

Ordinary Meeting

Meeting Date: Monday, 29 July, 2024
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 - 22 July 2024
6. **Declaration of Interests**
7. **Presentation of Petitions**

8. Mayoral Minute

Mayoral Minute

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10. Call Over of the Business Paper

11. A Committee of the Whole (if necessary)

12. Committee Reports

Nil

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Notices of Motion / Questions on Notice

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15. Confidential Reports

Reports

CCL24.22	Increase in Scope and Contract Value - Comerong Island Levee Remediation Works
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Local Government Act - Section 10A(2)(d)(i) - Commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.

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

MM24.26 Mayoral Minute - PFAS

HPERM Ref: D24/232477

Recommendation

That Council:

1. Support a transition away from products containing per and polyfluoroalkyl substances (PFAS) in Council's operations and services.
2. Adopts immediate measures to comply with the Department of Climate Change, Energy, the Environment and Water's (DCCEEW) draft PFAS National Environmental Management Plan (NEMP 3.0)
3. Give consideration to wholistic management of biosolids to ensure no further contamination to the environment, and advocate for a national leadership to developing appropriate management systems.
4. Undertakes a risk assessment of Council depots, wastewater management, and waste management sites to establish a baseline understanding if there is PFAS leaking to the environment.
5. Notes the excellent results from recent testing for PFAS in raw water, drinking water and reclaimed water and directs Shoalhaven Water to continue with annual testing of same.
6. Requests a meeting with NSW EPA to discuss the management and risk mitigation of the PFAS in Shoalhaven River and Currumbene creek, including ongoing water, soil and fish testing and an ongoing information communication strategy for residents and visitors.
7. Council consider how it can report to the community annually how PFAS may be impacting on our environment. Inform the Internal Audit committee of all PFAS risk emerging or current.

MM24.26

Details

Polyfluoroalkyl Substances or PFAS are a group of human made chemicals that have been widely used in industrial and consumer products since the 1950s. Due to the unique physical and chemical properties of PFAS to resist heat, stains, grease, and water, they have been used in:

- cleaning products
- water resistant fabrics such as rain jackets, umbrellas and tents.
- Stain-resistant coatings used on carpets, upholstery, and other fabrics.
- firefighting foams.
- floor polishes
- sunscreens
- Personal care products (e.g. shampoo, dental floss, nail polish, and eye makeup)
- grease-resistant paper
- non-stick cookware.

PFAS are of concern because they can persist for a long time in humans and in the environment. These chemicals are known cancer causing chemicals and the US EPA has recently concluded that there is no safe level in drinking water, and so set the very low target of 4 parts per trillion. These substances are now commonly detected at trace levels in groundwater, surface water and soils in urban areas worldwide.

While many essential uses of PFAS are still permitted, as a precautionary measure there are now efforts, both nationally and internationally, to restrict non-essential uses and reduce or ban the use of the most hazardous PFAS chemicals.

From 1 July 2025, the Australian Government is banning the manufacture, importation, exportation, or use of PFOS, PFOA, and PFHxS or any products containing them.

The use of PFAS in everyday household items and consumer products is a challenge for wastewater systems and existing conventional treatment processes. The most effective way to limit PFAS in wastewater is to reduce the potential sources of contamination before they enter the wastewater system.

PFAS can be present in biosolids, the dried by-product of sludge from wastewater treatment, and testing has revealed this to be the case at many of Shoalhaven's treatment facilities, albeit in varying concentrations at each of the 13 treatment plants.

Requirements for the management of wastewater in NSW are governed by licences and guidelines issued by the Department of Climate Change, Energy, the Environment and Water's (DCCEEW). National guidance is provided by the PFAS National Environmental Management Plan (NEMP). This plan provides guidance on actions and limits to better manage exposure to and the spread of PFAS, and to implement more effective source control. The PFAS NEMP is currently under review, with the next revision (NEMP 3.0) expected to be released in late 2024 and includes guideline values for PFAS in biosolids.

Reducing PFAS in the wastewater system requires effective source control, however until such time as NEMP 3.0 is finalised and new limits are set, Shoalhaven should be proactive and adopt biosolids disposal methods in accordance with the draft concentration limits.

Shoalhaven Water has recently tested its raw water sources for PFAS in the Shoalhaven River (Bamarang Dam), Porters Creek Dam and Kangaroo Valley (Bendeela Pondage). Results for all locations was "nil detectable" PFAS. For completeness, drinking water was also tested at Nowra, Milton and Kangaroo Valley. All resulted in "nil detectable" PFAS.

Similarly, reclaimed water was tested at Shoalhaven City Council's Reclaimed Water Management Scheme (the treated wastewater used for irrigation on local dairy farms). These test results revealed PFAS levels lower the American drinking water standard.

There are also areas of high PFAS levels in the Shoalhaven region due to firefighting foam being used at naval bases, and the NSW EPA has issued guidance about eating fish from the Shoalhaven River and Currumbene Creek. There has been limited ongoing testing and the guidance regarding PFAS levels in fish has not been widely communicated. There are leaflets provided by NSW EPA for Shoalhaven River and Currumbene Creek <https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/community/currumbene-fishing-and-dietary-advice.pdf>

<https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/pfas/shoalhaven-river-pfas-factsheet.pdf>

MM24.27 Mayoral Minute - Clr Greg Watson 50 Years of Service to Local Government

HPERM Ref: D24/199460

Recommendation

That Council congratulates Clr Greg Watson on his milestone golden anniversary, 50 years of service to the ratepayers and residents of Shoalhaven.

Details

Greg Watson was first elected as Alderman to Shoalhaven Shire Council in 1974, he was the first Mayor of our City when the Shoalhaven was officially proclaimed on 1 August 1979.

This year celebrates Greg's golden anniversary, 50 years of service in Local Government, a milestone that not many can or have achieved in NSW.

Greg has seen many changes during this time, the NSW Local Government Act and of course many other Acts have changed enormously, councils record keeping has gone from minute books and ledgers to online transmission of meetings and digital record keeping.

During Greg's time at council there have been many changes to the Shoalhaven, and he's taken great pride in being part of the council teams that have delivered those changes.

I first met Greg around 2007 as a younger Council hopeful, little did I know then that I would get to serve the next 16 years with this veteran councillor, who was known well in many circles.

Appreciation must also go to Mrs Robyn Watson, who has supported Greg tirelessly over the years, and to Greg's family who have supported him and the giving of his time for the community.

Thank you to LGNSW, who have awarded Greg a Certificate of Service and LGNSW medal recognising his 50 years' service to Local Government at Shoalhaven City Council.

Today, we formally celebrated Greg's achievement, recognising his service and showing appreciation with a bespoke gift.

On behalf of the Shoalhaven community, we thank you for your service.

MM24.27

CL24.215 Financial Sustainability Monthly Report

HPERM Ref: D24/277515

Department: Financial Sustainability
Approver: Robyn Stevens, Chief Executive Officer

Reason for Report

The purpose of this report is to adopt the recommendations tabled in the Financial Sustainability workshops and report the status of the Financial Sustainability project.

Recommendation

That Council receive the financial sustainability monthly report for the period of June-July 2024 for information and note the changes to Council facility operating hours which have been approved by the Executive Management Team for implementation.

Options

1. Council receives the report for information.

Implications: Nil

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

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

Background

In November 2023, AEC provided a report (CL23.420) to Council on its financial sustainability. In this report, Council was informed that the general fund net operating position has been in a deficit position over the past eight years and there is a structural deficit to fund recurrent expenditure of \$25-35 million per annum. AEC made 27 recommendations, including an SRV, and that all had to be implemented to ensure Council's financial sustainability.

In January 2024, Council resolved under MIN24.44 not to proceed with an application for a special rate variation with IPART. A special rate variation is considered to be a necessary step in improving Council's financial position. Instead, Council resolved to pursue all other recommendations in the AEC report as well as additional actions to improve financial sustainability.

The Financial Sustainability project has been established to coordinate Financial Sustainability actions and initiatives in response to MIN23.667, MIN24.44 and from report CL23.420 – AEC Financial Sustainability review from November 2023. The project commenced in February 2024 and has 3 major workstreams:

1. Asset and Project Management
2. Financial Management
3. Service Planning

The Financial Sustainability project will report to Council monthly on all matters relating to Council's financial sustainability that were tabled in the November 20 and January 29 Ordinary meetings.

CL24.215

This report will provide:

- Summary of work undertaken in the period, including items workshopped with Councillors.
- Status of project workstreams.
- Recommendations to Council to support the improvement of Council’s financial position.

Recommendations may call for projects to be paused until Council’s financial position improves. This means that projects will be reconsidered by Council at a point in time where Council has met the defined measures of financial sustainability:

- Maintain Council’s unrestricted cash reserve at \$15 million.
- Achieve and maintain an operating surplus of at least 4%.
- Met the asset renewal ratio of 85%.

Paused projects are retained on the capital projects list, managed by the enterprise project management office, for prioritisation by Council when funding becomes available.

Internal Consultations

A workshop schedule has been agreed with Councillors, with the first workshop occurring on the 20 February 2024. The workshops are exploring all financial sustainability items raised in MIN23.667, MIN24.44 and the recommendations from the AEC report CL23.420.

The workshops held to date include:

Workshop	Agenda	Report to Council
Workshop 1 – 20 February	Budget parameters Strategic projects review	CL24.68
Workshop 2 – 5 March	Community donations program Outdoor dining annual fees Strategic projects review	CL24.68
Workshop 3 – 12 March	2024/25 budget workshop 1	CL24.95
Workshop 4 – 19 March	Excess and under-utilised assets Use of consultants and contractors Strategic projects review	CL24.95
Workshop 5 – 4 April	2024/25 budget workshop 2	CL24.117
Workshop 6 – 16 April	Service planning Strategic projects review	CL24.117
Workshop 7 – 30 April	Asset Management Plans overview Bereavement Services overview	CL24.160
Workshop 8 – 28 May	Service planning update Plant and fleet service review	CL24.160
Workshop 9 – 25 June	Tourism – Visitor Information Services service review Family Day Care service review	In this report
Workshop 10 – 23 July	Operating hours proposal	In this report

CL24.215

Workshop 9 overview – 25 June

The Mayor and 8 Councillors were present at the 25 June workshop, with apologies received from Cr Watson, Cr Kitchener, Cr Christen and Cr D'Ath.

The agenda for this workshop included:

- Tourism – Visitor Information Services service review
- Family Day Care service review

Workshop 9 – summary of financial sustainability items discussed

1. Tourism – Visitor Information Services service review

Councillors were provided with an overview of the outcome of the Visitor Information Services service review. The service review considered services offered, budget and team structure. Service performance was reviewed, with an audit of the current service levels provided by channel, and benchmarking with neighbouring Visitor Centres and other customer service teams in Council.

The service review analysed delivery options to review how the service could be delivered differently to save money.

Business overview

The main services provided are:

- Handle visitor information enquiries (in person – Nowra, Ulladulla and mobile service, phone, live chat, email)
- Sale of merchandise, online and in person, in Nowra and Ulladulla
- Handle customer service enquiries for Shoalhaven Entertainment Centre box office (in person, phone)
- Business operator engagement and mentoring (deliver visitor guides and brochures, support with marketing and event listings, and support during natural disasters)
- Coordinate volunteer ambassador program and community groups through providing training and resources
- Provide support to the Jervis Bay Maritime Museum Visitor Centre and 10 supplementary information points within local businesses across the Shoalhaven

The team have handled an average of 635 enquiries a week over the last 5 years. 41% of the interactions are in person, 40% are over the phone, 13% over email and 5% on live chat. Enquiries have fluctuated over the past five years due to bushfires, COVID, and Service NSW vouchers.

Financial summary

The indicative cost of the current service is \$638,000 per annum. Approximately 43% of costs incurred are to provide customer service at the Shoalhaven Entertainment Centre Box Office and 57% of costs are to support visitor services.

Benchmarking

Information was provided about Accredited Visitor Information Centres (AVIC) which enable the Shoalhaven Visitor Information Centres to use the trademarked blue with yellow 'i', be promoted through its network and give a guaranteed quality standard. Additional information is available about accreditation on the [Destination NSW Website](#). Currently within the Shoalhaven there are three centres accredited including Nowra, Jervis Bay Maritime Museum (volunteer run outside of Council) and Ulladulla.

When comparing with neighbouring local government areas, Shellharbour and Kiama Visitor Information Services are provided as a Council service. Bermagui, Merimbula and Eden are not run by Council, but are supported by Council through funding arrangements. It is difficult to benchmark the Shoalhaven Visitor Information Service operation with neighbouring services as the Shoalhaven operation is co-located with Ulladulla Library and Shoalhaven Entertainment Centre. The co-location service model enables shared costs and resources within Council, providing efficiencies to both businesses.

Delivery options

The following service model options were considered as part of the service review:

Service Model	Outcome
Standalone (e.g. Southern Highlands Welcome Centre)	Not recommended as costs are estimated to be a lot more to operate this model.
Co-location (current model)	Recommended as option 1, with reduction in service to be proposed
Volunteer only	Not recommended, due to significant service reduction observed from case studies
Mobile only	Considered as option 2, but not recommended, due to the significant impact on the Entertainment Centre box office income, it is recommended that this be further reviewed in line with any outcomes from a future SEC service review.
Close all Visitor Information Services	Considered as option 3, but not recommended due to significant impact on service delivery, business support and the significant impact on the Entertainment Centre box office.

CL24.215

Recommendation

The Executive Management Team endorsed option 1, which retains the current service model with the following efficiencies to be implemented:

- Reduction in operating hours for Nowra Visitor Information Services on Saturday from 9am – 5pm to 10am – 2pm
- Close Nowra Visitor Information Services on a Sunday
- Shorten Box Office show shifts to close 30 minutes after a show begins instead of staying open for show intervals
- Reduced staff support to Ulladulla Library and Visitor Information Service

The implementation of these recommendations will reduce the operational cost of providing Visitor Information Services by \$100,000 per annum.

2. Family Day Care service review

An internal service review has been undertaken of the Family Day Care business. During the workshop, Councillors were briefed on the service review outcome, and this matter will be considered further by the new Council after the September 2024 local government election.

Workshop 10 overview – 23 July

The Mayor and 6 Councillors were present at the 23 July workshop, with apologies received from Cr Watson, Cr Kitchener, Cr Copley, Cr El, Cr Wells and Cr D’Ath.

The agenda for this workshop was to review the proposed changes to Council facilities operating hours.

Workshop 10 – summary of financial sustainability items discussed

Through the financial sustainability project, staff were tasked to find cost savings or revenue generating initiatives within their department. 38 of the 284 ideas submitted by staff suggested changes to the operating hours of Council facilities.

These ideas were triaged, and 34 ideas were green lighted to move to impact assessment. During impact assessment, staff were tasked to consider the impact of the operating hours change on patrons. Staff confirmed the operational savings associated with the change and also worked with HR to review the staff impact of the change.

The Executive Management Team then assessed the operating hours proposal based on the impact assessment results and supported 21 of the operating hours changes to proceed. These 21 changes to operating hours will result in a reduction of Council’s operating costs by \$503,650 per annum.

13 of the operating hours changes were not endorsed at this time due to the results of the impact assessment, where it was determined that the change would have a significant adverse local community impact or would not be cost favourable when considering revenue loss.

Operating hours changes that have a more significant impact on the community will be required in the future if Council’s financial position continues to be in deficit. If all operating hours changes had been approved, the full operating cost saving would have been \$1,003,150 per annum.

During the workshop, Councillors were consulted on the operating hours proposal and asked for feedback on the proposed changes, as well as the 13 changes that the Executive Management Team did not endorse at this time.

Village Swimming Pools

The following operating hours ideas were assessed for the 5 village pools in the Shoalhaven, located in Kangaroo Valley, Greenwell Point, Milton, Berry and Shoalhaven Heads. Village pools are currently open 22 weeks a year from November to March.

Village pools	Complete closure of 5 village pools for the full season	Reduce all 5 Village Pools season length to 6 weeks (Christmas holidays only)	Reduce all 5 Village Pools season length to 16 weeks. Commence start of season in December and ending mid-March, reducing season length by 6 weeks.	Reduce Weekend operating hours outside of school holiday periods to 10am - 3pm (currently open until 5pm)
Saving per annum	\$386,000	\$204,000	\$97,700	\$15,000
Approved	No	No	Yes	Yes

CL24.215

These proposed changes were assessed together, and the options with less community impact were supported at this time, which has limited the operational cost saving to \$112,700 (from a maximum saving of \$401,000). As Council continues to find operational efficiencies through the financial sustainability project, the more aggressive closures will need to be considered if Council does not endorse a special rate variation.

Hot weather activation processes already exist and can be applied to village pools when needed to offset the impact of reducing weekend opening hours outside of school holidays.

Total annual operational savings on village pools is **\$112,700**.

Sea Pools

The following operating hours ideas were assessed for the 2 sea pools in the Shoalhaven, operating in Ulladulla and Huskisson.

Sea Pools	Complete closure of 2 sea pools	Closure of Ulladulla and Huskisson Sea Pools during winter (June, July, August – 3 months)
Saving per annum	\$141,800	\$34,450
Approved	No	Yes

The sea pools at Ulladulla and Huskisson are well-patronised, and any change will have an adverse community impact. The supported change of closing in the winter months would impact 2000 visits in total across the two pools. A complete closure would have a much greater impact on the community, with an estimated 22,000 visits annually across the 2 pools.

Total annual operational savings on sea pools is **\$34,450**.

Leisure and Aquatic Centres

14 ideas were assessed across Shoalhaven’s 5 leisure and aquatic centres:

- Bay and Basin Leisure Centre
- Bomaderry Aquatic Centre
- Nowra Aquatic Park
- Sussex Inlet Aquatic Centre
- Ulladulla Leisure Centre

Bay and Basin Leisure Centre	Close Bay & Basin Leisure Centre on Sundays	Reduce operating hours at Bay & Basin Leisure Centre by 2 hours on Saturdays. Close at 2pm.	Reduce operating hours at Bay & Basin Leisure Centre by 2 hours on Sundays. Close at 2pm. Already implemented.
Saving per annum	-\$72,000	-\$2,700	\$5,350
Approved	No	No	Yes

During impact assessment, 2 of the ideas for Bay and Basin Leisure Centre were determined not feasible due to the revenue loss being greater than the operational saving so these ideas were discounted.

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Ulladulla Leisure Centre	Close at 12:30pm on Saturdays (currently closes 3pm)	Reduce 50m outdoor pool opening months from Oct - April to Dec - Feb	Close on Sundays (currently open 8am – 12pm)	Close on Sundays for 6 months only between April and September.
Saving per annum	\$4,500	\$2,800	\$13,500	\$8,750
Approved	No	No	No	Yes

During impact assessment, staff determined that weekend patronage at the Ulladulla Leisure Centre was high, so ideas to reduce opening hours on the Saturday and close for the full year on the Sunday were not endorsed at this time. Review of patronage indicated that closure for the 6 months between April – September would have less impact and was supported as the preferred option.

Congestion of the 25-metre indoor pool meant that there would be a significant impact if the outdoor pool was to have a reduced season and given the low saving it was determined not to proceed with this change at this time.

The Ulladulla Leisure Centre has 24-hour access to the gym and fitness facilities for members and the proposed changes would not impact these users of the gym facility.

Nowra Aquatic Park	Closure of Nowra Aquatic Park between May and August – 4 months	Extended Summer operating hours reduced from November - March, to 6-week holiday period
Saving per annum	\$41,000	\$15,000
Approved	Yes	Yes

Reducing of summer hours to school holidays only for Nowra Aquatic Park brings the extended summer offering in line with the current operations at Ulladulla Leisure Centre. Hot weather activation process will apply for extended summer hours where required.

Bomaderry Aquatic Centre	Close on Sundays in Winter	Close 50m outdoor pool in Winter	Close at 3pm on Saturdays. (currently closes at 5pm)	Extended Summer operating hours reduced from November - March, to 6-week holiday period
Saving per annum	\$6,800	\$4,000	\$9,900	\$15,000
Approved	No	No	Yes	Yes

It was determined not to proceed with the close with the winter opening hours changes for Bomaderry due to supporting the closure for Nowra Aquatic Park for 4 months over winter. This leaves one pool facility open seven days for Bomaderry/Nowra and northern Shoalhaven residents in the winter months.

Reducing of summer hours to school holidays only for Bomaderry Aquatic Centre brings the extended summer offering in line with the current operations at Ulladulla Leisure Centre (and Nowra as per above table). Hot weather activation process will apply for extended summer hours where required.

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Sussex Aquatic Centre	Closure of Sussex Inlet Aquatic Centre on Sundays (currently open 10am – 2pm)
Saving per annum	\$4,700
Approved	Yes

Patronage is low for Sussex Inlet Aquatic Centre on Sundays, with an average of 12 patrons per week.

Total annual operational savings on leisure and aquatic centres is **\$99,700**.

Libraries

Nowra Library	Close at 2pm on Saturdays (currently open until 3pm - reduction of 1 hour)	Close at 5pm in Winter only (June, July, August) Currently open 9:30am-7pm Monday – Friday all year round
Saving per annum	\$7,900	\$12,000
Approved	Yes	No

The early close in winter was not supported due to adverse impact on the student community.

Milton Library	Complete closure of Milton Library. Currently open Monday, Wednesday, Thursday and Friday 10:30am – 12:30pm and 2 - 5pm
Saving per annum	\$40,000-\$65,000
Approved	No

The complete closure of Milton Library was not endorsed at this time due to significant impact on the local community. Further investigation may be carried out in the future to look into options to use the space for other community use.

Sanctuary Point Library	Close on Saturday. Currently open 9:30am - 12pm.
Saving per annum	\$15,800
Approved	Yes

During impact assessment, it was determined that the lowest visitation at Sanctuary Point Library occurs on the Saturday – only 2.3% of visits.

Ulladulla Library	Close on Sunday (currently 9:30am – 2pm) and reduced hours on Saturday (from 9:30am - 2pm to 9:30am - 12pm, reduction of 2 hours)
Saving per annum	\$42,000
Approved	Yes

During impact assessment, it was determined that only 3.2% of total library visits occur on a Sunday and 3.3% of visits occur between 12-2pm on Saturday.

Total annual operational savings on Shoalhaven Libraries is **\$65,700**.

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Visitor Information Services

Visitor Information Services	Close Nowra Visitor Information Services on Sundays, reduce hours to 10am - 2pm, shorten interval opening times, and reduced support to Ulladulla Visitor Information Services	Close on Ulladulla Visitor Information Services on Sunday (currently 9:30am – 2pm) and reduced hours on Saturday (from 9:30am - 2pm to 9:30am - 12pm, reduction of 2 hours)
Saving per annum	\$100,000	Captured in Ulladulla Library saving – co-located service
Approved	Yes	Yes

The changes to Nowra Visitor Information Services opening hours were determined through the service review, however they are reported here to provide a full picture of all opening hours changes being enacted at this time due to financial sustainability challenges.

Total annual operational savings on Visitor Information Services is **\$100,000**.

Customer Service

Customer Service	Reduce Contact Centre operating hours to be 8:30am - 4:30pm (currently 8:30am - 5pm)	Reduce Nowra Counter Services operating hours to 9am - 4pm (currently 8:30am - 5pm)	Reduce Ulladulla Counter Services operating hours from 10am - 2pm (currently from 9am - 5pm)
Saving per annum	\$35,000	\$10,000	\$27,000
Approved	Yes	Yes	Yes

Changes to the opening hours of Council’s customer service touchpoints (phone, web chat and in person) have been determined through an assessment of the patronage throughout the day. The proposals for Nowra and Ulladulla are different due to the lower customer numbers experienced by Ulladulla. The operating hours changes for Nowra and Ulladulla Counter Services will impact an average of only 2-4 customers per day at each location.

Total annual operational savings on customer service touchpoints is **\$72,000**.

Waste Services

Waste Services	Reduce Huskisson Waste Depot opening hours by 1 hour, to be 8am – 4pm (currently opens 8am - 5pm daily)	Reduce Berry, Sussex and Callala Waste Depot opening days to 5 days per week over the 6-week summer period (closed Tue, Wed) Usually open 7 days per week over the summer period to accommodate the increased population.
Saving per annum	\$48,750	\$14,100
Approved	No	Yes

The change to Huskisson Waste Depot was not supported at this time due to moderate local patronage from 4-5pm, and the impact on local businesses as they finish their workday.

Total annual operational savings for Waste Services is **\$14,100**.

CL24.215

Shoalhaven Entertainment Centre

Shoalhaven Entertainment Centre	Reduce Encore Café hours by 30mins per day (Monday - Friday) Close at 2:30pm instead of 3pm	Close on a Sunday except when there is a booked event.
Saving per annum	\$2,500	\$2,500
Approved	Yes	Yes

Other operational efficiencies will be considered as part of the Shoalhaven Entertainment Centre service review, which is scheduled to commence in early 2025.

Total annual operational savings for the Shoalhaven Entertainment Centre is **\$5,000**.

Next steps

For endorsed operating hours changes, the manager responsible for the facility will develop an implementation plan that considers timing of the change, communication to patrons, and addressing any impacts on staff. The associated operational savings will be removed from budgets in QBR1 and reported in the next Financial Sustainability Quarterly Productivity and Efficiency Report.

CL24.215

CL24.199 2024/2025 Community Donations

HPERM Ref: D24/212674

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

Attachments: 1. Informal Minutes - Community Donations Panel 6 June 2024 [↓](#)

This item was deferred from the Ordinary Meeting 22 July 2024.

Reason for Report

This report seeks Council’s approval for funding to the successful applicants as determined by the Community Donations Assessment Panel.

Recommendation

That Council

- Note the information in the report outlining the process followed for the 2024/2025 Community Donations Program, including the applications received.
- Approve the funding of the 2024/2025 Community Donations recommended by the Community Donations Panel, totalling \$139,850.00 to the following community organisations and community groups in the Shoalhaven:

Organisation	Donation For:	Amount Recommended
Bravehearts Foundation Limited	Bravehearts Ditto's Keep Safe Adventure Personal Safety Program	\$4,000.00
Five Villages Community Garden	Five Villages Community Garden	\$2,000.00
Growing Together South Coast Inc	Food for Thought	\$6,300.00
Milton Ulladulla String Orchestra (MUSO)	Milton Ulladulla String Orchestra (MUSO)	\$3,000.00
Milton Ulladulla Youth Driver Education	Milton Ulladulla Youth Driver Education	\$19,000.00
Mission Australia - Southern Shoalhaven Youth Services	Youth Beat Outreach Project	\$2,000.00
Shoalhaven Youth Orchestra Inc.	Shoalhaven Youth Orchestra	\$16,000.00
The Ulladulla & Districts Community Resource Centre	Up and Go Service	\$5,000.00
Walking Football NSW	Introduction and Development of Walking Football/Soccer for Seniors, People with Disabilities or Socially withdrawn or Isolated	\$1,000.00

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Callala Bay Community Association Inc	Breakfast by the Bay- Community Australia Day Event	\$800.00
Rotary Club of Milton Ulladulla	Ulladulla Blessing of the Fleet Festival	\$10,000.00
Sanctuary Point Community Pride Inc	2025 Neighbour Day	\$500.00
Shoalcoast Community Legal Centre	Shoalhaven Koori Touch Football Competition	\$1,000.00
Shoalhaven Food Network	Autumn Celebration of Food	\$7,500.00
The Lions Club of Bomaderry Nowra Inc	Bomaderry Nowra Lions Annual Carols in the Park	\$5,000.00
Berry Branch of the CWA	Berry Branch CWA Rates	\$2,500.00
Friends of Callala Seniors Group	Friends of Callala Seniors Group	\$1,953.00
Manyana & Districts CPSA	Manyana & Districts CPSA	\$1,188.00
Mollymook Bridge Club Inc.	Subsidised Rental, Rates & Use of Council Facilities	\$2,160.00
Music Shoalhaven Inc	Music Shoalhaven Classical Concert Series	\$1,500.00
Shoalhaven City Concert Band	Weekly Hire of Rehearsal Venue and Concert/Workshop Venues	\$2,896.00
Shoalhaven Historical Society	Nowra Museum - Rent Subsidy	\$1,318.00
Shoalhaven Pistol Club	Annual Rates Subsidy	\$525.00
Sussex Inlet Foundation for Community Development Inc	Sussex Inlet Foundation for Community Development Rent Support	\$12,000.00
Tomerong School of Arts Inc.	Tomerong School of Arts Inc.	\$3,660.00
Treading Lightly Inc.	Rental Subsidy for Community Hub for NFPs and Groups	\$25,800.00
Wandandian Progress Association	Wandandian Progress Grant	\$1,250.00

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- Advise the remaining applicants that their application for the Community Donations Program have been unsuccessful.

Options

- As recommended.

Implications: The donations will be paid to the community organisations and groups as listed within the recommendation. This will result in funds of \$139,850.00 being expended from the Community Donations funds, leaving an available balance of \$40,150.00 in the Donations budget for 2024/2025. .

2. That Council approve the funding as recommended by the Community Donations Panel totalling \$139,850.00 as well as any additional funding being awarded to those Community organisations or groups as decided by Council.

Implications: The available balance of \$40,150.00 will be reduced by any additional donation amounts decided by Council.

3. That Council determines funding to applicants differently to the recommendation made by the Community Donations Assessment Panel.

Implications: This would delay the determination and distribution of funds until a later time.

Background

In accordance with the resolution of the Council of 25 March 2024 (MIN24.150) the community donations budget for 2024/2025 is \$180,000. At that time the Council also resolved that the Community Donations Policy would be amended so that applications for funding for fireworks will be ineligible under the program.

The process undertaken in accordance with the policy for the 2024/2025 Financial Year Community Donations Program has been as follows:

1. Correspondence to past donation recipients, both successful and unsuccessful to advise them of the application period opening and closing dates – (2 April to 3 May 2024).
2. Advertising and promotion of the Community Donations Program via Council website.
3. Applications closed on 3 May 2024.
4. A meeting of the Community Donations Assessment Panel was held on 6 June 2024 to assess the applications received. The minutes of the Community Donations Assessment Panel meeting can be found at **Attachment 1**.

As part of the procedure in accordance with the [Community Donations Policy](#), adopted at the Ordinary meeting of 27 June 2022, a Community Donations Assessment Panel was formed with the purpose of independently assessing applications across different areas of Council which involved staff from Environmental Services, Community Connections, Arts & Culture, Shoalhaven Entertainment Centre, Tourism Events, Business Assurance & Risk and Governance.

The Community Donations Assessment Panel met on Thursday, 6 June 2024. The panel considered all 46 applications received totalling \$327,585.00 of requested funds and recommended that:

- That of the 46 applications received, 27 be provided funding in full or part.
- That 19 applications do not receive funding on the basis that they are ineligible under the policy criteria, did not provide sufficient information for assessment, or were not considered appropriate to fund.
 - This represents \$144,000.00 in applications. These are shown in table 2 of Attachment 1.

The total amount of funding recommended to be paid for the 2024/2025 Financial Year by the Community Donations Assessment Panel is \$139,850.00.

This leaves an available balance of \$40,150.00 for 2024/2025 Financial Year.

This balance is available for further consideration by Council.

On the 11 June 2024, the Governance Team received a Sponsorship Request from Shoalhaven Workplace Learning seeking sponsorship for the Shoalhaven Excellence in Vocational Education & Training Awards – 2024.

The Donations Policy states the CEO (Director, City Performance), has delegated authority to approve any out of policy requests for donations of up to \$1,000 in exceptional circumstances/requests which align with Council’s strategic objectives and do not require a resolution.

The Director City Performance approved to sponsor this event for the amount of \$700 (Gold Package). Further to the budget balance noted above, this would now be an available balance of \$39,450.00 for 2024/2025 Financial Year.

Community Engagement

Past recipients of “Allocated” and “Unallocated” donations were contacted via email to advise of the opening of the Community Donations Program and were encouraged to review the eligibility criteria to apply for a 2024 / 2025 donation in line with the [Community Donation Policy](#)

Advertising was undertaken via the website and notifications to past recipients and others that expressed interest over the year were provided via email throughout April to May. The Customer Experience Team were also made aware in case of any calls were received in relation to seeking funding that could be referred to the process.

Information, eligibility criteria and online application forms were made available via Council’s website. The application period was open for a month from 2 April to 3 May 2024.

It is worth noting that the applications received has decreased from 58 applications last year (2023 / 2024) to 46 this year (2024 / 2025) and of the 46 applications, 15 are new applicants that had applied for a donation.

Financial Implications

The donations budget for the 2024/2025 Financial Year is \$180,000.00. The Community Donations Assessment Panel recommends funding of \$139,850.00.

If Council resolves to approve the recommendation as outlined in the report this would leave an available balance of \$40,150.00 in the Donations Budget for urgent events or items that arise through the remainder of the financial year – noting that Council has the opportunity to review remaining budget as part of each quarterly budget review.

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MINUTES OF THE COMMUNITY DONATIONS PANEL MEETING

Meeting Date: Thursday 6 June 2024
Location: Jervis Bay Meeting Room
Time: 2:00pm

The following staff were present:

Sara McMahon – Manager Business Assurance & Risk
Brooke Aldous – Governance Coordinator
Peter Swanson – Lead – Land Management (Left meeting 2:17pm)
Michael Paine – Manager Community Connections
Lisa Brown – Business & Events Coordinator
Karen Patterson - Manager - Arts, Culture & Entertainment
Benjamin Fischer – Minute taker

Apologies / Leave of Absence

Nil

Applications Received

There were 46 applications received through the application period which was from 2 April to 3 May 2024.

The applications were broken up into four different categories for assessment, with Panel Members being appointed to each assessment category as shown below:

1. Community & Culture – Michael Paine, Sara McMahon & Karren Patterson
2. Environmental – Peter Swanson & Sara McMahon
3. Local Events – Lisa Brown & Brooke Aldous
4. Rates and/or Rental Subsidies – Michael Paine & Brooke Aldous

Community Donations Budget

The donations budget for 2024/2025 is \$180,000, noting that the Community Donations Policy was updated to reflect that fireworks applications will be ineligible for funding under the program. (MIN24.150)

Funding Recommendations

The total funds requested through the application process was \$327,585.00.

