

Ordinary Meeting

Meeting Date: Monday, 13 February, 2023
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.30pm

Membership (Quorum - 7)
All Councillors

Please note: The proceedings of this meeting (including presentations, deputations and debate) will be webcast, recorded and made available on Council's website, under the provisions of the Code of Meeting Practice. Your attendance at this meeting is taken as consent to the possibility that your image and/or voice may be recorded and broadcast to the public.

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

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

Statement of Ethical Obligations

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

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

Agenda

1. **Acknowledgement of Country**
2. **Moment of Silence and Reflection**
3. **Australian National Anthem**
4. **Apologies / Leave of Absence**
5. **Confirmation of Minutes**
 - Ordinary Meeting - 23 January 2023
6. **Declarations of Interest**
7. **Presentation of Petitions**
8. **Mayoral Minute**

9. Deputations and Presentations

10. Call Over of the Business Paper

11. A Committee of the Whole (if necessary)

12. Committee Reports

Nil

13. Reports

City Performance

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Notices of Motion / Questions on Notice

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15. Confidential Reports

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CCL23.2	Tenders – Shoalhaven Area - Remediation of Multiple Landslips - RFT - 10053781
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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.

CCL23.3	Tenders – Establishment of a Panel of Suppliers to Provide Food and Beverages(Small Goods) to Council Facilities
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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.

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CL23.20 Re-Establishment Alcohol Free Zones Nowra CBD, Nowra Foreshore, Ulladulla, Sanctuary Point, Callala Beach, Basin View, St Georges Basin, Sussex Inlet - Feedback

HPERM Ref: D22/525901

Department: Business Assurance & Risk
Approver: Kevin Voegt, Director - City Performance

Attachments:

1. Alcohol Free Zone - Nowra CBD [↓](#)
2. Alcohol Free Zone - Nowra Foreshore [↓](#)
3. Alcohol Free Zone - Ulladulla [↓](#)
4. Alcohol Free Zone - Sanctuary Point [↓](#)
5. Alcohol Free Zone - Callala Beach [↓](#)
6. Alcohol Free Zone - Basin View [↓](#)
7. Alcohol Free Zone - St Georges Basin [↓](#)
8. Alcohol Free Zone - Sussex Inlet [↓](#)
9. Feedback from Alcohol Free Zone Consultation via Phone and Email (councillors information folder) [⇒](#)

Reason for Report

To consider the proposed re-establishment of those Alcohol-Free Zones in the areas of the Shoalhaven which are to expire in April 2023 as detailed in this report.

Recommendation

That Council:

1. Receive and note the summary of comments received from the community consultation process in relation to the proposed re-establishment of Alcohol- Free Zones.
2. On the basis that they are appropriate for the purpose of limiting alcohol consumption and maintaining community safety, proceed with the re-establishment without amendment of Alcohol-Free Zones which are for a period of four (4) years in the following areas:
 - a. Nowra CBD (Attachment 1)
 - b. Nowra Foreshore (Attachment 2)
 - c. Ulladulla (Attachment 3)
 - d. Sanctuary Point (Attachment 4)
 - e. Callala Beach (Attachment 5)
 - f. Basin View (Attachment 6)
 - g. St Georges Basin (Attachment 7)
 - h. Sussex Inlet (Attachment 8)

Options

1. As recommended – proceed with the re-establishment of the listed Alcohol-Free Zones without amendment until April 2027.

CL23.20

Implications: As outlined in the report, these areas have been agreed to by the NSW Police as appropriate for the purpose of limiting alcohol consumption and maintaining community safety.

2. That Council does not proceed with the re-establishment of the Alcohol-Free Zone in the areas specified in the report.

Implications: This may result in the increase of anti-social behaviour and property damage resulting from irresponsible street drinking.

Background

In considering a report to Council on 12 December 2022 outlining the proposed re-establishment of the Alcohol-Free Zones (AFZ) that are due to expire in April 2023, Council resolved as follows (MIN22.981):

That:

1. *Council proceeds with the re-establishment process of the Alcohol-Free Zones for a period of four (4) years in the areas of Nowra CBD, Nowra Foreshore, Ulladulla Sanctuary Point, Callala Beach, Basin View, St Georges Basin, and Sussex Inlet outlined in the attached maps, including consultation with licensees in the surrounding areas.*
2. *The CEO (Director City Performance) report back to Council summarising the feedback received.*

This report addresses part 2 of the above recommendation and details the reasons behind the recommendation to re-establish the alcohol-free zones under the Local Government Act.

