice provided confirming that they wish to proceed with the proposal – whereby presentation to the Ordinary Council Meeting is required.</p>	<p>2 August 2023</p>

Given the decision by the Court of Appeal in Buyozo above, condition 19 has been satisfied. Refer to confidential report for further detail and legal position.

City Development notes as part of MIN22.201, that DS21/1353 was deferred for: “*further advice regarding permissible road verges and the potential review of the Council Policy*”. The potential for the review of the policy has been considered by City Development. City Development however has not undertaken a review of the policies which consist of both the Shoalhaven Development Control Plan and Policy No. POL12/65 – Asset Management Plan.

Council cannot continue to hold the application in abeyance for the policy review. A review is likely to take some time and has been factored in the work program of the relevant sections of Council.

It is recommended therefore that the ‘potential review of the Council Policy’ as described in MIN22.201 be continued however as a matter separate to the determination of the subject Modification Application.

The applicant has requested the matter be reported to Council for resolution.

For completeness, the previous report to Council is attached.

### Planning Assessment

The Modification Application has been assessed under s4.15(1) and s4.55(1A) of the *Environmental Planning and Assessment Act 1979*. It is recommended that Council consider the separate confidential report on this matter in accordance with section 10A(2)(g) of the NSW Local Government Act 1993, and refer the application back to staff for determination.

### Consultation and Community Engagement:

One (1) public submission was received in relation to Council’s notification of the modification application, objecting to the development. The notification was made in accordance with Council’s Community Consultation Policy with letters being sent to neighbouring and surrounding property owners. The notification was for a two-week period between 20 October and 5 November 2021.

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Key issues raised as a result of the notification are provided below. It is noted that the objection largely relates to kerb and gutter requirements along Wollumboola Lane, not the West Cres frontage of the site.

a) Water Hazard

*Since they now have roof guttering that disperse now on the edge of the road it has created a large water hazard every time it rains.*



*Figure 10. Photographs provided by objector of Wollumboola Ln in a rain event.*

Comment

Photographs provided by the objector (Figure 10) and taken by Council as part of the site inspection confirm a water hazard does exist following the placement of the additional dwelling on the land during rain events – therefore necessitating the construction of the kerb and gutter as required by Condition 19.

b) Potential for Deterioration of Road Reserve

*This will continue to create damage to the existing road.*

Comment

This reflects Council's concerns and demonstrates the potential ongoing impacts upon the surrounding built environment, as it relates to Council's public infrastructure.

**Financial Implications:**

There are potential cost implications for Council in the event the matter is litigated.

**Legal Implications**

Disclosure of legal advice obtained by Council could prejudice future proceedings, and is therefore contained in a separate confidential report.

**Summary and Conclusion**

Refer to separate confidential report on this matter in accordance with section 10A(2)(g) of the NSW *Local Government Act 1993*. It is recommended that the application be referred to staff for determination.

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## CL23.265 Development Application - DA22/2368 - 1072 Bendalong Road Conjola - Lot 1 DP1071258

**DA. No:** DA22/2368/4

**HPERM Ref:** D23/310146

**Department:** Development Services

**Approver:** James Ruprai, Director - City Development

**Attachments:**

1. Planning Report S4.15 Assessment (under separate cover) [⇒](#)
2. Draft Development Consent (under separate cover) [⇒](#)
3. Architectural Plans [↓](#)
4. Letter of Justification by Applicant [↓](#)

**Description of Development:** Proposed Emergency Services Facility – Bushfire Station

**Owner:** Shoalhaven City Council

**Applicant:** Shoalhaven City Council

**Notification Dates:** 8 February – 23 February 2023

**No. of Submissions:** 30

### Purpose / Reason for consideration by Council

On 22 May 2023, Council resolved '*That Council call in DA22/2368 for a new RFS station on Bendalong Road due to the public interest*' (MIN23.273).

### Recommendation

That Council determine the application by way of approval, with appropriate conditions of determination as detailed in Attachment 2

### Options

1. Determine the application by way of approval in accordance with the recommendation.

Implications: The development will be able to proceed.

2. Refuse the application.

Implications: Council would need to determine the grounds on which the application is refused, having regard to section 4.15(1) considerations.

3. Alternative recommendation.

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

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## Location Map

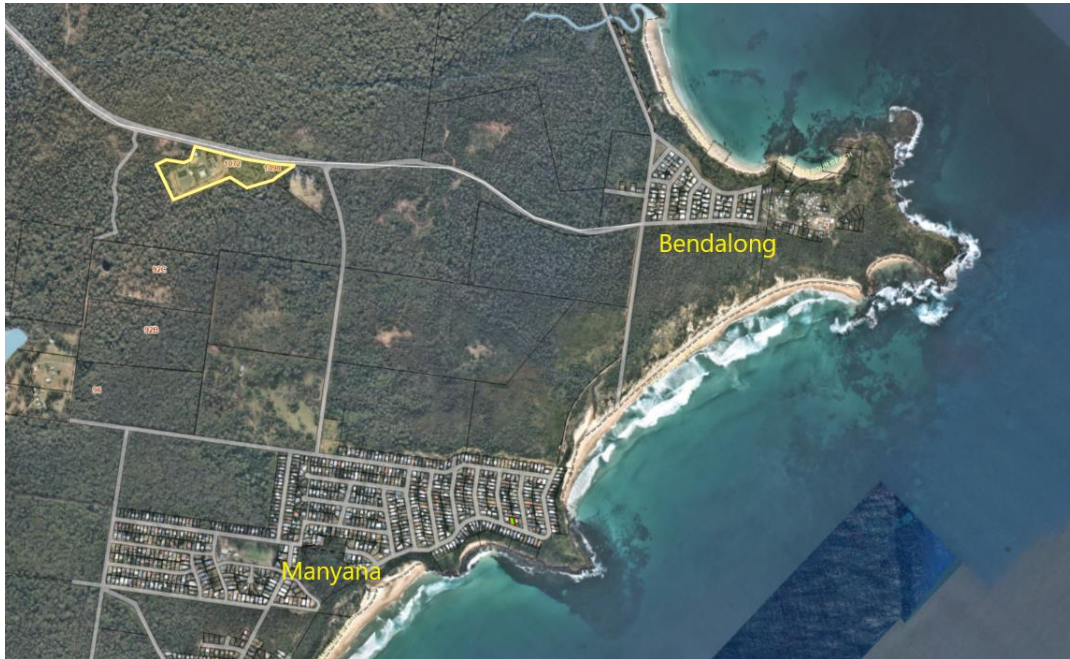


Figure 1. Location Map

## Subject Land

The subject site has frontage to Bendalong Road, Conjola. The land is located on the southern side of Bendalong Road, is situated to the west of the intersection of Bendalong Road and Inyadda Drive.

The site contains the existing Sewer Treatment Plant on the western side of the land. There is also an existing padmount station at the northwest side of the lot. The eastern side of the land is currently vegetated.

The land falls from the northeast corner of the site to the South, the majority of the land does fall to the north (to the road). Reticulated sewerage and water are available to the subject site. The site is serviced with above ground electricity lines, and telecommunication services are available in this locality.



Figure 2 - Aerial Image of Subject Site

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## Background

### History

The devastating impact to the communities of Lake Conjola and Manyana during the Currowan 2019/20 bushfire season resulted in significant property damage and road closures leaving the community isolated multiple times throughout the summer. The purpose for the development application is to build a new four-tanker rural fire service facility in response to community needs to increase community resilience of the Manyana/Bendalong area against future fire events.

The proposal is also the subject of a successful grant funding application, previously considered and reported to Council (MIN20.824 and MIN21.487).

### Proposed Development

The current application is for a new *Emergency Services Facility – Bushfire Station* to serve the communities of Bendalong, Manyana, Cunjurong Point, Berringer Lake and wider community. This proposal includes:

- Removal of vegetation (for building, access, parking area and APZ).
- Construction of a new rural fire station building comprising a four-bay vehicle storage building, attached office and amenities building, surrounding concrete driveways, carparking and manoeuvring areas with single access from Bendalong Road.
- A 26m bushfire asset protection zone (APZ) (15m inner protection area (IPA) and 11m outer protection area (OPA).
- A building to be constructed of dark grey Colourbond roof, with Colourbond and fibre cement cladding. The proposal retains vegetation between the building and the road and includes new landscaping. The building will be setback 13.2m from road boundary.