A summary of the applications is attached to the Minutes as **table 1** which provides the following information:

- Donation category;
- Applicant Details
- Event / Project / Activity for which the Applicant is seeking funds
- Amount Requested
- Feedback from the assigned Panel Members regarding the application
- Amount Recommended to be Paid as a Community Donation for the 2022/2023 financial year as determined by the Community Donations Assessment Panel.

The total funds requested through the application process was \$327,585.00.

The total amount of funding recommended to be paid for the 2024/2025 Financial Year by the Community Donations Assessment Panel is \$139,850.00. This leaves an available balance of \$40,150.00 for 2024/2025 Financial Year. This balance is available for further consideration by Council.

Ineligible Applications and Applications not recommended for Funding.

The Community Donations Panel has determined \$144,000.00 in applications were deemed ineligible or did not recommend funding. These are shown in **table 2**.

CATEGORY	PROJECT / EVENT SUBSIDY NAME	ORGANISATION NAME	AMOUNT REQUESTED	FEEDBACK FROM PANEL	RECOMMENDED AMOUNT
Community & Culture	Bravehearts Ditto's Keep Safe Adventure Personal Safety Program	Bravehearts Foundation Limited	\$5,000.00	The panel agreed that the program is a great initiative for the Shoalhaven, but noted that the financial information provided was insufficient to fully assess the organisation's capacity to undertake this program. The Panel commented that future applications will need further details, and recommended partial funding of \$4000.	\$4,000.00
Community & Culture	Five Villages Community Garden	Five Villages Community Garden	\$2,000.00	It was agreed that though the application lacked detail, and a lot of the funding will be going towards consumables, that there is a high level of participation for a small community and therefore benefits Manyana community. The panel recommended the full amount.	\$2,000.00
Community & Culture	Food for Thought	Growing Together South Coast Inc	\$9,660.00	The panel agreed that it is a valuable program, as it helps people through seasons of grief and loss, but noted that it only provides benefit to a minimum of 20 people and therefore recommended partial funding of \$6300.	\$6,300.00
Community & Culture	Milton Ulladulla String Orchestra (MUSO)	Milton Ulladulla String Orchestra (MUSO)	\$3,000.00	The panel agreed that this was a strong application and that the applicant clearly displayed their plan for the funds if received. The full amount was recommended.	\$3,000.00
Community & Culture	Milton Ulladulla Youth Driver Education	Milton Ulladulla Youth Driver Education	\$19,000.00	The panel agreed that this is an invaluable service, as one of the greatest causes of motor vehicle accidents is inexperienced young drivers and recommended the full amount.	\$19,000.00
Community & Culture	Youth Beat Outreach Project	Mission Australia - Southern Shoalhaven Youth Services	\$2,000.00	The panel agreed to recommend funding the full amount, with the following comment: future applications need to provide further information about Shoalhaven programs and interactions, including more detailed budget and the number of people they service.	\$2,000.00
Community & Culture	Shoalhaven Youth Orchestra	Shoalhaven Youth Orchestra Inc.	\$16,000.00	The panel agreed, given the reach of the program in Shoalhaven schools and the value of program for young children in the Shoalhaven, to recommend the full amount.	\$16,000.00
Community & Culture	Up and Go Service	The Ulladulla & Districts Community Resource Centre	\$5,000.00	The panel agreed that the service provides a worthwhile benefit to the Shoalhaven, but made the following comment: to ensure future applications are more detailed as it was noted follow-up was required in this instance. The full amount was recommended.	\$5,000.00
Community & Culture	Introduction and Development of Walking Football/Soccer for Seniors, People with Disabilities or Socially withdrawn or Isolated	Walking Football NSW	\$1,500.00	The panel agreed to partially fund this project, noting that Walking Football NSW will need to confirm in future applications that funds will only be used in the Shoalhaven LGA.	\$1,000.00

Local Events	Breakfast by the Bay-Community Australia Day Event	Callala Bay Community Association Inc	\$1,400.00	The panel noted that \$465.20 was unspent from the previous year as per the acquittal submitted by the Callala Bay Community Association, and that the Callala RFS appear to do fundraising towards this event, and although they are not 'on-donating' to another organisation in their application, they are 'reimbursing' the Callala RFS who fundraise for the event. The panel further noted that the impact to the broader community scored relatively low and therefore the panel recommended \$800.	\$800.00
Local Events	Ulladulla Blessing of the Fleet Festival	Rotary Club of Milton Ulladulla	\$30,000.00	"The panel found this application difficult to recommend due to the significant funds held by the organisation that would demonstrate this could be self-funded and it is clear that a profit is being made on this event, which would deem the application ineligible. The grant request included \$9000 for fireworks - which are ineligible. It is also noted that they have received a grant of \$12,000 from Bendigo Bank for this event. However, the panel also acknowledged this is a great community event with a long-standing history in Ulladulla and therefore, due to the limited events in Ward 3 that reach and benefit the community so widely, the panel recommended \$10,000."	\$10,000.00
Local Events	2025 Neighbour Day	Sanctuary Point Community Pride Inc	\$500.00	The panel found this application difficult to recommend due to the significant funds held by the organisation that would demonstrate this could be self-funded, although the panel noted that this was a small amount that was requested that would bring significant benefits to this community. The panel recommended to fund.	\$500.00
Local Events	Shoalhaven Koori Touch Football Competition	Shoalcoast Community Legal Centre	\$1,000.00	The panel agreed that this was a strong application, and noted that Shoalcoast Community Legal Centre are using their surplus of funds to help community with Legal issues relating to family/domestic violence cases which was provided as an additional financial information to the application. The full amount was recommended	\$1,000.00
Local Events	Shoalhaven Food Network - Autumn Celebration of Food	Shoalhaven Food Network	\$7,500.00	The panel agreed that this was a strong application, noting particularly that the training program has excellent alignment with the Community Wellbeing Strategy, with benefits to the whole region and a broad community focus. The panel recommend the full amount.	\$7,500.00
Local Events	Bomaderry Nowra Lions and Shoalhaven City Council Annual Carols in the Park	The Lions Club of Bomaderry Nowra Inc	\$20,000.00	The panel found this application difficult to recommend due to the significant funds held by the organisation that could demonstrate this could be self-funded, which would deem the application ineligible. However, the panel also acknowledged this is a great community event with a long-standing history in Nowra and therefore, due to the limited events in Nowra that	\$5,000.00

				reach and benefit the community so widely, the panel recommended \$5000	
Rates & Rental Subsidy	Berry Branch CWA Rates	Berry Branch of the CWA	\$2,500.00	The panel agreed that the application was well rounded and robust and provided sufficient information to recommend the full amount requested.	\$2,500.00
Rates & Rental Subsidy	Friends of Callala Seniors Group	Friends of Callala Seniors Group	\$1,953.00	The panel agreed that this application was very well supported by the Callala community and brings a worthwhile benefit to the community. The panel, also noted the group has minimal funds remaining and therefore recommended the full amount.	\$1,953.00
Rates & Rental Subsidy	Manyana & Districts CPSA	Manyana & Districts CPSA	\$1,188.00	The panel agreed that this application was very well supported by the Manyana community and brings a worthwhile benefit to the community. The panel, also noted the group has minimal funds remaining, recommended the full amount.	\$1,188.00
Rates & Rental Subsidy	Subsidised Rental, Rates & Use of Council Facilities	Mollymook Bridge Club Inc.	\$2,160.00	The panel agreed to recommend for full funding, noting the minimal funds remaining and the benefits this brings to the community and its members.	\$2,160.00
Rates & Rental Subsidy	Music Shoalhaven classical concert series	Music Shoalhaven Inc	\$3,000.00	The panel agreed to partially fund this application, noting Music Shoalhaven Inc has sufficient funds within their bank account and due to the fact they charge entry fees and estimate a further \$10k to be raised this financial year.	\$1,500.00
Rates & Rental Subsidy	Weekly Hire of Rehearsal Venue and Concert/Workshop Venues	Shoalhaven City Concert Band	\$2,896.00	The panel agreed to recommended for full amount, noting that they do not charge for performances, minimal funds remain in their account and the benefits the Concert Band brings to the community.	\$2,896.00
Rates & Rental Subsidy	Nowra Museum - Rent Subsidy	Shoalhaven Historical Society	\$1,318.00	The panel agreed to recommended for full amount, noting that this is a volunteer based museum, that it brings a benefit to the community and minimal funds held by the organisation.	\$1,318.00
Rates & Rental Subsidy	Annual rates subsidy	Shoalhaven Pistol Club	\$1,050.00	The panel recommended partial funding of \$525, noting that although the club operated at a loss last year, it holds significant funds.	\$525.00
Rates & Rental Subsidy	Sussex Inlet Foundation for Community Development Rent Support	Sussex Inlet Foundation for Community Development Inc	\$12,000.00	The panel agreed that this organisation brings a clear benefit to the Shoalhaven, and noting that they are operating at a loss, recommended the full amount of funding.	\$12,000.00
Rates & Rental Subsidy	Tomerong School of Arts Inc.	Tomerong School of Arts Inc.	\$3,660.00	The panel agreed that the Tomerong School of Arts Inc brings value to the Shoalhaven community, and although they have existing funds, the information provided demonstrates the need for the donation. The panel therefore recommend the full amount. The panel further commented that it would be expected that if the Tomerong School of Arts Inc applies the following financial year, the balance would have significantly decreased as outlined in the explanatory notes on the application.	\$3,660.00

Rates & Rental Subsidy	Rental Subsidy for Community Hub for NFPs and Groups	Treading Lightly Inc.	\$25,800.00	The panel agreed that although Treading Lightly Inc has existing funds in the bank, the additional financial information provided demonstrates the need for the donation. Full funding is recommended.	\$25,800.00
Rates & Rental Subsidy	Wandandian Progress Grant	Wandandian Progress Association	\$2,500.00	The panel agreed to recommend partial funding of \$1,250, noting that although the Association holds sufficient funds, it operates on a tight budget.	\$1,250.00

CATEGORY	PROJECT / EVENT SUBSIDY NAME	ORGANISATION NAME	AMOUNT REQUESTED	FEEDBACK FROM PANEL
Community & Culture	Canteen Supervisor Wage Subsidy	Berry Public School Parents and Citizens Association	\$8,000.00	The panel noted that the application lacked detail, the project provides a limited benefit to the Shoalhaven Community, and that a supervisor wage should be funded by the school itself. No donation was recommended.
Community & Culture	City of Shoalhaven Eisteddfod Competition	City of Shoalhaven Eisteddfod Inc	\$12,000.00	The panel noted that insufficient information was provided about the event, i.e. the competition categories, numbers of participants and audience appealed too, and that the application fails to demonstrate value to community, as the number of participants is not specified. It was further noted that \$21k is budgeted for prizes. The panel therefore recommended no donation.
Community & Culture	Greenwell Point Community Memorial Gardens further development	Greenwell Point Union Church Inc	\$8,000.00	The panel deemed this application ineligible, as it seeks funding for seats and shed, which is capital funding.
Community & Culture	Milton Ulladulla District Soup Kitchen van fitout	Milton Ulladulla District Soup Kitchen Inc.	\$25,000.00	The panel deemed this application ineligible, as it seeks capital funding for a van-fitout.
Community & Culture	Replace obsolete desktop computers	Milton Ulladulla Family History Society	\$2,700.00	The panel deemed this application ineligible, as it seeks capital funding to replace obsolete desktop computers.
Community & Culture	Shoalhaven Emergency Services Community Awards (SESCA)	Rotary Clubs of Berry, Milton-Ulladulla and Nowra	\$5,000.00	The panel noted that the application states that the funds expected to be raised will be donated to charity, the Children's Variety Club, which although is a well worth cause, makes the application ineligible.
Community & Culture	Renewal of Sporting Equipment	Shoalhaven Clay Target Club	\$7,750.00	The panel deemed this application ineligible, as it seeks capital funding for the purchase of equipment (clay traps).
Community & Culture	2024/2025 Council Grant	Tabourie Lake Museum	\$6,000.00	The panel deemed this application ineligible, as it seeks capital funding for air conditioning, signs and cabinet alterations.
Environment	Husbandry and monitoring of rewilded Eastern Quolls at Booderee Botanic Gardens	Booderee Botanic Garden	\$25,000.00	The Panel agreed that this application lacked sufficient information about how the project will facilitate community involvement or provide benefit to the Shoalhaven community. A breakdown of itemised costs in the budget was not available to enable the Panel to make an informed decision. Therefore no funding was recommended.
Local Events	Shoalhaven First Nations Film Festival	Shoalhaven Walking Together Alliance Inc	\$2,700.00	The panel determined this application as ineligible, as the event is able to be self-funded through ticket sales, and noted that the funds will benefit individuals by funding scholarships. Although this is a great initiative the panel agreed no donation was recommended.
Local Events	NATIONAL MOTORING HERITAGE DISPLAY DAY 2025	SHOALHAVEN HISTORIC VEHICLE CLUB INC	\$2,000.00	The panel agreed that the application identifies a large profit made by the Club and agreed no donation was recommended.
Local Events	Australia Day Celebrations	Ulladulla Milton Lions Club	\$16,188.00	The panel agreed that while this is a well-attended annual community event, based on submitted balance sheet, the event

				can be self-funded through the organisation, making the event ineligible for funding. The panel noted the intention to provide cash prizes to individuals. No donation was recommended.
Rates & Rental Subsidy	Reimbursement of Council Rates & Water Rates	Cambewarra School of Arts Inc.	\$3,000.00	The panel noted that the Cambewarra School of Arts Inc. currently has sufficient funds in the bank, and that the additional money provided last year was used towards power and electrical supply without Council approval. Therefore, no funding was recommended.
Rates & Rental Subsidy	Assistance with rental expenses for commercial premises 7/168 Jacobs Drive Sussex Inlet	CTC Sussex Inlet Incorporated	\$9,240.00	The panel noted that the CTC Sussex Inlet Inc. currently has extensive funds available and determined this application ineligible as it was able to be self-funded. Therefore, no funding was recommended.
Rates & Rental Subsidy	Support to Yearly Cover Cost of Hall Hire	Culburra Beach Orient Point RSL Sub-Branch	\$1,000.00	The panel noted that the Culburra Beach Orient Point RSL Sub-Branch currently has sufficient funds available in the bank and determined this application ineligible as it was able to be self-funded. Therefore, no funding was recommended.
Rates & Rental Subsidy	Subsidised rental, rates and use of Council facilities for Marine Rescue Jervis Bay	Marine Rescue NSW - Jervis Bay Unit	\$548.00	The panel agreed that although it is a minimal amount sought for a worthy cause, it is not recommend to fund based on the amount of support already provided from Council. The Panel referenced the resolution in 2018 which set the annual rent to \$490 plus GST, with annual CPI increases (SA18.86 - D18/82557) which has continued since then.
Rates & Rental Subsidy	Donation of Rates for Milton District CWA of NSW Reference#50484660	Milton District Branch of CWA of New South Wales	\$2,300.00	The panel agreed the Milton CWA brings great value to the Shoalhaven community, but noted that additional funds will be donated on, and therefore it was deemed ineligible and the panel did not recommend for funding.
Rates & Rental Subsidy	Rent subsidy for Sanctuary Point Centre for children and family services	Noah's Inclusion Services	\$5,517.00	It was agreed by the panel that though this is a great organisation that provides a worthwhile benefit to the Shoalhaven community, the panel deemed the application ineligible due to the extensive finances held by the organisation and their ability to self-fund.
Rates & Rental Subsidy	Sussex Inlet RSL sub-Branch Memorial Hall Rates & Charges Subsidy 2024-25	Sussex Inlet RSL Sub-Branch	\$2,057.00	The panel noted that the Sussex Inlet RSL Sub Branch currently holds extensive funds and determined this application ineligible as it was able to be self-funded. Therefore, no funding was recommended.

CL24.216 Policy - Fee Waivers Subsidies and Support

HPERM Ref: D24/288331

Approver: Kerrie Hamilton, Director City Performance

Attachments: 1. Fee Waivers and Subsidies Policy [↓](#)(under separate cover)

Reason for Report

To review and update Council's Fee Waivers, Subsidies and Support Policy. As this is a Public Policy it requires adoption by Council prior to its publication.

Recommendation

That Council adopt the Fee Waivers Subsidies Policy as amended.

Options

1. Adopt the recommendation as written

Implications: Nil

2. Not adopt the recommendation and give further instruction to staff

Implications: Staff will need to redraft the policy for endorsement by Council

Background

The Policy was last adopted by Council in 2018 with minor amendments at that time. Over the past two years this Policy has been reviewed and the following changes identified and recommended are as follows:

- a) Change in Policy title to 'Fee Waivers and Subsidies Policy'.

- b) Inclusion of the following points in '1. Purpose':

- Satisfies Clause 610E of the Local Government Act by determining categories under which Council may waive or subsidise fees.
- Applies to the hire of Council managed assets (exclusions are noted in item 2).

- c) Amendments to '2. Statement':

- Expanding on determination guidelines.
- '2.1 Definitions' – Minor updates to the table – remove 'Full cost pricing' row and 'Overheads' row.

- d) Removing Overview Process Diagram.

- e) Amendments to '3. Provisions':

- '3.1 Fee Support – 'Other Funding Bodies and Government Agencies' – it is now required that an approach by the hirer to State or Federal Government agencies or other funding bodies to seek support be made before any subsidy or waiver is considered.

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- '3.2 – Eligibility' – Inclusion of the following:
 - Fee Subsidies are calculated in accordance with the Fee Calculator (Attachment 1 of the policy), taking into consideration the degree of eligibility criteria as above.
 - Applications must be submitted by Application Form (Attachment 2 of the policy), a minimum of three months prior to the date of the booking.
 - '3.4 Applications' – Applications will be assessed by the Asset Custodian, or Council Department overseeing the service in accordance with the Fee Waivers and Subsidies Policy and Procedure (PRD21/91).
 - '3.5 Promotional and Marketing Activities' – amended to read offers will be documented and captured in Council's Annual Report.
 - '3.6 Ineligible Waivers' – amended to include Asset Custodian as assessing officer and amendment to the below dot point to include time frame:
 - Where other Council assistance is provided for the event or to the organisation in the same Financial Year.
 - '3.7 Delegations and Authorities' – Remove Section Manager from table – only Group Director or Council to have delegation.
- f) Amendment to '4. Implementation' – Update to reflect correct Directorate name.
- g) Amendment to '5. Review' – The responsibility for the review of this policy sits with the relevant departments i.e., Hire of Community Facilities.
- h) Removal of ESD Principles in line with current Policy format.
- i) Attachment 1 of the Policy – replaced by additional attachment 'Fee Waivers and Subsidies Calculator' (D17/139578).
- j) Attachment 2 of the Policy – was previously Attachment 1 - 'Fee Waivers and Subsidies Application Form'.

The recommended amendments are shown in **Attachment 1** of this report. For reference Council's Policy in its current format can be viewed online [here](#).

Internal Consultations

Consultation was undertaken with relevant Departments, Asset Custodians and the Senior Leadership Team. A final review of the Policy was undertaken by the Director of City Lifestyles and the Director of City Performance.

External Consultations

There is no statutory requirement to publicly exhibit any of the policies contained in this report. Council may choose to do so should they consider any changes of significance.

Community Consultations

There is no statutory requirement to publicly exhibit any of the policies contained in this report. Council may choose to do so should they consider any changes of significance.

Policy Implications

As this is a Public Policy it requires adoption by Council prior to its publication.

Financial Implications

Nil

Risk Implications

Nil

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CL24.217 Investment Report - June 2024

HPERM Ref: D24/290286

Department: Finance

Approver: Kerrie Hamilton, Director City Performance

Attachments: 1. Shoalhaven Monthly Investment Report - June 2024 (under separate cover) [⇒](#)

Reason for Report

The reason for this report is to inform the Councillors and the Community on Council's investment returns. The report also ensures compliance with Section 625 of the Local Government Act 1993 and Clause 212 of the Local Government (General) Regulation 2021, that requires a written report is provided to Council setting out the details of all funds it has invested.

Recommendation

That Council:

1. Receive the Record of Investments for the period to 30 June 2024.
2. Note that Council's total Investment Portfolio returned 5.06% per annum for the month of June 2024, outperforming the benchmark AusBond Bank Bill Index (4.35% pa) by seventy-one basis points (0.71%).

Options

1. The report on the Record of Investments for the period to 30 June 2024 be received for information.

Implications: Nil

2. Further information regarding the Record of Investments for the period to 30 June 2024 be requested.

Implications: Nil

3. The report of the record of Investments for the period to 30 June 2024 be received for information, with any changes requested for the Record of Investments to be reflected in the report for the period to 30 June 2024.

Implications: Nil

Background

Please refer to the attached monthly reports provided by Council's Independent Investment Advisor, Arlo Advisory Pty Ltd (formally Imperium Markets Pty Ltd).

Portfolio Return

The investment returns were a stable 5.06% p.a. in June 2024, outperforming the benchmark AusBond Bank Bill Index (4.35% p.a.) by seventy-one basis points (0.71%).

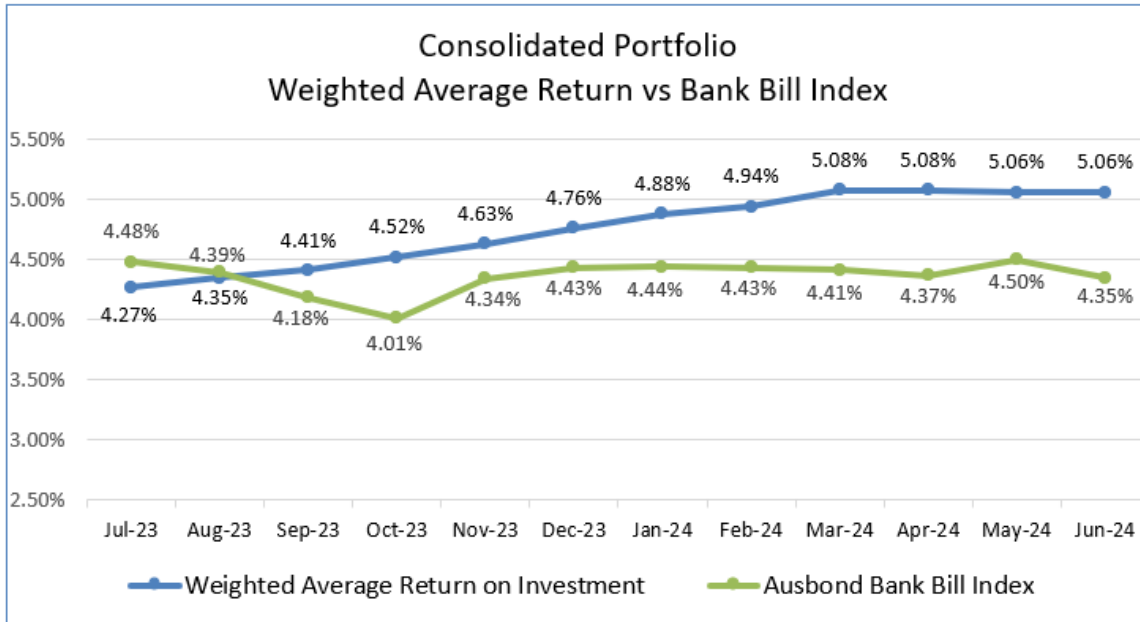
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At the June 2024 RBA meeting, the board made the decision to keep the cash rate on hold at 4.35%.

Investments

Graph 1 below, shows the performance of Council’s Investment Portfolio against the benchmark on a rolling 12-month basis.

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



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Investment Interest Earned – June 2024

Table 1 below, shows the interest earned for the month of June 2024.

Table 1- Interest Earned for the Month of June 2024

Fund	Monthly Revised Budget \$	Actual Earned \$	Difference \$
General	272,257	382,865	110,608
Water	143,918	208,225	64,307
Sewer	57,041	80,603	23,562
Total	473,216	671,693	198,477

The interest earned for the month of June, was \$671,693 compared to the monthly revised budget of \$473,216.

Investment Interest Earned - Year to Date

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

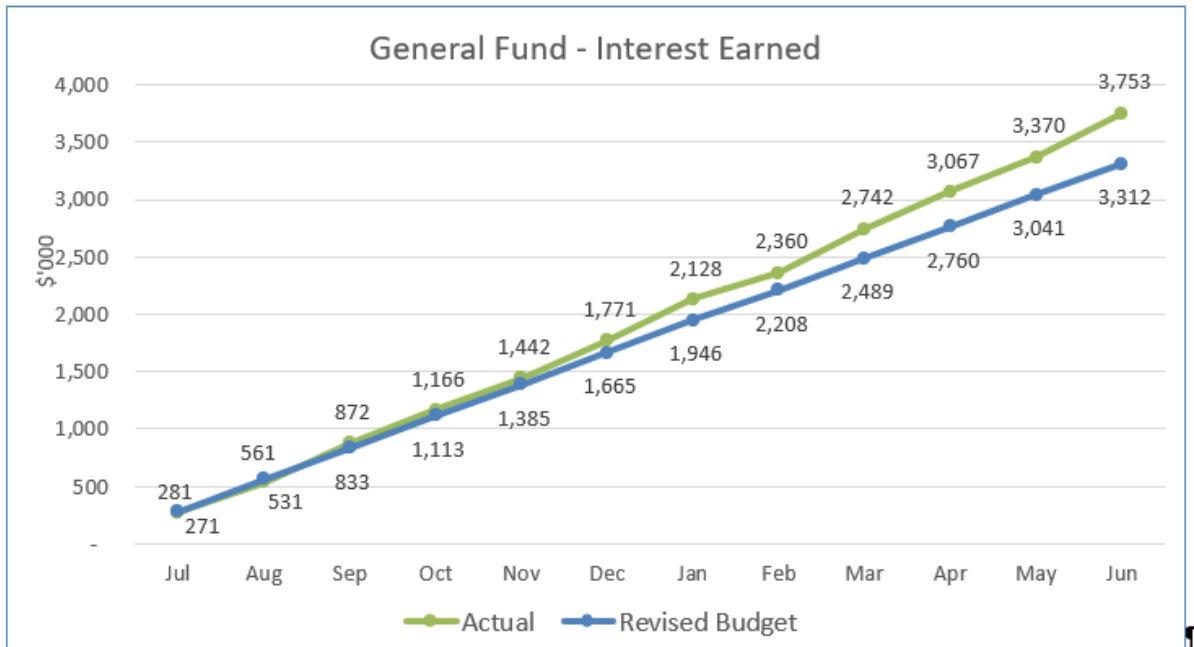
Table 2 - Amount of interest earned year to date, against the total budget.

Fund	Revised Total Annual Budget \$	Actual YTD \$	% Achieved
General	3,312,464	3,752,570	113.29%
Water	1,751,000	2,040,872	116.55%
Sewer	694,000	790,015	113.83%
Total	5,757,464	6,583,457	114.35%

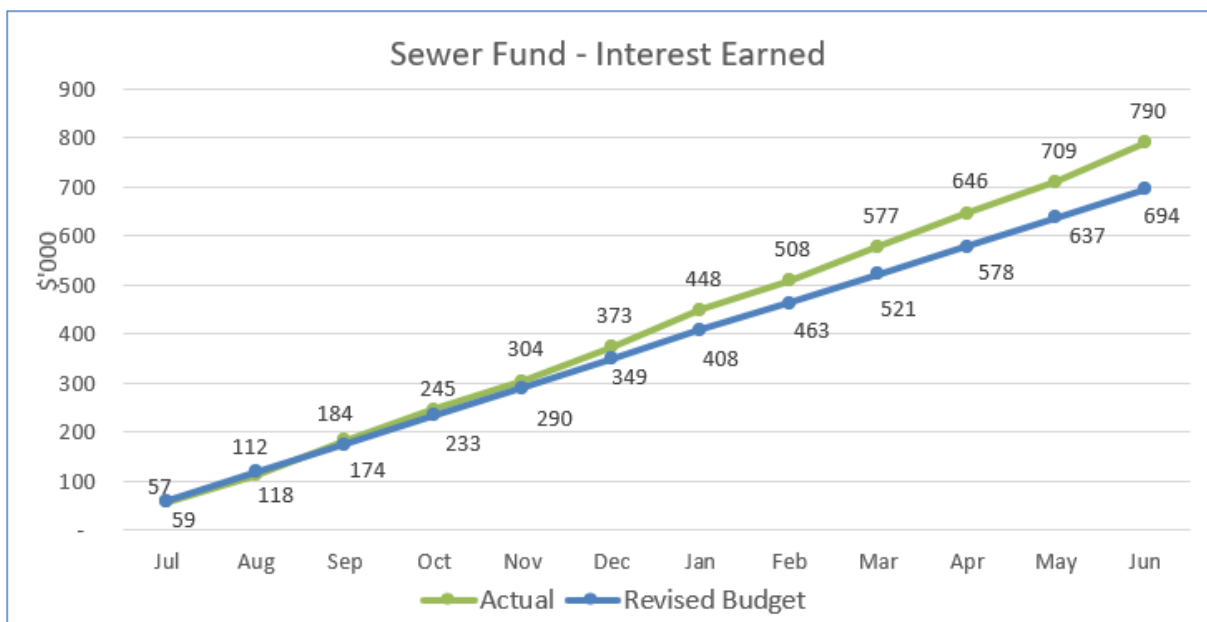
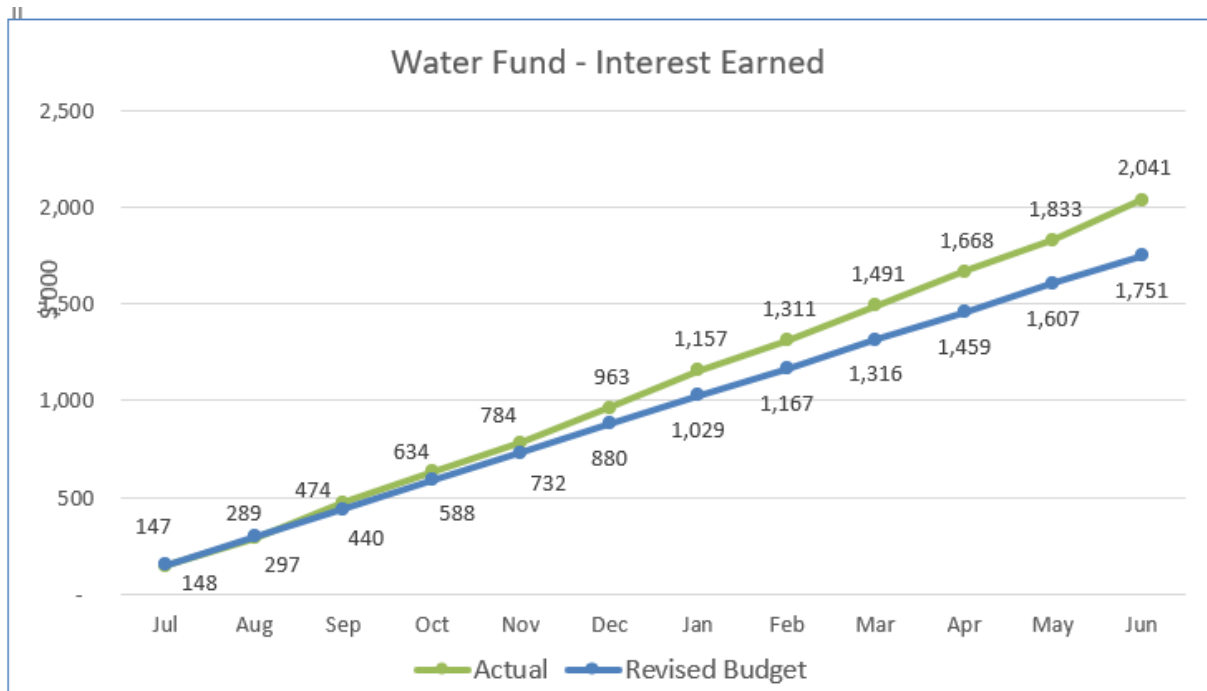
The cumulative interest earned for the year (July to June) was \$6,583,457 which is 114.35% of the current full year revised budget.

Graph 2 (3 separate graphs) below, illustrates the cumulative interest earned for the year for each fund (General, Water and Sewer) against budget:

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



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Cash and Restricted Assets, Restricted Asset Movements and Liquidity Indicators

As at 30 June 2023, Council had spent \$35M in grants spent in advance. In accordance with Council's adopted Liquidity Contingency Plan, internal restrictions were utilised to fund the grants spent in advance.

Since 30 June 2023 and up to 30 June 2024, Council received \$26M of the outstanding grants spent in advance balance.

Statement by Responsible Accounting Officer

I hereby certify that the investments listed in the attached report have been made in accordance with Section 625 of the Local Government Act 1993, Clause 212 of the Local Government (General) Regulations 2021 and Council's Investments Policy.

K Buckman

Katie Buckman

Date: 17 July 2024

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CL24.218 Berry Planning and Heritage Considerations: Proposed Amendments to Shoalhaven Local Environmental Plan 2014 and Shoalhaven Development Control Plan 2014

HPERM Ref: D24/171688

Department: Strategic Planning
Approver: Coralie McCarthy, Acting Director - City Futures

Attachments:

1. Princess Street HCA Assessment Report (under separate cover) [⇨](#)
2. List of Properties Proposed for Heritage Listing and/or Inclusion in HCA (under separate cover) [⇨](#)
3. Heritage Inventory Sheets - Items within the Proposed Princess Street HCA (under separate cover) [⇨](#)
4. Heritage Inventory Sheets - Proposed Items Outside the Proposed Princess Street HCA (under separate cover) [⇨](#)
5. Berry DCP Engagement Outcomes Report (under separate cover) [⇨](#)

Reason for Report

The purpose of this report is to:

- Advise on the outcomes of the independent review of the proposed additional Heritage Conservation Area (HCA) at Princess Street, Berry
- Advise on the outcomes of the initial community engagement activities relating to the proposed new chapter in the Shoalhaven Development Control Plan (DCP) 2014 for the area of Berry east of the Princes Highway/ bypass (often referred to as old Berry).