Endorsement by the Council to re-establish the alcohol-free zones in the areas outlined in the attachments will result in the following actions:

- Required notifications to the NSW Police, Aboriginal Affairs NSW, and local liquor license holders.
- Adjustments to the signage in each of the alcohol-free zones to reflect the extension of the period of restriction to 7 April 2027
- Updates to the Council Website and related maps.

Community Engagement

Council advertised the proposal on two (2) occasions in both the South Coast Register and the Milton Ulladulla Times on 11 and 18 January 2023.

Council also contacted the 64 local liquor license holders, NSW Police, and the Rangers/Compliance Unit within Council.

Of the 64 premises contacted, Council received support demonstrated through 27 responses (feedback was accepted both in writing and verbally) in favour of the re-establishment of the existing AFZ's. There were no objections received.

The most common responses were support on the basis that the AFZs assist in providing safety for the community and assist NSW Police to addressing anti-social behaviour and littering in those locations.

Further comments from supermarket retailers were in support as it *dissuades customers of supermarkets from purchasing liquor for immediate consumption in public areas in the vicinity of the supermarkets.*

CL23.20

Although the businesses contacted were in support of the AFZ, a number of them were in support of the consumption of Alcohol within the AFZ during one off events that have the requisite approvals in place.

Comments received from NSW Police were supportive of the proposal.

Comments from Ranger Services include:

No objections from Ranger Services, Rangers have little to no involvement with enforcement of the AFZ's as this duty falls to the NSW Police.

The detailed feedback received is shown as Attachment 9 within the Councillors Information Folder.

Following the adoption of this recommendation Council will notify the 64 premises who currently hold liquor licences in the surrounding areas outlining the re-established AFZ restriction dates will be extended from 7 April 2023 to 7 April 2027.

Policy Implications

There are no Policy implications however the Alcohol-Free Zones are established under Section 644 of the Local Government Act 1993.

Financial Implications

Advertising costs for South Coast Register and Milton Ulladulla Times and should Council proceed costs for reprinting of the AFZ stickers will be allocated from the Governance Unit Budget.

Risk Implications

Should Council not proceed with the re-establishment of the AFZ, there is potential for an increase in street drinking and anti-social behaviour in the Shoalhaven.