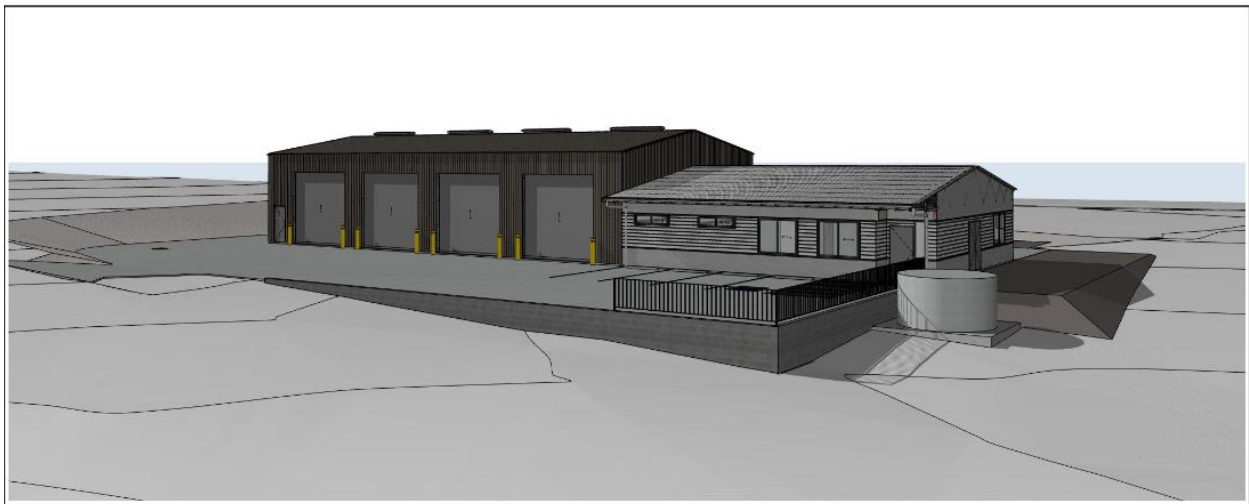


Figure 3: Proposed Development – 3D perspective

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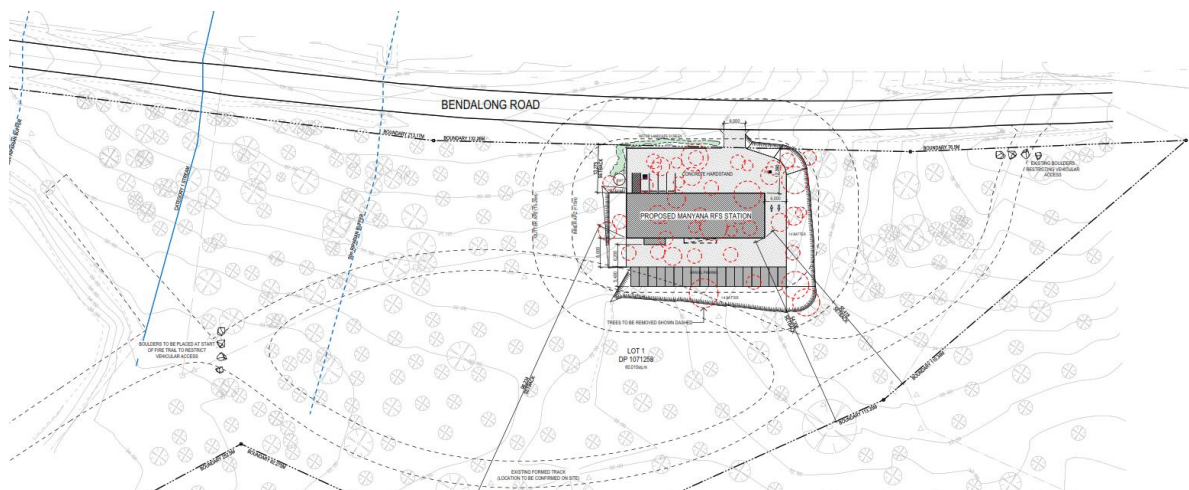


Figure 4: Proposed site plan

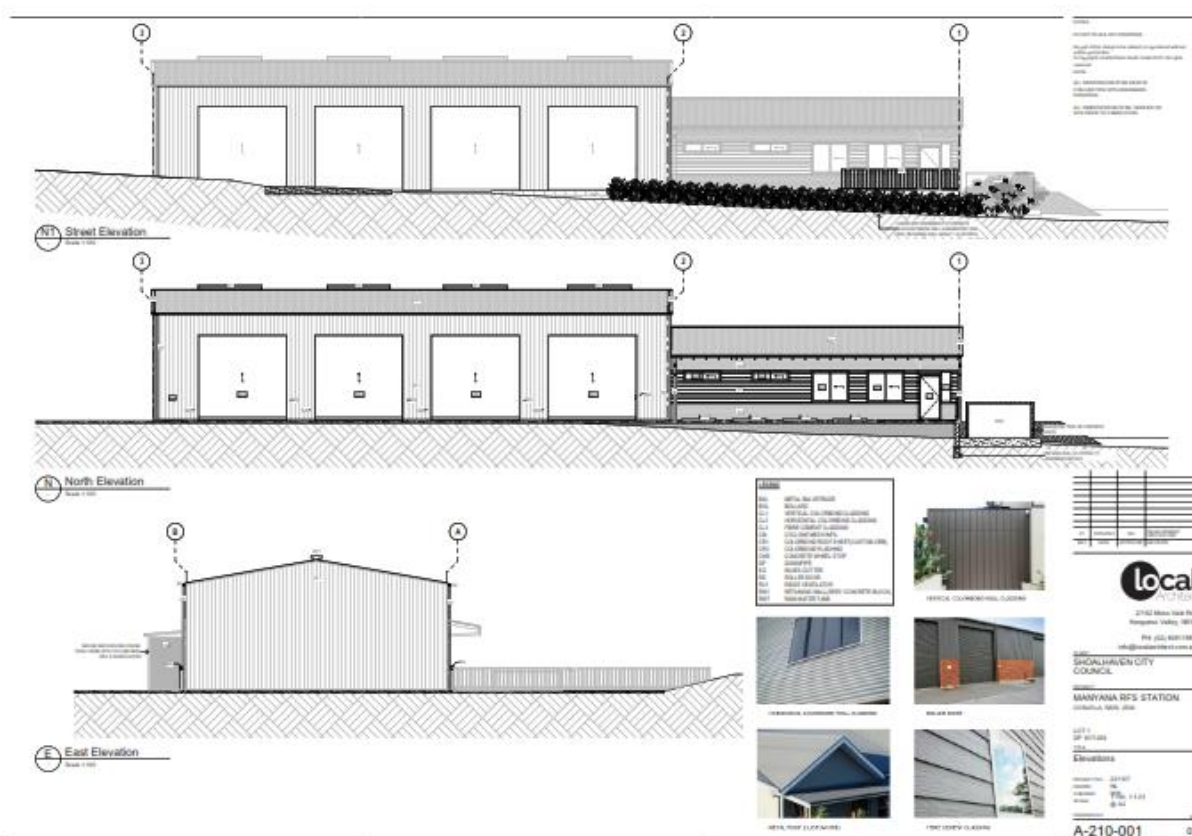


Figure 5. Proposed Elevations – North and East

## Issues

### Impacts on Biodiversity

Concern was raised through the assessment of the proposal that the development would clear extensive areas of vegetation and the proposal and extent of clearing had been inadequately assessed against the requirements of the *Biodiversity Conservation Act 2016* (BC Act) and *Shoalhaven Local Environmental Plan 2014* (SLEP 2014).

The application includes works or vegetation removal within the Biodiversity Values mapped area under the BC Act, and accordingly the proposed development is required to avoid,

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minimise and offset the impacts of proposed development and land use change on biodiversity.

The initial referral response from Council's Biodiversity Officer to the plans submitted initially for the DA, requested further information and amendments to the design to avoid and minimise impacts. Being a highly constrained site justification of the site for this project was requested to demonstrate the applicant has applied the avoid/minimise decision making hierarchy as required by the clause 7.5 of the SLEP 2014 – Terrestrial Biodiversity and the BC Act.

The applicant provided a response including amended plans and additional information including revised Flora and Fauna Report and proposal justification. The applicant outlined how they have complied with these principles and have tried to avoid impact as far as possible, within the constraint of site availability limitations.

Council's Biodiversity Officer has assessed the revised plans/documents against requested information. Each of the requested changes or additional information have been satisfied and accepted by Council's Biodiversity Officer. In addition to this, mitigation measures from the flora and fauna assessment by ELA are incorporated into the draft recommended conditions.

#### Extent of impact / Ongoing use of site / Site management

The site is vegetated, threatened species have been recorded on this site. The design of the development has been modified during the design process to avoid and minimise impacts to higher biodiversity values including threatened flora such as *Cryptostylis hunteriana* and hollow-bearing trees. Unfettered use of the site could result in adverse impact of threatened species.

### **Planning Assessment**

The DA has been assessed under s4.15 of the *Environmental Planning and Assessment Act 1979*. Please refer to **Attachment 1**.

### **Policy Implications**

#### Conflicts of Interest Policy – Dealing with DAs lodged by Council staff, Councillors and Council PPL22/149

This policy aims to manage potential conflicts of interest and increase transparency at all stages of the development process for council-related development. This policy applies to council-related development and where an applicant is a staff member or Councillor.

Council staff are the applicant and land owner. The stated Assessment Principles of this Policy have been adhered. This is a new fire station, and under this policy is a "routine DA", however this DA has been called in by Council, due to public interest raised in submissions.

All processes have been undertaken to ensure compliance with Council's policies, procedures, and legislative requirements.

### **Consultation and Community Engagement:**

Thirty (30) public submissions were received in relation to Council's notification of the development. The submission from Manyana Matters objected to the development and included an accompanying Ecological review of the submitted Flora and Fauna Assessment. The remaining twenty-nine (29) submissions were in support of the development.

The notification was for a 14-day period in accordance with Council's Community Consultation Policy with letters being sent to adjoining and nearby owners, notified to relevant CCB and notified in the press. It is noted that the 29 submissions supportive of the

proposal, were received after the notification period. The key issues raised in the submissions are provided below.

i) Issue - New facility needed for equipment, and health & well-being of RFS

Current facilities in nearby villages are outdated, sites and sheds too small to cater for current vehicles and equipment. Existing facilities inadequate to meet OHS needs of RFS personnel.

Comment

This corresponds with the applicant's supporting information. The Letter of Site Justification from the applicant, included at Attachment 4 of this report, outlines the need and site suitability of the proposed location and need for the facility.

ii) Issue – Support for Location

Central location would result in improvement to response times to villages and highway incidents. The land is sited away from residential development.

Comment

This corresponds with the application, in terms of the site justification and site selection process. This is further addressed by the applicant, see Attachment 4.

iii) Issue – Urgency of the matter

- Need for upgraded facilities well overdue,
- Impact on personnel with outdated facilities,
- Concern that funding has been allocated, and may be lost
- Concern for next fire season, need for critical infrastructure be built ASAP

Comment

This corresponds with the applicant's supporting information at Attachment 4.

iv) Issue – Concerns raised about submitted Flora and Fauna report

Several matters relating to the flora and fauna report (FF Report) were raised in the submission from Manyana Matters, including but not limited to:

- Area of impact calculation / clearing threshold questioned;
- Request for the size of the Development site be fully reviewed, to include the road verge;
- Vegetation and SLEP 2014 Biodiversity mapping / SEE questioned.
- Request that regardless of its size, the development trigger the BOS given the significance of threatened species on site listed under Federal and State environmental law and the proximity of the National Park;
- Concern that if more parking needed, the size of the proposal and impact will increase.;
- Assessments of several species claimed to be invalid due to time of year surveys undertaken, and *site verification lacking*.
- *Impact on habitat connectivity;*
- *Clearing will occur approx. 15m from Leafless Tongue Orchid recordings.*
- *More surveys and assessment under BOS requested.*

*"Scientific certainty is essential, not only to prevent potential local extinctions, but most critically to assess the impacts on BC Act and EPBC Act entities as prescribed by those Acts.*

*This is especially relevant in the wake of the devastating 2019/2020 bushfires which resulted in more than 80% of the Local Government Area being similarly impacted by fire."*

### Comment

The application was referred to Council's Biodiversity Team, who requested additional information and further justification from the applicant. The applicant provided a revised FF Report addressing matters raised both by the Biodiversity Team and in the submission, and a letter of justification (see Attachment 4) explaining the site selection process, and how attempts had been made to find an alternate site. The current site being found to be the only available option. The following table outlines how each of the above issues have been addressed.