Obtain direction regarding the progression of following: Planning Proposal (PP) to facilitate additional heritage listings in Berry. New DCP Chapter for Berry.

Recommendation

That Council:

1. Endorse the preparation of a Planning Proposal to amend Schedule 5 of Shoalhaven Local Environmental Plan (LEP) 2014 to introduce the following, as specified in this report and attachments:
 - a. A new Heritage Conservation Area (HCA) in the area of Princess Street, Berry
 - b. Nine new heritage items located within the proposed Princess Street HCA boundary at Berry, including;
 - i. 19 Prince Alfred Street (Victorian cottage),
 - ii. 29 Prince Alfred Street (Inter-war bungalow),
 - iii. 30 Prince Alfred Street (Late Victorian Cottage),
 - iv. 40 Prince Alfred Street (Federation weatherboard House),
 - v. 44 Princess Street (Weatherboard and fibro bungalow),
 - vi. 62 Princess Street and 85 Victoria Street (known as Alexandra Park),
 - vii. Part of 66 Princess Street and the adjoining Princess Street road reserve

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- (*Araucaria heterophylla*, Norfolk Island Pine),
- viii. 97 Victoria Street (Inter-war Cottage), and
 - ix. Sandstone Kerbing on the western side of Prince Alfred Street, between Queen and Victoria Streets.
- c. Nine new heritage items located outside of the proposed Princess Street HCA boundary, but within the area of Berry east of the Princes Highway/bypass, including:
- i. 45 Prince Alfred Street (Inter-war weatherboard bungalow),
 - ii. 73 Victoria Street (Federation Weatherboard Cottage),
 - iii. 17 Albany Street (Victorian Brick Residence),
 - iv. 30 Alexandra Street (Inter-war House),
 - v. 40 Alexandra Street (Federation bungalow),
 - vi. 53 Queen Street (Inter-war Weatherboard Cottage),
 - vii. 59 Queen Street (Federation Weatherboard Cottage),
 - viii. 68 Queen Street (Federation Weatherboard Cottage), and
 - ix. 70 Queen Street (Inter-war Weatherboard Bungalow).
2. Submit the Planning Proposal to the NSW Department of Planning, Housing and Infrastructure for a Gateway determination and if favourable:
 - a. Proceed to formal public exhibition in accordance with the terms of the determination and legislative requirements; and
 - b. Receive a further report following the conclusion of the exhibition period.
 3. Endorse the preparation of a draft new chapter for inclusion in the Shoalhaven Development Control Plan (DCP) 2014 for the area of Berry east of the Princess Highway/bypass, with the work to be undertaken in-house by Council staff and receive a further report on the draft chapter prior to public exhibition.
 4. Subject to the outcome of Part 3, run the public exhibition of the Planning Proposal and draft new DCP chapter concurrently.
 5. Advise key stakeholders, including (not exclusively) the Berry Forum, Berry Chamber of Commerce, Berry & District Historical Society and relevant landowners, of this resolution and the public exhibition arrangements for future related exhibitions.

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Options

1. As recommended.

Implications: This is the preferred option as it will enable Council staff to proceed with the heritage and planning work required to respond to community concerns on a range of issues relating to unsympathetic development within the Berry township.

The overall project will require significant resourcing which could impact on the delivery of the New Land Use Planning Scheme for Shoalhaven, including the preparation of a new growth management strategy, contributions plan, local environmental plan (LEP) and DCP. Preparation of the new DCP chapter and PP will also be subject to the general workload and capacity of the Strategic Planning Department. Preparing the draft DCP in house will be resource intensive, however additional budget allocation from general fund will not be required and this option has the benefit of related efficiencies in relation to the broader review of the citywide DCP.

2. Delay the progression of PP and new DCP chapter for Berry until Stage 2 of the New Land Use Planning Scheme and incorporate key findings for Berry into future work.

Implications:

This option would enable a renewed focus on the New Land Use Planning Scheme for Shoalhaven, including the new growth management strategy, contributions plan, LEP and DCP. This would ensure that Berry's concerns are considered concurrently with other impacted towns and villages across the City. This option is considered a more efficient use of resources to delivery LGA wide benefits. This has not been recommended as it is not line with the expectations of the Berry community.

3. As recommended but engage an external consultant to prepare the draft DCP chapter.

Implications: This option will see the heritage and planning work progressed (subject to funding allocation), however the preparation of the draft DCP chapter would be outsourced to external consultants. This option is not preferred as it:

- Is subject to the availability of appropriate consultant expertise which is an unknown.
- Will come at a cost to Councils general fund that has not been budgeted for (estimated to be at least \$30,000 - \$50,000).
- Does not guarantee time efficiencies and will still require staff resourcing in terms of procurement and project management of the consultant, which is time intensive.

The preparation of the PP would still be undertaken inhouse.

The overall project will still require significant resourcing under this option, which will impact the timeline for delivery of the New Land Use Planning Scheme for Shoalhaven, including the preparation of a new DCP and LEP. Preparation of the PP and consultant procurement/ management will also be subject to general workload and capacity of the Strategic Planning Department.

4. Adopt an alternative recommendation.

Implications: This would depend on the recommendation but could include adjusting the scope of the PP and/or draft DCP chapter, or not progressing one or both at all. Not implementing appropriate heritage protections and development controls could be a missed opportunity to further recognise the unique heritage and character of Berry and help address the potential adverse impacts of unsympathetic development which is of concern to the Berry community.

Background

Princess Street Heritage Conservation Area

In 2022, the Berry Forum requested that Council investigate the Berry & District Historical Society's (BDHS) proposal for an additional HCA and six additional heritage items within Berry for inclusion in Schedule 5 of Shoalhaven LEP 2014. The proposal was accompanied by a [Proposed Princess Street HCA Heritage Assessment](#) prepared by the BDHS.

On 11 September 2023, Council resolved (MIN23.496) to give priority to the finalisation of a new HCA.

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Subsequently, Louise Thom Heritage was engaged to undertake an independent review of the HCA proposal and potential heritage items located within the proposed HCA boundary. A copy of this peer review is provided as **Attachment 1**.

The review recommends that Council:

- Support the inclusion of a proposed Princess Street HCA in Schedule 5 of Shoalhaven LEP 2014, with a slightly modified curtilage to the BDHS proposal.
- Support the inclusion of nine heritage items located within the boundary of the proposed Princess Street HCA, which meet the threshold for inclusion in Shoalhaven LEP 2014. *Note: Four (4) of these items were included in the BDHS assessment.*
- Implement appropriate development controls that will retain the 10 identified contributory items. *Note: A contributory item is a property that has some heritage value but not enough to warrant individual listing as a heritage item. It is contributory because it makes a positive contribution to the heritage values of the HCA. The two BDHS items that were not supported as potential heritage items have been identified as contributory items.*

A list summarising the properties proposed for inclusion in the HCA and the nine additional proposed items can be found at **Attachment 2**. Draft heritage inventory sheets for each proposed item and the proposed HCA can be found at **Attachment 3**.

Figure 1 below shows the:

- Current heritage items and HCAs in Berry that are currently listed in the LEP.
- Proposed Princess Street HCA resulting from the review.
- Proposed nine additional heritage items within the proposed Princess Street HCA boundary.
- 10 contributory items.

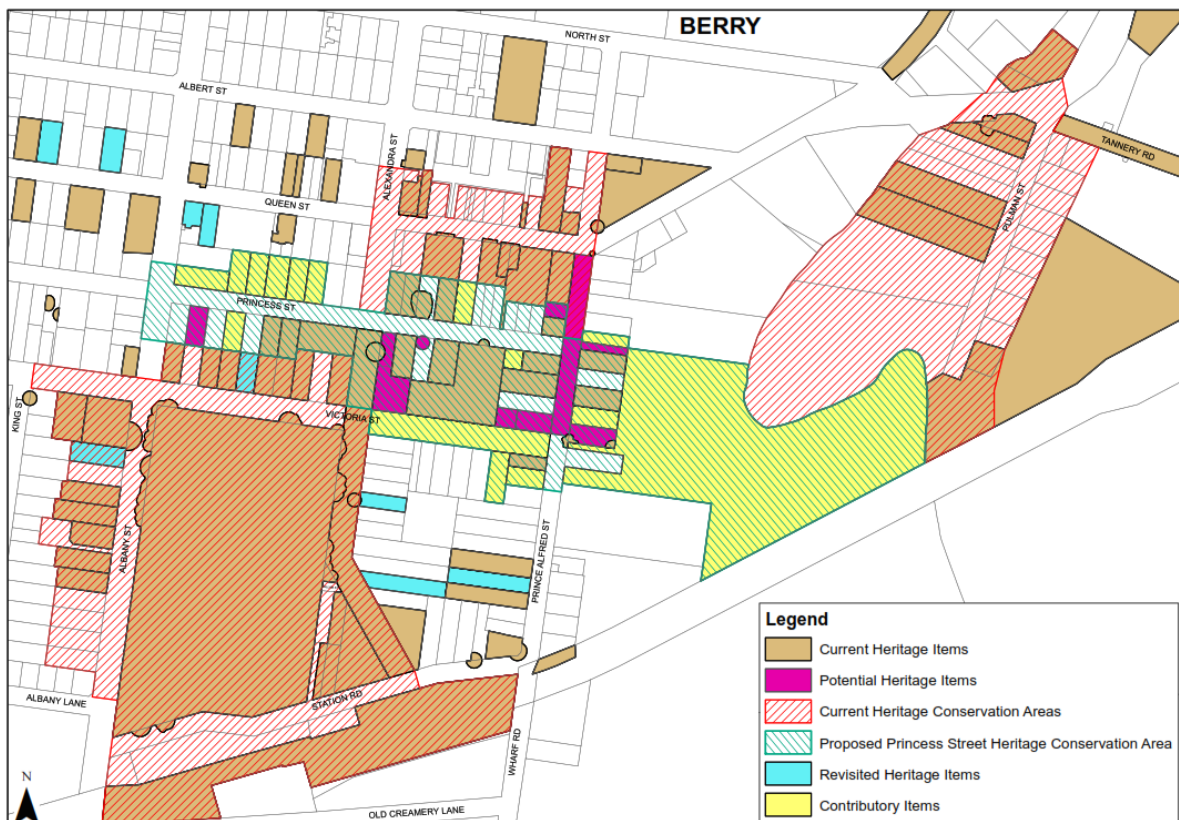


Figure 1: Current and Proposed Heritage Items, Heritage Conservation Areas and Contributory Items

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Figure 2 below compares the now proposed Princess Street HCA boundary and the boundary originally suggested by the BDHS.



Figure 2: Comparison of the Louise Thom and BDHS HCA Boundary

Revisited heritage items (identified in 2019)

In 2021, Council finalised an amendment to the LEP which listed a number of heritage items and two HCAs in Berry (Amendment No. 43). As part of the preliminary consultation process, landowners of individual items identified as possessing heritage significance were asked whether they supported the heritage listing of their property. This process resulted in 11 landowners (at the time) ‘opting out’ of the amendment and their properties were not ultimately listed as heritage items.

Due to ongoing community concerns regarding the impacts of potentially unsympathetic development and the loss of heritage significance raised during this project to date, it is also proposed that nine of these potential heritage items be revisited for inclusion in Schedule 5 of the LEP. The remaining items have undergone modifications that may impact the ability for the building to retain sufficient integrity to warrant listing as a heritage item. These properties would require further investigation when additional financial resources become available in the future.

Figure 1 above shows the nine revisited heritage items proposed for inclusion in the LEP. Refer to **Attachment 2** for a list of the properties and **Attachment 4** for the draft Heritage Inventory sheets for each.

The practice of ‘opting out’ of a heritage listing was discussed with Councillors at the 9 May 2024 Strategic Planning Working Party meeting, with the Councillors present generally in support of revisiting these items without running an ‘opt-out’ program. The owners of the nine properties in question will be notified/engaged should the recommended approach proceed further.

New DCP Chapter for Berry

During 2022, the Berry Forum requested that Council support the further preservation of Berry’s character through the prioritisation of Council resources to prepare a new DCP Chapter for Berry, similar to the DCP chapter for the [Town of Milton](#). This proposal was accompanied by a potential [Draft DCP Chapter for Berry \(east of the Princess Highway\)](#) provided by the Forum.

The proposed new DCP chapter was not included on the Strategic Planning Works Program for consideration until Council resolved (MIN 23.496) on 11 September 2023 to give priority

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to the completion of a draft DCP Chapter for this part of Berry in conjunction with the finalisation of the Princess Street HCA.

From late 2023 to June 2024, Locale Consulting was engaged to undertake initial community consultation and gather feedback and ideas to inform the preparation of a new DCP chapter for Berry. This involved two online surveys, targeted face-to-face consultation and a community drop-in session. An overview of the community engagement activities and a findings summary are provided in the Engagement Outcomes Report (**Attachment 5**) provided by Locale Consulting.

To inform and progress the proposed DCP chapter, the Engagement Outcomes Report makes seven recommendations (see **Figure 3** below) to help guide the preparation of the draft DCP chapter.

- 1 Planning guidelines implement the desired future character of Berry, with controls that underpin the importance of heritage, rural/ agricultural surrounds, scale of development within the township, site coverage, tree retention and vegetation.
- 2 Planning guidelines do not preclude change but rather respond to different site and area based constraints and opportunities. This can be achieved (in part) with controls based on the planning matters explored in the second survey.
- 3 Planning guidelines that relate to heritage, aim to ensure that the significant heritage elements of the past and heritage precincts are recognised and appropriately responded to by new development, but this does not extend beyond those elements and precincts.
- 4 Planning guidelines recognise the importance of and respond to the specific need for certain infrastructure provision to support new development, including drainage, parking and pedestrian access.
- 5 Planning guidelines are clear, concise and applicable (in the context of the NSW planning system) where they can have the most impact on the desired future character of Berry.
- 6 The Berry community and the development industry continue to be engaged and educated as any new planning guidelines are developed and implemented.
- 7 Planning guidelines are implemented consistently and in a timely fashion, appreciating process and available resources.

Figure 3: Recommendations - Locale Consulting, Engagement Outcomes Report (June 2024)

To ensure the eventual new DCP Chapter is well balanced and consistent with the broader public interest, its preparation will consider the community submitted draft DCP chapter, the relevant outcomes from the initial community engagement (**Attachment 5** and Figure 3) and the HCA Peer Review (**Attachment 1**). It is noted that some matters raised during the initial round of consultation (the Locale Consulting report) may not be able to be specifically addressed through the DCP framework; however, where appropriate, these items could be considered/progressed through other strategic plans and policies or by other areas within Council.

The timing of the work on this new DCP chapter will depend on overall strategic planning priorities and commitments and the ability of Council staff to be able to focus on this work.

Ideally, the draft DCP Chapter could be reported back to Council for consideration, prior to exhibition, toward the end of 2024 or early in 2025.

It is recommended that staff prepare the new DCP chapter as this option has the benefit of efficiencies in relation to the broader review of the citywide DCP. Alternative options for consideration include deferring the new DCP chapter or outsourcing this work (subject to sourcing suitable, available expertise and funding). It should be noted that Locale Consulting, who facilitated the community engagement, have advised that they would not be available to undertake the preparation of the new DCP, so the option to source expertise externally would require additional procurement processes.

Internal Consultations

Consultation has been undertaken with the asset strategic planners and asset custodians of the potential heritage items or properties owned or managed by Council within the proposed HCA (Works and Services Department and the Open Space and Recreation Planning Department). No immediate issues were raised.

Community Consultations

Following a favourable Gateway determination, the required PP would need to be exhibited in accordance with any conditions in the Gateway determination and legislative requirements.

Pending a further resolution by Council after consideration of the detail, the draft DCP Chapter will also need to be publicly exhibited for at least 28 days in accordance with legislative requirements. Ideally, the PP and draft DCP Chapter would be exhibited concurrently as both are heavily interrelated.

Public exhibition will provide an opportunity for further community engagement in relation to the detail of these matters. Any directly affected landowners will be advised of the exhibition arrangements in writing, as will the Berry Forum, Berry Chamber of Commerce and BDHS.

Policy Implications

The listing of the new Princess Street HCA and individual heritage items will require an amendment to Schedule 5 of the LEP. The new DCP chapter for Berry would be added as a new standalone chapter to the Shoalhaven DCP 2014. The land to which the new DCP chapter will apply will be refined through the DCP preparation process.

Financial Implications

There are no immediate financial implications for Council relating to the PP.

The preparation of the new draft DCP chapter, should it be undertaken in house, would need to be resourced from the Strategic Planning operational budget which could result in reduced funding being available to assist with other priority projects.

Should Council resolve to outsource preparation of the new draft DCP chapter, an allocation from Council's general fund would be required prior to proceeding. It is estimated costs would be in the vicinity of \$30,000 - \$50,000, depending on the scope.

Risk Implications

Not progressing with the heritage and planning controls discussed in this report may limit Council's ability to manage unsympathetic development through the assessment process, which could impact on the existing heritage significance and character of Berry.

Progressing with the proposed PP and new DCP chapter will impact on the timing and delivery of the New Land Use Planning Scheme for Shoalhaven. Projects that will be impacted includes the preparation of a new growth management strategy, contributions plan, LEP and DCP.

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CL24.219 Opportunities and Implications - Adjusting Payment Timing - Infrastructure Levies (Section 7.11 & Section 64)

HPERM Ref: D24/263138

Department: Strategic Planning
Approver: Coralie McCarthy, Acting Director - City Futures

Attachments: 1. Former POL22/39 - Payment of Development Contributions and Section 64 Headworks Charges by Deferment or Instalments Policy [↓](#)

Reason for Report

The purpose of this report is to outline opportunities and implications of incentivising certain development by deferring the timing of the payment of Section 7.11 Development Contributions and Section 64 Headworks (s7.11 and s64) charges. The report follows and responds to the Council resolution (MIN24.288) of 20 May 2024 that arose from a Notice of Motion in this regard.

Recommendation

That Council:

1. Receive this report for information.
2. Not pursue any changes to the existing payment timings for the payment of Section 7.11 Development Contributions and Section 64 Headworks Charges.

Options

1. As recommended.

Implications:

This option is preferred as reintroducing a s7.11 and s64 payment deferral is likely to place Council in an adverse financial position, one that is difficult to contemplate in Council's current financial position. Reliability of contributions income and resourcing efficiencies is considered critical currently.

2. Consider an alternative policy approach. This could include:

- Pursuing an amendment to Shoalhaven Contributions Plan 2019 and Shoalhaven Water s64 Certificate of Compliance notice of requirements.
- Preparing a new deferred payment policy for certain development.
- Consider planning agreement opportunities.

Implications:

This option is not preferred. Whilst such an approach may assist certain developers to deliver housing outcomes earlier than otherwise, it does not outweigh the adverse impacts on Council's cash flow and ability to deliver essential community infrastructure in a timely fashion. This outcome is not in the public interest as Council's general fund no longer has the capacity to assist.

If any of the mechanisms within this option are pursued, it is recommended that the detail of the proposed adjustments be workshopped with Councillors prior to proceeding further.

Background

Through the Shoalhaven Contributions Plan 2019 (the Contributions Plan), Council can levy monetary contributions (development contributions under s7.11 of the *Environmental Planning and Assessment Act 1979*) for new development which results in a demand for new or upgraded community infrastructure (e.g., roads, open space, drainage).

In accordance with the Contributions Plan, s7.11 Development Contributions are currently payable at the following milestones associated with development:

- Development applications involving subdivision - prior to the release of the Subdivision Certificate (linen plan).
- Development applications not involving subdivision, but where a subsequent Construction Certificate is required - prior to the release of the Construction Certificate.
- Other development application – prior to the commencement of the construction or occupation of premises.
- Complying development – prior to the commencement of works.

Council also levies monetary contributions (headworks charges under s64 of the *Local Government Act 1993*) to fund water and sewer infrastructure headworks that are directly related to a development (e.g., treatment plants, pumping stations, reservoirs, trunk mains).

The timing of s64 Headworks Contributions is not legislated or outlined in a policy document; however, for consistency, these contributions are generally applied in accordance with the above s7.11 timings.

The former *Payment of Development Contributions and Section 64 Headworks – Charges by Deferment or Instalments (under special circumstances) Policy (POL22/39)* (rescinded Policy – see **Attachment 1**) enabled the payment of the two charges by deferment or instalments in certain special circumstances and allowed for the following deferment/instalment timeframes:

- Up to 2 years for deferment of contributions that do not relate to residential subdivisions.
- The settlement of sale of the subdivided lots for deferment of contributions that relate to residential subdivisions.
- Payment by instalment over 5 years for tenants or businesses operating in Shoalhaven.

On 11 December 2023, Council resolved (MIN23.734) to rescind the former Policy.

On 6 May 2024, Council considered a Notice of Motion requesting staff to consider options in the s7.11 and s64 space to assist the development industry with cash flow problems to unlock essential housing supply. The motion was lost (MIN24.259), however a new Notice of Motion was considered on 20 May 2024 for essentially the same matter, with Council resolving (MIN24.288):

That the CEO give consideration to and report upon the possibility and implications of incentivising more significant forms of residential development (e.g. appropriate apartment/unit developments and residential subdivisions) by adjusting the timing of part or all of infrastructure levies (e.g. Sec 7.11 & Sec 64) to occupation certificate or similar stage of development.

This report back considers the opportunities for incentivising development through s7.11 and s64 levy payment timing adjustment and the possible implications of doing so.

Opportunities for Incentivising Development Through s7.11 and s64 Levy Payment Timing Adjustment

The Notice of Motion included commentary on the [Urban Task Force Australia's 24/25 pre-budget submission](#), summarising the related infrastructure levy recommendation as “changing the headworks/infrastructure payment timelines to ease the squeeze on cash flow and finance availability to the housing delivery pathway”. The Notice of Motion also raised concerns that infrastructure levies being due at the construction certificate stage and inability to finance these charges, is resulting in some development projects being at risk of abandonment.

The NSW Government introduced a deferred payment scheme during the COVID-19 pandemic to stimulate the economy. The scheme applied to development with a construction cost of more than \$10 million and did not include subdivision or complying development. It deferred payment of contributions to the occupation certificate stage. The scheme has been discontinued by the NSW Government.

The NSW Productivity Commission in its November 2020 [Review of Infrastructure Contributions in New South Wales Final Report](#) recommended that the COVID “Deferral should be permanent, subject to all contributions having been paid, before an occupation certificate is issued”. This was dependent on several related recommendations including adjustments to the Planning Portal and reforms to private certification and legislation. Whilst the NSW Government initially adopted this recommended, the NSW Government has advised that this work is no longer progressing as “wide scale reform requiring legislative change ceased in response to stakeholder feedback”.

There are three key ways that Council could enable an adjustment to the payment timing of s7.11 and s64 levies should it ultimately wish to:

- Amend the Shoalhaven Contributions Plan 2019 – The planning legislation is silent on when s7.11 levies are to be paid, except for complying development, allowing local government discretion in this space. Council’s existing arrangement is the general industry standard and is recommended by the NSW Government; however, Council could choose to make adjustments. A formal amendment to the Contributions Plan would however be required, involving staff time and resourcing, and the possible implications in the next section should be carefully considered. The timing for s64 contributions could follow suit with amendments to the Shoalhaven Water Certificate of Compliance notice of requirements.
- Introduce a new policy position that would enable deferred payment opportunities on a ‘case by case’ basis for certain development. This would ordinarily be facilitated via a deed with the registration of such on title. The former policy (**Attachment 1**) outlines the process and obligations that were previously in place; these are minimum requirements.
- Consider planning agreements on a case by case basis. These agreements, like the deed mechanism above, legally enables the change in payment timing with security. Simple agreement templates could be prepared to assist but would still involving staff time and resourcing.

Possible Implications - s7.11 and s64 Levy Payment Timing Adjustment

Whilst an adjustment to the timing of payments may assist developers in delivering housing outcomes and managing their cashflow, the financial risk burden is wholly placed on Council, as follows:

- Contributions received should be used to deliver essential infrastructure in a reasonable timeframe. Failure to deliver on time will lead to escalation in construction prices. Most s7.11 contributions projects are currently running at a loss with difficulties collecting the full developer part of the cost of works at the best of times.

This delays the delivery of projects and can even affect the long-term viability of projects.

Over the past decade, the s64 contribution concession has cost the reserve in the vicinity of \$56 million which impact on the water and sewer reserves.

The provision of new water and wastewater infrastructure is costly, with the Moss Vale Road urban release areas costing over \$40 million to deliver the required water and wastewater infrastructure. The s64 contributions need to be collected as soon as possible as this infrastructure has been funded in advance with only \$2.3 million collected as of 30 June 2024. Further delay in the payment of s64 contributions will further impact Shoalhaven Water's reserves and may further stretch Council's funds resulting in reliance on grant funding or loan funding to deliver the required infrastructure when needed, otherwise, large-scale housing delivery will be delayed due to lack of essential infrastructure.

- Council would not earn any interest on the funds until received. Interest received helps cover only part of the increase in project costs over time as CPI does not accurately offset construction cost increases. As such, it is Council's general fund that will ordinarily need to cover the difference, which is not considered in the broader public interest or financially sustainable at this point in time.
- Depending on the short/medium-term deficit, Council may need to use general funds to cover the development portion of a project cost. This has the potential to significantly impact Council's cash flows. The 'Deleted Fund Reserve' was established in 2019 to provide seed funding for this purpose for s7.11 infrastructure (MIN19.212), however this fund is now completely depleted and can no longer assist or be relied on in this regard.
- If a project faces delays, the debtor may not be able to pay upon completion, posing a credit risk.
- Interim occupation certificates can be issued without Council involvement and in the case of an owner not finalising the occupation certificate, a contribution payment would not be triggered.
- The process of deferring payments, depending on the mechanism, can be very resource intensive. The negotiating and drafting of the deed or planning agreement, and the extra management relating to the collection of payments to ensure income has been received, will require additional and ongoing resource consideration by Council.

The State Development Committee Inquiry into the 'Ability of Local Government to Fund Infrastructure and Services' is underway. Seven hearings have occurred to date, with numerous council and Local Government experts providing witness testimonies. The inadequacy of the current Developer Contributions Framework is a regular theme that has been raised by all witnesses. The current system does not provide sufficient funding to councils to meet the infrastructure needs of their communities, placing extra pressure on councils to fund developer contribution infrastructure through rates revenue. The deferral of payment terms, and therefore the reduction in interest Council can earn on these funds, will exacerbate the problem at a time when the sector is already struggling.

"More significant forms of residential development" as envisaged by the notice of motion will generally have a larger contribution obligation, which further compounds the above financial impacts.

Relatively recently Council engaged a consultant to review Council's existing infrastructure contributions resourcing and framework. The report recommended that Council discontinue allowing deferred and periodic payments. The former Policy was overly complex with limited benefit. The resourcing required to consider these requests can be significant, especially considering the minimal financial benefit that Council receives from these agreements. The

consultant recommendation is consistent with a range of councils that have excluded provisions for deferred and periodic payments as they transitioned to new contributions plans/frameworks (e.g., City of Sydney, Inner West and City of Parramatta). Council's Executive Management Team have endorsed the recommendations in the consultant report.

Conclusion

In summary, the act of deferring payments means that Council is not in receipt of relevant funds when anticipated, which affects cashflow, may impact the ability to deliver infrastructure works in a timely fashion and is likely to frustrate review and planning processes. This is immediately relevant considering Council's current financial position and the fact that Council has recently endorsed the preparation of a new Contributions Plan for Shoalhaven (MIN23.621). Reliability of contributions income and resourcing efficiencies is critical at this time.

Progressing with adjustments to the timing of s7.11 and s64 contribution payments in Council's current financial position is considered ill-advised.

Internal Consultations

Consultation has occurred with Shoalhaven Water, Council's General Counsel and the Chief Financial Officer on this matter. All agreed that the benefits of the proposed incentive were heavily outweighed by the financial implications/risks to Council.

Community Consultations

No community consultation is required or has been undertaken in relation to the proposal at this stage.

Should Council resolve to make a change to the Shoalhaven Contributions Plan 2019, the proposed amendment would need to be exhibited for at least 28 days in accordance with legislative requirements. Any planning agreement would need to be publicly notified for a period of 28 days.

A new policy regarding a basic deferral of s7.11 and s64 contributions would not require any formal community consultation, unless the scope of the proposed policy provided financial assistance to recipients who act for private gain, in which case a public notice period of 28 days is required under the *Local Government Act 1993*.

Policy Implications

Council can set the timeframes associated with the payment of s7.11 and s64 contributions, except for complying development, which is regulated by the Environmental Planning and Assessment Regulation 2021. Any permanent changes to the timing of contributions in the Shoalhaven Contributions Plan 2019 would be subject to a formal amendment process under the *Environmental Planning and Assessment Act 1979*.

The former policy (**Attachment 1**) allowed opportunities to further defer payment or make payments in instalments, through entering a deed. This could be revisited; however, it is noted that the former Policy was not well utilised and did not appear to have overly assisted in the delivery of housing.

The planning agreement mechanism would require an amendment to Council's existing [Planning Agreement Policy](#) to outline the general terms of any proposal, and preferably, the inclusion of a template agreement.

Council has recently endorsed the preparation of a new Contributions Plan for Shoalhaven (MIN23.621) as a corporate priority, and progressing any adjustments to the current Contributions Plan, reintroducing a deferred payment policy or adjusting the existing planning agreement policy would direct resourcing away from that task. The preparation of a new contributions plan is highlighted in Recommendation 13 of the AEC Report:

Council should complete the review of its developer contributions plan, before undertaking any substantial asset programs to ensure that the current contribution levels are able to support the future development costs.

Financial Implications

As discussed above, deferring s7.11 and s64 payments is likely to place Council in an adverse financial position, one that is difficult to contemplate in Council's current financial position. Reliability of contributions income and resourcing efficiencies is critical currently.

The preparation and ongoing operation of any adjustments in this space will be resource intensive at times, which could/will reduce efficiency in other areas.

If a revised deferred payment policy is pursued, Council's General Counsel recommends that an appropriate administration fee be put in place and interest be accrued for deferred payment amounts. It is also recommended that financial security for the full contribution amount be provided.

The planning agreement mechanism would require full cost recovery from developers as per the existing planning agreement policy and the recently adopted fees and charges; however, the preparation of a new planning agreement template for this purpose would come at a direct financial cost to Council.

Risk Implications

As discussed throughout this report, the risk implications associated with the proposed deferral of s7.11 and s64 payments are predominantly financial in nature and have the potential to be significant.

Council has more control over contribution payments if tied to construction certificates, as Council does not always have control over occupation certificates (issue or notification) due to private certification and other circumstances. In terms of subdivision, subdivision certificates are the last hold point in a development prior to finalisation, and therefore offer the latest possible security for Council.

Payment of Development Contributions and Section 64 Headworks – Charges by Deferment or Instalments (under special circumstances)

Adoption Date:	30/01/2007
Affirmed:	26/02/2013, 9/05/2017, 01/08/2022
Amendment Date:	9/06/2009, 19/04/2011, 29/05/2012
Minute Number:	MIN07.61, MIN09.719, MIN11.313, MIN12.596, MIN13.106, MIN17.378, MIN22.503
Review Date:	01/12/2024
Directorate:	City Futures
Record Number:	POL22/39

Payment of Development Contributions and Section 64 Headworks – Charges by Deferment or Instalments (under special circumstances)

1. Purpose

To enable the payment of development contributions and Section 64 (*Local Government Act 1993*) headworks charges by deferment or instalments.

2. Statement

Upon consideration of special circumstances, Council permits the payment of development contributions by deferment for a maximum of two years to all applicants and payment by instalments (periodic payment) over five years for tenants or businesses operating in the Shoalhaven Local Government Area. Where the request relates to residential subdivisions, Council allows deferring payment of development contributions and Section 64 headworks charges until the settlement of sale of the subdivided lots.

In circumstances where Council is to consider the waiving or long-term (i.e., greater than 5 years) deferred payment of development contributions, this arrangement should be detailed and finalised in a Voluntary Planning Agreement.

3. Provisions

Requests for payment of contributions by deferment for two (2) years or instalments are by written application to Council. The application is to include the reasons why special circumstances apply and will be determined at Council's discretion. Special circumstances will relate to the financial circumstances of the applicant, the amount of the contribution, the works that the contribution is applied to and its location and for tenants, the nature and duration of the tenancy.

For residential subdivisions, special circumstances relate to the difficulty in financing projects and do not need to be demonstrated in an application.

Payment of contributions by deferment or instalments will not be considered when the works projects to which the contributions apply, relate to public safety or health, or the amount of contributions is less than \$5,000.

Deferment for 2 Years or Payment by Instalments

Payments will be subject to an interest charge equivalent to that applied to overdue rates and an administration charge equivalent to the bank guarantee lodgement fee for subdivision related matters, as shown in Council's Fees & Charges.

The full amount of contributions plus interest is to be secured by bank guarantee, to be accepted by Council before release of plans or construction certificate.

If Council agrees to accept deferred payment for 2 years or payment by instalments, Council will require the applicant to provide a bank guarantee with the following conditions:

- the bank guarantee be by a bank equal to the value of the contribution payable or the amount of the outstanding contribution, plus interest;
- the bank unconditionally pays the guaranteed sum to the Council if the Council so demands in writing;
- the bank must pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee, and without regard to any dispute,

Payment of Development Contributions and Section 64 Headworks – Charges by Deferment or Instalments (under special circumstances)

controversy, issue or other matter relating to the development consent or the carrying out of the development;

- the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required;
- where a bank guarantee has been deposited with Council, the guarantee shall not be cancelled until such time as the original contribution, accrued interest and other charges are paid.