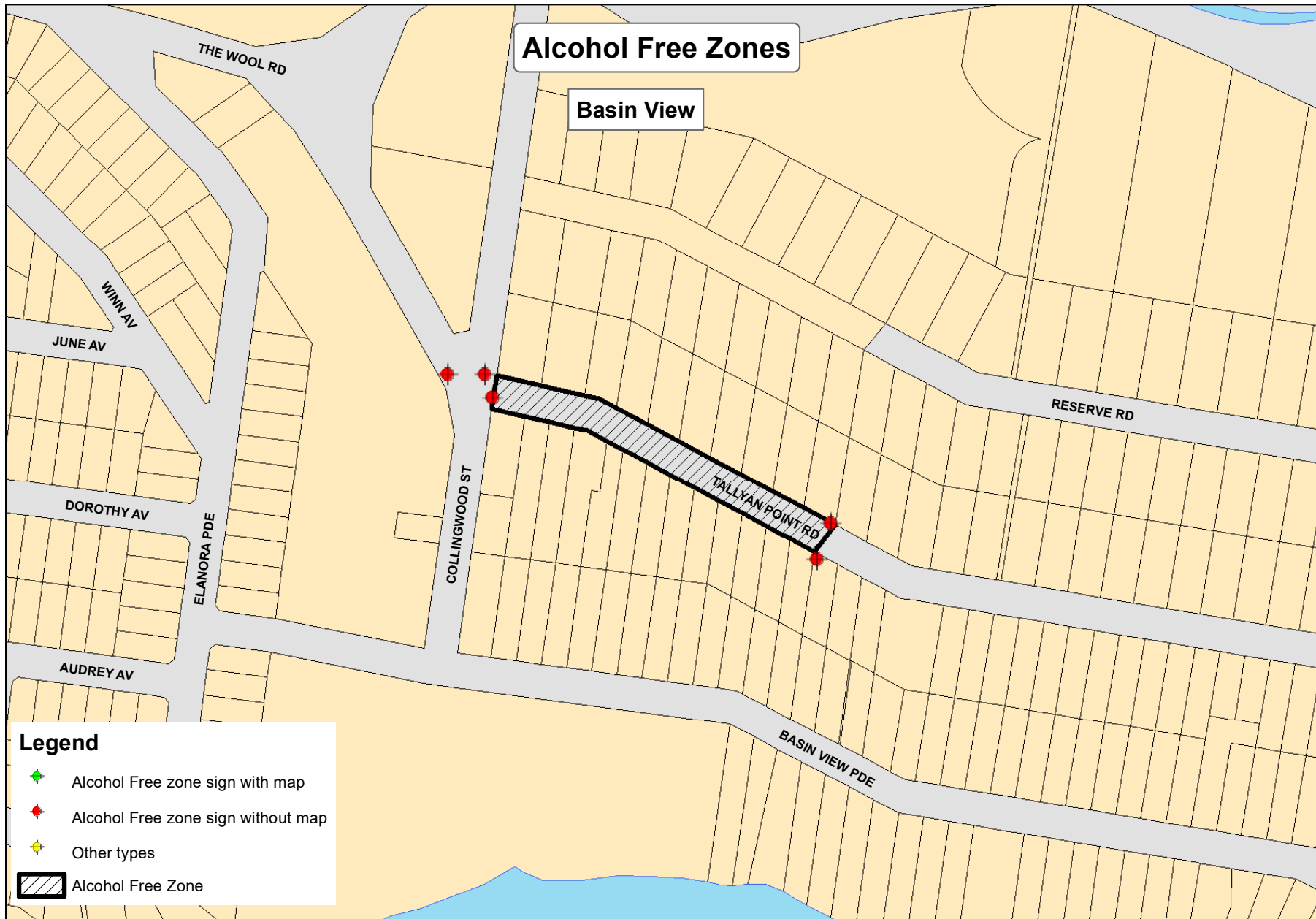

















Alcohol Free Zones

Legend

-  Alcohol Free zone sign with map
-  Alcohol Free zone sign without map
-  Other types

St Georges Basin

Date: 16/07/2015

0 100 200 400 Meters

CL23.20 - Attachment 7



CL23.21 Ongoing Register of Pecuniary Interest Returns - January 2023

HPERM Ref: D23/617

Department: Business Assurance & Risk

Approver: Kevin Voegt, Director - City Performance

Reason for Report

To provide the Council with the Register of Pecuniary Interest Returns from newly designated persons lodged with the Chief Executive Officer for the period of 1 January to 31 January 2023 as required under Section 440AAB of the Local Government Act 1993 and Part 4.26 of the Code of Conduct.

Recommendation

That the report of the Chief Executive Officer regarding the Ongoing Register of Pecuniary Interest Returns lodged for the period of 1 January to 31 January 2023 be received for information.

Background

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

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

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

Part 4.26 of the Model Code of Conduct states:

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

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

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

Directorate	Name	Designated Position Start Date	Returned
City Lifestyles	Michelle Babington	24/11/2022	03/01/2023
City Performance	Monica Oke	03/01/2023	03/01/2023
City Development	Darryl Pendlebury	15/11/2022	10/01/2023
City Development	Michael Langdon	07/12/2022	11/01/2023
City Development	Luke Moffitt	16/01/2023	17/01/2023

CL23.21

City Services	Stanley Oguine	16/01/2023	17/01/2023
City Development	Zoran Balukoski	16/01/2023	20/01/2023
City Development	Glendon Lee	03/01/2023	27/01/2023

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

Risk Implications

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

CL23.22 2024 Local Government Election Cost Estimates

HPERM Ref: D23/21023

Department: Business Assurance & Risk
Approver: Kevin Voegt, Director - City Performance

Attachments:

1. OLG Circular 22-35- Councils' Decisions on the Administration of their September 2024 Ordinary Elections [↓](#)
2. 22-35- Frequently Asked Questions Attachment - Councils' Decisions on the Administration of their September 2024 Ordinary Elections [↓](#)
3. 2024 Election Cost Estimate [↓](#)

Reason for Report

This report provides Council with cost estimates for the 2024 Elections which have been received from the Electoral Commission NSW (NSWEC) and seeks a determination from the Council on the provider for electoral services.

Recommendation

That:

1. Pursuant to s. 296(2) and (3) of the Local Government Act 1993 (NSW) ("the Act") that an election arrangement be entered into by contract for the Electoral Commissioner to administer all elections of Shoalhaven City Council.
2. Pursuant to s. 296(2) and (3) of the Act, as applied and modified by s. 18, that a council poll arrangement be entered into by contract for the Electoral Commissioner to administer all council polls of Shoalhaven City Council.
3. Pursuant to s. 296(2) and (3) of the Act, as applied and modified by s. 18, that a constitutional referendum arrangement be entered into by contract for the Electoral Commissioner to administer all constitutional referenda of Shoalhaven City Council.
4. Council note the cost estimate of \$782,298 (excluding GST) for the NSW Electoral Commission to conduct the 2024 Local Government Election and therefore increase the Election Budget (Project 102891) in future budget reviews to accommodate for the estimated election management costs and internal costs.
5. Council authorises the Chief Executive Officer (Director – City Performance) to finalise contractual arrangements with the NSW Electoral Commission by no later than 13 June 2023 (15 months before the next ordinary elections).
6. In 2025 (within six months of the 2024 election) the Council receive a report for submission to the Minister for Local Government on the Conduct of the 2024 Election including full and transparent costings of the election.