Issues Raised in Submission	Response
<p><b>Area of impact calculation / clearing threshold</b></p>	<p>The revised FF Report outlines that:</p> <p><i>“Approximately 0.43 ha of native forest is assumed to be removed from within the subject land to establish the APZ, although selected trees within the OPA will be retained. The cleared road verge (0.04 ha) to the north of the native forest will also be impacted by the APZ, access and drainage. The regularly slashed groundcover in the road verge is primarily exotic with some native species. The entire development footprint south of the sealed section of Bendalong Road is 0.472 ha in size, and below the BOS clearing threshold of 0.5 ha”.</i></p> <p>Council's Biodiversity Officer undertook a detailed survey of the site and has reviewed the area of proposed vegetation removal and is in agreement that the area of clearing is below the BOS clearing threshold of 0.5 ha.</p>
<p><b>Request for the size of the Development site be fully reviewed, to include the road verge.</b></p>	<p>The revised FF stated:</p> <p><i>“The design and location of the proposal has been refined in order to minimise the clearing of native vegetation and avoid higher biodiversity values. Part of the APZ to the north is contained within the cleared road easement, and the initial location of the proposal has been moved to avoid threatened flora and all large hollow-bearing trees. A subsequent redesign in 2023 reduced the size of the development footprint. The location of the proposal minimises impacts to hollow-bearing trees, so that only four are expected to be removed. Trees will be selected for retention within the OPA where compliant with APZ specifications, with hollow-bearing trees preferentially retained”.</i></p> <p>Council's Biodiversity Officer has reviewed the revised plans and FF Report and stated that the revised architectural plans show vehicle access from the hard stand into adjacent informal tracks or into the adjoining APZ have been removed and vehicle access from the hard stand into retained habitat for <i>C. hunteriana</i> has been removed from plans. Additional car spaces are shown across the area where the rear driveway was shown previously. The revised plans have adequately refined the design of the proposal to address previous concerns to outline that the development has avoided, minimised or offset the impacts. Additionally, recommended conditions have been included on the consent to manage the ongoing operations of the facility.</p>

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<b>Vegetation mapping questioned &amp; SLEP 2014 Biodiversity mapping / SEE questioned.</b>	Council's Biodiversity Officer undertook a detailed survey of the site, has reviewed the proposed vegetation mapping and is supportive of the revised FF Report and the mapping undertaken to assess the proposal.
<b>Request that regardless of its size, the development trigger the BOS given the significance of threatened species on site listed under Federal and State environmental law and the proximity of the National Park.</b>	<p>The initial Biodiversity Officer review requested further information and amendments to the design to avoid and minimise impacts. Being a highly constrained site justification of the site for this project was requested in order to demonstrate the applicant has applied the avoid/minimise decision making hierarchy as required by the Clause 7.5 of the SCC LEP – Terrestrial Biodiversity. The information outlined in the revised FF Report satisfactorily addressed the threatened species on the site. In relation to <i>Cryptostylis hunteriana</i>, Council's Biodiversity Officer stated:</p> <p><i>"The Test of Significance (ToS) for C.hunteriana has been revised and is accepted. The ToS concludes the proposal is unlikely to have a significant impact on the species. The ToS is assessed based on a vegetation management plan (VMP) being prepared and mitigation measures implemented to minimise impact to terrestrial orchid habitat during construction and ongoing APZ maintenance. The VMP and recommended measures from the flora and fauna report are included within [the] recommended conditions".</i></p>
<b>Concern that if more parking needed, the size of the proposal and impact will increase.</b>	The revised FF Report outlines that <i>"All construction activities, parking of vehicles and storage of materials are to be contained within the IPA [Inner Protection Area] and cleared road verge as much as possible". "A Vegetation Management Plan (VMP) to guide the implementation, use and maintenance of the OPA [Outer Protection Area] and protection of surrounding habitat, is to be prepared by an appropriately qualified person."</i> The VMP has been recommended as a condition of consent (see Attachment 2 – Condition 35).
<b>Assessments of several species claimed to be invalid due to time of year surveys undertaken, and site verification lacking.</b>	Council's Biodiversity Officer reviewed this concern and has stated that the revised FF Report <i>"includes detail of the reference sites checked to ensure threatened orchids were in flower locally prior to targeted survey on the development site. NSW DPE website Bionet states the Cryptostylis hunteriana flowers from December to Late January on the South Coast. Genoplesium baueri is detailed as flowering February – March. Targeted surveys were conducted for these species on the 3rd &amp; 11th February. These species were observed at nearby reference sites on 14<sup>th</sup> January (G. baueri) and 25<sup>th</sup> January (C. hunteriana). Note while the targeted survey for C.hunteriana was slightly later than the recommended timing this is accepted given the species was [revised FF] report".</i>
<b>Impact on habitat connectivity</b>	<p>Council's Biodiversity Officer has stated that:</p> <p><i>"The letter by Garry George dated 8 June 2023 provides justification for the site selection. Alternative Council owned lots are assessed and are not suitable due to size/zoning/location/ neighbouring land use. No other sites are available for consideration. The site has been deemed most suited as this is the only Council owned site</i></p>

CL23.265

	<p><i>that meets the needs for the new Fire Station, The letter states: The selected site has been diligently considered as the best viable option as there are no suitable alternatives, it meets the needs of the RFS District Office and Local Brigade to provide a centrally located, easily accessible site that supports the station and appliances to be stored on site.</i></p> <p><i>Further to this it is stated that the proposal has been sited to avoid impact to the recorded C hunteriana plants and minimise loss of hollow bearing trees, avoiding the need to remove any larger, better quality hollows which will be retained onsite.</i></p> <p><i>This justification is accepted”.</i></p>
<p><b>Clearing will occur approx. 15m from Leafless Tongue Orchid recordings.</b></p>	<p>The VMP required under proposed Condition 35 requires “Vegetation removal must be conducted between March and October outside the flowering period for <i>Cryptostylis hunteriana</i>”.</p> <p>This matter will be suitably managed, and impacts mitigated via the proposed conditions of consent.</p>
<p><b>More surveys and assessment under BOS requested.</b></p>	<p>Both the revised FF report and the site inspection by Council's Biodiversity Officer have undertaken an extensive review of the site and surrounding area. It is considered that suitable assessment of the impacts on biodiversity has been undertaken, and in conjunction with conditions of consent to manage potential impact, it is concluded that the proposal is unlikely to have a significant effect on threatened species, populations or communities.</p>

CL23.265

v) Issue – exploration of alternate site

The submission from Manyana Matters raised that:

- the current two Fire Stations at Manyana and Bendalong are not fit for purpose and that, for the protection of the community and of the natural environment, a new site needed;
- requested a more environmentally suitable and centrally located site be found; and
- Impact on threatened species not acceptable, alternate site requested.

Comment

The submitted letter of justification (Attachment 4) outlines how/why the site was selected and confirmed that an alternate site is not available. This justification has been accepted.

Issue - delay with notification

Information on the proposal was sought since September 2022. Proposal process ‘opaque’ and “without any level of community consultation”.

Comment

While the project pre-lodgement phase may have been underway for some time, the DA was not lodged December 2022, just prior to the end of year holiday period.

The applicant responded to an initial request for information, prior to the application being notified to ensure a wholistic and complete DA was considered by the public. The notification of the DA was undertaken in accordance with Council's Community Consultation Policy.

**Financial Implications:**

The Currowan fires result in significant property damage and road closures. Improved infrastructure necessary in this location.

This proposal was the subject of a successful Bushfire Local Economy Recovery (BLER) grant funding application (MIN.21.497).

**Legal Implications**

Pursuant to section 8.2 of the EP&A Act, a decision of the Council may be subject of a review by the applicant in the event of an approval or refusal. However, if the application is determined by Council, if such a review were submitted it could not be put to Council for consideration.

Alternatively, an applicant may also appeal to the Court against the determination pursuant to section 8.7 of the EP&A Act.

**Summary and Conclusion**

The application has been prepared to address the need to build a new rural fire service facility to increase community resilience of the Manyana/Bendalong area.

A submission with several issues of concern was submitted. The applicant has addressed those issues of concern.

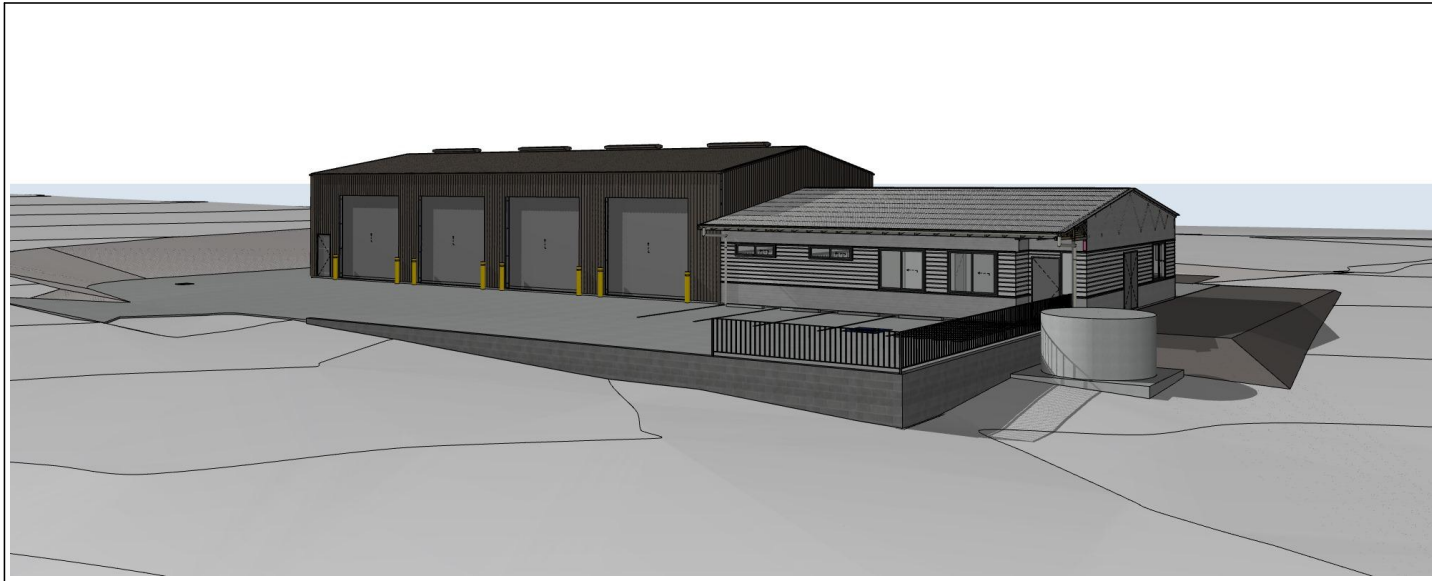
Having regard to the assessment and the matters described in 'Issues' in this report, notably assessment of biodiversity matters, with due regard to with regard to relevant legislation, including the BC Act, the proposal is recommended for a determination by way of approval.