The administration charge is to be paid at the time of lodgement of the bank guarantee.

Deferment for Residential Subdivisions

Note: This section does not apply to subdivisions where the construction of a dwelling is included in the development application.

In the case of subdivisions, Council will consider the deferment of payment of development contributions and Section 64 headworks charges, subject to the following:

- The owner of the land and, if relevant, any mortgagees of the property entering into, at no cost to Council, a Deed of Agreement.
- The agreement between the Council and applicant binding the applicants land with the obligation to repay the contributions.
- If the applicant's land is subject to a mortgage(s), Council entering into a priority agreement with the mortgagee(s) that gives Council priority for payment of contributions.
- Notice of the agreement and Council's rights being registered in the form of a caveat on the title of the land to be subdivided.
- The agreement making provision for payment of the deferred contribution **at the rate applicable at the time of payment** and detail a schedule for the timing of the payments upon sale of the subdivided lots.
- The caveat shall be in a form that acts as a bar to transfer of ownership of any lot within the subdivision unless Council has provided its agreement to remove the caveat.
- Council's agreement to removal of the caveat from a subdivided lot being provided upon receipt of payment of the deferred contributions in accordance with the terms of the Deed of Agreement.

Note: All costs involved in the above requirements are at the expense of the applicant.

4. Implementation

The policy applies to specific development and subdivision applications, and therefore implementation of this policy is the responsibility of the City Futures, City Performance and City Development Directorates and Shoalhaven Water. The following implementation procedures will apply:

Payment of Development Contributions and Section 64 Headworks – Charges by Deferment or Instalments (under special circumstances)

Deferment for 2 Years or Payment by Instalments

- Calculations for the amount of the Bank Guarantee plus interest and the deferment or instalment schedule are to be checked and signed off by Finance Section (refer to Financial Accountant) prior to entering an agreement with the developer.
- It is usual practice not to have an expiry date on the Bank Guarantee and it is to be unconditional. If an expiry date is included, it must be at least 1 month after the due date for payment of the contribution. Under no circumstances should the Bank Guarantee have an expiry date on or before the due date.
- The Bank Guarantee for the correct amount (including interest) is to be received and confirmed as complying with Council's requirements prior to the release of linen plans or construction certificate (refer to Financial Accountant).
- The original Bank Guarantee is to be forwarded to Council's Finance Section (Financial Accountant) with an accompanying electronic memo which references the related SF or DA file so that it can be checked, registered as a legal document, and placed in Council's safe.
- When all the amounts owing (including interest) have been paid, a memo is to be sent to the Financial Accountant requesting that the Bank Guarantee be released.
- If amounts owing (including interest) have not been paid by the due date, a letter should be sent to the applicant warning that the Bank Guarantee will be called up if payment is not made by a specific date (within 1 week).
- If amounts owing (including interest) have still not been paid despite the warning letter, a memo is to be sent to the Financial Accountant requesting that the Bank Guarantee be called up. This must be done at least 2 weeks before any expiry date on the Bank Guarantee.
- Although Council has agreed to payment of development contributions by deferment or instalments, it is preferred that a Bank Guarantee for the full amount due (including interest) be held by Council until all the contributions plus interest due have been paid.
- It is not preferred that the Bank Guarantee amount be reduced progressively (for example, following part payment). Any reduction to the Bank Guarantee amount is to be requested via a memo to the Financial Accountant who will then contact the bank. It is usual practice for the bank to replace an existing Bank Guarantee with a new Bank Guarantee when the amount is reduced.

Deferment for Residential Subdivisions

- Development contributions and Section 64 headworks charges to be deferred are to be confirmed and signed off by the assessing officers prior to being detailed in the Deed of Agreement.
- Council's agreement to removal of the caveat from individual lots will be provided upon receipt of payment of the deferred contributions in accordance with the terms of the Deed of Agreement.

5. Review

This policy will be reviewed within 12 months of election of a new Council.

CL24.220 Proposed Public Exhibition - Moss Vale Road North Urban Release Area - Draft Development Controls and Local Infrastructure Contributions Framework

HPERM Ref: D24/290244

Department: Strategic Planning
Approver: Coralie McCarthy, Acting Director - City Futures

Attachments:

1. Draft DCP Chapter NB4 MVRN URA (under separate cover) [⇒](#)
2. Proposed Local Infrastructure Contributions Framework (under separate cover) [⇒](#)
3. Previous Council Resolutions (under separate cover) [⇒](#)
4. Summary of Adjusted Development Controls (under separate cover) [⇒](#)
5. Indicative Infrastructure Map (under separate cover) [⇒](#)

Reason for Report

This report sets out the proposed work to progress the local planning documents to 'release' and guide the delivery and development of the regionally significant Moss Vale Road North Urban Release Area (the URA).

Council settled contemporary planning controls for the release area at the end of 2023 with an amendment to Shoalhaven Local Environmental Plan 2014 (the LEP). The more detailed Development Controls and a Local Infrastructure Contributions Framework now need to be finalised to complete the local planning documents facilitating, guiding and enabling the actual development of the URA.

Recommendation

That Council:

1. Proceed to publicly exhibit the draft Development Control Plan Chapter (**Attachment 1**) and proposed Local Infrastructure Contributions Framework (**Attachment 2**, noting the 'yellow' highlighted items will be updated/finalised prior to exhibition) for the Moss Vale Road North Urban Release Area for review and comment.
2. Delegate authority to the CEO (or delegate), to make minor adjustments to the two documents prior to any public exhibition that do not alter the intent of the documents (e.g. minor formatting and labelling of figures).
3. Receive a further report following the public exhibition to consider any feedback received on the two documents and the work necessary to complete them.
4. Give 'in principle' support and delegation to the CEO to apply for a grant under Stream 2 of the Australian Governments Housing Support Program by the deadline of 16 August 2024, with the aim of fully funding relevant essential infrastructure components to support this new Urban Release Area where practically possible.
5. Request updates on the grant application via Councillor briefings or newsletter given the short deadline timeframe involved.

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Options

1. As recommended.

Implications: The recommendation allows the public exhibition of a draft Development Control Plan (DCP) chapter for the URA and a proposed Local Infrastructure Contributions Framework. The recommendation progresses the planning and delivery of this important URA, facilitating the supply of new homes in the northern Shoalhaven.

The exhibition of these documents is the next step in the process to finalise them and allow subdivision, development and infrastructure delivery to commence. Completing this work is a high priority project confirmed by Council's earlier decisions, the Community Strategic Plan, and adopted Local Strategic Planning Statement.

The draft DCP chapter responds to some of the requests for simpler development controls made by interested owners/developers. The exhibition of the draft documents provides further opportunities for these owners/developers and the broader community to provide further comment on them before they are finalised.

2. Defer the public exhibition of the documents and collaborate with interested owners/developers to identify and possibly agree on adjustments or changes to them.

Implications: This could result in the further adjustment of the draft DCP Chapter and the examination of alternative solutions to fund and deliver local infrastructure, including solutions which would avoid the limitations of the current NSW Government imposed cap on contributions (e.g. the use of Voluntary Planning Agreements).

However, a deferral would delay this matter moving forward and there is also no guarantee of consistent agreement or an alternative solution to fund and deliver local infrastructure. Any delays may result in missed opportunities to apply for Federal and State Government infrastructure funding initiatives that continue to emerge, such as Stream 2 of the Australian Government's [Housing Support Program](#) that was announced in early July and for which applications close on 16 August 2024 .

Continued, prolonged work on the URA, especially liaison with owners/developers, will impact on the ability of staff to work on the delivery of Council's other land use planning priorities, such as the preparation of the new Land Use Planning Scheme and the Development Contributions Plan review.

Delaying the URA documents could also prompt further owners/developers to prematurely apply for Council's development consent for proposed subdivisions. These applications may not be consistent with the draft DCP Chapter or provide the necessary infrastructure. In addition, Council cannot determine an application until an overall DCP Chapter is finalised.

3. An alternative resolution, including not to proceed with the exhibition.

Implications: Would be subject to the nature and direction of any alternative resolution, but any decision requiring further analysis, studies, or consideration of an alternative outcome will most likely ultimately delay delivery of the URA. It may also impact on Council's resources and other priority land use planning work.

A recommendation to not proceed would effectively cease the planning and delivery of the URA. The LEP provisions currently applying to the URA would continue to apply. These controls include the requirement for a DCP Chapter and arrangements for local infrastructure to be in place prior to any subdivision and development activity. This would mean Council could not approve any subdivision or development.

Background

The following local planning documents are needed to enable the ‘release’ and guide delivery of the URA:

- An amendment to the LEP setting land use zones, minimum lot sizes, etc. Note: This was finalised in December 2023.
- New chapter in the City-wide DCP.
- Local Infrastructure Contributions Framework to support and secure the funding and delivery of infrastructure to enable development and support the future community.

Once these documents are in place, Council can consider development applications consistent with Part 6 Urban Release Areas of the LEP.

Between 2017 and 2019, Council made a series of decisions around the delivery of the URA and to work with the then Moss Vale North Owners Group (comprising the then major landowners within the URA at the time) to bring the planning work forward and revise/settle development outcomes. Council also commissioned an evidence base of technical studies, where required, to help inform the detailed local planning documents.

Between 2019 and 2023, Council prepared, exhibited, and finalised updated LEP provisions for the URA. This included and involved consultation with NSW Government Agencies and the preparation of extra studies to identify and manage environmental risks and protect and enhance natural areas.

In 2022, ownership interests within the URA however changed with the emergence of new owners/developers and the creation of a new owners’ group. The new owners/developers have different aspirations to the original owners’ group. Council staff have engaged with the new owners/developers keeping them updated on progress and providing opportunities to identify potential/desired adjustments to the planning documents. Feedback received from the new owners has been considered, where possible and appropriate, as the preparation of the draft DCP Chapter and local infrastructure contributions planning work has progressed.

Attachment 3 summarises Council’s prior resolutions about the URA.

The following section of the report covers the remaining planning documents that now need to be finalised to enable ‘release’ of the URA.

Background - DCP Chapter

Council exhibited, with the intention of finalising, a DCP Chapter for the URA at the same time as amending the LEP. However, the delay in resolving and finalising the eventual LEP amendment required adjustments to and prevented the finalisation of the draft DCP Chapter.

As a result, Council needs to re-exhibit and then proceed to finalise a DCP Chapter. The additional time has allowed for the previous draft DCP Chapter to be revised and adjusted to match the LEP, help manage flood risk, incorporate more detailed infrastructure requirements and consider/accommodate some of the owner’s/developer’s requests for more flexible controls where appropriate.

Background - Local Infrastructure Contributions Framework

The additional time has also enabled an evidence base to be prepared to better inform the proposed Local Infrastructure Contributions Framework. Essential supporting infrastructure has been identified and concept designs and costings prepared. Land valuations have been completed to identify any potential acquisition costs. Flood modelling was also undertaken to identify the necessary flood evacuation route for the URA and to confirm that the planned drainage infrastructure will not create adverse impacts on flood risk downstream of the URA.

The preparation of the proposed framework is also complicated by the NSW Government’s current cap on the contributions Council can charge developments in the URA – currently set at \$30,000 per lot. The essential infrastructure identified to support the URA will cost

significantly more than \$30,000 per lot. As a result, further examination of potential approaches to settle a framework for the URA is needed to secure the required funding and ultimate delivery of necessary and essential infrastructure.

Draft DCP Chapter

An updated draft DCP Chapter for the URA has been prepared for addition to the existing Shoalhaven DCP 2014. The inclusion of a new chapter is important as the draft controls call on some controls in the existing plan to ensure consistency with other URAs and residential subdivisions generally and avoid unnecessary duplication of generic controls.

The draft chapter supports the settled LEP which removed development opportunities from areas at significant risk from flooding and provided wider riparian corridors. The draft development controls also manage residual flood risk by requiring all lots and roads to be filled above the Probable Maximum Flood (PMF) level and the provision of a flood evacuation route.

Several adjustments have also been made to the previously exhibited draft DCP Chapter in response to feedback from the current owners/developers. These adjustments attempt to simplify and lessen the cost of delivering the required road network and introduce flexible controls for development staging, bushfire asset protection zones, local parks, and the proposed village centre. These changes are summarised in **Attachment 4**.

The final significant inclusion in the draft DCP Chapter is the proposed satisfactory arrangements for infrastructure which identify the essential infrastructure, confirm which projects will be added to Council's existing Contributions Plan and which will be delivered by development. This reflects the proposed Local Infrastructure Contributions Framework.

The full new draft DCP Chapter is provided as **Attachment 1**.

Proposed Local Infrastructure Contributions Framework

The following infrastructure is essential to enable the delivery of the URA and support the new community:

- Roads, roundabouts, and bridges to connect all proposed stages of development to the existing and future road network and provide a flood evacuation route.
- Drainage infrastructure, such as wetlands, detention basins and pollutant traps to manage water quality and the flow and volume of water from the URA.
- Open space, including district - and local-scale parks and playgrounds to meet the recreation needs of new residents.
- Natural areas along watercourses and Moss Vale Road to protect and enhance biodiversity values and provide a buffer between new homes and Moss Vale Road.
- Community facilities through the upgrade of existing regional and district facilities such as libraries, swimming pools, and art galleries.

The roads, drainage and open space infrastructure and natural areas that are anticipated to be needed to support the new community are identified in **Attachment 5**.

The delivery of this essential infrastructure is estimated to cost \$45,000 per lot assuming delivery of 2,250 lots; that is \$15,000 more than the current cap imposed on the collection of development contributions by the NSW Government (\$30,000). There are several options to address this gap:

1. Reduce the infrastructure to lower the cost beneath the cap, noting this will lead to the undersupply of infrastructure for the new community, may delay delivery of the URA and create a future need for Council to fund new and upgraded infrastructure.

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2. Apply to increase the cap to deliver the identified infrastructure. This requires an application to the Independent Pricing and Regulatory Tribunal (IPART) to vary the cap, a process which can take 12-18 months, does not guarantee the requested amount and may also remove the requirement for development to contribute to the upgrade of existing community facilities.
3. Federal and State Government funding accessed through relevant application processes. However, there is no guarantee the necessary funding can be secured, potentially leading to the undersupply of infrastructure, delays in the delivery of the URA and a future need for Council to ultimately fund (or help fund) infrastructure.
4. Owners/developers fund and deliver all identified local infrastructure through Voluntary Planning Agreements (VPA's). that are not subject to the cap on local infrastructure contributions, but will still require considerable resourcing and oversight by Council.
5. Transfer responsibility to development to deliver the infrastructure components that can be directly related to development such as relevant roads, drainage, and local parks. Requiring developers to dedicate the land for this infrastructure and the natural area land at no cost provides further savings. The funding for any relevant coordinating infrastructure enabling the URA delivery is still added to Council's existing Contributions Plan.

Option 4 is potentially the most complete pathway to secure the timely delivery of all local infrastructure, but is a solution which needs to be proposed by the current owners/developers and agreed to by Council. For such a large URA, the resourcing and oversight of VPA's could be complex, time consuming and will require additional dedicated resources.

Option 5 is considered to provide the perhaps the best option in terms of timing and securing the delivery of the local infrastructure. It secures and coordinates both enabling infrastructure and the infrastructure to service the future community. The remaining infrastructure – those items required by or relating directly to development – is delivered by developers as development occurs. This option also enables the potential use of Government funding initiatives to help fund or accelerate the delivery of infrastructure. Other opportunities to enable the early delivery of infrastructure include Works-in-Kind Agreements (WIKAs) in appropriate circumstances.

The proposed Local Infrastructure Contributions Framework (**Attachment 2**) identifies the essential infrastructure, sets out the above options, and recommends Option 5. It identifies the proposed split between the infrastructure funded by development contributions and the infrastructure delivery responsibilities associated with development. As this point, the draft DCP Chapter includes proposed satisfactory arrangement controls to support the implementation of the above Option 5.

In regard to Option 3, an opportunity has recently emerged under Stream 2 (Community Enabling Infrastructure Stream) of the Australian Government's Housing Support Program (\$1.5 billion initiative) to apply for funding to potentially assist with the cost effective delivery of this URA.

The program is specially aimed at supporting 'the delivery of increased housing supply by funding projects that seek to deliver enabling infrastructure and provide amenities to support new housing development'. The overall program supports:

- *Infrastructure projects that support new housing, such as connecting essential services like water, power, sewage, and roads; and*
- *Infrastructure projects that provide amenities to support new housing, including shared facilities like community centres and parks.*
- *Building planning capability, including resources to support increased delivery of new housing and master planning to support increasing housing in well-located areas.*

Stream 2 is currently open to Councils and provides funding for enabling infrastructure and community amenity projects. Applications are due by 16 August 2024. The maximum funding amount available is \$45 million per application. The Australian Government will contribute up to 100 % of the total project cost for successful local government projects. There is no limit to the number of applications that can be submitted, and an application may include multiple sub-projects that are clearly and logically linked. Projects must be completed on or before 30 June 2026.

It would appear from initial review that much of the essential infrastructure required to support this URA would fall within the scope of this funding stream and there is considerable merit in investigating and if appropriate making an application. Subject to the consideration of this report and its detail, Council staff will need to review the potential projects, the application requirements and the range of considerations that need to be considered.

Should it be determined that it would be appropriate to make an application and given the timeframes, it may not be possible to report back to Council prior to the deadline date for applications. As such it is recommended that Council provide 'in principle' support to applying for this grant and delegate authority to the CEO to consider and make an application on behalf of Council by the deadline date of 16 August 2024.

Proposed Next Steps

Subject to the consideration of this report and the resultant resolution of Council, the draft DCP Chapter and proposed approach for a Local Infrastructure Contributions Framework need to be exhibited so they can be 'tested' with the owners' group and broader community.

Following the exhibition, all feedback received on the draft documents will be summarised and reported to Council to inform its decisions to:

- Adopt the draft DCP Chapter either as exhibited or adjusted, and
- Commence the preparation of an update to the existing Contributions Plan or an alternative mechanism(s) to actually secure the infrastructure required to support the URA.

Internal Consultations

Council's Strategic Planning team has collaborated with the following teams within Council to prepare the draft DCP Chapter and proposed Local Infrastructure Contributions Framework:

- Strategic Transport Planner - road network and designs.
- Environmental Services - flooding, drainage and the management of natural areas.
- Open Space and Recreation - controls and embellishment cost of open space.
- City Services - design and costing of road, bridge and drainage infrastructure.

As the development of the URA proceeds, it is intended that a Project Control Group consisting of staff from the above teams, Asset Custodians, and Development Services staff will be activated to manage and coordinate the delivery of infrastructure and assist with the consideration of relevant development applications.

External Consultations

Extensive consultation occurred with the following NSW Government Agencies (or their predecessors) and informed the preparation of the LEP amendment and has also informed the draft DCP Chapter where relevant:

- NSW Rural Fire Service

- Transport for NSW
- NSW Department of Climate Change, Energy, the Environment, and Water
- NSW Department of Planning, Housing, and Infrastructure.
- NSW Department of Primary Industries

These agencies will be notified of the exhibition of the draft DCP Chapter.

Council staff have engaged with the current owners/developers and their planning consultants, meeting them in December 2023, January 2024 and July 2024. Discussions focussed on the background to the planning for the URA, previous and proposed exhibitions of draft local planning documents and potential, alternative development outcomes. The owners/developers have also made two submissions on the previously exhibited development controls: one in response to the 2022 exhibition and a more detailed follow up in March 2024. These two submissions have been considered where appropriate/possible in the preparation of the draft DCP Chapter.

Community Consultations

The proposed public exhibition will occur for the required 28-day period as soon as practical after the Council resolution. The owners/developers and affected and adjacent owners will be notified of the exhibition. Broader notification will occur through Council's website.

The LEP Amendment and earlier draft DCP Chapter were exhibited from May to June 2022. The exhibition was supported by two community meetings providing the opportunity for people to view the draft documents and maps of the future development and talk with staff. As a result of the previous exhibition, Council received one submission from a community member, five submissions from owners/developers, and seven from Government agencies.

Policy Implications

The NSW Government's Illawarra-Shoalhaven Regional Plan 2041 identifies the Nowra-Bomaderry Regional Release Areas, which includes this URA, as being regionally significant.

Council's Local Strategic Planning Statement (*Shoalhaven 2040*) confirms the importance of preparing the local planning documents for the URA in *Planning Priority 1: Providing homes to meet all needs and lifestyles*. The finalisation of the planning documents in a timely manner is a high priority project and current focus for Council's Strategic Planning Team.

The delivery of the URA will enable the delivery of a substantial number of new homes, helping Council to meet the NSW Government's recently released housing targets.

Financial Implications

Settling an appropriate Local Infrastructure Contributions Framework for this URA within the constraints of the cap imposed on development contributions is essential to help secure the funding and coordinate the delivery of essential infrastructure. This removes the risk of Council having to fund the delivery of essential infrastructure from other sources.

Other funding and infrastructure delivery initiatives will be pursued to either fund the infrastructure or help facilitate its early delivery. These include Federal and State Government infrastructure funding initiatives that continue to emerge and agreements with owners/developers.

Council has expended considerable staff resources and funding to date to get the local planning documents to this point in the planning process. There is currently no funding allocated to consider departures from the current work, for example to pay for further studies

into alternative development outcomes. This would mean the funding and priority of other planning projects would need adjusting by Council.

The management of any requests for alternative outcomes as separate future requests/applications to adjust settled planning and development controls provides an appropriate process and resourcing opportunity to program and fully consider the requests on a managed and cost recovery basis.

CL24.220

CL24.221 Open Stormwater Drains Maintenance - Culburra Beach/Orient Point - Prince Edward Ave/The Triangle - Inspections Outcome/Green & Golden Bell Frog/Statutory Requirements

HPERM Ref: D24/281969

Department: Works & Services
Approver: Carey McIntyre, Director - City Services

Reason for Report

The purpose of this report is to provide an update on the resolution passed at the Council Meeting on 22 April 2024 regarding a report back in relation to the drainage maintenance in Culburra (MIN24.218).

Recommendation

That Council note the report updating Council on the actions related to drainage maintenance in the Culburra area.

Options

Council note the report updating Council on the actions related to drainage maintenance in the Culburra area.

Background

At the Council meeting on 22 April 2024, it was resolved that it:

Council:

1. *Acknowledges the significant community concern about the condition of Council's open stormwater drainage infrastructure in Culburra Beach and surrounding areas due to frequent flooding events.*
2. *Notes that a number of open stormwater drains have significant levels of vegetation growing within them.*
3. *Directs the CEO (City Services) to ensure that wherever technically possible, maintenance works are prioritised for the drains located along Prince Edward Avenue and the Triangle and wherever else required in Culburra Beach, Orient Point and surrounds.*
4. *Directs the CEO (City Services) to provide a timely report to councillors addressing the following matters:*
 - a. *The outcome of the asset maintenance inspections of drainage infrastructure funded under the 2023/24 budget.*
 - b. *Summary of the NSW State Government Management Plan - The Green and Golden Bell Frog Key Population within the Crookhaven River Floodplain (DECC 2007) and what implications this has on the timing of asset maintenance of open stormwater drains.*
 - c. *How state environmental statutory requirements dictate how Council undertakes asset maintenance of open stormwater drains.*

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An update on each item is provided as follows:

1. Noted.
2. Noted.
3. All maintenance of the drains in the area has been completed except for one drain. Access to this drain is restricted due to the saturated area. This work will be prioritised once the area has dried out.
4. The actions have been undertaken as described below.
 - a. The asset inspections indicated that some drain maintenance was required and that this maintenance work should be undertaken during the winter months to minimise the impact on the threatened Green and Golden Bell Frog population.
 - b. *The Green and Golden Bell Frog Key Population within the Crookhaven River Floodplain Management Plan* is the NSW guiding document for recovery of the threatened Green and Golden Bell Frog (GGBF) in the Crookhaven Floodplain. The management plan focuses on proactive management actions such as construction and restoration of habitat, control of threats, monitoring and research. Council operations – while not inconsistent with the GGBF management plan – are not governed by the management plan and it therefore has no implications on the timing of asset maintenance of open stormwater drains.
 - c. Council's operational activities are primarily concerned with **avoidance of harm** to threatened species including the GGBF, as governed by the *Biodiversity Conservation Act 2016* and the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

To comply with relevant environmental legislation, routine maintenance works on drainage channels where GGBF occur, follow protocols established by REFs for these activities.

Works in potential GGBF habitat are timed to every practical extent to avoid periods when the frogs are active (they move around and breed over Summer generally).

When works in potential GGBF habitat need to be carried out during active periods for the frogs, a pre-works check is carried out by Council's Environmental Officer to confirm that works can proceed.

The protocols and practices we have in place ensure that essential maintenance works can be carried out when and as required, while avoiding risks of impact on GGBF.

Financial Implications

The works associated with item 3 was accommodated within normal operational budgets.

Risk Implications

Failure to adequately manage Council operations to minimise any impact on the GGBF could place Council as risk of action under state and national environmental legislation including SEPPs.

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CL24.222 Increase in Scope and Contract Value - Comerong Island Levee Remediation Works

HPERM Ref: D24/286985

Department: Works & Services

Approver: Carey McIntyre, Director - City Services

Reason for Report

The reason for this report is to seek an exemption from tendering under S.55. (3) (i) Extenuating Circumstances for additional repairs on Comerong Island Levee.

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

Recommendation

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

Options

1. Accept the recommendation

Implications: Consider a separate confidential report on the matter.

2. Council make a different resolution

Implications: This is not recommended as repair work to Comerong Island levee is urgent.

Background

Council called tenders for Comerong Island Levee Remediation Works on 6 February 2024 which closed at 9.30am on 12 March 2024. Following the tender process and prior to commencement of works, the Shoalhaven region was impacted by two severe weather events declared as natural disasters on 1 April 2024 (AGRN1119) and 7 June 2024 (AGRN1129).

The Comerong Island Levee sustained additional damage during these events and Council has the opportunity to utilise resources currently available.

Policy Implications

Council seek an exemption from tendering policy under S.55. (3) (i) Extenuating Circumstances.

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Financial Implications

Council approved funding under the Disaster Recovery Funding Arrangements.

Risk Implications

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

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CL24.223 Narrawallee Beach Dog Access - Review of Environmental Factors and Proposed Permanent Dog Access Arrangements - Outcome of Engagement Activity

HPERM Ref: D24/196331

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

- Attachments:**
1. Report - Narrawallee Beach Dog Access - Review of Environmental Factors and Proposed Permanent Dog Access Arrangements - Outcome of Engagement Activity (06/11/2023) (under separate cover) [⇒](#)
 2. Access Areas for Dogs Policy (under separate cover) [⇒](#)
 3. Description of Study Area (under separate cover) [⇒](#)
 4. Review of Environmental Factors (under separate cover) [⇒](#)
 5. Map - Interim Dog Access Arrangements (in effect from 7 November 2023) (under separate cover) [⇒](#)
 6. Map - Proposed Permanent Dog Access Arrangements (for community consultation: May 2024) (under separate cover) [⇒](#)
 7. Map - Proposed Dog Access Arrangements (if adopted, in effect from: 1 September 2024) (under separate cover) [⇒](#)
 8. Overview of External Engagement (under separate cover) [⇒](#)
 9. Summary - Live Community Information Event (under separate cover) [⇒](#)
 10. Community Engagement Summary Report (under separate cover) [⇒](#)
 11. Overview of Staff Responses to Community Feedback (under separate cover) [⇒](#)
 12. Policy Implications & Strategic Alignment (under separate cover) [⇒](#)
 13. Risk Assessment (under separate cover) [⇒](#)

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Reason for Report

The purpose of this report is to:

1. Inform the Council about work undertaken in relation to implementing permanent dog access measures at Narrawallee Beach, following the designation of interim dog access measures at this location in November 2023 in accordance with MIN23.661.
2. Provide the Council with a recommendation for designation of permanent dog access measures at Narrawallee Beach, in accordance with the findings of contemporaneous environmental assessments and feedback received from the community during a community engagement activity held in May 2024.

Recommendation

That Council:

1. In accordance with the *Companion Animals Act 1998* (NSW), the Shoalhaven City Council *Access Areas for Dogs Policy* (ref. POL23/69, amended: 11/12/2023), and the Review of Environmental Factors (titled: *Review of Environmental Factors (REF) – Dog Off-Leash Access – Narrawallee Beach, Narrawallee* [certified under delegation on: 02/05/2024]), make the following dog access designations for public recreation and wildlife protection areas at Narrawallee Beach and surrounding areas as illustrated in **Attachment 7: Map - Proposed Dog Access Arrangements:**

- a. Dogs be prohibited in the area north of 'BA8'.
 - b. A timed dog off-leash area be implemented south of 'BA8' and north of 'BA3' (also known as Matron Porter Drive Beach Access Track), during the following times:
 - i. Australian Eastern Daylight Savings Time: **4pm to 8am**;
 - ii. Australian Eastern Standard Time: **3pm to 10am**.
 - c. Permit dogs to be on-leash south of 'BA8' and north of 'BA3' (also known as Matron Porter Drive Beach Access Track), during the following times:
 - i. Australian Eastern Daylight Savings Time: **8am to 4pm**;
 - ii. Australian Eastern Standard Time: **10am to 3pm**.
 - d. Dogs be prohibited in the area south of BA3 (also known as Matron Porter Drive Beach Access Track).
2. Direct the CEO (Director – City Development) to implement a public awareness and education campaign for 5 weeks from the date of this resolution, concluding on 31 August 2024, during which:
 - a. Interim dog access arrangements (for public recreation areas and wildlife protection areas) at Narrawallee Beach and surrounding areas will remain in effect, in accordance with MIN23.661;
 - b. Verbal warnings (only) shall be issued for eligible access related infringements for designated dog access areas listed in part 1 of this resolution (for public recreation areas and wildlife protection areas) at Narrawallee Beach and surrounding areas, noting that Council maintains a zero tolerance approach to enforcing other matters (including dog registration and dog attacks) in accordance with MIN20.264.
 3. In accordance with the *Companion Animals Act 1998* (NSW) and any other related act, direct the CEO (Director – City Development) to enforce designated dog access areas (for public recreation areas and wildlife protection areas) at Narrawallee Beach and surrounding areas, in accordance with part 1 of this resolution, including the issue of penalty notices for any infringements, from (not before): **1 September 2024**.
 4. In accordance with Section 14 of the *Companion Animals Act 1998* (NSW), the Shoalhaven City Council *Access Areas for Dogs Policy* (amended: 11/12/2023), and the designated dog access areas listed in part 1 of this resolution, direct the CEO (Director – City Lifestyles) to:
 - a. Amend the site-specific designated dog access area information for public recreation areas and wildlife protection areas at Narrawallee Beach and surrounding areas listed in on Council's website.
 - b. Coordinate the design, fabrication, and installation of notices for public recreation areas and wildlife protection areas (signage) at Narrawallee Beach and surrounding areas for dog prohibited and dog off-leash areas.
 5. Acknowledge the high-level of community interest in dog access arrangements at Narrawallee Beach, and in doing so, direct the Direct the CEO (Manager – Media & Communications) to issue notices (communication materials) as necessary to thank the Narrawallee Beach community (dog walkers and those seeking to avoid contact with dogs alike) for:
 - a. Their engagement with Shoalhaven City Council officers and elected officials since November 2023;
 - b. Providing feedback during community consultation undertaken in May 2024;
 - c. Participating in a live community information session held on 18 June 2024;

- d. Providing additional (late) feedback following the conclusion of community consultation and in the lead-up to the Council's consideration of this matter.

Options

OPTION 1 – Adopt the recommendation as printed

Implications: Designated dog access areas (as illustrated in **Attachment 7: Map - Proposed Dog Access Arrangements**) would come into effect, following a grace period, from 1 September 2024, and enforced accordingly.

Communication materials will be published to inform the Narrawallee community and regular users of Narrawallee Beach of the Council's decision on this matter.

OPTION 2 - Defer decision to allow further environmental assessments (based on definition of proposed use as '24-hour' dog off-leash) and receive future report

Proposed alternative recommendation:

That Council:

1. Accept this report as an update about work undertaken in relation to implementing permanent dog access measures at Narrawallee Beach, following the designation of interim dog access measures at this location in November 2023 in accordance with MIN23.661.
2. Defer a decision on permanent dog access measures for public recreation and wildlife protection areas at Narrawallee Beach and surrounding areas to allow a supplementary environmental assessment to be undertaken, and:
 - a. In accordance with Part 5 of the *Environmental Planning and Assessment Act 1979* (NSW), direct the CEO (Director – City Development) to compile and certify a new Review of Environmental Factors (REF) for public recreation and wildlife protection areas at Narrawallee Beach and surrounding areas, revising the proposed activity from 'timed' dog off-leash access to '24-hour' dog off-leash access;
 - b. Direct the CEO (Director – City Lifestyles) to provide a future report to Council for final proposed permanent dog access measures in accordance with the determinations made in a certified Review of Environmental Factors and with consideration of feedback received from the Narrawallee community in mid-2024.
3. Acknowledge the high-level of community interest in dog access arrangements at Narrawallee Beach, and in doing so, direct the CEO (Manager – Media & Communications) to issue notices (communication materials) as necessary to:
 - a. Thank the Narrawallee Beach community (dog walkers and those seeking to avoid contact with dogs alike) for:
 - i. their engagement with Shoalhaven City Council officers and elected officials since November 2023;
 - ii. providing feedback during community consultation undertaken in May 2024;
 - iii. participating in a live community information session held on 18 June 2024;
 - iv. providing additional (late) feedback following the conclusion of community consultation and in the lead-up to the Council's consideration of this matter.
 - b. Inform the community of the Council's decision to defer a determination on permanent dog access measures at Narrawallee Beach and surrounding areas until the outcome of a supplementary environmental assessment is completed.