Options

1. As recommended. The Council has previously resolved to engage the NSW Electoral Commission to undertake the Election as required under Section 296AA of the Local Government Act 1993 by no later than 13 March 2022. Where councils have resolved to enter into an election arrangement with the NSWEC, the contract with the NSWEC must be finalised no later than 15 months before the next ordinary elections (i.e., 13 June 2023).

Implications: The election contractual arrangements will proceed.

CL23.22

2. The Council is to identify and appoint an alternate election service provider before 13 June 2023.

Implications: The Council is not aware of a service provider that would be able to meet the requirements of election services provider for the next election. It is likely that should a provider be identified that they would likely be less experienced in the provision of election services than NSWEC and this would constitute a significant risk and likely additional cost for the Council. A tender process would be required for the engagement of an alternate tender provider.

3. That the Council defer making a decision if further detailed information is required and consider the matter again for determination on the electoral provider before 13 March 2023.

Implications: If the Council does not make a determination before 13 March 2023, Council must find and engage an alternative election provider.

Background

Under section 296AA of the Local Government Act 1993 (the Act), councils are required to make a decision on how their ordinary elections in September 2024 are to be administered by 13 March 2023.

Each council must resolve either:

- to enter into an election arrangement with the NSW Electoral Commissioner (NSWEC) to administer all of the council's elections, polls and constitutional referenda or
- that the council's elections are to be administered by another electoral services provider engaged by the council.

Councils who choose to engage the NSWEC must enter into a contract for the provision of election management services by 13 June 2023 and resolve to do so by 13 March 2023.

If a council fails to decide on the administration of its elections, polls and referenda by 13 March 2023, it will not be able to engage the NSWEC to administer its ordinary election and it will be required to make its own arrangements with another electoral services provider for the administration of its elections. A council that fails to decide on the administration of its elections by 13 March 2023 will also be required to publish a notice of that failure on the council's website.

Further details of the engagement of the conduct of elections are outlined in the OLG Circular 'Councils' decisions on the administration of their September 2024 Ordinary

Elections' (**Attachment 1**) and 'Administration of the 2024 Elections - Frequently Asked Questions' (**Attachment 2**).

If a council resolves to adopt an electoral services provider other than the NSWEC, the resolution must state whether the CEO has identified an electoral services provider to be engaged for the next ordinary election and, if so, the name of that provider

The options available to Council for the administration of the election are as follows:

1. Engage the Electoral Commission NSW

Advice from OLG is that Council should only resolve to administer its own elections if it is confident that it has the capacity to do so. Most Councils use the NSWEC as they have the expertise, resources and experience to administer Local Government elections.

This would be the simplest approach and separates responsibilities from the Council and Council staff, as the NSWEC engagement is to manage and conduct the complete election process and is the lowest risk option to Council.

The election arrangement with NSWEC is a standardised contract for all councils. The service schedule and costs schedule of the standardised contract will vary between councils and are made by the NSWEC in consultation with each council.

Under this option, NSWEC would also manage complaints or protests arising from the elections, rather than the CEO and staff, as would be required under other options.

The Local Government Act exempts the need to call tenders if the NSWEC is engaged.

On 30 January 2023, Council received the cost estimate for the 2024 Election from the NSW Electoral Commission. The estimate is provided as **Attachment 3** to this report.

The cost estimate provided to Council is for \$782,298 excluding GST.

The NSWEC has successfully conducted the last 2 elections of the Council (2016 and 2021)
If the Council

2. Engaging a third-party company to conduct the election.

Council has not received any correspondence, offers or quotations from private companies who have the capacity to run a Local Government election. Staff are not aware of any provider that would meet the needs of the Council in this space.

As the cost to conduct an election for the Shoalhaven Local Government Area exceeds the \$150,000 tender limit applies and therefore Council will need to call for tenders prior to officially engaging any private company to conduct the elections on Council's behalf. This is not required if the NSWEC is engaged. To avoid calling tenders Council would have to resolve, using the provisions of the Act & Regulations, that tenders would not be called because of extenuating circumstances or on the basis of unavailability of competitive or reliable tenderers.