A draft determination, Attachment 2, is attached to this report for consideration.



MANYANA RFS STATION  
CONJOLA, NSW, 2540

LOT 1  
DP 1071258



No.	DRAWING NAME	REV
A-001-001	Title Sheet	02
A-100-001	Site Plan	02
A-110-001	Floor Plan	01
A-110-002	Roof Plan	01
A-210-001	Elevations	01
A-210-002	Elevations	01
A-310-001	Sections	01

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REV	DATE	APPROVED	REVISION
02	25/05/2023		DEVELOPMENT APPLICATION
01	10/05/2023		DEVELOPMENT APPLICATION



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CONJOLA, NSW, 2540

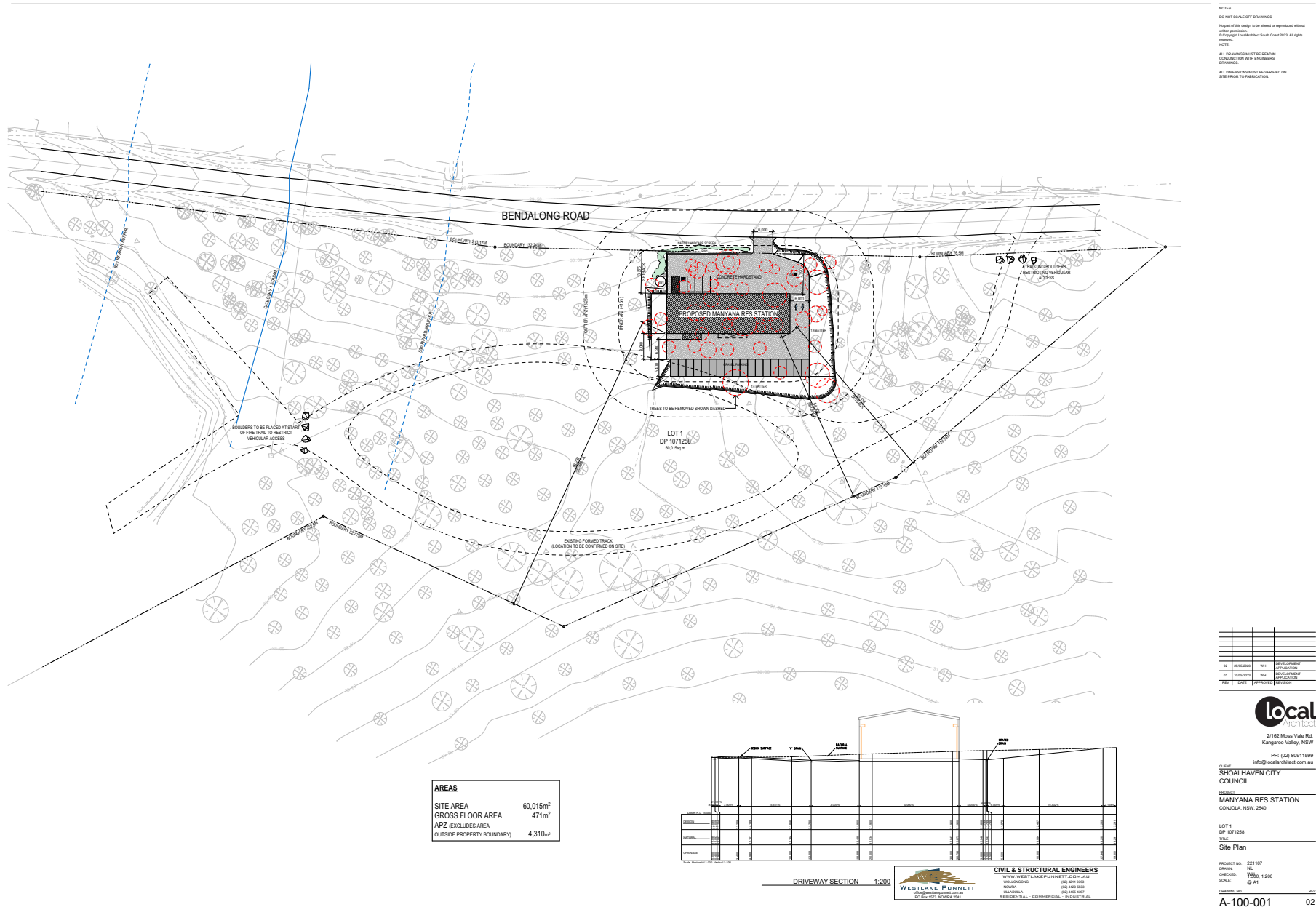
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DP 1071258

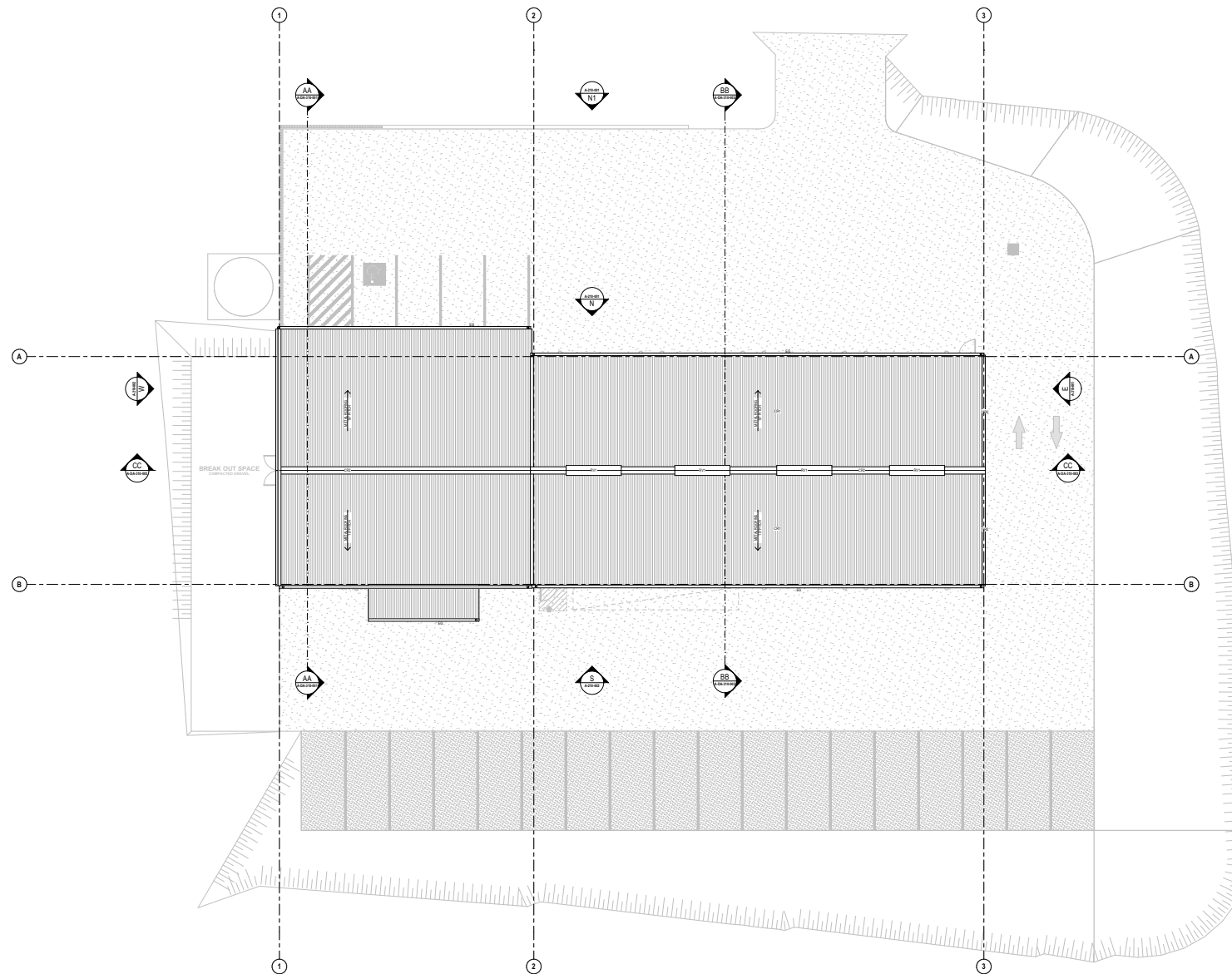
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Title Sheet

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DRAWING NO  
A-001-001

REV  
02





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BY	DATE	BY	DATE
1	10/08/2023	1	10/08/2023
2	10/08/2023	2	10/08/2023
3	10/08/2023	3	10/08/2023