Implications: Interim dog access measures will remain in effect at Narrawallee Beach in accordance with MIN23.661, and enforced accordingly, until Council makes permanent designations for dog access measures at Narrawallee Beach.

Further assessment and evaluation under relevant legislative instruments will need to be undertaken, giving consideration to environmental impacts arising from any alternate access arrangements proposed at Narrawallee Beach.

A future report will be provided to Council with a recommendation for permanent dog off-leash measures at Narrawallee Beach in accordance with the findings of a certified review of environmental factors and considering feedback received from the Narrawallee Beach community in mid-2024.

Any diversion for the recommendation will require full evaluation and assessment under relevant legislative requirements.

OPTION 3: Defer Decision on Permanent Dog Access Arrangements

Council may determine to adopt a revised resolution, in accordance with obligations under the *Environmental Planning and Assessment Act 1979* (NSW), *Companion Animals Act 1998* (NSW), and any other relevant legislation, deferring a decision to make designation for permanent dog access arrangements at Narrawallee Beach until a new Council is appointed following local government election to be held in September 2024.

Proposed alternative recommendation:

That Council:

1. Defer a decision on new designations for dog prohibited and dog off-leash areas for public recreation and wildlife protection areas at Narrawallee Beach and surrounding areas until a new Council is appointed following local government elections scheduled for September 2024.
2. Direct the CEO (Director – City Lifestyles) to re-table the **Narrawallee Beach Dog Access - Review of Environmental Factors and Proposed Permanent Dog Access Arrangements - Outcome of Engagement Activity** report in the business papers for a future Ordinary Council Meeting, once a new Council is appointed following local government elections scheduled for September 2024.

Implications: If the alternative Recommendation is adopted as proposed, interim dog access arrangements will remain in effect at Narrawallee Beach, in accordance with MIN23.661 (06/11/2023), and enforced accordingly.

Dog access to Narrawallee Beach will remain restricted to the area between BA3 and BA7, as illustrated in **Attachment 5** of this report, and in accordance with notifications (signs) currently installed at Narrawallee Beach. Dogs will remain prohibited on the Surfers Avenue stairs and Victor Avenue stairs, as these access ways terminate at a designated dog-prohibited area. Existing in-situ signs will remain in place.

This report (and attachments) will be re-tabled at a future Ordinary Council Meeting, for consideration by the new Council.

Any diversion for the recommendation will require full evaluation and assessment under relevant legislative requirements.

Background

Interim Dog Access Measures

At the Ordinary Council Meeting held on 6 November 2023, Council adopted temporary dog access arrangements at Narrawallee Beach. These arrangements are now in force, by order

of the General Manager (CEO), until further notice (or until the Council makes new orders in relation to designated dog access areas), ref MIN23.661.

MIN23.661 reads:

That Council:

1. *Adopt the following in relation to dog access measures at Narrawallee Beach:*
 - a. *Accept the interpretation of the 9 March 2021 resolution (ref. MIN 21.120), and implications of previous resolutions related to dog access at Narrawallee Beach, as illustrated in Figure 3 of Narrawallee Beach Dog Access Areas: interim dog access measures and update on Review of Environmental Factors report.*
 - b. *Remove the 10 metre wide on-leash transit area / access way from Surfers Avenue steps to the Victor Avenue steps illustrated in Figure 3 of the Narrawallee Beach Dog Access Areas: interim dog access measures and update on Review of Environmental Factors report.*
 - c. *Leave the existing access to the Narrawallee Beach off-leash area in place via the Matron Porter Drive beach access track (as the sole point of access to the off-leash area), as illustrated in Figure 5 of the Narrawallee Beach Dog Access Areas: interim dog access measures and update on Review of Environmental Factors report.*
2. *As an interim measure, and until the outcome of Part 7 of this resolution is known, designate that dogs are prohibited in the southern area of Narrawallee Beach, between the Surfers Avenue steps and Victor Avenue steps, under s14(1)(d) of the Companion Animals Act 1998 (NSW).*
3. *Direct the CEO (Director – City Lifestyles) to amend the site-specific designated dog access area information listed in Access Areas for Dogs policy to read that:*
 - a. *Dogs are prohibited on Narrawallee Beach and reserve from Narrawallee Creek to the unnamed island (in line with the intersection of Parkinson Street and Matron Porter Drive);*
 - b. *Dogs are prohibited on Narrawallee Beach and reserve from the Matron Porter Drive beach access track to Surfers Avenue steps;*
 - c. *Dogs are permitted to be off-leash on Narrawallee Beach between the unnamed island (in line with the intersection of Parkinson Street and Matron Porter Drive) and the Matron Porter Drive beach access track during the following times:*
 - i. *Australian Eastern Daylight Savings Time – off leash from 4pm – 8am;*
 - ii. *Australian Eastern Standard Time - off leash from 3pm – 10am.*
4. *Direct the CEO (Director - City Lifestyles) to coordinate the design, fabrication, and installation of temporary signage at Narrawallee Beach reflecting the interim dog access measures adopted for Narrawallee Beach in accordance with Part 1 & 2 of this resolution and as illustrated in Figure 4 of the Narrawallee Beach Dog Access Areas: interim dog access measures and update on Review of Environmental Factors report.*
5. *Direct the CEO (Director - City Lifestyles) to coordinate the design and implementation of a communications strategy to raise awareness around the interim dog access measures adopted for Narrawallee Beach in accordance with Part 1 & 2 of this resolution, including: flyers; advertising; and updates to Council's Get Involved page and Dog Off-Leash Guide.*
6. *Direct the CEO (Director - City Development) to update the Review of Environmental Factors (REF) for Narrawallee Beach off-leash area and exhibit the revised REF for information only.*

7. *Direct the CEO (Director, City Lifestyles) to submit a report on the REF findings for Narrawallee Beach off-leash area, results of consultation activities, and recommendations for the designation of dog off-leash and dog-prohibited areas at Narrawallee Beach to a future Council Ordinary Meeting for final determination.*
8. *Direct the CEO (Director, City Development) to increase Ranger patrols from now, and throughout the summer period at Narrawallee Beach dog on and off leash areas, and report back on enforcement statistics.*

Council's decision was made following a Land and Environment Court ruling, which deemed the prior dog access arrangements at Narrawallee Beach to be of no force and effect (decision date: 21 July 2023). Further information about this process is described in **Attachment 1**. Key excerpts of this report are provided in the sub-sections below, titled:

- Legal Proceedings and Court Decision;
- Interim Measures and Reversion to Previous Resolution;

Legal Proceedings and Court Decision

In May 2023, a Class 4 action was brought by the Narrawallee Beach Environmental Group Inc. (NBEG) concerning dogs off-leash at Narrawallee Beach. The case was heard before Justice Pain of the Land and Environment Court from 22 to 24 May 2023. The Court's decision had implications impacting the management of dog access at Narrawallee Beach.

Justice Pain declared and ordered that the Council resolution of 2 November 2021 (ref. MIN21.804), which allowed for dog access at Narrawallee Beach, was of no force and effect. The reason for this decision was that Council had failed to comply with Section 5.5 of the *Environmental Planning & Assessment Act 1979* (NSW) (EP&A Act), which requires the preparation of a Review of Environmental Factors (REF) before making such a decision.

While Council staff had completed a REF for dog access to Narrawallee Beach after the 2 November 2021 resolution, this REF was not endorsed by Council. Consequently, the Court found that the 2 November 2021 resolution was invalid.

Interim Measures and Reversion to Previous Resolution

The effect of the Court's decision was that the position regarding dog access at Narrawallee Beach reverted to the Council resolution of 9 March 2021 (ref. MIN21.120). However, due to ambiguity in this resolution, Council's internal Legal Counsel, senior staff, and project team considered a precautionary approach advisable.

As an interim measure, Council rescinded the 10-metre-wide transit zone/access way from Surfers Avenue to the Victor Avenue steps. Additionally, the southern section of Narrawallee Beach, between the Surfers Avenue steps and the Victor Avenue steps, was designated as a dog-prohibited area under Section 14(1)(d) of the *Companion Animals Act 1998* (NSW) (CA Act).

The reversion to the 9 March 2021 resolution meant that the southern boundary of the off-leash area shifted northward by approximately 100m, aligning with the Matron Porter Drive beach access track. Consequently, the southern part of Narrawallee Beach from the Matron Porter Drive beach access to Surfers Avenue steps became dog-prohibited, with no on-leash transit permitted. Access to the timed off-leash area was only allowed via the Matron Porter Drive Beach access track.

Preparation of an Updated Review of Environmental Factors (REF)

Justice Pain found the REF prepared by Council staff (dated 28 January 2022) to be capable of enabling Council to comply with Part 5 of the EP&A Act.

The REF was not endorsed (certified) by Council, leading to the Court ruling that the 2 November 2021 resolution was of no force and effect. Justice Pain acknowledged the thoroughness of the REF but emphasised the need for Council endorsement (certification)

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for it to be effective. Consequently, an external consultant was engaged to prepare an updated REF to address recent legislative changes, including the *Environmental Planning and Assessment Regulation 2021* (NSW) and relevant State Environmental Planning Policies. It ensures environmental due diligence through a contemporary assessment of relevant environmental aspects.

The updated REF includes a review of current legislation, such as the *State Environmental Planning Policy (Resilience & Hazards) 2021*, *State Environmental Planning Policy (Transport and Infrastructure) 2021*, and the *Environmental Planning and Assessment Regulation 2021* (NSW) (EP&A R), which commenced on 1 March 2022.

The updated REF has been prepared in accordance with legislative requirements and best practices in environmental assessment. This section addresses key concerns raised about the REF and provides justification for its approach and findings.

Key points addressed in the revised REF:

- Legislative compliance: The REF is prepared in line with contemporary legislative requirements, ensuring accurate due diligence and consideration of environmental aspects.
- Comprehensive assessment: The REF evaluates the proposed dog off-leash area against all environmental factors in accordance with Section 171 of the EP&A R, aiming for a balanced outcome.
- Community and expert consultation: The REF incorporates feedback from community engagement undertaken in relation to preparation of the *Access Areas for Dogs Policy* and consultations with experts, including ecological surveys and data from licensed and reputable sources such as the NSW BioNet *Atlas of Wildlife* database and Birdlife Australia's *Birdata*.
- Mitigation measures: The REF identifies mitigation measures to minimise impacts on threatened species and other environmental factors, ensuring a balanced approach to dog access areas.
- Independent review: An independent consultant prepared the REF, and suitably qualified Council staff reviewed it to ensure due diligence, and to determine the environmental assessment in accordance with requirements of Part 5 of the EP&A Act.

Independence and Objectivity

To ensure objectivity, the REF was prepared by an independent consultant, in accordance with MIN23.661 (November 2023). While Council branding may be present, this is because Council is the determining authority under Part 5 of the EP&A Act. Council staff's role (under delegation) was to review the independent consultant's work to ensure the required level of environmental due diligence was achieved.

Methodology and Data Sources

The REF utilised a comprehensive range of data sources to ensure accuracy and currency of information, particularly regarding shorebird presence and locations. These sources include:

- Multiple NSW BioNet databases accessed between September 2022 and April 2024;
- Birdlife Australia's *Birdata* and shorebird monitoring data;
- Council's GIS data layers including licensed sensitive species data;
- Consultation with NPWS Shorebird Ranger and NSW Shorebird Recovery Program;
- Site inspection by Council staff and consultant, EcoPlanning, on 14 November 2023.

This approach addresses concerns about insufficient data or lack of scientific backing for the presence of threatened species listed under the *Biodiversity Conservation Act 2016* (NSW) (BC Act) and *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act). It also enables the assessment of impacts associated with the proposed activity on other environmental aspects.

In relation to threatened species, the REF utilises a likelihood of occurrence criteria. In this way, threatened species recorded within the locality (10 kilometres of the subject site) were identified from the aforementioned database searches and site assessment. The likelihood of occurrence for each species was assessed as high, medium, or low based on species records and habitat features. All species determined as having a moderate or high likelihood of occurrence have potential to occur within the subject site and study area and the potential to be either directly or indirectly impacted on by the proposed activity. These species were assessment further using the Assessment of Significance (BC Act) and Significant Impact Criteria (EPBC Act). Accordingly, the delineation of dog off-leash areas and the implementation of other prescribed mitigation measures ensured that referral was not needed to the NSW State Government for BC Act listed species and to the Commonwealth for EBPC Act listed species.

Environmental Impact Assessment

The REF thoroughly assessed the proposed dog off-leash use (defined as timed) study area against all environmental factors as required by Section 171 of the EP&A R. This includes consideration of the following environmental factors:

- Community;
- Transformation of the locality;
- Ecosystems and threatened biodiversity;
- Aesthetics, recreational values, scientific values;
- Heritage;
- Safety of the environment;
- Pollution;
- Waste management;
- Resource demand;
- Coastal processes.

Accordingly, the assessment aimed to achieve a balanced outcome that minimises environmental impacts while accommodating community needs.

Buffer Zones and Access Points

Buffer zones were determined based on the landscape, recreational activities, and the need to minimise impacts on threatened species. While there are no set guidelines for buffer proportions on beaches, the REF considered the Australian Government's former Department of Energy and Environment (DoEE 017), *Policy Statement 3.21*, which states:

Options for mitigating impacts from disturbance include the use of buffer zones around important areas for migratory shorebirds. Appropriate buffers will depend on local circumstances, including the species present, type of habitat (ephemeral or permanent), habitat use (roosting or foraging) and scale of disturbance. As a guide, studies have recommended buffer zones with widths ranging from 165 metres to 255 metres.

These distances are considered adequate to ensure these habitats are not impacted on by the proposed activity.

The exclusion of Victor Avenue stairs from dog access was justified by the presence of additional threatened shorebirds recorded in the area to the south of these stairs during surveys. This determination, to prohibit dogs from the Victor Avenue stairs and in the area south of BA3, aims to protect sensitive habitats while providing separate beach access for non-dog users.

Hence, the Victor Avenue and Surfers Avenue Stairs are not able to be used for access to the dog off leash area to the north, as these access ways terminate at a dog prohibited area.

Consideration of Alternatives and Previous Arrangements

The REF considered prior dog access arrangements as part of its assessment to minimise impacts per the EP&A R requirements.

The REF for Narrawallee Beach dog access has been prepared with attention to environmental factors, current legislation, and community concerns. It represents a thorough and balanced assessment that aims to protect sensitive ecosystems while accommodating recreational needs. Furthermore, the REF aimed to achieve the objectives of the Access Areas for Dogs Policy and in particular the following:

Provide clear and accessible designations for ‘dog off-leash’ and ‘dog-prohibited’ areas within Shoalhaven local government area (LGA) to ensure population health and wellbeing benefits associated with dog ownership are achieved in balance with the protection of biodiversity and maintenance of ecosystem health.

Council has fulfilled its role as the determining authority by ensuring comprehensive review and environmental due diligence throughout the REF process.

Certification of Review of Environmental Factors (REF)

The REF for dog access to Narrawallee Beach serves as a comprehensive environmental assessment tool used by Shoalhaven City Council to evaluate the impacts of dog off-leash areas on the community and environment. The REF is prepared in accordance with Part 5 of the EP&A Act and is informed by investigations considering environmental factors outlined under Section 171 of the EP&A R.

The updated REF was certified under delegation by Council officers and placed on public exhibition for four weeks, from: 6 May 2024 to 2 June 2024. Exhibition of the REF is a requirement under Section 171(4) of the EP&A R as Council (the determining authority) considered that it was of public interest. During this period, 714 surveys and 140 written submissions were received, including one written submission with 1,028 signatures. The outcomes of this public exhibition are provided in subsequent chapters of this report.

Supplementary Material

The ***Narrawallee Beach Dog Access - Review of Environmental Factors and Proposed Permanent Dog Access Arrangements - Outcome of Engagement Activity*** report (this report) should be read in conjunction with the following attachments:

1. Report – Narrawallee Beach Dog Access - Review of Environmental Factors and Proposed Permanent Dog Access Arrangements - Outcome of Engagement Activity (06/11/2023)
2. Access Area for Dogs Policy (amended: 11/12/2023)
3. Description of Study Area
4. Review of Environmental Factors (certified 2/05/2024)
5. Map: Interim Dog Access Arrangements (November 2023)
6. Map: Proposed Permanent Dog Access Arrangements (Consultation Campaign – May 2024)
7. Map: Proposed Permanent Dog Access Arrangements (September 2024)

8. Overview of External Engagement
9. Summary – Live Community Information Event
10. Community Engagement Summary Report
11. Overview of Staff Responses to Community Feedback
12. Policy Implications & Strategic Alignment
13. Risk Assessment

Access Areas for Dogs Policy

The Shoalhaven City Council Access Area for Dogs Policy (ref. POL23/69 Attachment 2) was amended by Council on 11 December 2023, and states that:

Council recognises companion dogs provide significant benefits for population health and wellbeing. [...] these benefits are realised and managed in a manner that protects the rights of all users to equitable access to a range of public places across Shoalhaven; recognising there are segments of the population that wish to avoid contact with dogs.

It is acknowledged dogs in public places can present a barrier to participation for some members of the community, including children, the elderly, and people living with physical and intellectual disabilities. Consideration shall therefore be given to equitable access to dog-free areas when designating dog-controlled areas.

The Shoalhaven community is custodian of nationally significant, environmentally sensitive areas across a wide array of landscapes. Thus, there is a vital need for dog exercise in public places to be conducted in a manner that minimises impacts on the environment and community.

Further information about the role of this policy is provided in the Policy and Legislative Implications chapter of this report.

Subject Site

Narrawallee Beach is situated approximately 5km east of Milton, 3km north of Mollymook, and 5km north of Ulladulla. Narrawallee Beach can be described in three distinct areas: North, Central, and South. A detailed description of the subject site (including photographs) is provided in **Attachment 3**.

North

BA15 – BA8: The northern section of Narrawallee Beach stretches south from Narrawallee Inlet Reserve (and headland) to an unnamed island. This area is currently designated as a dog prohibited area, due to proximity to threatened and migratory shorebird nesting and breeding habitat (located at Narrawallee Creek Inlet).

Central

BA8 – BA3: The central section of Narrawallee Beach extends from the unnamed island to the main Matron Porter Drive access track. This area is currently a timed dog off-leash area.

South

BA3 – BA1: The southern section of Narrawallee Beach extends from Victor Avenue stairs to Surfers Avenue stairs, and is bound at its southern extent by an intertidal rock platform. This area is currently a designated dog prohibited area.

A number of site visits (inspections) have been undertaken by relevant staff associated with the contents of this report. Site inspections were undertaken across a range of seasonal conditions, and at different times of the day, in: October 2023; November 2023; January 2024; March 2024; April 2024; May 2024; and June 2024.

Maps

The following maps are provided as attachments to this report:

- **Attachment 5:** Map - Interim Dog Access Arrangements (in effect from: 7 November 2023);
- **Attachment 6:** Map - Proposed Permanent Dog Access Arrangements (for community consultation: May 2024);
- **Attachment 7:** Map - Proposed Permanent Dog Access Arrangements (subject of this report).

Options

Three options are presented in the Options chapter of this report for the Council's consideration. These include:

1. Option 1 (staff recommendation): Adopt the recommendation as printed;
2. Option 2: Defer a decision to allow further environmental assessments to be undertaken;
3. Option 3: Defer a decision until a new Council is appointed following local government elections to be held in September 2024.

Option 1

To comply with relevant legislation in relation to dog access matters at Narrawallee Beach, and to provide certainty to the Narrawallee Beach community on this matter, it is strongly recommended that the Council adopt the recommendation as printed (Option 1).

In accordance with determinations made in the REF certified: 02/05/2024, dog access to Narrawallee Beach would be provided via beach access points labelled BA3 through BA8 (ref. Fig. 3, **Attachment 4**).

Similarly, dog access would not be permitted via BA1 and BA2 (also known as Surfers Avenue stairs and Victor Avenue stairs), as these access ways terminate at a designated dog prohibited area.

Option 2

Should the Council wish to defer a decision on the designation of permanent dog access areas at Narrawallee Beach to allow further environmental assessments to be undertaken - on the basis of the proposed activity being 24-hour dog off leash access to Narrawallee Beach - then it is proposed that the Council adopt the alternative recommendation as drafted (Option 2).

Note: The Review of Environmental Factors (certified 02/05/2024) was undertaken on the basis of the proposed activity being timed dog off leash access to Narrawallee Beach (as documented in Section 1.3 of the REF, ref. p. 8).

Option 3

Council may determine to defer the matter for consideration by a new Council, following local government elections to be held in September 2023 (Option 3); however, it should be noted the new Council will be bound by the determinations of a Review of Environmental Factors (either the REF certified on 02/05/2024 or a subsequent document, such as the REF foreshadowed at Option 2). Similarly, the new Council must give consideration to legislation and policy as outlined in the Legislation, Policy Implications and Strategic Alignment chapter of this report.

Note: Option 3 is considered to provide the greatest level of uncertainty to the Narrawallee Beach community.

Internal Consultations

This report has been prepared by City Lifestyles (Open Space & Recreation Planning) in consultation with:

- City Development (Environmental Services, Certification & Compliance);
- City Performance (General Counsel, Enterprise Risk Management);
- City Services (District Engineer – South, as asset custodian);
- Media & Communications (Marketing & Community Engagement).

External Consultations

An overview of meetings with key stakeholders is provided in Table 1 (See: **Attachment 8**).

Community Consultations

May – June 2024 Engagement Campaign

In accordance with MIN23.661, a community consultation campaign was undertaken for four weeks from 6 May 2024 to 2 June 2024, during which the community was invited to provide comments on proposed permanent dog access arrangements (developed in accordance with the determination of the REF certified 02/05/2024). This campaign was targeted to residents and property owners in the North Mollymook, Narrawallee, and Milton, and regular users of Narrawallee Beach.

In accordance with MIN23.661, the REF (certified 02/05/2024) was also placed on public exhibition during this period, as a matter of public interest. Importantly, it should be noted that environmental assessments cannot be altered on the basis of community feedback alone.

The campaign was promoted through the following communications channels:

- Advertisements published in the Milton Ulladulla Times (x2 occasions);
- Targeted Facebook notifications (5km radius of subject site);
- Information published to community information hubs in Milton and Ulladulla;
- 4,363 letters sent to property owners and residents in North Mollymook and Narrawallee;
- *Dogs in the Public Domain* Get Involved Page (including notifications to page subscribers);
- Emails to key stakeholders (including Paws 4 Shoalhaven, Narrawallee Beach Environmental Group Inc., and Community Consultative Bodies in the Milton / Ulladulla area);
- Email responses to enquiries from the general public (approx. 100 recipients).

The engagement campaign was designed in accordance with the Shoalhaven City Council *Community Engagement Strategy 2022 - 2026* and aimed to seek public feedback on proposed permanent dog access arrangements at Narrawallee Beach. The results of this campaign are outlined below, with further detailed information in relation to quantitative and qualitative data provided in an Engagement Summary Report (see: **Attachment 10**).

Engagement (Response) Level

During the exhibition period, Council received:

- 714 survey submissions (including 654 unique responses)

- 140 written submissions
- In total, 854 *unique* submissions were received during the community consultation campaign held in May this year, which is a relatively high engagement rate for a community consultation activity undertaken by this council.
- One written submission included a petition with 1,028 signatures.

A further 232 pieces of correspondence were received following a live community information session held on Tuesday, 18 June 2024. Further information about this event is provided below (ref. subsection titled: *Live Community Information Event*).

Feedback received during May 2024 covered various topics, including: accessibility; mental health; social cohesion; tourism; dog off-leash times; shorebirds; environmental assessments; and survey design.

Data was collected using the following methods:

- Online Survey: Respondents could complete a short online survey available on Council's website;
- Surveys: Hard copy equivalents of the online survey were available at Council's customer service centres in Ulladulla and Nowra as well as Ulladulla and Nowra libraries;
- Detailed written submissions sent to the Council via email, as well as received through the Mayor, Councillors, senior staff, and officers.

Further details are provided in an engagement summary report at **Attachment 10**. Officer responses to main themes emerging from this engagement activity are presented in **Attachment 11**.

Conclusion

The community engagement activity revealed a complex set of opinions and concerns among respondents. The majority of respondents were frequent beach visitors, with 68.3% being dog owners who regularly use the off-leash area.

A strong desire for increased dog access was evident, with 74.9% of respondents wanting more off-leash opportunities. However, a consistent minority (about 20-25%) preferred reduced or no dog access, highlighting the need for a balanced approach.

The loss of access via the Victor Avenue stairs emerged as a major concern, with 327 respondents expressing issues with this change. Accessibility for elderly and disabled individuals was emphasised by 170 respondents, who stressed the importance of maintaining convenient beach access.

Environmental concerns were mixed, with some arguing dogs have minimal impact and others worried about effects on shorebirds and nesting areas. The REF received limited support, with 76 respondents disagreeing with its findings.

The survey also revealed community concerns about enforcement, compliance, and community trust in Council. Some respondents suggested better enforcement of existing rules and increased presence of Council rangers.

Overall, the results highlight the need for a carefully considered approach to managing dog access at Narrawallee Beach, balancing various stakeholder interests and environmental considerations.

Live Community Information Event

Following conclusion of community engagement activities undertaken in May 2024, a live, online community information event was held on Tuesday, 18 June 2024. The purpose of this event was to provide an opportunity for interested community members to hear from Council staff about results of engagement activities undertaken in May 2024, to respond to feedback

about the REF, and to provide information about next steps – including the pathway to a Council decision. Approximately 65 attendees engaged with Council staff during this event.

Further information about this event is provided in **Attachment 9**.

Legislation, Policy Implications and Strategic Alignment

In designating dog prohibited and dog off-leash areas, Council must comply with relevant commonwealth and state legislation, including, but not limited to:

- *Biodiversity Conservation Act 2016*
- *Civil Liability Act 2002*
- *Coastal Management Act 2016*
- *Companion Animals Act 1998*
- *Companion Animals Regulation 2018*
- *Crown Land Management Act 2016*
- *Environment Protection and Biodiversity Conservation Act 1999*
- *Environmental Planning and Assessment Act 1979*
- *Environmental Planning and Assessment Regulation 2021*
- *Fisheries Management Act 1994*
- *Local Government Act 1993*
- *Marine Estate Management Act 2014*
- *Marine Estate Management (Management Rules) Regulation 1999*
- *National Parks and Wildlife Act 1974*
- *Prevention of Cruelty to Animals Act 1979*
- *Public Spaces (Public Property) Act 2021*
- *Shoalhaven Local Environmental Plan 2014*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*

Companion Animals Act 1998 (NSW) (CA Act)

In accordance with the CA Act, local councils have the authority to impose additional restrictions or requirements for dog access in their local government areas, as long as these are consistent with the Act.

The CA Act provides mechanisms for the management of companion animals, including dogs, in public spaces. Regarding dog off-leash areas and prohibited areas, the CA Act outlines the following key points:

- Under Section 13 (6) and Section 14, councils have the authority to declare public places as dog off-leash and dog prohibited.
- Under Section 13(6) there must at all times be at least one area within the LGA that is dog off-leash. In effect, Council only legally needs to provide one off-leash area across the Shoalhaven.

- Dogs are generally required to be on a leash when in a public place, except in designated off-leash areas. Section 13(1) of the CA Act stipulates that a dog that is in a public place must be under the effective control of a competent person.
- Section 14 of the CA Act outlines certain public places where dogs are prohibited. These include: children's play areas, food preparation/consumption areas, recreation areas, public bathing areas, school grounds, childcare centres, shopping areas, and wildlife protection areas.

Overview of Enforcement at Narrawallee Beach and Surrounds

Ranger Services undertakes active and reactive enforcement activities at the subject site in accordance with the CA Act and other legislation. Between the dates of 6 November 2023 and 30 June 2024, Ranger services conducted a total of 93 proactive patrols at Narrawallee Beach and Narrawallee Inlet, the breakdown of these patrols were:

- 22 Patrols – Narrawallee Beach North;
- 20 Patrols – Narrawallee Beach Central – timed off-leash;
- 43 Patrols – Narrawallee Beach South;
- 8 Patrols – Narrawallee Inlet, Spit.

Generally, it is noted there was a high-level of dog compliance demonstrated by dog owners (handlers), with 169 compliant dogs observed during this period. Additionally, there were 69 instances of education provided to dog owners, as well as 5 penalty notices issued.

Rangers also responded to 7 reactive patrol instances, including 2 stray dog containments and 5 cases of dogs not under effective control.

The number of incidents experienced during this time are as follows:

- 1 reported dog-on-dog attack.
- 1 dog-on-human attack – currently under investigation.

These statistics demonstrate a balanced approach to enforcement, emphasising education and compliance, while addressing violations when necessary, is required to effectively enforce designated dog access areas at Narrawallee Beach.

Environmental Protection and Assessment Act 1979 (NSW) (EP&A Act)

Under Part 5 of the EP&A Act, a determining authority (Council) must consider the environmental impacts of creating or modifying dog off-leash areas (as a use / activity), through the completion of a Review of Environmental Factors (REF). In designating a portion of Narrawallee Beach as dog off-leash, it is considered that there is an intensification, and, accordingly, a REF was completed for this activity.

In line with the EP&A Act, Council is required to notify and consult with communities affected by proposed changes to existing dog off-leash areas.

Environmental Planning and Assessment Regulation 2021 (NSW) (EP&A R)

Section 171 of the EP&A R outlines items that are to be considered and assessed when a REF is being prepared for a site and activity.

This regulation supports the functions of the EP&A Act, and also determines at what point an REF is required to be published and made available for the public (ref. Section 171(4)). Under Section 171 of the EP&A R, the determining authority must make the REF public if it determines it is in the public interest to do so. As the matter of off-leash designation was considered to be in the public interest for the Narrawallee are, Council decided to exhibit the REF and make it public in the interest of community transparency.

CL24.223

Shoalhaven City Council Access Areas for Dogs Policy POL23/69 (amended: 11/12/2023)

Council amended the *Access Areas for Dogs Policy* in December 2023, following two periods of community consultation, and extensive engagement with external key stakeholders (ref. MIN23.740).

This policy provides the basis for designating dog OFF-LEASH and dog PROHIBITED areas in the Shoalhaven local government area, in accordance with the CA Act and the following priorities identified in the *Shoalhaven 2023 Community Strategic Plan*:

- 1.3 Support community wellbeing through fostering active and healthy communities;
- 2.3 Protect the natural environment and enhance sustainability;
- 4.3 Inform and engage with the community about the decisions that affect their lives.

In accordance with the CA Act, responsible dog ownership practices shall be supported and enforced through the establishment of appropriate 'dog off-leash' and 'dog-prohibited' areas for land and assets within the ownership, management, care, and control of Shoalhaven City Council.

In accordance with the CA Act, Council must provide at least one dog off-leash area within the Shoalhaven local government area. All other matters relating to dog ownership (such as collars, microchipping, registration, etc.) are defined under the Act and are outside of the scope of the *Access Areas for Dogs Policy*.

Further information in relation to policy implications and strategic alignment is provided in **Attachment 12**.

Financial Implications

Expenditure related to materials and services associated with the contents of this report, including communication materials and the design and installation of temporary signage, was funded through a City Lifestyles operational budget:

- 103303 – Dog Signage.

The updated REF (certified 02/05/2024) was funded under the following City Development budget, utilising funds carried forward from the 2022/23 financial year:

- 107149: Environmental Assessments for Dog Policy Review.

Spend to Date: October 2023 – 30 June 2024.

An overview of all costs associated with the contents of this report (spend-to-date for the May 2024 engagement campaign, including signage, mailout and the REF) is provided below.

Total spend: **\$26,227.51**. These costs are further outlined in Table 1 below.

Table 1: Overview of Cost Incurred (November 2023 to June 2024)

<u>Description</u>	<u>Total Cost (including GST)</u>
Signage, including materials and installation.	\$3,944.16
Preparation of Review of Environmental Factors (REF)	\$10,846
Advertising and Communication Materials	\$11,437.35
Total	\$26,227.51

CL24.223

Delivery Program Operational Plan and Budget 2024-2025

There is \$15,532 available in *Delivery Program Operational Plan and Budget (DPOP) 2024/25* to support expenditure associated with dog access areas in the current financial year (FY 2024/25).

Should Council adopt the alternative recommendation (Option 2), as outlined in this report, and with a view to minimising any further financial impact on Council, it is proposed that any work to undertake a new environmental assessment (REF) be undertaken 'in-house' by suitably qualified staff (which can be funded utilising existing staff salaries budgets), and undertaken using the REF certified 02/05/2024 as a bases for assessment.

Should Council make an alternate determination, the Council will need to identify sufficient funding to implement any actions arising.

Risk Implications

A risk assessment was completed in accordance with Shoalhaven City Council's enterprise Risk Management Policy (see **Attachment 13**). Should Council not adhere to the recommendations within the REF and make alternative changes without seeking either a review of, or new REF, it faces potential reputational damage and potential financial implications from any legal costs associated with the matter that may arise.

Access points at the subject site have been inspected and deemed fit for purpose. The access points will be managed under the asset management program, which includes inspections and ongoing maintenance as required.

Any concerns of personal safety using the access points to the proposed dog off leash area during low light times, is the responsibility of the individual to make their own determination.

CL24.224 Bay and Basin Boxing Club - Summary of Engagement Activities

HPERM Ref: D24/141566

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

Attachments: 1. Report - Ordinary Council Meeting - 30 October 2023 (under separate cover) [⇒](#)
2. Tables Referenced in this Report (under separate cover) [⇒](#)

Reason for Report

The purpose of this report is to provide Council with information regarding the outcome of two engagement activities undertaken as part of work to identify a location for the Bay and Basin Boxing Club in the Sanctuary Point area, in accordance with a related Notice of Motion (ref. MIN22.612) and a subsequent report (ref. MIN23.623).