Under the provisions at the time, Council was able to conduct its own election in 2012. This is no longer a permissible option.

For the 2016 and 2021 Local Government Elections the, the now position of Business Assurance & Risk Manager provided support and assistance to the CEO in the administrative tasks that were required to support the activities of the NSWEC which include:

- Assistance with the location of suitable premises for the Returning Officer, Pre-Poll and Polling venues
- Advertising
- Non-Residential Roll Management
- Providing information for staff and the public, including website updates.
- Responding to enquiries from the public and candidates
- Liaison with the NSWEC

The NSWEC is the dominant provider of electoral services in NSW. While other entities are able to provide electoral services, they usually propose a model that requires a significant resource investment from the council in terms of staffing and equipment.

Further, Council will need to be satisfied that if the provider claims to be able to obtain all the electoral material, or hire the necessary venues, or arrange the printing of the ballot papers, or conduct the count, that they can demonstrate their successful completion of these tasks in similar circumstances.

A key consideration will be whether the provider is able to administer the complex counts required under the weighted inclusive Gregory method of preference allocation prescribed under the Local Government (General) Regulation 2021 (the Regulation) for council elections using the proportional system.

It is also a requirement that the method proposed to be used by the provider to conduct the count of the ballot papers (whether through the use of data entry or scanning equipment) can comply with the formality, scrutiny and record keeping provisions contained in the Act and Regulation.

Given these challenges and the success that Council has had using the NSWEC in recent elections, there has been no investigations of other providers to date due.

If a council resolves to adopt an electoral services provider other than the NSWEC, the resolution must state whether the CEO has identified an electoral services provider to be engaged for the next ordinary election and, if so, the name of that provider

By- Election and Countback for the current term of the Council

Where a council resolves to engage the NSWEC to administer its elections, polls and referenda, the election arrangement with the NSWEC will apply to the 2024 ordinary election and every election, poll and referendum including any by-election or countback election until the contract is automatically terminated 18 months before the following ordinary election of councillors.

Following the 2021 election, Council resolved at its first meeting that any casual vacancies occurring in the office of a councillor within 18 months after the last ordinary election of councillors for the Council on 4 December 2021 are to be filled by a countback of votes cast at that election for the office in accordance with section 291A of the Act (MIN22.8).

That

- 1. Pursuant to section 291A(1)(b) of the Local Government Act 1993 (the Act) Shoalhaven City Council declare that casual vacancies occurring in the office of a Councillor within 18 months after the last Ordinary election of Councillors for the Council on 4 December 2021 are to be filled by a countback of votes cast at that election for the office in accordance with section 291A of the Act; and*
- 2. The Council directs the CEO to notify the NSW Electoral Commissioner of the Council's decision within 7 days of the decision.*

Should the need arise for a by-election for the Shoalhaven City Local Government Area in advance of the September 2024 elections, the arrangements for the service provision for NSWEC from the 2021 elections will apply.

Once the September 2024 elections have been conducted, the Council will be requested to determine the application of count- back as one of the first items of business in the new term.

Additional Information and Election Statistics

To assist Councillors in understanding the impact of the Election the following information is provided.

Number of Enrolled Voters for as at 24 January 2023:

Ward 1 – 28,470

Ward 2 – 28,406

Ward 3 – 27,988

Total Enrolled Voters – 84,864

Community Engagement

There is no requirement for the Council to engage with the community with respect to the resolution to appoint an electoral provider.

CL23.22

Financial Implications

In November 2019, prior to the 2021 Council elections (postponed from 2020 due to the pandemic) Council was quoted \$663,032 (Ex GST) by NSWEC to conduct the election. In May 2022, the final account of \$663,031 (ex GST) for the 2021 elections was received.

The table below provides comparison to the previous election taking into account for the 2021 elections there was an NSW Government Subsidy provided, no subsidy has been announced for this coming election.

Table 1.

Shoalhaven City Council - Election Cost Summary

Description	2021	2024	Variance 2020 Election to 2024	
Council Election Costs	\$663,032.00	\$782,298.00	\$119,266.00	15%
Electors	81,000	84,864	3,864	4.5%
Cost per Elector	\$8.19	\$9.22	\$1.03	11%
Total Variance			\$123,131.03	18.5%

With respect to the cost estimate for the 2024 Election, the Electoral Commission stated:

The Electoral Commission will only ever charge the actual cost to conduct the election – we do not apply any margin to the cost. Costs have risen since the December 2021 elections and are likely to continue to rise between the date of this estimate and the holding of the election.