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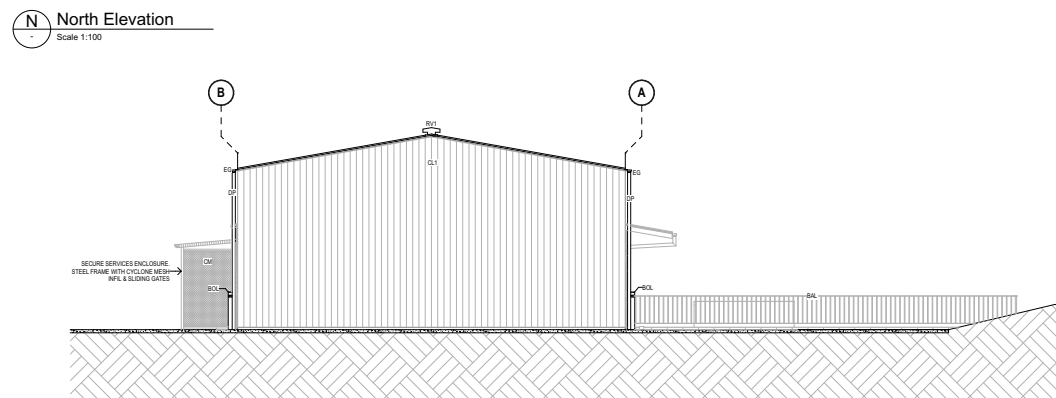
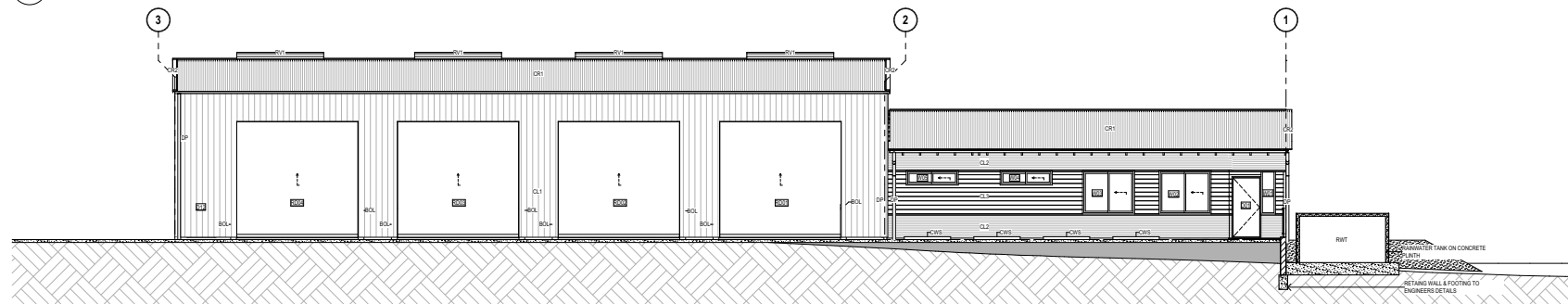
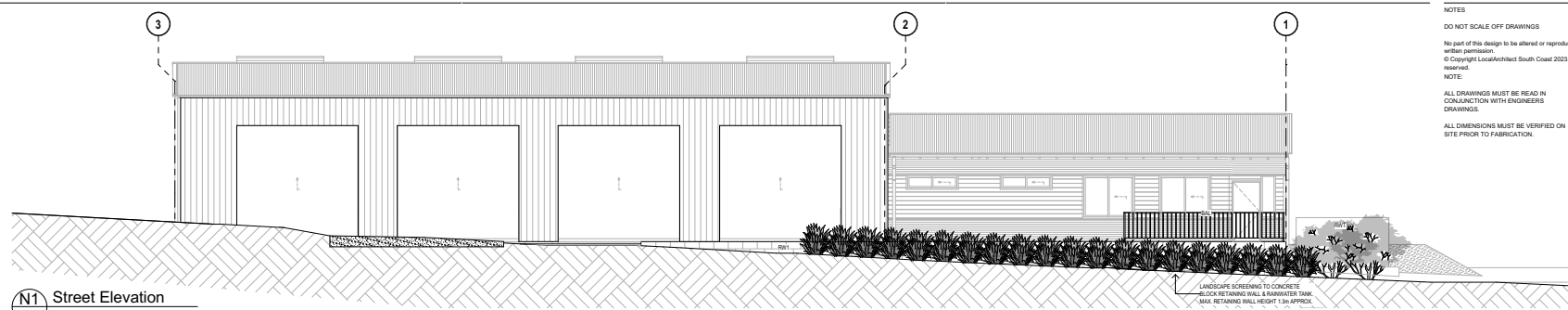
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 MANYANA RFS STATION  
 CONJUGA, NSW, 2540

LOT 1  
 DP 107 258

TITLE  
 Roof Plan

PROJECT NO: 221107  
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 CHECKED: WH  
 SCALE: 1:100 @ A1

DRAWING NO: A-110-002  
 REV: 01



**LEGEND**

BAL	METAL BALUSTRADE
BOL	BOLLARD
CL1	VERTICAL COLORBOND CLADDING
CL2	HORIZONTAL COLORBOND CLADDING
CL3	FIBRE CEMENT CLADDING
CM	CYCLONE MESH INFILL
CR1	COLORBOND ROOF SHEET (CUSTOM ORB)
CR2	COLORBOND FLASHING
CWS	CONCRETE WHEEL STOP
DP	DOWNPIPE
EG	EAVES GUTTER
RD	ROLLER DOOR
RV1	ROOF VENTILATOR
RW1	RETAINING WALL (GREY CONCRETE BLOCK)
RWT	RAIN WATER TANK



01	10/05/2023	WH	DEVELOPMENT APPLICATION
REV	DATE	APPROVED	REVISION



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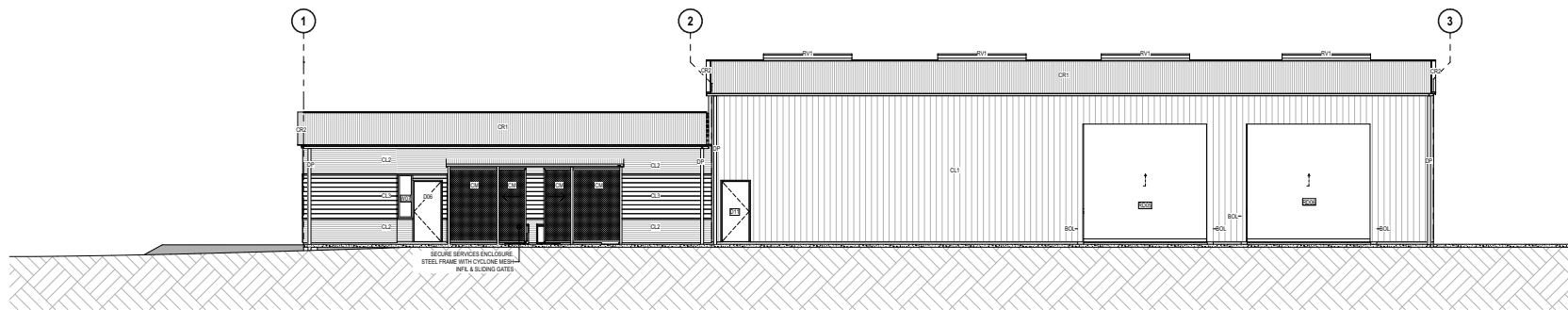
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**MANYANA RFS STATION**  
CONJOLA, NSW, 2540

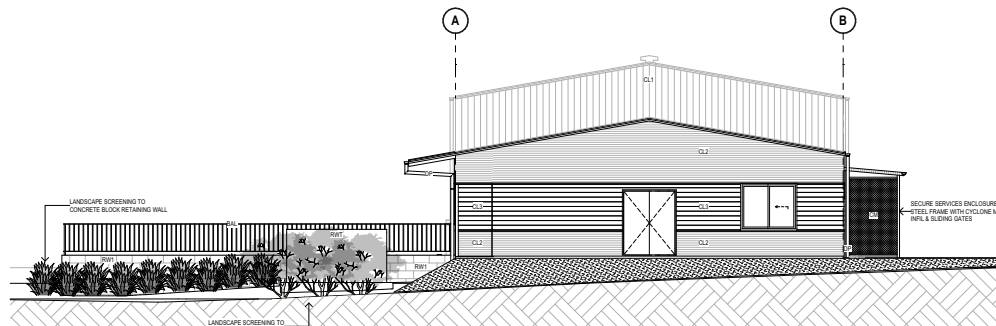
LOT 1  
DP 1071258  
TITLE  
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**A-210-001**  
REV  
**01**

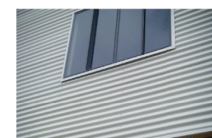


**S** South Elevation  
Scale 1:100



**W** West Elevation  
Scale 1:100

LEGEND	
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BOL	BOLLARD
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CL2	HORIZONTAL COLORBOND CLADDING
CL3	FIBRE CEMENT CLADDING
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RD	ROLLER DOOR
RV1	ROOF VENTILATOR
RW1	RETAINING WALL(GREY CONCRETE BLOCK)
RWT	RAIN WATER TANK



HORIZONTAL COLORBOND WALL CLADDING



METAL ROOF (CUSTOM ORB)



VERTICAL COLORBOND WALL CLADDING



ROLLER DOOR



FIBRE CEMENT CLADDING

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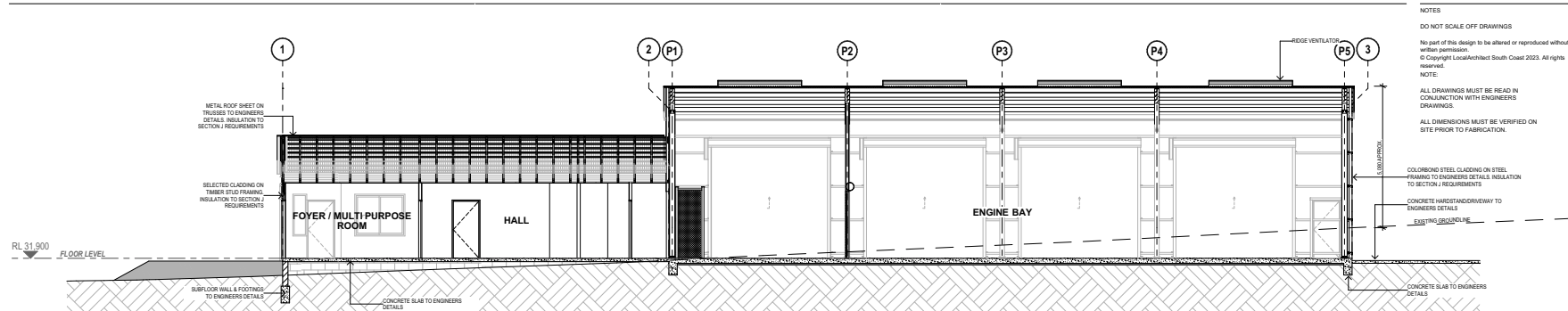
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DP 1071258