Recommendation

That Council:

1. Accept the *Bay and Basin Boxing Club: Summary of Engagement Activities* report as a summary of the outcomes of engagement activities and investigations undertaken in accordance with Parts 3 and 4 of MIN23.623.
2. Endorse Clifton Park, Sanctuary Point, as the preferred location (site) for a facility to house the Bay and Basin Boxing Club, subject to the outcome of any future Development Application and / or conditions of development consent related to a facility at Clifton Park.
3. Direct the CEO (Director – City Lifestyles) to prepare a Project Candidate submission (including preparation of a Project Initiative and Project Mandate) for further design and investigation works related to the Bay and Basin Boxing Club's request for a site to house a future clubhouse facility, in accordance with the requirements of Council's enterprise Project Management Office (ePMO).
4. Subject to the completion of processes described in Part 3 of this resolution, pause any further work related to the Bay and Basin Boxing Club's request for a site to house a future clubhouse facility until Council's financial position improves, in accordance with MIN23.667 and other related work being undertaken to improve Council's financial position.

Options

1. Accept the recommendation as proposed.

Implications: Council's Project Officers will continue to engage with the Bay and Basin Boxing Club to create and finalise a Project Mandate submission to Shoalhaven City Council's enterprise Project Management Office (ePMO), to enable the project to proceed once Council's financial position has improved (and subject to the Project Mandate submission being accepted by the ePMO as a 'Project Candidate').

CL24.224

2. Adopt an alternative recommendation, removing Part 2 of the proposed recommendation.

Implications: If Council does not endorse Clifton Park as the preferred location, additional community consultation will need to be undertaken to identify an alternative location. This will incur additional facilitation costs (for communications materials), as well as additional staff time (resourcing).

3. Adopt an alternative recommendation, to be confirmed by Council.

Implications: To be confirmed, pending the outcome of Council's deliberations on the matter. Council would need to provide direction to the CEO via a revised recommendation.

Background

A Notice of Motion titled *Bay and Basin Boxing Club - Building location investigation* was considered by Council at its Ordinary Meeting, held on 12 September 2022 (ref. MIN22.612).

MIN22.612 reads:

That Council investigate suitable locations or suitable sites to establish a facility for the Bay and Basin Boxing Club, including but not limited to Council facilities / buildings.

In accordance with MIN22.612, a report was prepared by City Lifestyles' staff, which was considered by Council at its Ordinary Meeting, held on 30 October 2023 – see **Attachment 1**. The purpose of this report was:

1. *To provide Council with information about the outcome of investigations for the Bay and Basin Boxing Club to occupy Council owned or managed land within the Sanctuary Point area, in accordance with MIN22.612.*
2. *To provide Council with information about a proposed community engagement activity, and to seek Council's endorsement to undertake engagement.*

Council's decision in relation to this report is recorded in MIN23.623.

MIN23.623 reads:

That Council:

1. *Accepts the Bay and Basin Boxing Club: 'site investigations and proposed engagement activity' report in relation to the outcomes of investigations undertaken to date in response to MIN22.612;*
2. *Provide in-principle endorsement for Clifton Park as the preferred location for a facility for the Bay and Basin Boxing Club, based on investigations undertaken to date (subject to further investigations);*
3. *Direct the CEO (Director City Lifestyles) to undertake engagement activities outlined in the Community Consultation chapter of this report; and'*
4. *Receive a future report outlining the results of engagement activities and further recommendations in relation to the establishment of facilities at Clifton Park to house the Bay and Basin Boxing Club.*

Internal Consultation

Internal consultation was conducted in relation to the proposed establishment of a boxing club in the Bay and Basin area and has included contact with the nominated Asset Custodians for Clifton Park (District Engineer) and Sanctuary Point Oval (Shoalhaven Swim Sport Fitness), and Council's Property Services team.

External Consultation

The following are considered key stakeholders in relation to any proposed use or development to support the provision of a facility for the Bay and Basin Boxing Club in the Sanctuary Point area:

- Proponent (owner of the Bay and Basin Boxing Club).
- Volunteer groups and users of Clifton Park.
- Residents directly impacted by the proposed development (overlooking or adjoining the site).
- Residents within 400m of the site at Clifton Park.
- Community Consultative Body (Basin Villages Forum).

In accordance with MIN23.623, engagement planning commenced in October 2023 for two engagement activities, referred to as Engagement Activity 1 and Engagement Activity 2. Council's Project Officers liaised with the proponent to provide advice regarding next steps and agree on the communications materials for Engagement Activity 1 and Engagement Activity 2.

Further details of Engagement Activity 1 and Engagement Activity 2 are provided below.

Community Consultations

Engagement Activities

In accordance with Shoalhaven City Council's *Community Engagement Strategy: 2022 - 2026*, the engagement model utilised to facilitate provision of feedback by key stakeholders to Council was *consult*.

Accordingly, two community engagement activities were planned and completed. These engagement activities were designed to capture feedback from all relevant external key stakeholders, including directly affected residents and the local community surrounding the subject site.

Further information regarding both Engagement Activity 1 and Engagement Activity 2, is available on the *Bay and Basin Boxing Club Get Involved* page – <https://getinvolved.shoalhaven.nsw.gov.au/bay-and-basin-boxing-club>

Engagement Activity One

Engagement Activity One (EA1) was a targeted survey to consult with directly affected residents and regular users of Clifton Park. EA1 was conducted over four weeks, between 5 December and 31 December 2023.

The objective of EA1 was to garner feedback from the directly affected users and residents to measure support for the Bay and Basin Boxing Club to be located at Clifton Park, Sanctuary Point.

A total of 13 letters were sent to directly affected residents, user groups of Clifton Park, and the Basin Village Forum (Community Consultation Body – CCB) requesting feedback on the proposal to establish a facility to house the Bay and Basin Boxing Club at Clifton Park. Recipients were encouraged to complete a short online survey or submit written submission via email or mail.

Seven written responses were received. No survey responses were received during EA1. An overview of responses and key themes is provided in Table 1 of **Attachment 2**.

Summary of Data

The following conclusions can be drawn from community consultation undertaken as part of EA1:

- There is a prevailing sentiment of apprehension about the provision of facilities to house the Bay and Basin Boxing Club at the subject site.
- There is concern about potential impacts to the environment, existing facilities, safety and overall quality of life for the residents in Sanctuary Point.

Engagement Activity Two

Engagement Activity Two (EA2) was conducted over six weeks, from 27 February to 5 April 2024, and was promoted via the following communications channels:

- **26 February 2024:** Get Involved page News Feed item ('Have Your Say – The Sanctuary Point Community').
- **27 February 2024:** Letters were delivered to 586 residents within a 400m radius of Clifton Park.
- **01 March 2024:** Email to Councillors.
- **27 February 2024:** Email sent to the proponent with a copy of the letter sent to the residents.

EA2 was designed to allow the target audience (defined as interested residents within the walkable catchment - 400m - of the subject site) to provide feedback to Council regarding the proposal to establish a facility to house the Bay and Basin Boxing Club at Clifton Park.

Respondents were encouraged to provide feedback via an online survey, and were also given the opportunity to provide detailed written feedback via email or mail.

The survey consisted of quantitative and qualitative questions.

202 respondents provided feedback through the online survey.

One detailed written response was received.

Quantitative Results

Question Four: Age Group:

- Under 12 (1%).
- 12 - 17 (2.5%).
- 18 - 24 (11.4%).
- 25 - 34 (23.8%).
- 35 - 44 (24.8%).
- 45 - 54 (19.3%).
- 55 - 64 (8.9%).
- Over 65 (8.3%).

48.6% of survey respondents are aged between 25 and 44. According to 2021 Census data, the median age in Sanctuary Point is 47. The age distribution data also indicates a relatively high participation rate from youth and young adults, which is not typically the case for engagement activities undertaken by Shoalhaven City Council. This confirms the target audience responded to communications materials published as part of this engagement activity.

Question Five: Which statement best describes you? (multiple responses accepted).

- Resident of Sanctuary Point (66.8%).
- Visitor to Sanctuary Point (17.8%).
- Community Organisation in Sanctuary Point (4.4%).
- Member of Bay and Basin Boxing Club (13.8%).
- Interested in using the Bay and Basin Boxing Club (25.74%).
- Other (7.9%).

The survey data indicates a high level of anticipated future usage for the Bay and Basin Boxing Club, with 25.74% of respondents noting that they would be interested in using the Bay and Basin Boxing Club at Clifton Park.

Question Six: In general, do you support the proposed location for the Bay and Basin Boxing Club at Clifton Park?

- No (6.4%).
- Yes (93.6%).

Most respondents support Clifton Park as the proposed location for a facility to house the Bay and Basin Boxing Club (93.6%).

The key themes of the extended response relating to question six is provided in Table 2 of **Attachment 2**.

Question Seven: Is there anything else you would like to share with us about this proposal?

- No (70.8%).
- Yes (29.2%).

Most respondents chose not to share additional information. 29.2% of respondents did provide additional feedback on this proposal (ref. Question Eight)

The key themes of the extended response relating to question eight is provided in Table 3 of **Attachment 2**.

Summary of Data

In general, feedback received as part of EA2 indicates that there is strong support for the Bay and Basin Boxing Club to be located at Clifton Park, which is juxtaposed with the feedback received during EA1.

Results of EA1 and EA2 indicate that:

- Directly affected residents do not support the proposal.
- The proposal enjoys broad support amongst the general public (in Sanctuary Point).

Policy Implications

Policy: Nil.

Legislation: A Development Application will be required for the proposed development of facilities at Clifton Park to house the Bay and Basin Boxing Club, in accordance with the *Environmental Planning and Assessment Act 1979 (EP&A Act 1979)*.

Financial Implications

It is the Proponent's intention to fund the proposed development utilising external funding (grants – provided by external grant bodies).

The provision of any funding commitment, or associated lease / licence agreement, to progress the proposed use and development of facilities at Clifton Park to house the Bay and Basin Boxing Club is outside of the scope of this report.

This project is currently not identified in Council's Delivery Program Operation Plan (DPOP) 2023 / 24 or the draft DPOP 2024 / 25, and consequently there is no funding allocated for further design investigations or implementation works (construction).

Work undertaken by City Lifestyles staff in relation to MIN22.612, MIN23.623 including engagement activities (EA1 and EA2) has been undertaken utilising operational funding.

It is recommended that a Project Mandate submission be prepared for further design and investigation works related to the Bay and Basin Boxing Club's request for a site to house a future clubhouse facility, in accordance with the requirements of Council's enterprise Project Management Office (ePMO).

Should the Council adopt this resolution (as proposed), City Lifestyles Project Officers will continue to engage with the Bay and Basin Boxing Club to create and finalise a Project Mandate submission to Shoalhaven City Council's enterprise Project Management Office (ePMO), to enable the project to proceed once Council's financial position has improved (and subject to the Project Mandate submission being accepted by the ePMO as a 'Project Candidate').

Risk Implications

Reputation

Failure to endorse Clifton Park as the preferred location for the Bay and Basin Boxing Club may result in a loss of confidence in Council's ability to make decisions related to the provision of community infrastructure based on feedback provided by the community, with reference to the commitments and engagement principles outlined in Shoalhaven City Council's *Community Engagement Strategy 2022 - 2026*.

Finance and Asset Depreciation

This project is currently not identified in Council's Delivery Program Operation Plan (DPOP) 2023 / 24 or the draft DPOP 2024 / 25, and consequently there is no funding allocated for design or construction phases.

Sufficient funding will need to be identified, either through future capital works budgets and / or via external funding bodies, to fund design, delivery, asset maintenance and depreciation.

The Proponent has indicated that it is their intention to secure necessary funding for internal fit out via external grant bodies. It is therefore not anticipated that a request will be forthcoming to Council to fund the proposed works. However, it will remain Council's obligation to fund depreciation of a new asset.

Preliminary, high-level cost estimates for the proposed works are yet to be determined. It is anticipated these figures will be in the order of \$250,000 - \$500,000 for a facility in line with the Proponent's requirements and associated infrastructure, with an additional figure of at least \$150,000 required to deliver necessary internal fit out.

The preliminary cost estimate provided above would need to be revised in response to any change of scope.

Use

It is foreshadowed that work undertaken in response to MIN22.612 will result in a new, single-use, bespoke facility to house the Bay and Basin Boxing Club (either at Clifton Park or elsewhere). Such a facility would be added to Council's asset register and depreciated accordingly.

Should Council wish to pursue a multi-use community facility model to house the Bay and Basin Boxing Club in Sanctuary Point, the Bay and Basin Boxing Club's request would need to be re-scoped and re-investigated.

CL24.224

CL24.225 Sanctuary Point Library - Project Update #1

HPERM Ref: D24/229936

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

Attachments:

1. Sanctuary Point Library - Detailed Project Timeline (under separate cover) [⇒](#)
2. Sanctuary Point Library - Outcomes of Engagement to Date (under separate cover) [⇒](#)
3. Sanctuary Point Library - Library Act 1939 (NSW) and NSW State Library Guidelines Implications (under separate cover) [⇒](#)

Reason for Report

The purpose of this report is to provide an update to the Council about the Sanctuary Point Library project, in accordance with MIN24.241.

It outlines the process of closing out the existing capital works project and recommencing under a new scope of works, giving consideration to related project matters and work currently underway to improve financial sustainability at Shoalhaven City Council.

The report provides an update on the project's current status, and steps being taken to identify a viable solution for progression of this project in accordance with the Council's recent direction.

CL24.225

Recommendation

That Council:

1. Accept the *Sanctuary Point Library - Project Update #1* report as an update on the:
 - a. Close out and rescoping processes outlined in *Adaptation and Rescoping*.
 - b. Professional ethics matters associated with the adoption of designs previously delivered for a project located elsewhere, including obtaining proper permissions and ensuring the adapted design is appropriate for the new context, as outlined in *Procurement and Adaption and Rescoping*.
2. Direct the Chief Executive Officer (Director – City Lifestyles) to continue investigations into intellectual property (IP) matters associated with use of designs for the Warilla Library project as a precedent for a new library at the corner of Paradise Beach Road and Kerry Street in Sanctuary Point, by:
 - a. Engaging with Shellharbour City Council to obtain formal permission for use of IP associated with Warilla Library design.
 - b. Negotiating with Brewster Hjorth Architects (as required) regarding the use of intellectual property rights associated with the Warilla Library design, its potential adaptation and implementation, and any other associated design services required to deliver concept designs for a new capital works project.
 - c. Obtaining legal advice (as required) to ensure all intellectual property matters are properly addressed and documented.
3. In accordance with Section 55(3)(a)(i) of the *Local Government Act 1993* (NSW), and subject to receipt of an acceptable fee proposal, provide delegation to the CEO to appoint Brewster Hjorth Architects for design services without inviting tenders, on the grounds of extenuating circumstances, and the following reasons:

- a. The direct appointment is for rescoping and developing alternative design solutions for a library at Sanctuary Point using the Warilla Library as a precedent example of Council's desired outcomes.
- b. A satisfactory result would not be achieved by inviting other tenders due to:
 - i. Efficiencies gained from Brewster Hjorth Architects' involvement in both the Warilla Library and Sanctuary Point Library projects to date, including their site knowledge and understanding of Council's requirements.
 - ii. The need to achieve these outcomes in a timely manner to maintain project viability and meet grant funding deadlines.
4. In accordance with Clause 26 (and AS4122-2010) of the agreement between Shoalhaven City Council and Brewster Hjorth Architects (ref. LD8547), and to minimise financial liability to Shoalhaven City Council, direct the CEO (Director – City Lifestyles) to terminate the existing contract with Brewster Hjorth Architects for the original Sanctuary Point Library design, noting further engagement with Brewster Hjorth Architects is facilitated through Part 3 of this resolution.
5. To minimise financial liability to Shoalhaven City Council, direct the CEO (Director – City Lifestyles) to terminate the existing contract with Public Works Advisory for project management services (related to implementation works).
6. Receive a future report on the further progression of matters outlined in the *Sanctuary Point Library - Project Update* report in October 2024.

CL24.225

Options

1. Adopt the recommendation, as presented.

Implications: City Lifestyles staff will continue engagement with Shellharbour City Council, Brewster Hjorth Architects, and others as required, to progress work to close-out the existing Sanctuary Point Library capital works project and progress work on rescoping of the project, in accordance with MIN24.241. A further report will be provided to the Council in October 2024

2. Adopt an alternative recommendation, as determined by the Council.

Implications: Unknown. The Council would need to provide further direction to the CEO in relation to progression of any works associated with the existing Sanctuary Point Library capital works project and MIN24.241.

Background

At the Ordinary Council meeting held on 6 May 2024, the Council considered a Notice of Motion in relation to the Sanctuary Point Library project (ref. MIN24.241).

That Council:

1. *Acknowledge the commitment made to the community of Sanctuary Point for the delivery of a district library.*
2. *Subject to fulfilling Council's own procurement obligations, seeks to secure the rights to utilise the designs prepared by Brewster Hjorth Architects for the Warilla Library in Shellharbour City.*
3. *Seeks to have those plans adapted by Brewster Hjorth Architects for the Warilla Library, to suit the Sanctuary Point site, and for that adaptation to reflect potential*

design changes of the project to incorporate as many features of the original design as possible.

4. *Have a cost estimate prepared of the revised and re-scoped project reported to Council as soon as practicable, and then subject to a resolution of Council, be delivered by the City Services Directorate, with the project owner being the City Lifestyles Directorate.*
5. *Receive a report from staff to Councillors on two-monthly basis to include timeframes and level of compatibility with grant schedules, and any variations which may need to be applied for.*
6. *Send a copy of this resolution to the Federal Member for Gilmore, Fiona Phillips MP and the Member for South Coast, Liza Butler MP.*

Accordingly, Council staff have initiated and progressed work necessary to close out the existing Sanctuary Point Library project and to rescope a new library project at the corner of Paradise Beach Road and Kerry Street in Sanctuary Point. Actions arising to give effect to MIN24.241 are organised into the following themes:

- Part 2: Procurement (see: Background chapter)
- Part 3: Adaptation and Rescoping (see: Background chapter)
- Part 4: Finance and Grants (see: Financial Implications chapter)
- Part 5: Reporting (see: Background chapter)
- Part 6: Engagement with Key Stakeholders (see: External Consultations chapter)

Further information about each of these themes is provided below, and in the subsequent chapters of this report.

Procurement (MIN24.241 part 2):

A formal request was sent to Shellharbour City Council on 28 June 2024, seeking information on:

1. Intellectual Property (IP) rights for the Warilla Library designs by Brewster Hjorth Architects.
2. Contact details for the department managing these IP rights.

Shellharbour City Council has acknowledged the request and the need to investigate IP implications. Shellharbour City Council has committed to having their project staff contact Shoalhaven City Council directly and has offered to share public tender documents for the Warilla Library project as an interim measure.

The consultation process related to IP rights is ongoing, with further communication expected regarding the feasibility of adapting the Warilla Library design for the Sanctuary Point project in July / August 2024 (ref. Part 2 of the Recommendation of this report).

Additionally, there is an ongoing consultation process involving coordination with various consultants, including: Brewster Hjorth Architects (BHA Architects); PWA (Project Manager); and SODA (Public Art Curator). This process includes initial contact with the consultants, facilitating the closeout of the current design project, and ensuring completion and documentation of all necessary tasks and deliverables. These tasks encompass finalising approvals or status, addressing outstanding issues, and preparing for a project closeout.

Discussions with BHA and stakeholders about new design ideas have been postponed until clarity on IP permissions is received for utilising the Warilla library designs.

Contract Termination

As at 30 June 2024, outstanding commitments related to the original capital works project total: **\$885,315.75**.

CL24.225

To facilitate rescoping activities for a new capital works project and to minimise financial liability to Shoalhaven City Council, it is recommended that existing agreements with BHA and PWA be terminated.

Brewster Hjorth Architects (BHA):

To minimise financial liability to Shoalhaven City Council, and to facilitate the direct engagement for design services associated with rescoping of a new capital works project, it is recommended that the existing contract with Brewster Hjorth Architects for the original Sanctuary Point Library design be terminated (ref. Part 5 of the Recommendation of this report). Recognising the efficiencies gained through the consultant's familiarity with both the Warilla Library and the Sanctuary Point project, it is recommended that a new agreement be entered into with Brewster Hjorth Architects under for the new, rescoped project.

This recommendation is made in consideration of procurement requirements in accordance with Section 55(3)(a)(i) of the *Local Government Act 1993* (NSW) (LG Act), which allows for such appointments under extenuating circumstances. The proposed specific task is to:

- Rescope and develop alternative design solutions for the Sanctuary Point Library, using the Warilla Library as a model for desired outcomes.

The recommendation to directly engage BHA and forego the usual tender process is based on the consideration that inviting other tenders would not yield a satisfactory result. BHA has been involved in both the Warilla and Sanctuary Point Library projects, giving them unique insights and efficiencies. Their extensive site knowledge and understanding of Shoalhaven City Council's requirements make them particularly well-suited to deliver effective design solutions.

By appointing BHA, Council can take advantage of their existing expertise and project familiarity.

Public Works Advisory:

To minimise financial liability to Shoalhaven City Council, it is recommended that the existing agreement with Public Works Advisory be terminated (ref. Part 6 of the Recommendation of this report). Given the likely significant changes to project scope and the need for an updated approach to project management under the new circumstances, this termination will allow Council to reassess its project management needs in line with the rescoped project.

Adaptation and Rescoping (MIN24.241 part 3):

As at mid-July 2024, the close-out process related to the original capital works project is approximately 50% complete. Staff are working to finalise the remaining aspects of the original project, with the aim of achieving full close-out by the next reporting period.

Concurrently, rescoping work related to a new capital works project is in its early stages, with approximately 10% of the work completed as at mid-July 2024. Further progression of this work is dependent on further information regarding intellectual property rights related to the Warilla Library designs.

Description of Subject Site

The proposed site for the Sanctuary Point Library project is located on the corner of Kerry Street and Paradise Beach Road, with the official address being: 194 Kerry Street, Sanctuary Point.

The site is situated within the Sanctuary Point Town Centre, surrounded by various retail and commercial businesses along the Paradise Beach Road frontage. Sanctuary Point is accessible via the Wool Road, which connects to St Georges Basin to the northwest and Vincentia to the northeast. The nearest major centre, Nowra, is approximately 30km north of Sanctuary Point (approximately 30 minute drive).

The subject site comprises multiple lots:

- Lot 944 DP 27857 (638.64m²)
- Lot 945 DP 27857 (600.71m²)
- Lot 946 DP 27857 (600.71m²)
- Lot 947 DP 27857 (600.71m²)

These four lots, totalling **2,440.77m²**, are zoned *Business - E1 - Local Centre* and are owned by Shoalhaven City Council.

Additionally, the subject site includes Lot 4 DP 806393, a larger parcel of 4.523 hectares currently used as a carpark. This lot is zoned *RE1 - Public Recreation* and is also owned by Shoalhaven City Council.

The natural topography of the immediate locality features a fall from north to south-west, with an approximate 4m relative level difference from Paradise Beach Road to Kerry Street.

The project is intended to serve Bay & Basin communities. The site's location within the Sanctuary Point town centre provides an opportunity to create a modern library facility that integrates well with the existing built environment, and is also considered to have opportunities to seed (catalyse) further revitalisation of the Sanctuary Point Village Centre.

Project Objectives

The original project objectives, which also formed an integral part of 2 successful grant applications, include:

1. *Community Engagement:* To create a community hub that fosters social interaction, learning, and cultural engagement. The library will offer spaces for informal meetings, collaboration, and connection, enhancing community cohesion.
2. *Information Access:* To provide equitable access to a wide range of information resources, including well-displayed, engaging book collections and digital resources.
3. *Inclusivity and Accessibility:* To ensure the library is accessible to all community members.
4. *Diverse Spaces:* To offer a variety of spaces catering to different needs and age groups.
5. *Cultural Preservation:* To showcase local culture, creativity, and history through local studies resources and locally created content.
6. *Flexible Usage:* To design interconnected spaces that allow for access outside normal library operating hours, maximising the facility's utility for the community.
7. *Account for Growth:* To anticipate and accommodate future community needs through adaptable spaces and infrastructure that can evolve with changing technologies and user requirements.

Others Matters Informing Scope

It is acknowledged Council recently determined the scale of a rescoped library at Sanctuary Point would be informed by the Warilla Library (ref. MIN24.241).

The State Library of NSW, under the authority of the *Act Library Act 1939* (NSW), provides guidelines for public libraries (*People Places: A Guide for Public Library Buildings in New South Wales* (State Library of NSW, 2022) (the Guidelines)). The Guidelines include recommendations for the size of library buildings based on the population served. Further information about the Act and Guidelines is provided in **Attachment 3**.

According to the Guidelines, and giving consideration to population statistics for the Bay and Basin area (with a current population of 30,835 and a projected population of 41,306 by

2041), the recommended GFA for a library to service the Sanctuary Point / Bay & Basin area is:

- **1,170m²** (to service current population) to;
- **1,435m²** (to service projected population).

Warilla Library

Council staff have commenced investigations to utilise designs prepared for the Warilla Library as the basis for a rescoped library at Sanctuary Point: Construction Cost: \$5.09m (ex GST) or \$5.6m (Inc GST) – based on contract award figures as at 2018.

- Built by: Patterson Building Group.
- Tendered: 2018.
- Construction Completed: Late 2019.
- Note: In 2016 this project was valued (estimated) at 3.6 million.
- Gross Floor Area (GFA): approximately 900m².

Notes: Figures provided above are for construction costs (only), as reflected in publicly accessible tender information for this project, and do not account for: variations; design; project management/administration; contingency.

Further information about on the Warilla Library project will be provided to Council in update report #2 .

Shellharbour LGA has a major city library co-located at its administrative centre approximately 5 kilometres from the Warilla site. Along with the other four libraries in the Shellharbour LGA, which is approximately 150 square kilometres, the City Library operates as a 'hub' with smaller outlying libraries as 'spokes'.

Warilla Library has a GFA of approximately 900m² and services a population of 20,397. Application of the *People Places: A Guide for Public Library Buildings in New South Wales* (State Library of NSW, 2022) suggest a GFA of approximately 1,500m² would be appropriate for a new library at Sanctuary Point. A rescoped project based on Warilla Library will result in a provision gap of approximately 600m² when applying the best practice guidelines.

A future project update report will provide further recommendations, and seek direction from Council, on the scope of the new library. Considerations will include:

1. *Size expansion:* The design and the ability for the Sanctuary Point to service the Bay and Basin population now and into the future.
2. *Functional adaptation:* Incorporation of spaces that cater to the specific needs of the Sanctuary Point community, as identified through previous community consultations.
3. *Future-proofing:* The adaptation of the design to consider the projected population growth and demographic breakdown therein, ensuring the library remains adequate through to 2041 and beyond.
4. *Legislative compliance:* Any adaptations should enable the library to better align with the requirements outlined in the Act, Regulation, and associated Guidelines.
5. *Grant requirements:* Alignment of the design with the criteria in the Priority Community Infrastructure Program (PCIP) grant deed and, should the project scope differ from the metrics set out in the current PCIP grant deed, a change request application will be submitted for the grant funding body's consideration.
6. *Community feedback integration:* Previous community input regarding design elements, services, and local cultural considerations should be incorporated into the adapted design.

7. *Site-specific adjustments:* The design must be modified to suit the topography and characteristics of the Sanctuary Point site, which differs from the Warilla location.

Professional Ethics Considerations

There are professional ethics matters to consider when adopting designs previously delivered for a project located elsewhere. These pertain to:

1. *Intellectual property rights:* Proper permissions must be obtained from both Shellharbour City Council and BHA to use and adapt the Warilla Library design.
2. *Design integrity:* The adaptation process must respect the original design's integrity while ensuring it meets the new context's requirements.
3. *Transparency:* The community and stakeholders should be informed about the design's origin and the adaptation process.
4. *Professional responsibility:* Architects involved in the adaptation must ensure the design meets all relevant codes, standards, and regulations for the new location.

Given the significant differences between the Warilla Library and the Sanctuary Point site, it is proposed to continue rescoping efforts to redesign the Sanctuary Point Library using the Warilla Library as a precedent giving consideration to the site constraints, topography and the specific needs of the Bay and Basin community.

Additionally, by pursuing a redesign, the project can more effectively address the specific requirements outlined in the grant deed to reduce the risk of loss of funding.

Next Steps

The following next steps are being progressed and will form part of future reporting:

1. *Initiate Change Request:* Engage with the federal funding body to discuss a 'change request' for the grant agreement. This process will seek approval for revised terms that align with Council's current financial capabilities, project constraints, and foreshadowed rescoping work for a new capital works project.
2. *Review Project Scope:* Conduct a comprehensive review of the project scope. This review should aim to align the project's objectives and deliverables with potentially reduced funding scenarios, ensuring that the most critical community needs can still be met within available resources.

Reporting (MIN24.241 part 5):

It is anticipated multiple reports will be provided to Council in relation to work being undertaken to give effect to MIN24.241. Anticipated scheduling for these reports is provided below in Table 1,

Table 1: Reporting Schedule (related to MIN24.241)

Report	Description	Status	Date
Report 1	This report	Update re. close out phase	July 2024
Report 2	Future report	Completion milestone close out phase	October 2024 (accounting for caretaker period)
Report 3	Future report	Kick-off new capital works project (subject to Council approval to proceed)	January 2025
Report -	Future report(s)	Project updates	2-monthly, in accordance with MIN24.241

CL24.225

Internal Consultations

Work associated with the contents of this report is currently being led by City Lifestyles and has included coordination with the following teams:

- City Performance (Finance, Procurement, Legal)
- City Lifestyles (Library Services)
- City Services (Building Services)

Finance

The Finance team has provided information regarding expenditure to date, funding availability, and Council's forecasted financial contributions to the project, to provide a clear understanding of the impact on the project's funding structure given Council's current financial constraints.

Procurement

Procurement offered advice regarding contracts and compliance with Government Information (Public Access) Act (GIPA) requirements, and procurement obligations outlined in the *Local Government Act 1993* (NSW). Advice provided by this team ensures that all procurement processes adhere to legal and regulatory standards.

Legal

The Legal team was consulted on issues related to contract termination and intellectual property, including the provision of advice on the implications of terminating existing agreements and managing intellectual property rights associated with the project.

Library Services

As the future tenants of the proposed facility, Library Services has provided recommendations on the gross floor area and scope for the proposed library. Their insights into spatial and functional requirements ensure the library meets community needs and complies with grant specifications.

Building Services

The Building Services team, as asset custodian, provided operational and maintenance advice, as well as information on necessary approvals. Their input covers the operational and maintenance aspects of the new library, including obtaining required approvals for construction and ongoing operations.

External Consultations (MIN24.241 part 6):

External consultation undertaken include engagement with Shellharbour City Council, which is prompted by the need to understand options for the potential use of Warilla Library designs (as a precedent) for the Sanctuary Point Library project.

Advice on the most recent resolution of Council has also been sent to the Federal Member for Gilmore, Fiona Phillips MP, and the Member for South Coast, Liza Butler MP.

Community Consultations

Direct community engagement has not been undertaken in relation to the contents of this report. It is foreshadowed that further community engagement activities will be necessary as the project progresses and will be the subject of future project update reports to Council.

An overview of previous engagement activities undertaken throughout the course of the original capital works projects is provided in **Attachment 2**.

Legislation & Policy Implications

Acknowledging the Council has made a determination in relation to the scale of a rescoped project based on the Warilla Library it should be noted the *Library Act 1939* (NSW) (the Act) governing the provision of public library services in New South Wales. The Act, along with the associated *Library Regulation 2018* (NSW) (the Regulation), has implications for the Sanctuary Point Library project, particularly concerning the size of the library in relation to the population it will serve.

Further information about the application of this Act is provided in the Adaption & Rescoping section (ref. to the Background chapter of this report) and in **Attachment 3**.

Financial Implications (MIN24.241 part 4):

Finance and Grants

Grant Funding

The original Sanctuary Point Library capital works project secured the following grants:

- Priority Community Infrastructure Program (PCIP): **\$7,500,000** (ex GST)
- Public Library Infrastructure Grants (PLIG): **\$450,000** (ex GST)

These grants are a fundamental component of the project's funding structure. Under the current PCIP deed, Council's co-contribution requirement stands at \$14.2m.

Once the scope of a new project is confirmed and costed (through update report #2 and #3), change requests will be progressed via the respective grant funding bodies to align the rescoped project with external funding commitments. These processes will seek to re-negotiate the deed and deliverables commensurate with funding that Council determines to allocate to the project.

Council Co-Contribution

A future decision of the Council will be required to formally make funding allocations necessary to fulfill Shoalhaven City Council's co-contribution requirements under the Priority Community Infrastructure Program (PCIP) grant deed and/or any other deed related to this project. This decision will need to consider both the capital cost to build and deliver, the ongoing operational / whole of life costs, any loan repayments and depreciation.

Funding considerations are foreshadowed in the AEC *Financial Sustainability Review* (November 2023) report, and accounted for within the recommended Special Rate Variation (SRV) model therein. This will need to be formally endorsed by the Council either through budget allocation(s) in a future Delivery Program Operational Plan and Budget and/or Long Term Financial Plan (as part of a future Resourcing Strategy).

Sanctuary Point Library Update #2 will provide further information about high-level cost estimates for a rescoped project based on the Warilla Library design. This report will also discuss funding for implementation and operation of a new library at Sanctuary Point, and align with other work being undertaken in the organisation as part of the 2025/26 budget preparations including the need for Council to consider a Special Rate Variation (SRV).

Expenditure to Date

As at 30 June 2024, total expenditure on the Sanctuary Point Library project is: **\$1,390,720** (for further details, see: Table 2). This includes costs for design, planning, community consultations, and initial site works for L2 electrical services. Main costs include:

- Architectural and design services - BHA;
- Project management services – PWA;
- Public art.