Key cost increases include:

- Early voting centre rental costs have significantly increased since LGE21
- Logistics costs are increasing by 10% year-on-year
- The fuel levy for material deliveries and collections has increased by 24%
- The 3-year CPI increase is 13.12%
- Staff costs have risen by 2.83% pa
- Growth in the number of electors is 3.34% over 3 years
- Paper costs have risen (affecting ballot papers and printed rolls)

It is important to note that this estimate does not include the 'core' costs of running the election (for example, the Electoral Commission's head office operating/capital costs such as staff payroll, training, IT system development and maintenance of the electoral roll). These core costs are met by the NSW Government.

For the 2024 election there will be in place a requirement for the CEO to provide a report for the Minister for Local Government within 6 months of the election outlining full and transparent costs for the elections including both the cost to engage electoral services and any internal costs, such as advice and other services provided to electors, costs of information and candidate running seminars, staff time including the CEO's time (by proportion), technological support etc.

Policy Implications

The Local Government Act (s.296(2) and (3) of the Local Government Act 1993 (NSW)) is definitive in the requirement to resolve to enter into an arrangement with the NSWEC by the specified date or conduct its own elections. Council needs to be assured that the election is conducted professionally and transparently and still be cost effective.

CL23.22

Risk Implications

The option to have the CEO administer the election rather than the engagement of the NSWEC holds additional operational, reputation and legal risks for the organisation.

Council needs to be assured that the election is conducted professionally and transparently and still be cost effective.



Office of
Local Government

Circular to Councils

Circular Details	Circular No 22-35/ Date 11 November 2022/ A839620
Previous Circular	18-43 – <i>Council decisions on the administration of the September 2020 elections</i>
Who should read this	Councillors / General Managers / Council governance staff
Contact	Council Governance Team / 02 4428 4100 / olg@olg.nsw.gov.au
Action required	Council to Implement

Councils' decisions on the administration of their September 2024 ordinary elections

What's new or changing

- Under section 296AA of the *Local Government Act 1993* (the Act), councils are required to make a decision on how their ordinary elections in September 2024 are to be administered by **13 March 2023**.
- Each council must resolve **either**:
 - to enter into an election arrangement with the NSW Electoral Commissioner (NSWEC) to administer all the council's elections, polls and constitutional referenda **or**
 - that the council's elections are to be administered by another electoral services provider engaged by the council.
- If a council does not resolve to engage the NSWEC to administer its elections by **13 March 2023**, it must engage another electoral services provider to do so.

What this will mean for your council

- Councils are required to make a decision under section 296AA by 13 March 2023 on the administration of their next ordinary election. Information to assist councils in making that decision is provided in the attached FAQ.
- If a council is proposing to engage the NSWEC to administer its elections, it should resolve to do so as soon as possible and notify the NSWEC.

Key points

- Where councils resolve to engage the NSWEC to administer their elections, polls and referenda, a model resolution is suggested in the attached FAQ.
- If a council resolves to adopt an electoral services provider other than the NSWEC, the resolution must state whether the general manager has identified an electoral services provider to be engaged for the next ordinary election and, if so, the name of that provider.

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Where to go for further information

- Further information to assist councils' decisions on the administration of their September 2024 ordinary elections is contained in the FAQ attached to this circular.
- Contact the Office of Local Government's Council Governance Team by telephone on 02 4428 4100 or by email at olg@olg.nsw.gov.au.
- Contact Steve Robb at the NSW Electoral Commission by telephone on 1300 135 736.

Melanie Hawyes
Deputy Secretary, Crown Lands and Local Government

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FREQUENTLY ASKED QUESTIONS

Part 1 Decision making on the administration of elections

What decisions must councils make on the administration of their elections?

Under section 296AA of the *Local Government Act 1993* (the Act), each council must resolve by **13 March 2023** either:

- to engage the NSW Electoral Commissioner (NSWEC) to administer the council's elections, polls and referenda, or
- that the council's elections are to be administered by another electoral services provider.

What happens if a council fails to make a decision on the administration of its elections by 13 March 2023?

If a council fails to make a decision on the administration of its elections, polls and referenda by 13 March 2023, it will not be able to engage the NSWEC to administer its ordinary election and it will be required to make its own arrangements with another electoral services provider for the administration of its elections.

A council that fails to make a decision on the administration of its elections by 13 March 2023 will also be required to publish a notice of that failure on the council's website.

Part 2 Election arrangements with the NSWEC

What election arrangements can councils enter into with the NSWEC?