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**Elevations**

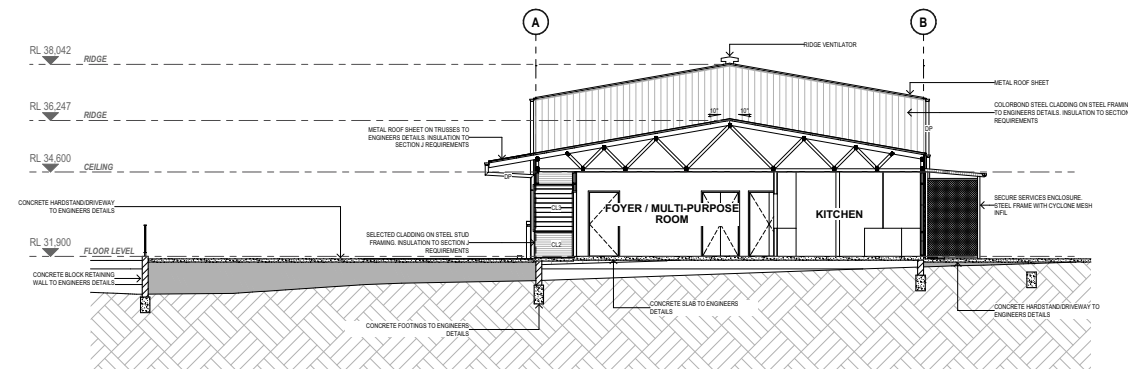
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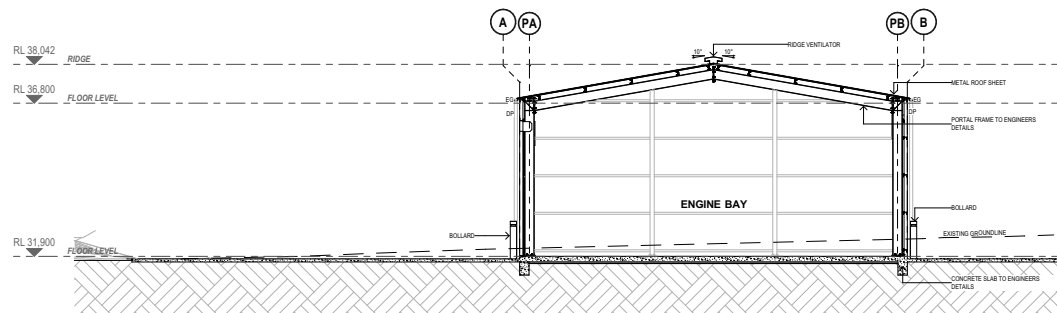
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**01**



Section C-C  
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Section A-A  
Scale 1:100



Section B-B  
Scale 1:100

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COLORBOND STEEL CLADDING ON STEEL FRAMING TO ENGINEERS DETAILS. INSULATION TO SECTION / REQUIREMENTS  
CONCRETE HARDSTAND/DRIVEWAY TO ENGINEERS DETAILS  
EXISTING GROUNDLINE  
CONCRETE SLAB TO ENGINEERS DETAILS

REV	DATE	APPROVED	REVISION
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TITLE  
Sections

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REV  
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Council Reference: 25365E (D23/216629)

08/06/2023

Elizabeth Downing  
PO Box 42  
NOWRA NSW 2541

Dear Ms Downing

#### **Justification – Proposed Site - Manyana RFS Station**

Council made a Bushfire Local Economy Recovery (BLER) grant funding application for a new Rural Fire Service (RFS) Station located within the Bendalong / Manyana district.

This was in accordance with MIN20.824 of Councils Strategy & Assets meeting dated 10 November 2020. At that meeting council endorsed a list of projects including estimated costs (\$1.5M) to be applied under the BLER.

Subsequent MIN21.497 confirmed that construction of a RFS station for Manyana and Bendalong was successful under the BLER stage 2 funding approvals.

The business case (attached) explained the need to build a new four-tanker rural fire service facility at 1072 Bendalong Rd, Conjola, to increase community resilience of the Manyana/Bendalong area against future fire events. Citing the devastating impact to the communities of Lake Conjola and Manyana during the Currowan 2019/20 bushfire season, with significant property damage and road closures leaving the community isolated multiple times throughout the summer.

In summary, the key reasons for providing additional firefighting capacity to the area are:

- To improve bushfire readiness.
- To improve community resilience.
- Allow for increased capacity for volunteer support & community involvement and awareness.

Significant outcomes from provision of this station are summarised below.

Outcome	Beneficiaries
Decreased response time to local events, particularly those occurring inland.	RFS, Local Community, Council
Ability to attend multiple fire incidents during peak fire season	RFS, Local Community, Local Businesses, Council

Better capacity for strategic allocation of resources and decreased dependency on other district resources during peak fire season.	RFS, Local & Regional Community & Businesses
Ability to accommodate larger firefighting trucks and other equipment as needed for Strategic Purposes.	RFS
Increased Capacity for Community Involvement and Volunteering	Local Community, RFS

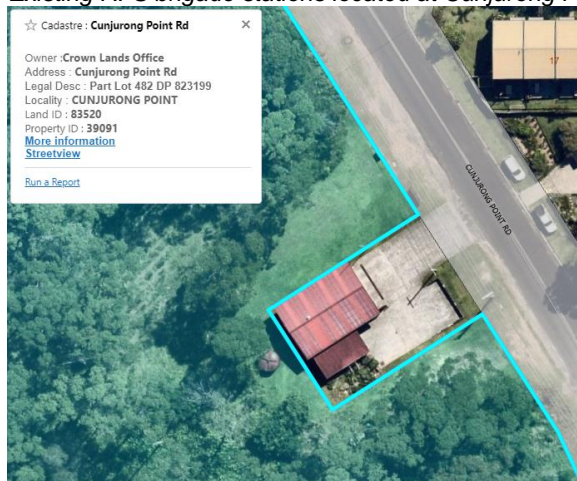
### Site Selection

The proposed site (Lot 1 DP 1071258, 1072 Bendalong Rd, Conjola) was chosen as the site for the new Manyana RFS station primarily as being the only available Council owned land (Zoned SP2 - Infrastructure) within the Manyana / Bendalong / Conjulong Point area. The selected site has previously been disturbed with the installation of the Tertiary Treated Effluent Release Main and the Reticulation Water Main connecting to the Sewer Treatment Plant on the same lot, leaving 2 informal fire trails on the property. Extensive Flora & Fauna, Arborist, Bushfire & Environmental investigations of the site have been undertaken by an experienced ecologist, which included a 6-month detailed assessment of Flora and Fauna.

Considerations to prevent the works disturbing the *Cryptosylis Hunteriana* have been included within the design. Since their discovery the footprint of the works has moved west, to avoid and minimise impacts to higher biodiversity values including the threatened flora and hollow-bearing trees. The overflow carpark has been relocated to the rear of the building and access will be restricted to the habitat with the closure of the informal fire trails allowing them too naturally regenerate. Upon completion of the build a sign will be installed advising 'Parking permitted in designated spaces only'.

**Other options considered include:**

*Existing RFS brigade stations located at Conjulong Point and Bendalong.*



The Conjulong Point site has no available land on site for either extensions to the existing station or construction of a new station. It is landlocked on all boundaries by Crown Lands and with an existing informal APZ on the Crown Land parcel. Considering the needs of the new station, building buffers, setbacks and required APZs, the site does not support the required development. Additionally, the site is located to the extreme south of the precinct which does not meet the need for a central location between both Manyana and Bendalong.





The location of the existing Bendalong RFS brigade station is within a residential neighbourhood on land zoned R2 – Low Density Residential. The site does not support the proposed station requirements due to zoning, insufficient area, and residential proximity, nor does it meet the needs of the RFS.

### Neighbouring Waste Facility

The cleared land on the neighbouring waste facility was considered as a potential site; however, the land is owned by The State of NSW (Crown) with Council assigned the Crown Land Manager.



There are numerous considerations for this site including.

- The site was gazetted for the purpose of a rubbish depot. R94085
- The site is under Aboriginal Land claim.
- The site is flagged as potentially contaminated due to its use.
- Geotechnical issues.
- Shared occupation and use.

The site cannot be transferred into Council ownership until the Aboriginal land claim has been determined.

Further noting the Reserve purpose:

- 2.12 Dedicated or reserved Crown land to be used for limited purposes.  
Dedicated or reserved Crown land may be used only for the following purposes—
- (a) the purposes for which it is dedicated or reserved,
  - (b) any purpose incidental or ancillary to a purpose for which it is dedicated or reserved,
  - (c) any other purposes authorised by or under this Act or another Act.

There is currently no other suitable property available within the Bendalong / Manyana district.

Council is not able to acquire or contribute any funds towards acquisition of any privately owned property, of which there are none suitably zoned (SP2) properties available.

The selected site has been diligently considered as the best viable option as there are no suitable alternatives, it meets the needs of the RFS District Office and Local Brigade to provide a centrally located, easily accessible site that supports the station and appliances to be stored on site.

Within the selected site, the proposed footprint was derived by positioning the new building as far west as possible from the vulnerable flora habitat, without impeding the existing water main and limiting the impact to the hollow bearing trees.



If you need further information about this matter, please contact Gary George, City Services on 1300 293 111. Please quote Council's reference 25365E (D23/216629).

Yours faithfully



**Gary George**  
**Manager - Building Services**

## CL23.266 Amendment to Draft 2023/24 Fees - Food shop Administration Fee - Public Exhibition

**HPERM Ref:** D23/319712

**Department:** Environmental Services

**Approver:** James Ruprai, Director - City Development

### Reason for Report

The purpose of this report is to seek the endorsement of Council to place the Food Business Administration Fees on public exhibition in accordance with legislative requirements.

### Recommendation

That Council endorse the draft 2023/24 Food Business Administration Fees for the purpose of placing them on public exhibition for a period of 28 days.

### Options

1. Council resolves to place the draft 2023/24 food business Administration Fees, on public exhibition for 28 days.

Implications: The fees will be placed on public exhibition and reported back to Council in September. This report will provide detail any submissions received.

2. Council defers a decision in respect of these draft 2023/24 food business Administration Fees being placed on public exhibition pending further information being provided or another purpose.

Implications: A delay in placing the draft fees on public exhibition could result in loss of income.

### Background

Council resolved at the Ordinary Meeting on 26 June 2023 to adopt the 2023/24 Fees and Charges, Part 1 and Part 2 (MIN23.326).

Due to an administrative oversight, the food business Administration Fees normally applied to the food hygiene inspection program were not included in that report.

These Administration Fees have been charged by Shoalhaven City Council since the introduction of the NSW Food Regulation Partnership with the NSW Food Authority in 2008.

The proposed food shop Administration Fees 2023/24 includes a consumer price index increase of 4.6% as adopted on the 26 June 2023.

Table 1 – Food shop administration fee categories and draft fees 2023/24

Food premises risk category	2022/23 Food business Administration Fees	Draft 2023/24 Food business Administration Fee
Low - Medium risk food business: <5 food handlers	\$110	\$115
High risk food business: <5 food handlers	\$163	\$170

CL23.266

High Risk food business: 6 – 50 food handlers	\$449	\$469
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The NSW Food Regulation 2015 (the Regulation) states that an enforcement agency may impose an administration charge for a 12-month period on any person who carries on a food business. Section 15(10) of the Regulation sets a maximum charge per food business based on the number of food handlers.

Table 2 – Maximum food business Administration Fees set by legislation.

Number of full-time equivalent food handlers working at premises	Maximum charge per premises
Up to and including 5	\$390
More than 5 but not more than 50	\$800
More than 50	\$3,500

The draft 2023/24 food business Administration Fees are less than half of the maximum charges set by the Regulation.