Table 2: Expenditure to Date (as at 30 June 2024)

Financial Year	Expenditure	Funding Source
2020/21 and prior	\$267,616.99	100% S7.11
2021/22	\$526,292.06	\$296,047.84 from loans \$136,142.07 from General Fund \$94,102.15 from S7.11
2022/23	\$582,325.04	\$372,106.54 from S7.11 \$210,218.50 from loan
2023/24	\$14,486.45	100% S7.11
2024/25	\$0	100% S7.11
TOTAL	\$1,390,720.54	

Sources of Funding

As at 1 July 2024:

- Actual available funding is: **\$500,000.**

Risk Implications

Risk assessments of key components of the project have been undertaken in accordance with Shoalhaven City Council’s enterprise Risk Management Policy.

CL24.225

CL24.226 Kangaroo Valley Men's Shed - Confirmation of Endorsed Site Following Completion of Resident Engagement

HPERM Ref: D24/196471

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

Attachments:

1. Report - CL23.464 - Kangaroo Valley Men's Shed - In-Principle Endorsement of Proposed Site - 11 December 2023 (under separate cover) [⇒](#)
2. Resilient Building Council - Letter of Support - REDACTED (under separate cover) [⇒](#)
3. Tables Referenced in this Report (under separate cover) [⇒](#)

Reason for Report

The purpose of this report is to:

1. Provide Council with an update regarding the outcome of a targeted community engagement activity undertaken in accordance with MIN23.714, and;
2. Provide Council with an opportunity to reconfirm in-principle endorsement for West Moss Vale Road Reserve (Lot 7 DP 264336) as the preferred site to house future clubhouse facilities for the Kangaroo Valley Men's Shed, in accordance with the outcomes of a related community engagement activity and previous investigations.

Recommendation

That Council:

1. Accept the *Kangaroo Valley Men's Shed – Confirmation of Endorsed Site Following Completion of Resident Engagement* report and note the outcomes of engagement with key stakeholders regarding the proposed establishment of a Men's Shed facility at West Moss Vale Road Reserve (Lot 7 DP 264336) in Kangaroo Valley.
2. Reconfirm in-principle endorsement for West Moss Vale Road Reserve (Lot 7 DP 264336) in Kangaroo Valley as the preferred location for a Men's Shed facility on Council owned / managed land in Kangaroo Valley, subject to the outcome of any future Development Application and / or conditions of development consent related to such a facility at West Moss Vale Road Reserve (Lot 7 DP 264336).
3. Direct the CEO (Director – City Lifestyles) to prepare a Project Candidate submission for further design and investigation works related to the Kangaroo Valley Men's Shed's request, in accordance with the requirements of Council's enterprise Project Management Office (ePMO).
4. Subject to the completion of processes described at Part 3 of this resolution, pause any further work related to the Kangaroo Valley Men's Shed's request for a site to house a future Men's Shed facility in Kangaroo Valley until Council's financial position improves, in accordance with MIN23.667 and other related work to improve Council's financial position.

CL24.226

Options

1. Accept the recommendation as proposed.

Implications: Council officers will continue engagement with the Kangaroo Valley Men's Shed organisation to create and finalise a Project Candidate submission to Shoalhaven City Council's enterprise Project Management Office (ePMO), to enable the project to proceed once Council's financial position has improved (and subject to the Project Mandate submission being accepted by the ePMO as a 'Project Candidate').

Additionally, Council officers will continue to coordinate with the Kangaroo Valley Men's Shed organisation in relation to the submission of a future Development Application for related works (development) at West Moss Vale Reserve (Lot 7 DP 264336).

2. Adopt an alternative recommendation rescinding Council's in-principle endorsement of West Moss Vale Reserve (Lot 7 DP 264336) as the preferred location for a future facility to house the Kangaroo Valley Men's Shed on Council owned / managed land in Kangaroo Valley.

Implications: Additional community consultation will need to be undertaken for any other location to be considered in response to the Kangaroo Valley Men's Shed's request for a site to house a future Men's Shed facility in Kangaroo Valley. This will incur additional facilitation costs (for communications materials), as well as additional staff time (resourcing).

3. Adopt an alternative recommendation, to be confirmed by Council.

Implications: To be confirmed, pending the outcome of Council's deliberations on the matter. Council will need to provide direction to the CEO.

Background

Kangaroo Valley Men's Shed Inc. (KVMS) was formed in June 2022. The organisation subsequently submitted a request to Council about undertaking investigations to identify a suitable site on Council owned / managed land for a Men's Shed facility in Kangaroo Valley.

A report was provided to Council at its Ordinary Meeting, held on 11 December 2023 (**Attachment 1**). The purpose of this report was to provide Council with:

1. Notification that Kangaroo Valley Men's Shed Inc. has requested a location to build a purpose-specific premises on Council land in Kangaroo Valley.
2. Background information regarding the Kangaroo Valley Men's Shed's request and work undertaken to date by City Lifestyles staff.
3. An opportunity to provide in-principle endorsement for a preferred site for a purpose built Men's Shed facility in Kangaroo Valley.

Council's decision in relation to this report is recorded in MIN23.741.

MIN23.741 reads:

That Council:

1. *Accept the Men's Shed, Kangaroo Valley: in-principle endorsement of preferred site report for information in relation to options for a purpose built Men's Shed facility in Kangaroo Valley.*
2. *Provide in-principle endorsement for Lot 7 DP 264336 (West Moss Vale Road Reserve) as the preferred site for a purpose built Men's Shed facility in Kangaroo Valley subject to the outcome of community engagement.*

CL24.226

3. *Direct the CEO (Director - City Lifestyles) to:*
 - a. *Undertake community engagement to seek community views about the planned future use of this site;*
 - b. *Provide a future report to Council outlining the outcome of engagement activities and proposed next steps.*
4. *Note that the project is not identified in Council's Delivery Program Operation Plan & Budget 2023 / 24, nor in the draft Resourcing Strategy currently on public exhibition as part of Council's Financial Sustainability Review, and subsequently has no funding allocated for design or construction.*

In accordance with Part 3 of MIN23.741, a targeted engagement activity was undertaken by City Lifestyles staff. Further information regarding the outcome of this engagement activity is presented below.

Internal Consultations

Work undertaken in accordance with MIN23.741 is being led by officers from the Open Space & Recreation Planning team from Council's City Lifestyles Directorate. Internal stakeholders include:

- Northern District Engineers (as Asset Custodian);
- Environmental Services (as key internal stakeholder).

Further information about internal consultation is outlined in **Attachment 1**.

External Consultations

In accordance with MIN23.741, Council officers invited the Kangaroo Valley Community Consultative Body (KVCCB) on 30 January 2024 to provide written comment about the proposal to establish a facility for a Men's Shed at West Moss Vale Road Reserve (Lot 7 DP 264336) (subject site) in Kangaroo Valley.

A reply was received from the Vice President of the KVCCB on 10 February 2024, to the effect that:

The KVCCB held its General Meeting on Tuesday 30th January 2024 where the proposal for a Kangaroo Valley Men's Shed was discussed.

All Members present were in agreement with the Motion passed at Council's Ordinary Meeting of 11th December 2023, and are happy to accept in principle, Lot 7 DP 264336 (West Moss Vale Road Reserve) as the preferred site for a purpose built Men's Shed facility in Kangaroo Valley. The KVCCB notes that the project is not identified in Council's Delivery Program Operation Plan & Budget 2023 / 24, nor in the draft Resourcing Strategy and subsequently has no funding allocated for design or construction.

Community Consultations

In accordance with MIN23.741, a targeted community consultation campaign was designed based on the following:

- Audience: Directly affected residents (in dwellings directly adjacent to, overlooking, or in streets within direct proximity of the subject site).
- Campaign Dates: 29 February 2024 to 24 March 2024 (subsequently extended to 12 May 2024).

- Communications Channel(s): Notifications (invitations to provide feedback) sent by mail.

A letter was sent to all directly affected residents on 29 February 2024, with an invitation to provide written comment regarding the proposal to establish a facility for a Men's Shed at the subject site. The due date for submissions was 24 March 2024. In total, 49 dwellings received this notification.

Feedback from residents began to be received from 5 March 2024, with one resident noting there was a delay in the receipt of their letter. At the KVCCB meeting, held in February 2024, a Ward 1 Councillor was asked to request that the consultation period be extended.

Directly affected residents were subsequently notified by letter, and by reply email for those who had already submitted a response, that the consultation period had been extended to 12 May 2024.

In total, submissions were received from nine directly affected residents. It is evident some residents forwarded the Council email address to friends and neighbours. Unsolicited correspondence was subsequently received from 24 people (outside of the intended audience).

Correspondence was received separately from the KVMS and from the Resilient Building Council.

Results of Engagement with Directly Affected Residents

Nine directly affected residents responded to the invitation to provide feedback to Council about the proposal to establish a facility at the subject site to accommodate the KVMS.

One respondent indicated support for the proposal. Eight respondents indicated opposition to the proposal. Two residents wrote in twice, and in both cases, their submissions were counted once.

In addition, other Kangaroo Valley residents (outside of the intended target audience for this engagement activity) provided feedback regarding the proposal. 21 respondents indicated opposition to the proposal, and two indicated support for the proposal. One resident wrote in twice, which was counted as a single response. An overview of all responses received is provided in Tables 1 and 2 of **Attachment 3**.

A range of matters were raised by both directly affected residents and other parties, which are beyond the scope of this report. Additional matters raised have relevance to finding a suitable site for a Men's Shed facility elsewhere in Kangaroo Valley. These additional matters have been separated from the core purpose of this report and are documented in Table 3 of **Attachment 3**.

Several key themes emerged in comments received from directly affected residents and also from other parties. These are summarised below.

Theme 1: Broad Community Support for Kangaroo Valley Village Spirit and for the Men's Shed Concept

The majority of correspondents noted their investment in, care for, and loyalty to the Kangaroo Valley community in general.

Six directly affected residents and 20 other residents offered support for the concept of building a Men's Shed facility in Kangaroo Valley. Respondents indicated support for initiatives which support rural men's mental health and provide a chance for men to work together on community projects and to enhance community connections.

Two respondents suggested the inclusion of female members in the Men's Shed would be valued, or that the KVMS workshop facilities, if situated within a multi-use Council owned property, be made available to other 'makers' groups who are inclusive of female participation.

Two respondents expressed sadness that the process of identifying a suitable site for a Men's Shed facility has caused division in the local community.

Theme 2: Ecological Value

Directly affected, and other, residents place importance on the environmental values present at the subject site, and raised concerns about potential impacts on these values.

Residents noted that many animals regularly spend time in and traveling through the subject site, including:

- Bare nosed wombats.
- Eastern grey kangaroos who are known to regularly rest and graze in the reserve.
- Swamp wallabies.
- Pythons.
- Red belly black snakes.
- Long nosed bandicoots.
- Echidnas.
- Possums.
- Turtles.
- A range of birds including the yellow tailed black cockatoo.

The following comments were provided by residents –

- *The Reserve [sic] may look as if it is a largely uncared for and partially privet infested block of land, but this is purely to human eyes. It is one of the only safe locations supporting thriving wildlife in the heart of Kangaroo Valley village environs forming part of Myrtle Creek corridor, facilitating the movement of animals across the landscape.*

[Resident who walks the subject site frequently]

- *Connectivity is an essential part of conservation, to allow species to move across the landscape.....The reserve which is proposed as the location for the Men's Shed is an important part of the Myrtle Creek corridor connecting to the area of Myrtle Creek near Chakola, which then leads to Red Rocks and the Cambewarra Range Nature Reserve..... We need to preserve and protect those corridors that we still have, rather than allowing them to be broken, because restoration of corridors almost never happens, it is too much work..... While there is natural bushland next to the river, not all species are suited to riparian habitat and need access to the reserves away from the river.*

While the West Moss Vale Road Reserve is small, it has been allowed to remain in a fairly natural condition. The reserve is one of the few areas where native grasses have been preserved..... which is why it is an important food source for the grazing wildlife.

[Resident who has observed animal behaviour in the subject site]

Theme 3: Financial Viability of the Proposal

Six directly affected, and seven other residents, raised concerns about the potential costs to Council of the proposal. It was suggested that Council should not pay for any development processes, construction, or ongoing maintenance. There was resistance to the idea that Council should offer KVMS any land to build a facility on, especially a greenfield site containing ecological values.

Staff Responses to Comments Raised by Residents

Responses to concerns raised by residents are listed in Table 4 of **Attachment 3**.

Summary of Other Correspondence Received

Three emails from two representatives of the KVMS were received during the consultation period. Themes addressed in the KVMS emails were:

- *KVMS fully support Shoalhaven City Council's (SCC) preferred site for a purpose-built Men's Shed facility in Kangaroo Valley as Lot 7 DP 264336 (West Moss Vale Road Reserve) and SCC's community engagement process.*
- *Men's Sheds have a multi-purpose and ... are about Men's health both physical and mental, an oasis where men can come together to discuss men's business in a neutral and caring space.*

There are about 1200 sheds all about Australia and have spread to other parts of the world. Men's sheds may do a variety of activities from manual crafts to gardening to beekeeping. Some may undertake community projects such as making toys for local childcare groups. Men's sheds may provide an opportunity to learn new skills for men 18 years old and up. Sheds are coordinated by the Australian Men's Shed Association (AMSA).

- Concerns were raised about community discussion (outside of the scope of processes led by Council officers).

Community Discourse (Outside of the Scope of this Report)

It is understood that several directly affected residents invited some members of KVMS to participate in a discussion regarding the proposed site/project on 3 April 2024. Council officers were not invited to attend this meeting and the meeting did not form part of Council's engagement with residents regarding the issue, it is therefore considered to be outside of the scope of this report. Minutes of the meeting were not provided to Council.

Following this meeting, additional correspondence was received from directly affected residents, unsolicited emails were also received from other parties, and emails were received from both the Secretary and the Chairman of KVMS.

Additional feedback was submitted to Council following the informal discussion between directly affected residents and some KVMS representatives. This feedback is outlined in Table 5 of **Attachment 3**.

Council discussions with KVMS prior to the community engagement period were centred around identifying a preferred site (only) for the Men's Shed. Design solutions for such a facility at the subject site have not yet been considered by Council officers and are outside of the scope of this report. Design solutions can be addressed as part of future processes, informed by the opportunities and constraints inherent at the subject site.

Resilient Building Council

A submission was received from the Chief Executive Officer of the Resilient Building Council (RBC) supporting the proposed KVMS project (refer to **Attachment 2**).

Conclusion

The purpose of the targeted engagement activity described in this report was to invite feedback from directly affected residents regarding Council's decision to provide in-principle endorsement to West Moss Vale Road Reserve (Lot 7 DP 264336) as the preferred site for a facility to house a future Men's Shed facility in Kangaroo Valley. The substantive matters relevant to this report therefore relate to siting of a use at this location (only) as a forerunner to any future design and development application processes.

Matters relating to permissibility of the proposed use at the subject site are outlined within the previous report to Council at its Ordinary Meeting, held on 11 December 2023 (refer to **Attachment 1**).

The majority of concerns raised by residents can be considered and determined through a future development application process. The nature of the feedback received to date is therefore not considered sufficient to cease further project investigations (including compilation of information necessary to complete a Project Mandate submission for consideration by Shoalhaven City Council's enterprise Project Management Office) and related work.

Strategic Alignment

Community Strategic Plan

The *Shoalhaven 2023 Community Strategic Plan* identifies 11 key priorities, categorised into four themes:

1. *Resilient, Safe, Accessible & Inclusive Communities.*
2. *Sustainable, Liveable Environments.*
3. *Thriving local economies that meet community needs.*
4. *Effective, Responsible & Authentic Leadership.*

The KVMS proposal aligns with the following Key Priorities:

- 1.1: *Support inclusive, safe and connected communities.*
- 1.2: *Preserve, support and develop cultural and creative vitality across our communities.*
- 1.3: *Support community wellbeing through fostering active and healthy communities.*
- 4.3: *Inform and engage with the community about the decisions that affect their lives.*

Community Wellbeing Strategy

Shoalhaven City Council's *Community Wellbeing Strategy* cites foundational values which are relevant to this project:

- *Foundation 1: Vibrant communities where everyone can participate and connect.*
- *Foundation 2: Lifelong learning and helping each other.*
- *Foundation 3: Safe and prepared communities.*

The *Community Wellbeing Strategy* further recognises:

- *Participation in local activities is vital for forming social connections that develop a sense of belonging and connection to the community... This contributes to a vibrant community life that supports individual wellbeing and resilience... For the community to come together, they need inclusive community gathering spaces... Contemporary practice for community facilities is moving towards providing spaces that can support a range of community uses.*

(Community Wellbeing Strategy, page 22)

The KVMS's proposal to establish a purpose-built Men's Shed facility in Kangaroo Valley aligns with Council's *Community Strategic Plan* and *Community Wellbeing Strategy*.

Financial Implications

Finance and Asset Depreciation

The KVMS's request (project) is currently not identified in the *Delivery Program Operation Plan (DPOP) 2023 / 24*, nor is it identified in the *draft DPOP 2024 / 25*, and consequently has no funding allocated for design or construction.

KVMS have committed to sourcing funding for the project through pro bono support, fundraising and / or grant applications.

KVMS, in their earlier approach to Council, requested consideration for Council to fund:

- Processes to progress through a DA process.
- Planning requirement costs.
- The development of sewer and utility works necessary for the site.

Desktop investigations, site visits, and liaison with KVMS to date has been funded through the Recreation Projects – Planning & Delivery staffing budget.

Should Council choose to progress this project beyond the stages described in the recommendation of this report, a Scope of Works would need to be defined and sufficient funding identified and allocated to enable further works to progress.

It is recommended that a Project Mandate submission be prepared for further design and investigation works related to the KVMS's request for a site to house a future Men's Shed facility, in accordance with the requirements of Council's enterprise Project Management Office (ePMO).

Should Council adopt this resolution (as proposed), City Lifestyles Project Officers will continue to engage with the KVMS to create and finalise a Project Mandate submission to Shoalhaven City Council's enterprise Project Management Office (ePMO), to enable the project to proceed once Council's financial position has improved (and subject to the Project Mandate submission being accepted by the ePMO as a 'Project Candidate').

Risk Implications

Options

1. Accept the recommendation as proposed.
 - **Financial:** This proposal is currently unfunded for any aspect of work beyond the scope of this report. There is a risk that expectations in the community may be raised beyond Council's reasonable ability to support implementation of the initiative.
 - **Reputational:** Failure to act on the KVMS's request for identification of a suitable site to house a future facility for the Men's Shed in Kangaroo Valley may result in a lack of confidence in Council processes within the Kangaroo Valley community and a loss of community trust in Council's capacity to deliver community infrastructure in line with community feedback.
 - **Reputational:** Directly affected residents have expressed opposition to West Moss Vale Road Reserve being utilised to house a future facility for the KVMS. Other Kangaroo Valley residents have also expressed dissatisfaction with the proposal. Confirming this site as the preferred location for a Men's Shed may prompt continued community opposition.
2. Adopt an alternative recommendation rescinding Council's in-principle endorsement of West Moss Vale Reserve (Lot 7 DP 264336) as the preferred location for a future facility to house the Kangaroo Valley Men's Shed on Council owned / managed land in Kangaroo Valley.

CL24.226

- **Reputational:** Choosing to rescind the Council’s endorsement of the West Moss Vale Road Reserve as the preferred site for a future facility to house the KVMS will cause delays to the planning, design and construction of a Men’s Shed facility in Kangaroo Valley, which will likely cause disappointment and frustration amongst the Men’s Shed organisation members.
3. Adopt an alternative recommendation, to be confirmed by Council.
- **Risks:** To be confirmed, pending the outcomes of Council’s deliberation on this matter.

CL24.227 Membership Appointment for Inclusion & Access Advisory Committee

HPERM Ref: D24/252444

Department: Community Connections
Approver: Jane Lewis, Director - City Lifestyles

Reason for Report

The purpose of this report is to seek endorsement from Council for the appointment of a new member to the Inclusion and Access Advisory Committee (IAAC), following an Expression of Interest (EOI) received to fill a vacant position on the committee.

Recommendation

That Council:

1. Appoint Juliette Boyd as a voting member of the IAAC in accordance with the IAAC Terms of Reference (ToR) as a 'family, friend and/or carer of a person living with disability'.
2. Send a notification letter to the successful applicant.
3. Note that Expressions of Interest will now close as all vacant positions have been filled.

Options

1. Adopt the recommendations as written.

Implications: Appointing the above member who will fill one membership vacancy, with no vacancies remaining.

2. Provide an alternative recommendation.

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

Background

Council received an EOI application for membership on the IAAC from Juliette Boyd on 27 May 2024. An assessment panel was convened on 14 June 2024 that consisted of a Council staff member (Community Capacity Builder), a Councillor (in the absence of a nominated Chairperson) and one community member. The panel assessed the application against identified criteria and recommended that Council appoint the applicant as a voting member who would bring the following to the Committee:

- Lived experience of disability as well as being the family member of a person that lives with disability.
- Demonstrated interest in the National Disability Insurance Scheme (NDIS) Graduate Program and relevant current studies.
- Understands the barriers experienced by people living with disability in the Shoalhaven as she lives and works locally.
- Provides additional youth representation on the committee.

CL24.227

External Consultations

The EOI has been open since 20 April 2023 and advertised in local newspapers, via social media platforms and distributed to relevant Community Connections networks.

Conditional on adoption of the recommendations in this report, the EOI will close until such a time that vacant positions become available on the committee.

Policy Implications

The recommendations are in accordance with the IAAC ToR adopted by Council on 13 March 2023.

CL24.227

CL24.228 Resignation - Kate Dezarnaulds - Arts Advisory Committee

HPERM Ref: D24/283509

Department: Business Assurance & Risk
Approver: Jane Lewis, Director - City Lifestyles

Reason for Report

This report is presented to Council as the Arts Advisory Committee meeting on 2 July 2024 failed to reach quorum and this matter of business was not able to be dealt with.

To inform Council of the resignation of Ms Kate Dezarnaulds and of Ms Christine Dunstan's departure after completing two terms on the Committee.

Recommendation

That Council:

1. Receive the resignation of Ms Kate Dezarnaulds and thank her for her contribution and commitment to the Arts Advisory Committee.
2. Note that Ms Christine Dunstan recently completed her second term on the Committee and thank her for her contribution and commitment to the Arts Advisory Committee.
3. Note the above two vacancies will be filled through the current EOI open for this Committee.

Options

1. Adopt the recommendation

Implications: The Council is informed of the resignation of Ms Kate Dezarnaulds and departure of Ms Christine Dustan. Council will continue to advertise all vacancies for this Committee.

2. An alternative recommendation

Implications: Unknown

Background

Council received a notice of resignation from the Arts Advisory Committee from Ms Kate Dezarnaulds on 13 December 2023, and following this, Ms Christine Dunstan completed her second term on the Committee on 17 December 2023.

Council is asked to receive Ms Kate Dezarnaulds resignation, note the departure of Ms Christine Dunstan and thank both for their contribution and commitment to the Arts Advisory Committee. It is noted that staff have already sent a thank you letter to both Ms Dezarnaulds and Ms Dunstan.

Despite 2 new community member appointments to the Arts Advisory Committee, adopted by Council at its Ordinary Meeting on 24 June 2024, there remain two (2) further vacancies on the Committee. Unfortunately, quorum could not be achieved for the meeting scheduled for the 2 July 2024, this has resulted in 2 items of business being referred to Council for consideration.

CL24.228

The Expression of Interest (EOI) process for 2 further community members will remain open until all vacant positions are filled.

Community Engagement

The EOI will remain until all vacant community member positions are filled, and will be re-posted via social media and will continue to be advertised on Council's [Arts Advisory Committee Webpage](#).

CL24.228

CL24.229 Shoalhaven City Art Collection - Acquisition of Works - Australian Artist Robert Dickerson - Cultural Gifts Program

HPERM Ref: D24/281732

Department: Arts Culture & Entertainment
Approver: Jane Lewis, Director - City Lifestyles

Reason for Report

The purpose of the report is to enable the Council to consider the acquisition of two significant paintings by renowned Australian artist Robert Dickerson (b.1924, Hurstville – d. 2015, Nowra).

These works have been offered as a donation under the Cultural Gifts program to be considered for acquisition to the City Art Collection by the artist's widow Mrs Jennifer Dickerson, in line with Shoalhaven City Art Collection – Acquisition and Management Policy POL22/49.

Recommendation

That Council:

1. Accept the two works by artist Robert Dickerson offered for donation by Jennifer Dickerson into the Shoalhaven City Art Collection.
Proceed with an application for a Certificate of Donation via the Australian Government's Cultural Gifts Program.

Options

1. The Council accepts this report.

Implications: The works will be accessioned into the City Art Collection and an application will be made for a Cultural Gifts Program Certificate of Donation.

2. The Council Amend or change the Recommendation.

Implications: Acquisition of works may not be in line with Shoalhaven City Art Collection – Acquisition and Management Policy POL22/49

Background

Two significant paintings by renowned Australian artist Robert Dickerson (b.1924, Hurstville – d. 2015, Nowra) have been offered as a donation to Shoalhaven Regional Gallery by the artist's widow Mrs Jennifer Dickerson.

The works are:

- *South Coast Landscape* (1992) acrylic on canvas, 92 x 122 cm, and
- *Children Playing, South Coast* (2013), acrylic on canvas, 92 x 122 cm.

Both are signed 'Dickerson' in the lower right. The works are in excellent condition.

Robert Dickerson is one of Australia's better known figurative painters. He was a founding member of the 'Antipodeans' Art Movement, and his work was inspired by people and scenes of everyday life.

The Shoalhaven Regional Gallery holds a suite of seven prints by Robert Dickerson dating from the 1990s, acquired into the collection in 2023. The two paintings offered as a gift under the Australian Government’s Cultural Gift Program represent a major acquisition for the Gallery of Dickerson’s painting.

They show one of the artist’s favourite themes, children playing in the landscape and figures in the landscape; both are inspired by the South Coast. They encompass a period from the artist’s mid-career (1992) to his later years; *Children Playing, South Coast* was painted two years before his death.



South Coast Landscape (1992) acrylic on canvas, 92 x 122 cm



Children Playing, South Coast (2013), acrylic on canvas, 92 x 122 cm

Images and information regarding the proposed Dickerson donation were emailed to Acquisition Subcommittee Members Mr Stephen Buzacott, Cllr Moo D’Ath, Mr Clive Freeman, Mr Frank Howarth and Mr Drew Longbottom.

Mr Stephen Buzacott viewed the paintings on Tuesday, 11 June 2024 in the Gallery’s Collection storage space and confirmed his agreement to the acquisition. Mr Frank Howarth, who is currently overseas, has written confirming his endorsement.

Acting Gallery Director Judith Blackall who joined the Acquisitions Subcommittee in its appraisal also endorsed the proposed donation given the works’ relationship to the Shoalhaven.

The sub-committee considered the works in relation to the importance of the artist. Dickerson is represented in all major Australian public Collections.

The proposed acquisition meets the criteria of the Shoalhaven City Council Art Collection under section 3.1.6 under the following considerations:

- Significance of artist
- Local Significance
- Historical / cultural value

The proposed works are also important in relationship to the series of Dickerson prints already in the Collection.

The Arts Acquisition Sub-Committee recommend the donation by Jennifer Dickerson of Robert Dickerson works be accepted into the Collection.

Community Engagement

The City Art Collection is made available to the community through the online collection catalogue, through exhibitions at Shoalhaven Regional Gallery and through placement of suitable works in the Administration building, Shoalhaven Entertainment Centre foyer and other locations as suitable.

Policy Implications

All offers of donation were reviewed against the Shoalhaven City Art Collection – Acquisition and Management Policy POL22/49.

Financial Implications

The works are offered under the Australian Government’s Cultural Gift Program. The Art Acquisition budget has sufficient funds to cover any incidental costs which have included the appraisal and valuation of the works.

CL24.229

CL24.230 Shoalhaven Arts Foundation Limited - Formation as a Not-for-Profit Public Company in Accordance With Section 358 of the NSW Local Government Act 1993

HPERM Ref: D24/183670

Approver: Jane Lewis, Director - City Lifestyles

Attachments:

1. Shoalhaven Arts Foundation Limited - Constitution (under separate cover) [⇨](#)
2. Shoalhaven Arts Foundation Limited - Key changes to Constitution (under separate cover) [⇨](#)
3. Shoalhaven City Council - S358 Application - July 2024 (under separate cover) [⇨](#)
4. Shoalhaven Arts Foundation Limited - Business Implementation Plan (under separate cover) [⇨](#)

Reason for Report

Following on from Council's resolution of 22 May 2023, the report seeks Council endorsement for:

- The formation of the Shoalhaven Arts Foundation Limited as a not-for-profit public company limited by guarantee
- The approval to submit to the NSW Minister for Local Government an application to consider the Foundation's establishment as a corporation, in accordance with section 358 of the *Local Government Act 1993*.

Recommendation

That:

1. Council approves the formation of the Shoalhaven Arts Foundation Limited (**Foundation**) as a not-for-profit organisation, constituted as a public company limited by guarantee under the *Corporations Act 2001* (Cth), (and intended to be registered as a charitable institution with deductible gift recipient status) established to promote cultural activities and arts within Shoalhaven.
2. Council confirm that the Foundation will operate independently from Council under the model proposed in that:
 - a. While Council will have representative directors on the Board of the Foundation, the Foundation's governance, management, strategic planning, oversight and decision-making will be at all times within the control of the Board of the Foundation which is intended to be controlled by individuals independent of Council;
 - b. The Directors will be indemnified by the Foundation from liability to the extent permitted by law and the Foundation will maintain insurance for Directors for any liability incurred by Directors; and
 - c. Council's liability as a member of the Foundation is limited to \$100.00 should the Foundation become insolvent or wound up.
3. Council, pursuant to section 358(1) of the *Local Government Act 1993*, makes an application to the Office of Local Government seeking the consent of the Minister for

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- Local Government for the formation of such a Foundation as a company limited by guarantee under the proposed name of Shoalhaven Arts Foundation Limited in accordance with the application attached as Attachment 3.
4. Council, subject to Ministerial consent, the Foundation will make an application to be a registered charity with the Australian Charities and Not-for-profits Commission (ACNC) and to apply for Deductible Gift Recipient (DGR) status with the Australian Taxation Office (ATO).
 5. Council delegates to the Chief Executive Officer the authority to:
 - a. Finalise and submit to the Office of Local Government the application seeking the consent of the Minister for Local Government for the formation of the Foundation as a company limited by guarantee pursuant to section 358 of the Local Government Act 1993.
 - b. With Ministerial consent granted:
 - i. Proceed to incorporate the Foundation as a company limited by guarantee and to undertake all necessary acts as part of the incorporation and formation of the Foundation; and
 - ii. Proceed to make an application with the Australian Charities and Not-for-profits Commission (ACNC), to seek Deductible Gift Recipient (DGR) status and any other applicable tax concessions with the Australian Taxation Office (ATO) and to advise other relevant government bodies.
 6. Council advise the Arts Advisory Committee of the actions being taken by Council.
 7. A further report be provided to Council on the outcome of the Minister's consideration of the application made in accordance with section 358 of the *Local Government Act 1993* and actions proposed to proceed with the formation of the Shoalhaven Arts Foundation Limited.

CL24.230

Options

1. Accept the recommendation as written.

Implications: Council will be indicating its support for the formation of the Shoalhaven Arts Foundation Limited with its proposed constitution being in the public interest and, pursuant to section 358 of the *Local Government Act 1993*. Council to agree to make an application seeking the consent of the NSW Minister for Local Government in accordance with the draft application attached as Attachment 3. This is commensurate with the adopted policy position of Council

2. Amend the recommendation.

Implications: The Shoalhaven Arts Foundation Limited may not be able to be established to independent operational capacity in accordance with the model proposed which requires the consent of the NSW Minister for Local Government under section 358 of the *Local Government Act 1993*.

3. Reject the recommendation and pause the project until Council's financial sustainability improves, and the project can be reconsidered.

Implications: The Shoalhaven Arts Foundation Limited will not be progressed at this time, the project put on pause and the funding allocated returned to general fund. The Council's Arts Advisory Committee to be advised accordingly.

Background

As reported to Council on 22 May 2023, the proposal to establish a Shoalhaven Arts Foundation had been worked on since 2008 and had been an action in the previous Arts Board Terms of Reference since 2015 (now the Arts Advisory Committee).

Since late 2022, Council staff had been working with the specialist firm J9 Consulting to undertake the initial work in the establishment of the Arts Foundation and to develop an appropriate draft constitution for the Shoalhaven Arts Foundation. An overview of J9 Consulting's work was presented to Councillors at a briefing on 2 February 2023.

In considering the matter at the 23 May 2023 meeting, Council received a report on the progress in establishing the Arts Foundation as a not-for-profit public company and resolved MIN23.167 that Council:

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

After Council's meeting of 22 May 2023, a number of actions have been undertaken by Council staff:

- The contract engagement with J9 Consulting was paused pending consideration by the Minister for Local Government on the formation of the Arts Foundation under section 358 of the *Local Government Act 1993 (The Act)*.
- The engagement of Council legal panel member Marsdens Law Group to review Council's work on the formation of the Shoalhaven Arts Foundation Limited including the appropriateness of the draft constitution, discussion on the points raised by Councillors and amendments to the draft constitution were appropriate. Marsdens were engaged due to their specialist expertise in local government law and understanding of the formation of corporate not-for-profit companies for charitable purposes, including good governance arrangement.
- Liaison with the NSW Office of Local Government Council Engagement Manager and subsequent discussions with officers of the NSW Office of Local Government (OLG) Performance Team on Council's model for the Shoalhaven Arts Foundation having regard to the requirements under the Office's guideline *Formation of Corporations and Entities (Section 358) January 2022*.
- Holding meeting with representatives of the Performance Team at OLG in relation to the OLG's guideline with specific reference to the following:
 - Ensuring the Arts Foundation meets the public interest test.
 - Annual reporting by the Arts Foundation to the Founding Member (Council).