The election arrangement is a standardised contract for all councils. The service schedule and costs schedule of the standardised contract will vary between councils and are made by the NSWEC in consultation with each council.

Where a council resolves to engage the NSWEC to administer its elections, polls and referenda, the election arrangement with the NSWEC will apply to the 2024 ordinary election and every election, poll and referendum including any by-election or countback election until the contract is automatically terminated 18 months before the following ordinary election of councillors.

Where a council resolves to engage the NSWEC to administer its elections, polls and referenda, it should use the model resolutions provided below.

If a council wishes to engage the NSWEC to administer its elections, polls and referenda what form should its resolution take?

Councils wishing to make a resolution that an election arrangement be entered into for the NSWEC to administer all elections, polls and referenda under section 296(3) of the Act should use the following model resolution:

The [insert full description of council] ("the Council") resolves:

1. *pursuant to s. 296(2) and (3) of the Local Government Act 1993 (NSW) ("the Act") that an election arrangement be entered into by contract for the Electoral Commissioner to administer all elections of the Council.*

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2. pursuant to s. 296(2) and (3) of the Act, as applied and modified by s. 18, that a council poll arrangement be entered into by contract for the Electoral Commissioner to administer all council polls of the Council.
3. pursuant to s. 296(2) and (3) of the Act, as applied and modified by s. 18, that a constitutional referendum arrangement be entered into by contract for the Electoral Commissioner to administer all constitutional referenda of the Council.

When must the election arrangements with the NSWEC be finalised?

Where councils have resolved to enter into an election arrangement with the NSWEC, the contract with the NSWEC must be finalised no later than 15 months before the next ordinary elections (ie **13 June 2023**).

Can election arrangements with the NSWEC be terminated?

Yes, but only after the council's ordinary election. An election arrangement for the NSWEC to administer all elections, polls and referenda of a council can be terminated by the council or the NSWEC at any time after the ordinary election by giving written notice of termination and in accordance with any notification requirements set out in the contract.

If the election arrangement is not terminated by either party, the arrangement is automatically terminated 18 months before the following ordinary election when the council will be required to determine who will conduct its next ordinary election.

If a council does not engage the NSWEC to administer its ordinary election, can it engage the NSWEC to administer a particular by-election, poll or referendum after the ordinary election?

Yes. Where a council does not enter into an election arrangement with the NSWEC to administer its ordinary election, the council may resolve to enter into an election arrangement with the NSWEC to administer a particular by-election, poll or referendum following the ordinary election.

If councils resolve to engage the NSWEC to administer a particular by-election, poll or referendum after the ordinary election, they should use the model resolutions provided below.

If a council wishes to engage the NSWEC to administer a particular by-election or countback election, what form should its resolution take?

Councils wishing to engage the NSWEC to administer a particular by-election or countback election after the ordinary election should use the following model resolution:

The [insert full description of council] ("the Council") resolves pursuant to ss. 296(2) and (4) of the Local Government Act 1993 (NSW) that:

1. *an election arrangement is to be entered into for the Electoral Commissioner to administer [insert description of the particular election but do not do so by date in case the election date is changed or postponed]; and*
2. *such election arrangement is to be entered into by contract between the Electoral Commissioner and the Council.*

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Note: Please refer below for additional information concerning limitations with respect to countback elections.

If a council wishes to engage the NSWEC to administer a particular poll, what form should its resolution take?

Councils wishing to engage the NSWEC to administer a particular poll after the ordinary election should use the following model resolution:

The [insert full description of council] ("the Council") resolves pursuant to ss. 296(2) and (4) of the Local Government Act 1993 (NSW), as applied and modified by s.18, that:

- 1. a council poll arrangement be entered into for the Electoral Commissioner to administer [insert description of the council poll but do not do so by date in case the poll date is changed or postponed]; and*
- 2. such council poll arrangement be entered into by contract between the Electoral Commissioner and the Council.*

If a council wishes to engage the NSWEC to administer a particular referendum, what form should its resolution take?

Councils wishing to engage the NSWEC to administer a particular referendum after the ordinary election should use the following model resolution:

The [insert full description of council] ("the Council") resolves pursuant to ss. 296(2) and (4) of the Local Government Act 1993 (NSW), as applied and modified by s.18, that:

- 1. a constitutional referendum arrangement be entered into for the Electoral Commissioner to administer [insert description of the constitutional referendum but do not do so by date in case the referendum date is changed or postponed]; and*
- 2. such constitutional referendum arrangement be entered into by contract between the Electoral Commissioner and the Council.*

If a council does not engage the NSWEC to administer its ordinary election, can it engage the NSWEC to administer a countback election following the ordinary election?