### Community Engagement

These draft food premises administration fees will be placed on public exhibition on the Shoalhaven City Council website for a period of 28 days with a report back to Council and outline any submissions received.

### Financial Implications

The forecast 2023/24 income from the Food Premises Administration Fee is \$87,445, with the 2023/24 budget including this income.

CL23.266

## **CL23.267 Exemption to Policy - Temporary Storage (Shipping) Container on Public Land (POL16/218) - Kioloa Bawley Point Sport & Recreation Club - Crown Reserve Lot 7005 DP 1020466 Murramarang Road Kioloa**

**HPERM Ref:** D23/245637

**Department:** Technical Services

**Approver:** Sarah Taylor, Acting Director - City Lifestyles

### **Reason for Report**

The purpose of this report is for Council to consider an exemption to Council's Temporary Storage (Shipping) Container on Public Land Policy (POL16/218) to enable Kioloa Bawley Point Sport & Recreation Club to retain two shipping containers at the Kioloa Bawley Point Community Centre, on Crown Reserve – Lot 7005 – DP 1020466 Murramarang Road, Kioloa.

### **Recommendation**

That Council:

1. Approve an exemption to the Temporary Storage (Shipping) Container on Public Land Policy (POL16/218) to allow Kioloa Bawley Point Sport & Recreation Club to place two shipping containers at the Kioloa Bawley Point Community Centre, on Crown Reserve - Lot 7005 - DP 1020466 Murramarang Road, Kioloa.
2. Write to the Kioloa Bawley Point Sport & Recreation Club to inform them of the exemption approval which will enable them to submit their Development Application for the second storage container on Crown Reserve – Lot 7005 – DP1020466 Murramarang Road Kioloa.

### **Options**

1. Resolve as recommended.

Implications: Kioloa Bawley Point Sport & Recreation Club is able to submit a Development Application to assess the shipping containers on the Crown Reserve. If the shipping containers are permitted, this will allow the Club to retain necessary storage of its equipment.

2. Adopt an alternate recommendation.

Implications: Kioloa Bawley Point Sport & Recreation Club remove the second shipping container at its own cost and the Club will not have the required storage space for its equipment.

### **Background**

The Kioloa Bawley Point Community Centre, on Crown Reserve – Lot 7005 – DP 1020466 Murramarang Road, Kioloa, is highly utilised by the community, including a hall, two tennis courts, tennis clubhouse, basketball court, playground, reserve areas and sports field. Both casual and permanent user groups utilise the community centre for various activities, including:

CL23.267

- Indoor Bowls
- Yoga
- Playgroup
- Alcoholics Anonymous
- Nia Dance
- Senior Heart Moves
- Markets
- Kids Club
- Yuukan Judo
- Darts
- Table Tennis
- Tennis
- Kioloa Bawley Point Sport & Recreation Club

The permanent user groups of the centre have exhausted current available storage options in the hall and clubhouse, and the Club is requesting the use of an additional temporary storage container.

The Kioloa Bawley Point Sport & Recreation Club first approached Council as Crown Land Manager in August 2018 to place a storage container at the community centre.

A Crown Land short-term licence was granted in December 2018 for a 12-month period for one storage container, which was renewed for a further 12 months until the last expiry in November 2021.

When the licence was due for renewal in November 2021, it was identified that the Club had placed a second storage container on the land. The placement of two storage containers does not comply with Council's adopted Temporary Storage (Shipping) Container on Public Land Policy (POL16/218).

This policy stipulates that only one temporary storage container can be located on a reserve unless there are exceptional circumstances, in which case, Council will determine each application on its merits.

The Kioloa Bawley Point Sport & Recreation Club has provided the following information regarding exceptional circumstances:

- The storage containers are used for storage of items belonging to a community group.
- The Club provides valuable contributions to the community as it assists with funding of the shared cycleway and footpath linking Kioloa and Bawley Point.
- Being unable to procure a 40-foot shipping container at time of installation, the Club installed a 20-foot container, however, additional storage space was required so a second container was installed. Both containers are installed in a tidy and discreet manner and location.
- The containers are located adjacent to each other, are clearly intended for joint purpose, do not impede any other activity and are kept in good condition.
- It would pose a considerable cost to the Club to exchange the existing two containers for one 40-foot container.





*Figure 1: Photo of shipping containers utilised by Kioloa Bawley Point Sport & Recreation Club*

Should Council approve the Exemption from Policy, the Club must obtain Development Consent for both temporary storage containers from Council, separate to other licences and approvals required under Council's Policy.

### **Community Engagement**

If the recommendation is supported and Development Consent granted, Council will advertise its intention to licence two shipping containers on Crown Reserve – Lot 7005 – DP 1020466 Murramarang Road, Kioloa via local newspaper and on Council's website. Any objections received will be subject to a further report to Council.

### **Policy Implications**

The Policy exemption relates to Council's Temporary Storage (Shipping) Container on Public Land Policy (POL16/218) which states that only one temporary storage container can be located on a reserve unless there are exceptional circumstances, in which case, Council will determine each application on its merits.

### **Financial Implications**

All costs associated with a Development Application and subsequent public advertising will be funded by the Kioloa Bawley Point Sport & Recreation Club.

### **Risk Implications**

Should Council permit the second storage container on Crown Reserve – Lot 7005 – DP 1020466 Murramarang Road, Kioloa, this may set an unwanted precedent for the proliferation of multiple containers in parks and reserves.

## CL23.268 Acquisition - Easement for Water Main - Lot 1 DP 823267 & Lot 2 DP 813898, 1534 Bolong Road Coolangatta

**HPERM Ref:** D23/290369

**Department:** Technical Services

**Approver:** Robert Horner, Executive Manager Shoalhaven Water

### Reason for Report

This report provides Council with an opportunity to consider the acquisition of an easement for water supply 6 metres wide over Lot 1 DP 823267 and Lot 2 DP 813898, 1534 Bolong Road Coolangatta.

The easement is required to secure a pipeline that provides the residents of Shoalhaven Heads with an essential back-up source of water supply.

### Recommendation

That Council

1. Acquires by agreement an easement for water supply 6m wide with an approximate area of 1160m<sup>2</sup> (subject to survey) over Part Lot 1 DP 823267 Bolong Road Coolangatta, and an easement for water supply 6m wide with an approximate area of 155m<sup>2</sup> (subject to survey) over Part Lot 2 DP 813898, 1534 Bolong Road Coolangatta.
2. Agrees to pay compensation in the amount of \$36,000 plus GST (of applicable) for Part Lot 1 DP 823267 and Part Lot 2 DP 813898, 1534 Bolong Road, Coolangatta plus, reasonable valuation and legal costs associated with the acquisition from Council's Water Fund.
3. Delegates authority to the Chief Executive Officer to adjust the compensation in accordance with the area of the easement determined by the final registered plan.
4. Authorises the Chief Executive Officer to sign all documentation required to give effect to this resolution and to affix the Common Seal of the Council of the City of Shoalhaven to all documentation required to be sealed.

### Options

1. Resolve as recommended.

Implications: Acquiring the easement will provide Council with the legal capacity to access, construct and maintain the underground pipes.

The secondary connection will reduce the risk of no water to the residents of Shoalhaven Heads should the main water supply in Shoalhaven Head Rd break or fail.

2. Not resolve as recommended.

Implications: Will leave the residents of Shoalhaven Heads without water should the existing water main fail or have any issues.

CL23.268

The acquisition of the easement will be undertaken in accordance with Council's Acquisition of Land by Shoalhaven City Council, POL22/120.

**Financial Implications**

The compensation and reasonable valuation and legal costs associated with the acquisition are to be funded from Council's Water Fund.

**Risk Implications**

Acquisition of the easement is necessary to secure Council's legal rights for access, operation, and maintenance of essential public infrastructure.

CL23.268

## CL23.269 Exemption from Tendering - Sludge Dewatering Centrifuge Hire, Nowra Wastewater Treatment Plant

**HPERM Ref:** D23/303759

**Department:** Water Operations & Maintenance

**Approver:** Robert Horner, Executive Manager Shoalhaven Water

### Reason for Report

To allow Council to consider an exemption from the Procurement Policy to continue the existing hire arrangement with Flottweg Australia Pty Ltd for a Sludge Dewatering Centrifuge at Nowra Wastewater Treatment Plant (WwTP) until a suitable unit can be purchased.

### Recommendation

That Council

1. Approves an exemption from tendering in accordance with Section 55(3)(i) of the Local Government Act 1993, for the continued hire of a sludge dewatering centrifuge for Nowra Wastewater Treatment Plant (WwTP) for extenuating circumstances existing due to:
  - a. A pre-existing hire agreement was entered into to allow additional capacity in light of burgeoning demand for sludge removal at Nowra WwTP and to trial the feasibility of a permanent dewatering unit on-site. Flottweg Australia Pty Ltd were originally engaged following the evaluation of three (3) quotations for a dry hire arrangement.
  - b. Continuing with the current hire agreement is the most cost-effective solution to providing essential services to ensure environmental compliance until the purchase of a permanent dewatering unit is finalised.
2. Authorises the CEO (Executive Manager, Shoalhaven Water) to approve purchase orders for Flottweg Australia Pty Ltd for the continued hire of a sludge dewatering centrifuge.

### Options

1. Resolve to adopt the recommendation.

Implications: This would facilitate the continuous processing of biosolids material produced at the Nowra WwTP in the most cost-effective manner, until the completion of purchasing a permanent centrifuge for the WwTP.

2. Council chooses not to accept the recommendation and resolves to undertake a full open tender process.

Implications: A full open tender process requires significant time, which would result in additional costs and a regression in treatment stability resulting in additional risk to the WwTP's environmental compliance.

CL23.269

## Background

### Hire Agreement

The initial hire arrangement was established as a trial to assess the feasibility of a permanent on-site facility to address the need of processing an increasing volume of biosolids produced at the new Nowra WwTP.

Council sought three (3) rental agreement quotes which were each evaluated for technical suitability and cost effectiveness. Following the evaluation, a supplier was chosen, and an agreement has been in place since February 2023.

### Trial Outcome

The trial has confirmed the need to have a permanent facility to compliment the mobile centrifuge that currently supports Council's other WwTP's to effectively process sludge and provide a long-term solution. A formal Request for Tender to purchase a unit has been established. The purchase is fully budgeted for in the current Plant Replacement Schedule, through Council's Sewer Fund.

### Interim Coverage

As the tendering process and the lead time for the delivery of a unit may take some time, advice was sought from the Procurement Team as to the most appropriate way to continue with a hire agreement to ensure continuity of processing, until a permanent unit is established on-site.