- Having a skilled-based Board where a director is not paid a fee.
- Minimising Council's role on Foundation Board to ensure its independence and minimise Council's exposure to liability.
- Financial impact on Foundation where ongoing operational funding not provided by Council.
- Legal review by Marsdens Law Group to provide Council with an updated draft constitution and the provision of relevant explanations around the revised approach taken in the constitution on the key changes made in order to meet the requirements under section 358 of the *Act*. Advice has been provided by Marsdens on the appropriateness of the section 358 application to be submitted to the Office of Local Government.

Further information is provided in this report on the formation of the Shoalhaven Arts Foundation and the recommended optimal model as a public company limited by guarantee. To progress this, a formal resolution of Council is required which will enable Council to make an application to the OLG seeking the consent of the Minister for Local Government for the formation of a public company limited by guarantee pursuant to section 358 of the *Act*.

In presenting the information in this report to Council, regard has been given to Council's legislative obligations and the OLG's guideline requirements, with reference to:

- The role of Council as the Governing Body under section 223 of the *Act*. In this respect in establishing a not-for-profit corporation such as the Arts Foundation which will be subject to regulatory oversight by other government agencies, that does not preclude the organisation being accountable within the regulatory framework under the *Act*.
- The guiding principles for councils outlined in section 8A of the *Act*.
- Principles of sound financial management provided under section 8B of the *Act*.
- Integrated planning and reporting principles that apply to councils under section 8C of the *Act*.
- Having regard to the central focus of section 358 of the *Act* which is the public interest test before proceeding to propose the creation of an external entity.

Given Council's recent financial sustainability review and commitment to improve its financial position, it is prudent to consider whether it is appropriate to progress this project or place it on pause until such time as Council's financial situation improves. The contract with J9 Consulting has been paused whilst the work to investigate and progress the Section 358 application is undertaken. Under the contract J9 Consulting were engaged to build the website and donations platform.

There is an opportunity to return budget to general fund which is detailed further in Financial Implications.

The Shoalhaven Arts Foundation Limited Constitution

At its meeting of 23 May 2023, Council agreed to a draft constitution for the Shoalhaven Arts Foundation as the basis to establish the Foundation, which included references to Council as the *Founding Member* of the Foundation.

As the constitution is a fundamental component in the formation of the Shoalhaven Arts Foundation Limited and in submitting Council's application to the Office of Local Government (OLG), Marsdens Law Group were asked to review and provide an updated constitution to best meet the model proposed, Council's legislative obligations and those of other relevant government agencies.

Marsdens advised that there was a need to pay further close attention to the wording and format of the constitution since this important document will be placed in front of the OLG,

the Australian Charities and Not-for-profits Commission (ACNC) and the Australian Tax Office (ATO) for review. Marsdens considered that the constitution needed to be precise, succinctly drafted and well structured so that Council's chances at obtaining approval at each stage are as high as possible.

The Foundation's Constitution prepared by Marsdens is provided as Attachment 1 to this report and Annexure A of the section 358 Application to the OLG.

Marsdens' revision has improved the previous draft, and appropriately deals with the key requirements of the Corporations Act, the OLG's section 358 guideline for applications, ACNC matters and Deductible Gift Recipient (DGR) matters. The key changes and reasons proposed by Marsdens are presented in Attachment 2 to this report.

Council Section 358 Application

To establish the recommended optimal model of a not-for-profit organisation constituted as a public company limited by guarantee, Council needs to make an application to the Office of Local Government (OLG) seeking the consent of the Minister for Local Government for the formation of such a company pursuant to the provisions of section 358 of the *Local Government Act 1993*. In the application, a key consideration is for Council to demonstrate to the Minister's satisfaction that the formation of the Shoalhaven Arts Foundation is in the public interest.

Council's proposed application is provided as Attachment 3 to this report. The application has been prepared with the advice and assistance of Marsdens Legal Group. The Foundation's proposed Constitution (Attachment 1) forms part of Council's section 358 application.

Next Steps

The proposed recommendation also identifies further actions that are required should Council determine to proceed with the Shoalhaven Arts Foundation this includes:

- Submitting the section 358 application to the NSW Office of Local Government,
- Subject to Ministerial consent being obtained, making application to register the Arts Foundation as a charitable company.
- The Chief Executive Officer is to be delegated authority:
 - To finalise and submit the section 358 application
 - Proceed to make the necessary registration applications with:
 - The Australian Charities and Not-for-profits Commission (ACNC),
 - To seek Deductible Gift Recipient (DGR) status for the Shoalhaven Arts Foundation and any other applicable tax concessions with the Australian Taxation Office (ATO) and to advise other relevant government bodies.

A proposed Business Implementation Plan has been developed as Attachment 4 (Annexure B in the section 358 application) outlining the key steps to be taken in the formation of the Arts Foundation. Marsdens Law Group will be engaged to provide legal advice and assistance in finalising Council's section 358 application and in the seeking of necessary Ministerial approval.

Strategic Alignment

The establishment of the Shoalhaven Arts Foundations aligns with Council's strategic and policy objectives in bringing the arts to the Shoalhaven Region. This is in line with key

priorities and outcomes under the *Shoalhaven 2032 Community Strategic Plan (CSP)*, which include:

- Active participation in an inclusive arts community.
- Provision of cultural facilities.
- Greater awareness, understanding and respect of local Aboriginal and Torres Strait Islander culture, heritage and histories.

Through the Delivery Program and Operation Plan (DPOP) process within IP&R, the Council has indicated its intention to progress the formation of a Arts Foundation. The 2021/2022 and 2022/2023 DPOP advised that Council will continue to progress development of the Foundation with funding for its formation in the 2022/23, 2023/24 and 2024/25 budgets.

Policy and Legislative Requirements

- Section 358 of the Local Government Act 1993 requires Ministerial consent prior to the establishment of a public company limited by guarantee.
- Section 377(1)(s) of the Local Government Act 1993 requires Council to approve the making of an application to the Minister.
- Corporations Act 2001 (Cth) guides the establishment of the public company limited by guarantee.
- Office of Local Government's guideline *Formation of Corporations and Entities (Section 358) January 2022* sets out procedures and processes to be followed when councils are considering making an application to the Minister for consent to the creation of a separate entity outside the Council structure.
- Treasury Laws Amendment (2021 Measures No. 2) Bill 2021 requires a fund, authority or institution to be a registered charity or an Australian government agency, or be operated by a registered charity or an Australian government agency, to be entitled to a deductible gift recipient endorsement.

Internal Consultations

An internal Control Group comprising of Council officers and the Chair of the Arts Advisory Board was established in late 2022 to progress the establishment of the Arts Foundation following the engagement of J9 Consulting, a specialist advisory agency in the cultural sector and creative industries.

Briefings on the proposed formation of the Shoalhaven Arts Foundation have been provided to Councillors on 31 March 2022 and on 2 February and 17 May in 2023, a briefing was provided to the Shoalhaven Arts Board on 8 February 2023.

External Consultations

Marsdens Law Group were engaged in June 2023 to provide their expertise in local government law and also their corporate / commercial expertise around charities and not-for-profit organisations to assist in finalising the Foundation's proposed constitution and, subsequently provide assistance in finalising Council's application under section 358 of the *Act*.

A meeting was held between Council officers and representatives of the NSW Office of Local Government on 15 February 2024 to discuss the formation of the Shoalhaven Arts Foundation as a corporation under section 358 of the *Local Government Act 1993* having regard to requirements under the Office's guideline *Formation of Corporations and Entities (Section 358) January 2022*.

Community Consultations

The proposed formation of the Shoalhaven Arts Foundation was included as a key term of reference of the then Shoalhaven Arts Board from 2015, which comprises community representatives involved in arts and culture.

A series of community engagements were undertaken in 2016 which included a community workshop on the proposal. Further community engagement was undertaken in late 2022 and 2023 with community representatives to understand the potential value, perceptions and benefits of the proposed Foundation, undertaken through the contribution of a J9 Consulting representative.

Financial Implications

Council resolved on 26 April 2022, as part of the 2022/23 budget preparations, that funding be allocated to the establishment of the Shoalhaven Arts Foundation for three years, being \$150,000 in 2022/23, \$150,000 in 2023/24 and \$100,000 in 2024/25. A total funding \$400,000.

Table - Summary of expenditure and commitments to date

	Actual Spend \$	Budget \$	Remaining Budget \$	Commitments \$	Remaining Budget \$ less Commitments
FY22/23	101,011	150,000	48,989 [^]		48,989
FY23/24	22,416	148,989	126,573 [^]		126,573
FY24/25	0	100,000	100,000	56,025*	43,975
	123,427	398,989	275,562	56,025	219,537

*Commitments include J9 Consulting, Marsdens and Project Officer

[^] \$48,989 returned to general fund 22/23, \$100,000 returned to general fund in QBR3 2023/24 and balance of \$26,573 to be returned at 2023/24 year end.

\$100,000 has been included in the 2024/25 budget to undertake further work to establish the Shoalhaven Arts Foundation, subject to Ministerial consent under section 358 of the Act (less commitments).

Dependant on the outcome of the application, the funds previously returned to general fund will need to be reinstated in future budget years. This will enable the formal establishment and setting up of the Shoalhaven Arts Foundation, as an independent operating entity. After which the seed funding from Council will cease and the entity will need to be self-funding.

Under the proposed model for the Foundation, Council will not be funding the ongoing operations of the organisation.

Risk Implications

As the Shoalhaven Arts Foundation is to operate independent of the Council, including employment of its own staff, it should have minimal risk to the Council.

A separate risk assessment for the Shoalhaven Arts Foundation project has been included as part of the section 358 application to be lodged with the Office of Local Government (Attachment 3; Annexure C).

CL24.230

CL24.231 South Coast Arts - Renewal of Memorandum of Understanding (MOU) 2025 - 2029

HPERM Ref: D24/286118

Approver: Jane Lewis, Director - City Lifestyles

Attachments:

1. Report - South Coast Regional Arts Development Organisation - update and request to Council - Ordinary Meeting 26 April 2022 [↓](#)
2. Memorandum of Understanding (MOU) - South Coast Arts / Shoalhaven Council - 2025 to 2029 (councillors information folder) [↗](#)

Reason for Report

The purpose of this report is to seek Council support to enter into a further Memorandum of Understanding (MOU) with South Coast Arts (NSW) Inc. (formerly South Coast Regional Arts Development Organisation - RADO) effective from 1 January 2025 to 31 December 2029.

The current MoU which was endorsed by Council at its meeting on 26 April 2022 expires on 31 December 2024.

Recommendation

That Council:

1. Support the continued development and ongoing operations of the South Coast Arts (NSW) Inc.
2. Continue to allocate \$45,749 (+GST) funding from the general funds in the 2025/26 FY budget as Council's financial contribution, and recurrent funding + 3.5% increase year on year thereafter, for the term of the Memorandum of Understanding (MOU).
3. Approve under delegation that the Chief Executive Officer (Director City Lifestyles) enter into a Memorandum of Understanding (MOU) with South Coast Arts (NSW) Inc. for the period 1 January 2025 to 31 December 2029.

Options

1. Adopt the recommendation as printed.

Implications: The South Coast Arts (NSW) Inc. will continue to progress with the support from and representation of Shoalhaven City Council and the 2 other member Council's: Kiama Municipal Council and Shellharbour City Council. Funding from General Fund is allocated in FY 2024/25 to meet Council's obligations under the MOU, and recurrent funding +3.5% CPI will be provided for the term of the MOU

2. Amend the recommendation.

Implications: The South Coast Arts (NSW) Inc. may not be able to operate within the Shoalhaven as intended, representation on the board may be impacted and the overall partnership between South Coast Arts (NSW) Inc. and the 3 member Councils (Shoalhaven, Kiama and Shellharbour LGA's) could be adversely impacted

CL24.231

Background

Council at its Ordinary Meeting on 26 April 2022, considered a report about the establishment of a Regional Arts Development Organisation (RADO) for the South Coast in partnership with Create NSW, Shellharbour City Council and Kiama Municipal Council. A copy of the report is at Attachment 1 . Council adopted MIN22.301

That Council:

- 1. Support the continued development and establishment of the South Coast Regional Arts Development Organisation;*
- 2. Nominate Councillor Tonia Gray to represent Shoalhaven City Council on the Board of the South Coast Regional Arts Development Organisation with an appropriate staff member as support person and proxy;*
- 3. Allocate \$38,825 from the general funds in the 2022/23 FY budget as Council's financial contribution and recurrent funding + 3.5% increase year on year thereafter.*
- 4. Approve under delegation that the Chief Executive Officer (Director City Lifestyles) enter into a Memorandum of Understanding (MOU) with South Coast Regional Arts Development Organisation which will also detail the provision of in-kind support to be provided by Council.*

The MoU commenced on 1 July 2022 until December 2024. Council, along with other member Councils and Create NSW make an annual funding contribution towards the operation of the RADO, now known as South Coast Arts (NSW) Inc.

This report seeks Council support to renew its commitment to South Coast Arts (NSW) Inc. and enter into an MOU for a 5 year period commencing 1 January 2025 until 31 December 2029.

Board Membership and Nomination

The South Coast Arts (NSW) Inc. board is made up of seven (7) co-opted board members with a diverse skill set, a chair and one (1) representative from each of the three councils totalling eleven (11) board members in total. The options available to Council are to consider a nomination of either:

1. A councillor, or
2. A suitable staff member, or
3. A councillor with a supporting staff member who is also the proxy

To date Council has nominated a Councillor (currently Cllr Gray) supported by a professional member of staff as proxy in instances where the Councillor cannot attend (currently Karen Patterson Manager Arts, Culture and Entertainment). The constitution for the South Coast RADO provides for this form of representation by Council.

The Councillor nominated to be on the board of South Coast Arts (NSW) Inc. is determined at Council's Annual 'Call Meeting'.

Create NSW seek financial contributions from each of the represented Councils to support the operational costs of South Coast Arts (NSW) Inc. The financial contributions are assessed based on the population of the LGA. Both Shoalhaven City Council and Shellharbour City Council are in the population category 40,001 and above. Shoalhaven City Council has funding of \$41,718 for the 2024/25 FY contribution to South Coast Arts (NSW) Inc. which is already budgeted from General Fund.

The MoU seek recurrent funding plus a CPI of 3.5% increase for each financial year following for the duration of the MoU. Shellharbour City Council will provide the same level of funding

as Shoalhaven, whilst Kiama Municipal Council, who fall within the population category 15,001 – 25,000, provides funding support for a lesser amount.

Community Engagement

Create NSW have previously consulted widely prior to the establishment of the RADO in 2022.

More recently South Coast Arts (NSW) Inc. have consulted on the development of their Strategic Plan 2024-28:

(https://southcoastarts.org.au/wp-content/uploads/2024/06/StrategicPlan_2024-2028_web.pdf);

and released their Annual Report for 2023-24:

(https://southcoastarts.org.au/wp-content/uploads/2024/06/SCA_AnnualReport-2023_web.pdf)

Financial Implications

The South Coast Arts (NSW) Inc. requires financial support from all three member Councils to be successful. The financial contribution supports administration, programming and activity by South Coast Arts (NSW) Inc. in the region.

The contribution in the 2024/25 financial year from Shoalhaven City Council is \$41,718. This is included in the Arts and Culture - Cultural Activities budget line.

The funding required under the MoU for FY 2025-26 is \$45,749 (+GST) and recurrent funding +3.5% CPI is required over the term of the MoU.

The financial contribution is allocated from the General Fund.

CL22.200 South Coast Regional Arts Development Organisation - update and request to Council

HPERM Ref: D22/150592

Department: Arts & Culture
Approver: Jane Lewis, Director - City Lifestyles

Reason for Report

To inform Council of the status of the South Coast Regional Arts Development Organisation (RADO) and the request for support through nomination of a Board Member, financial contribution and in-kind support.

Recommendation

That Council:

1. Support the continued development and establishment of the South Coast Regional Arts Development Organisation;
2. Nominate a Councillor [*Councillor name to be inserted at meeting*] to represent Shoalhaven City Council on the Board of the South Coast Regional Arts Development Organisation with an appropriate staff member as support person and proxy;
3. Allocate \$38,825 from the general funds in the 2022/23 FY budget as Council's financial contribution and recurrent funding + 3.5% increase year on year thereafter.
4. Approve under delegation that the Chief Executive Officer (Director City Lifestyles) enter into a Memorandum of Understanding (MOU) with South Coast Regional Arts Development Organisation which will also detail the provision of in-kind support to be provided by Council.

Options

1. Adopt the recommendation as printed.
Implications: The South Coast RADO will continue to progress to operational status with the support from, and representation of Council.
2. Amend the Recommendation.
Implications: The RADO may not be able to operate within the Shoalhaven as well as intended, and representation on the board may be impacted.
3. Reject the Recommendation.
Implications: The RADO will be reduced in its ability to represent the Shoalhaven in its activities which will have flow on impacts to arts and arts organisations within the region.

Background

In July 2021 Council received a presentation from Create NSW on the proposal to investigate the establishment of a Regional Arts Organisation (RADO) for the South Coast. A report was considered by Council in August 2021 and MIN21.596 was resolved:

That Council:

1. *Provide In Principle support for the proposal by Create NSW to undertake a three (3) month investigation into the establishment of a Regional Arts Development Organisation (RADO) for the South Coast;*
2. *Receive an update from Create NSW at the conclusion of the investigations;*
3. *Consider support for a RADO and the likely financial implications as part of the 2022/23 Delivery Program and Operations Plan and Budget;*
4. *Write to The Minister for the Arts, The Hon. Don Harwin MLC to thank him for this opportunity and provide an update on Council's In Principle support for the proposal.*

In accordance with Part (2) of the resolution Council invited Create NSW to provide an update to Council via a Councillor Briefing on 31 March 2022.

Create NSW have concluded their three-month investigation into the opportunities and community response to the proposal has been undertaken with strong support and engagement across Shellharbour, Kiama and the Shoalhaven.

Following the period of investigations Create NSW have interviewed for and appointed an establishing Board for the South Coast RADO and are now working on the establishment of the organisation, including registration as a charity, setting up financial, administration and IT systems and appointment of an Executive Director.

To fully progress the establishment phase of the RADO, Create NSW and the founding board of the South Coast RADO, are asking Council to provide firm commitment to the RADO through financial contribution and nomination of a representative to the Board.

In accordance with Part (3) of the resolution the likely financial implications have been considered as part of the 2022/23 Delivery Program and Operations Plan and Budget.

In accordance with Part (4) of the resolution a letter was sent to the then Minister for the Arts, the Hon. Don Harwin MLC on 27 August 2021.

Board Member nomination

The RADO board is made up of seven (7) co-opted board members with a diverse skill set, a chair and one (1) representative from each of the three councils totalling eleven (11) board members in total. The options available to Council are to consider a nomination of either:

1. A councillor, or
2. A suitable staff member, or
3. A councillor with a supporting staff member who is also the proxy

Council has representatives on several boards with various options for representation.

- The South East Zone library collective (a subcommittee of the Public Libraries Association NSW), there is a mix of Councillors and Library Managers in attendance. The Chair is always a Councillor, with councillors attending 3 of the 4 meetings held. The Library Managers (staff) are the decision makers with input from Councillors.
- The Illawarra Academy of Sports has the Mayors of the five (5) representative Councils as Founding Members. The Mayors are able to nominate an alternate which is usually another councillor.
- South Eastern Australia Transport Strategy Inc (SEATS) has representation from Government, Councils, industry and community. The board has three (3) representatives from NSW and a Councillor from one of the local Councils is nominated as Chair. Shoalhaven City Council currently Chairs this group and has a staff member as one of the three NSW representatives.

Based on the above models, it is recommended that Council seek to nominate a Councillor as the Board Member to the RADO, with a staff member acting as support and proxy in

instances where the Councillor cannot attend. The constitution for the South Coast RADO provides for this form of representation by Council.

Financial contribution to the RADO

Create NSW seek financial contributions from each of the represented Councils to support the operational costs of the RADO. The financial contributions are assessed based on the population of the LGA. Both Shoalhaven City Council and Shellharbour City Council are in the population category 40,001 and above. Shoalhaven City Council is asked to provide \$38,825 for the 2022/23 FY with an anticipated 3.5% increase in the amount each Financial Year following. Shellharbour City Council will be requested to consider the same level of funding as Shoalhaven whilst Kiama Council, who fall within the population category 15,001 – 25,000, will be asked to consider funding of \$19,412 in FY2022/23.

In-Kind Support

The South Coast RADO are also asking contributing Councils to consider in-kind support, for their offices. They are ideally seeking a (commercial) premises with good accessibility that can support up to four (4) staff workstations and space for board meetings at a reduced rent.

Alternatively, they are seeking no-fee access to meetings rooms and community halls for meetings, consultation sessions and community engagement programs. Options to support this request are currently being investigated and will be incorporated into the Memorandum of Understanding (MOU) to be finalised between Shoalhaven City Council and South Coast RADO. It is proposed that the MOU be finalised and approved under delegation.

Community Engagement

Create NSW have met with 45 artists and arts organisations across the South Coast region, they have held several community information sessions and undertaken an audit of services and programs, venues and activity of the sector prior to undertaking establishment work. They will use the consultation and information gathered to inform their strategic plan and actions in the establishment phase.

Financial Implications

The South Coast RADO requires financial support from all three member Councils to be successful. The financial contribution supports administration, programming and activity by the RADO in the region.

The contribution in the 22/23 Financial Year is \$38,825 with a 3.5% increase year on year.

The financial contribution will need to be allocated from the General Fund.

CL24.209 Notice of Motion - Tourist Cabins

HPERM Ref: D24/279836

Submitted by: Cllr Tonia Gray

This item was deferred from the Ordinary Meeting 22 July 2023.

Purpose / Summary

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

Recommendation

That Council receive a report back that covers:

1. The interplay between the current 'Tourist and Visitor Accommodation' provisions contained in the Shoalhaven Local Environmental Plan 2014 and Shoalhaven Development Control Plan 2014 and the Agri-tourism related planning reforms that have been implemented at the NSW Government level through State Environmental Planning Policies including use by proponents of the innominate term 'tourist cabins' in rural areas as opposed to 'farm stay accommodation';
2. Community issues/concerns or compliance matters that have emerged in rural areas including in the Berry and Kangaroo Valley areas such as regarding:
 - a. lack of control over development of tourist accommodation and function centres;
 - b. protection of rural amenity and landscapes from inappropriate development;
3. Any opportunities that may exist and could be considered to practically tighten up or improve the consideration and assessment of applications for these types of use, noting the limitations to turn off or amend provisions contained in a State Environmental Planning Policy (SEPP).

Background

For several years, Shoalhaven rural residents have been under threat of potential loss of amenity due to the absence of any controls over tourist cabin development in the Shoalhaven Local Environmental Plan 2014 (SLEP).

Residents in Berry and Kangaroo Valley have been particularly exposed, and many communities have been forced to rapidly mount very costly, time-consuming campaigns to protect rural amenity and landscapes from inappropriate development proposals for tourist accommodation and function centres.

When the SLEP was constructed, Council chose to retain use of the accommodation description 'tourist cabin', to facilitate the growth of tourism in the Shoalhaven.

Tourist cabins are categorised as an 'innominate use' under the Local Environmental Plan (LEP) group term 'tourist and visitor accommodation' (TVA), so there is no definition for tourist cabins in the SLEP Dictionary. Additionally, Clause 5.4 in the SLEP includes limits on the number of bedrooms for farm stay accommodation (7) and B&Bs (5), but there are none for tourist cabins.

Consequently, residents have no grounds under the SLEP for objections, whatever the scale and size of the development or the number of cabins. Council also has no capability to

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defend an appeal at the Land and Environment Court (LEC) against refusal of any tourist cabin development.

The Shoalhaven Development Control Plan 2014 (SDCP) also provides no protection. It includes a guideline of 1 cabin per 2Ha, but this is ignored by the LEC. The SDCP maximum floor area of a tourist cabin is 120sqm, but an LEC Commissioner approved 195sqm without hesitation.

Farm Stay Accommodation

The SLEP definition is “*a building on a commercial farm used to provide temporary accommodation to paying guests*”.

The SLEP definition for a *commercial farm* is “*a farm on which agriculture is undertaken that is –*

- (a) *on land categorised as farmland under the Local Government Act 1993, or*
- (b) *a primary production business within the meaning of the Income Tax Assessment Act*”

If a landowner is claiming tax deductions as a primary producer or a rates reduction for land categorised as 'farmland', a Development Application (DA) for tourist accommodation must be characterised as 'farm stay accommodation', a named sub-term under the TVA group term.

It is therefore incumbent on Council to categorise any proposed accommodation on a commercial farm as farm stay accommodation and not allow an applicant to use the 'tourist cabin' description to evade the applicable controls.

Farm Stay Accommodation Controls

The SEPP development standards for farm stay accommodation, including restrictions on the number and size of buildings, are shown below. There is also a limit of 7 bedrooms in SLEP Clause 5.4 for farm stay cabins.

SEPP 2008 - Farm stay accommodation

2.32N General development standards

- (b) landholding must have an area of at least 15ha
- (g) number of guests accommodated at any one time must not be more than 20
- (h) a guest must not stay on the landholding for more than 21 consecutive days

9.10 Complying development standards for buildings

- (c) the development must not cause there to be more than—
 - (i) 1 building used for the purposes of farm stay accommodation per 5ha, and
 - (ii) 6 buildings used for farm stay accommodation on the landholding,

9.13 Additional development standards

- (h) a new building must have a gross floor area of no more than 60m²
- (k) a building must not be within 50m of a property boundary and 250m of residential property on neighbouring land

Note by the CEO

Previously, the Council initiated a review of tourist and visitor accommodation provisions in the Shoalhaven Local Environmental Plan (SLEP) and Shoalhaven Development Control Plan (SDCP). However, this review was placed on hold following a Council resolution in 2020 and no further work has progressed.

Now, with Stage 1 predominantly complete (including the currently exhibited draft growth principles and affordable housing strategy), Stage 2 work is scheduled to commence in the second half of 2024, which involves a comprehensive review of the planning scheme for Shoalhaven, including a new city-wide LEP, DCP, and associated work. The goal is to holistically address many planning opportunities and challenges for the city, including future growth opportunities and better suited provisions for tourist and visitor accommodation across our City.

It's important to note that if the recommendation is accepted, the resources for the subsequent report and any future resolved next steps will be reallocated to this matter for Berry and Kangaroo Valley, impacting the progression of the important city wide priority planning projects.

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CL24.232 Notice of Motion - Request for an Urgent Review of the Entrance Management Plan for Shoalhaven Heads

HPERM Ref: D24/303320

Submitted by: Cllr Serena Copley

Purpose / Summary

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

Recommendation

It is recommended that with respect to the Lower Shoalhaven River Coastal Management Program that Council:

1. As a matter of policy and priority, remove the review of the Shoalhaven River Entrance Management Plan for Flood Mitigation (EMP) from the workflow program associated with the Lower Shoalhaven River Coastal Management Program.
2. Prioritise the EMP for urgent review to reduce flooding for Shoalhaven Heads and surrounding residents.
3. Prioritise funding as part of the Quarterly Budget Review.
4. Direct the CEO (Director City Development) to ensure the Shoalhaven Heads Estuary Taskforce is briefed and consulted on the EMP review with all reports and recommendations to go via the Shoalhaven Heads Estuary Taskforce prior to being reported to Council for consideration

Background

The impacts of climate change combined with major developments upstream (such as expansion of housing developments and infrastructure) are having a significant impact on the Shoalhaven River and its flows which have resulted in increased flooding events for Shoalhaven Heads and surrounding residents. It is the view of many locals that these flooding events can be significantly reduced in their severity with the right planning and maintenance.

Whilst Council has initiated the process to update the current Shoalhaven River Entrance Management Plan for Flood Mitigation (EMP) which involves reviewing the opening trigger levels for flood mitigation as part of the Lower Shoalhaven River Floodplain Risk Management Study and Plan, such is the necessity for this review that urgent attention, data collection and consultation with the community must occur in order to ensure these documents align with the very pressing needs of locals to improve flood immunity.

The Entrance Management Plan was last reviewed in 2006. Whilst much has changed over this period, the plan has not, and many residents are being all too frequently impacted by rising flood waters that could be avoided if the Shoalhaven River was manually opened at a point below 2.0m AHD.

Changing a plan of this nature is not a simple process. Any potential changes to planned opening trigger levels to help reduce flooding in the Shoalhaven River need to be supported by an evidence-based process and approved by NSW State Government agencies. Council

is provided a licence to open the river via a Crown Lands licence. NSW Government provides the licence to Council based on information provided to them from the EMP data (floor level surveys, REF, FRMSP) and is supported by other agencies, including NSW Crown Lands, NSW DPI Fisheries, NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW), and NSW National Parks and Wildlife Service (NPWS).

Although the community has concerns as to the accuracy of the flood modelling, Council has already captured data as part of the Shoalhaven LGA Floor Level Survey for Flood Planning investigation and complimentary flood modelling from the Lower Shoalhaven River Flood Study. The availability of this data will strengthen the case to expedite the Entrance Management Plan review, and provide elected Councillors confidence that a significant body of the evidence and work needed to progress this review has already been undertaken.

It should be noted that the EMP, as a matter of policy, was meant to be reviewed after each flood event. If this is the case, no community members I've spoken with have been consulted as part of any review required under the policy.

The policy clearly states the limitations of entrance opening: ...aims to reduce, not eliminate, the impacts of flooding... there may be circumstances (e.g., closed roads, dangerous sea conditions) where, despite its best endeavours, Council cannot act to open the entrance of the river at the level indicated in this plan.

The predicted flood levels at Nowra are used as triggers for preparations of the opening at Shoalhaven Heads. The policy states: When a Flood Watch notice is received from the Bureau of Meteorology (via the SES), Council's Site Supervisor and Flood Engineer will get things ready for an emergency opening if it becomes necessary (including putting machinery on standby and inspecting the site for sand build up).

There is no question that the Shoalhaven River requires mechanical intervention from time to time, however, the key question is whether the current trigger levels are correct. It is hard to sustain a reasonable argument that a figure arrived at based on evidence from two decades ago is the correct figure for today's environment given the significant increase in wet weather events and the following inundation of homes that occurs.

Note by the CEO

The Entrance Management Policy and associated trigger levels are currently under review.

This is a multi-pronged process that requires the integration of several technical studies, of which the Lower Shoalhaven River Coastal Management Program (CMP) is a key component.

The review of the trigger levels requires flood modelling (completed in late 2022), floor level studies (completed mid 2024) and the relevant sub-component of the Floodplain Risk Management Study and Plan (to be completed in late 2024). This information is then embedded into the EMP update process as part of the Lower Shoalhaven River CMP (expected to occur late 2024 – early 2025 following public exhibition in accordance with the *Coastal Management Act 2016*).

Concurrently with the latter process, and required to support the EMP update, is the Review of Environmental Factors for entrance intervention. It is then anticipated that this process and the associated deliverable will be presented to NSW Crown Lands for the application of a Crown Lands licence to permit the implementation of the EMP (mid 2025). Concurrence is required from NSW DPI Fisheries, NSW DCCEEW and NPWS for the approval to be issued to Council.

For these reasons, and given the process is underway as integrated in our longer-term studies and programs to be consistent with all other EMPs, we would not recommend an urgent review progressing. An alternate recommendation that accords with the current work program is outlined below.

That Council:

- 1. Acknowledge the Shoalhaven Heads community have expressed their urgency regarding review of the Entrance Management Plan, trigger levels and regulatory requirements.**
- 2. Acknowledge the current work program completed or underway on: Flood Modelling; Floor Level Surveys; Floodplain Risk Management Study/Plan; and, Coastal Management Program, that will appropriately inform a review of the Entrance Management Plan.**
- 3. Direct the CEO (Director, City Development) to continue the drafting of the Lower Shoalhaven River Coastal Management Program, and give priority to the review of the Entrance Management Plan as an action and outcome.**

CL24.232

CL24.233 Notice of Motion - Dog Access to Bherwerre Wetlands Boardwalk

HPERM Ref: D24/303461

Submitted by: Cllr John Kotlash

Purpose / Summary

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

Recommendation

That Council:

1. Direct the CEO to include the Bherwerre Wetlands for evaluation as a dog prohibited area in accordance with the Access Areas for Dogs Policy and MIN23.740.
2. That the evaluation be undertaken in the same manner, and via the same processes as required for all coastal dog access and/or prohibited areas in the context of environmental and social impacts and/or benefits.
3. Provide a future report back to Council on the outcome of the evaluation.

Background

The Bherwerre wetland is very similar to the Husky Maritime Museum Boardwalk through the Wetlands/ Mangroves. It is a significant natural area with a lot of shorebird habitat. The raised pathways are not suitable for dogs as they provide no walk around space for people without encountering the dogs. Further to that the narrow raised walkways are not suitable surfaces for people to clean up after their dogs. Please investigate the provisions that apply to the Huskisson Boardwalk and apply them if possible to this area. I seek the support of other Councillors.

Note by the CEO

To give effect to MIN23.740, a strategic approach has been adopted that will progressively review all of all designated dog access areas (prohibited and off leash areas).

This work has commenced with the current focus being on the completion of REF's for coastal / beaches off leash areas, and will then progress to other dog off leash areas across the city. Staff can include the Bherwerre Wetlands as part of this programmed work.

This work is unfunded in the DPOP 2024/25 and is subject to the capacity within the Environmental Services Team to undertake the necessary environmental assessments.

Inclusion of Bherwerre Wetlands may require additional funding for internal resourcing and assessments, which is not allocated as part of the current budget should analysis and evaluations (including a Review of Environmental Factors under part.5 of the *Environmental Planning and Assessment Act 1979*) be required.

The progression of the Access Areas for Dogs Policy and location reviews will be reported back to Council as required, including relevant environmental assessments.

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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.