The current hire spend to date is \$192,091.37 (including GST), so continuing hire beyond August 2023 would see the value exceed the allowable threshold within Council's Procurement Policy/Procedure. Rather than cease the existing hire and conduct a separate Request for Tender for continued hire, which would add cost and delay the processing of material, it was identified that the most efficient option would be to seek a Council resolution exemption under s55(3) of the Local Government Act to continue with the current hire arrangement until a unit has been purchased.

## Policy Implications

Requires an exemption from Council's Procurement Policy as allowed under the Procedure (Sec.5.6) and in accordance with s55(3) of the Local Government Act 1993.

## Financial Implications

Nil implications. Any costs associated with the ongoing hire of a sludge dewatering centrifuge are covered by the operating budget for Nowra WwTP.

## Risk Implications

### Negative Implications

If the current hire arrangement must be finalised and a tender advertised, it will result in additional costs by way of equipment demobilisation and diversion of internal resources to manage the sludge in the unit's absence. Furthermore, sludge accumulation in the interim risks a destabilisation of the broader treatment process which has historically compromised the discharge water quality leading to an environmental non-compliance. Council would then incur further costs to establish a new unit on-site following the tender process.

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Positive Implications

Adopting the recommendation saves both time and money, by retaining the existing unit that is already set up and running, it allows for continuous processing until a suitable permanent unit can be purchased. It reduces the risk of process complications at the WwTP and ensures material is removed from the lagoons and is able to be stockpiled in the hardstand areas in a suitable condition.

CL23.269



## CL23.270 Notice of Motion - Improving Traffic Access to Nowra Riverfront Businesses and Residences

**HPERM Ref:** D23/317039

**Submitted by:** Cllr Serena Copley  
Cllr Paul Ell

### Purpose / Summary

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

### Recommendation

That Council:

1. Calls on Transport for NSW (TfNSW) to urgently review the proposed ongoing closure of Pleasant Way Nowra which has adversely affected businesses and residents in the riverfront precinct.
2. Calls on TfNSW to reopen Pleasant Way Nowra and ensure a southbound exit and northbound entry from the Princes Highway into Pleasant Way as a matter of urgency.
3. Directs the CEO to provide a copy of this motion to:
  - a. The Hon Jo Haylen MP (NSW Minister for Transport),
  - b. Mr Gareth Ward MP (Member for Kiama)
  - c. Mrs Liza Butler MP (Member for South Coast) and
  - d. Mrs Fiona Phillips (Federal Member for Gilmore)
4. Calls for a report back from TfNSW at the proposed 21 September briefing to Council and to also include an update on any additional plans for Shearwater Way.

### Background

Due to road works to support the Nowra Bridge Project, Pleasant Way Nowra has been blocked off from traffic completely. This has meant that access to businesses and residents' homes located in this precinct has been severely impacted, as a more complex approach is now necessary.

Cars and caravans must now undertake an additional 3km of driving to negotiate through poorly signposted residential streets and through a heavily trafficked school zone to access businesses and homes. A significant number of patrons have contacted the affected businesses to inform them that access is just too difficult, and they have given up and gone elsewhere. Some businesses in the precinct have noted a downturn in trade in the region of 30% to 40%.

This precinct has been identified by the Riverfront Taskforce as being a key area in future planning to provide entertainment and hospitality venues and therefore must have direct highway access to ensure the viability of these establishments.

CL23.270

## **CL23.271 Notice of Motion - Council Policy to Avoid Misinformation**

**HPERM Ref:** D23/318129

**Submitted by:** Cllr Evan Christen  
Cllr Tonia Gray

### **Purpose / Summary**

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

### **Recommendation**

That Council:

1. Reviews current communications, media and social channel policies to ensure they protect against misinformation being propagated by any individual, group organisation through any of Council's activities and communication channels.
2. Receive a report on the outcome of the review, including what is the current situation and making recommendations on possible policy additions and amendments.

### **Background**

In recent times there is misinformation/false information circulating in the community and media that can have negative consequences for the health and wellbeing of the community. It is important that the Council does not become a conduit for such misinformation as we strive to care for the health and wellbeing of our community.

CL23.271

## CL23.272 Notice of Motion - Boongaree Long Vehicle Parking Area

HPERM Ref: D23/317193

Submitted by: Cllr Tonia Gray  
Cllr Matthew Norris  
Cllr Patricia White  
Cllr Serena Copley  
Cllr John Wells

### Purpose / Summary

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

### Recommendation

That Council:

1. Directs the CEO to remove the long vehicle parking (LVP) area for 6 vehicles from its current location in the adopted Boongaree Master Plan.
2. Investigates alternative options for long vehicle parking within the Boongaree precinct and report back to Council with the findings.

### Background

The Boongaree sporting and recreational precinct is a major destination park for the Shoalhaven region. Additionally, the park's popularity has eclipsed expectations resulting in a substantial increase in pedestrian and vehicular traffic. Historically, the inclusion of a long vehicle parking (LVP) area in the original Master Plan was intended to cater to people stopping over in Berry while travelling up and down the coast with a caravan, boat or other trailer.

The footpaths and green spaces within Boongaree have increased in popularity with recreational activity such as dog walkers, bicycle riders, joggers and skateboard riders. The ambience is one of a 'safe user friendly' environment where parents allow their children to ride freely from the Mark Radium Park roundabout to the Boongaree play park.

Councillors have been made aware of the groundswell of Berry community concerns surrounding the Stage 5 LVP area.

The residents have highlighted the following concerns:

- **Issues centre primarily around pedestrian safety.** They argue safety will be inevitably compromised if the LVP area goes ahead in the proposed location and draw our attention to SDCCP Ch. N2 Town Centre, A2.1 which clearly states:

"Pedestrian routes are direct and minimise potential conflicts with vehicles."

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- The uninterrupted pathway along North Street where children co-planted their own trees in partnership with the Rotary Club of Berry will be irreversibly changed. To date, community members have had a clear pathway with no vehicle access from the Kangaroo Valley Road roundabout to Bongaree Play Park. This has provided an ideal environment for little children to learn to ride bikes without the risk of encountering vehicles unexpectedly crossing their bike path.
- People using the North Street footpath for walking, jogging and riding their bikes and/or scooters, and those parking either side of the proposed LVP area will inevitably walk across the proposed exit and entry points.
- Long vehicles, with poor line of site, will first have to negotiate the busy and hazardous intersection and then avoid pedestrians, kids on bikes and dog owners walking across the entrance to the LVP area. It is not possible to rationalise and plan for the impulsive and energetic nature of children who cannot foresee potential outcomes. The previous proposal, expecting people to walk around the whole LVP area rather than walking crossing the entry/exit points was irrational.
- Most people park to the east of the proposed LVP area and access the town via the sealed footpath on the western side of Alexandra Street, as the grass surface on the eastern side is uneven. To do so, they currently walk across the proposed LVP entry/exit points along North Street or diagonally across the intersection. This poses a serious safety issue for the elderly, disabled and families with prams, scooters, kids bikes or dogs and will become acute if long vehicles are introduced.
- To access the designated parking area, long vehicle drivers will utilise the three sections of road with the highest pedestrian activity in Berry - along Queen Street and North Street, and their connection along Alexandra Street. Introducing oversized vehicles with poor visibility into these areas would heighten the high probability of accidents where cars will be reversing in and out of 90-degree or 45-degree parking spaces.

- There is no conclusive evidence the LVP users are there to visit Boongaree. On busy days when the six parking spaces are occupied, there will be additional safety hazards when LV drivers become distracted as they seek alternative parking spots along North Street.
- If deemed appropriate, a Dump Point sign is to be erected in the proposed LVP lot directing caravans and RVs to the Berry Showground to dump their black water (sewage). The long vehicles will need to cross five (5) intersections, namely North, Albert, Queen, Princess, and Victoria Streets to reach the Showground. This will increase the risk of serious accidents and injuries to both drivers and pedestrians alike.
- Finally, the iconic vista along Alexandra Street across to North Street and onto the escarpment is popular with visitors and tourists. The community argued to retain this distinctive feature during the planning process for the bypass. The insertion of a cluster of large vehicles into this space will diminish the natural ridgeline and landscape.

## CL23.273 Question on Notice - Report on the 12-month (now 16 month) review of the Tendering Process - Public Amenities Cleaning

**HPERM Ref:** D23/316928

**Submitted by:** Cllr Tonia Gray  
Cllr Matthew Norris

### Context:

At the Shoalhaven City Council meeting on 28 March 2022 councillors debated the following item: **CCL22.10 Tenders – Public Amenities Cleaning - Building**

The CEO agreed to a 12-month report to be given to councillors (due 28 March 2023). As yet (7 August, 2023), councillors have not obtained this report some following 16 months later.

### Councillors have the following questions on notice

1. What is the feedback from the general public from Wards 1, 2 and 3 on the quality of the amenities upkeep in the Shoalhaven as a result of Storm International taking over the contract?
2. Are all council amenities in our parks and recreation services etc been assigned to Storm International or have we retained some in-house cleaning?
3. How are the performance metrics monitored in the Shoalhaven?
4. Is the workforce wearing PPE in accordance with NSW Health standards? If so, how is this data captured?
5. How many Storm International workers are long-term local residents of the Shoalhaven vs international workers on an special visa?
6. What are the lessons learnt (both positive and negative) from this 12 month (now 16 month) trial period?
7. Can Council look into availing ourselves of the many organisations locally e.g. Flagstaff who run similar programs with their employees with contracts for public amenities so the local workforce and economy is strengthened and money stay in the local community?

### Background

At the 27 March 2023 meeting, the following resolution was made (MIN22.231C):

### CCL22.10 Tenders – Public Amenities Cleaning - Building Services

That:

1. Council endorses the recommendation of the Tender Evaluation Team to accept the Tender from Storm International Pty Ltd for two years (with the option of a one-year extension) at a cost of \$573,840.12 (exc. GST) per year (total cost over two years \$1,147,680.24).
2. Council note that this arrangement does not prevent Council staff undertaking Emergency Reactive Repair Works and ad-hoc cleaning due to high service demand and that no existing staff are disaffected or displaced through this contractual arrangement.
3. Council notes the budget implication of both options presented and that an adjustment of the Building Services Public Amenities budget from \$631,288 to \$1,054,728 will be required in the 2022/2023 financial year.

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4. The contract documents and any other associated documents be executed on behalf of the Council in accordance with Local Government (General) Regulation 2021 (section 165), by the CEO (Director – City Services), as the Principal's Representative.

**Response**

A report will be submitted to Council at a future meeting in relation to the above mentioned Questions on Notice.

CL23.273



## 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.