No. Under section 291A(b) of the Act, if the council's ordinary election was administered by an electoral services provider other than the NSWEC, a countback election to fill a casual vacancy must be conducted by a returning officer appointed by that electoral services provider.

Part 3 Election arrangements with other electoral services providers

What information must be included in a resolution to engage an electoral services provider other than the NSWEC?

Under section 296AA, where a council resolves that its elections are to be administered by an electoral services provider other than the NSWEC, the resolution must also state whether the general manager has identified an electoral services provider to be engaged for the next ordinary election and, if so, the name of that provider.

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As soon as practicable after the resolution is made, the general manager must publish a copy of the resolution on the council's website.

What should councils consider before making a decision to engage an electoral services provider other than the NSWEC?

In considering the use of other electoral services providers, it is important to clarify that they can deliver the elections for the council.

Councils need to be satisfied that if the provider claims to be able to obtain all the electoral material, or hire the necessary venues, or arrange the printing of the ballot papers, or conduct the count, that they can demonstrate their successful completion of these tasks in similar circumstances.

A key consideration will be whether the provider is able to administer the complex counts required under the weighted inclusive Gregory method of preference allocation prescribed under the *Local Government (General) Regulation 2021* (the Regulation) for council elections using the proportional system.

It is also a requirement that the method proposed to be used by the provider to conduct the count of the ballot papers (whether through the use of data entry or scanning equipment) can comply with the formality, scrutiny and record keeping provisions contained in the Act and Regulation.

If councils decide to use a commercial electoral services provider, is it necessary to go to tender?

Section 55 of the Act exempts councils from tendering when entering into a contract or arrangement for the NSWEC to administer the council's elections, referendums and polls. This exemption does not apply to contracts or arrangements with any other service provider.

As the amount involved in conducting council elections can be significant it is important to ensure that any commercial organisation is providing value for money. It is also important to ensure that as public funds are being expended, principles of openness, transparency and accountability are not compromised.

Unless the cost of administering the elections is under \$250,000 or any of the other exemptions provided for in section 55 apply, councils will be required to go to tender or to conduct a selective tender when engaging a commercial electoral services provider.

What should councils consider when entering into a contract with a commercial electoral services provider?

In negotiating arrangements for the administration of their elections with commercial electoral services providers, councils need to ensure that:

- there will be an appropriate number of pre-poll and polling places
- there will be adequate staffing levels
- the provider uses counting software that can undertake counts using the weighted inclusive Gregory method
- the potential need for the provider to administer countback elections in the 18 months following the ordinary election.

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What is the appropriate number of polling places?

The appropriate number of polling places for any one council will depend on its individual characteristics and factors such as the number of electors, the geographic area it covers, available transport options and suitable venues.

While the cost of hiring venues will be a consideration, councils should also consider the following when negotiating the number and type of venues to be used with the electoral service provider:

- How many voters are there in total in the area, and how many voters can each particular venue comfortably handle?
- What venues have been used in the past by either the Australian Electoral Commission for federal elections or the NSWEC for either state or local government elections? What was the previous attendance pattern at these venues?
- Is the venue conveniently located, particularly in light of transport options?
- Is it suitable for the purpose of conducting an election? For example, is there sufficient space for the various tables, voting screens, ballot boxes, throughput of voters? Is there appropriate furniture for electoral officials? For example, if small tables and chairs are used in a primary school these are not appropriate for adults involved in election-related activities.
- Is it easily accessible for all voters and in particular those with a disability, mobility issues, the elderly or frail, parents with prams?
- Are there venues located close to ward boundaries that can issue ballot papers for both the ward in which they are located as well as votes for adjoining ward/s? Or in the case of an undivided council, venues located close to the boundary of another council or councils?
- Is appropriate public liability insurance in place?

It is likely that the more electors a council has, the more polling places it will need.

What are the appropriate staffing levels for a council election?

Determining the appropriate number of staff required for any particular council area depends on the estimated number of votes likely to be cast and the volume for each particular voting option (pre-poll, declared institution, postal and election day) as this will have an impact on the categories of staff recruited. For example, if it is anticipated that there will be a high demand for pre-poll voting it may be necessary to have more office assistants available in the returning officer's office than in an area where it is likely that more votes will be taken on election day at polling places.

Under the legislation, all polling places must have a minimum of two staff, one of whom is the polling place manager.

The NSWEC's polling place staffing formula is based on 450 votes per issuing table (at one election official per table) and the overall projected number of votes for the polling place determines the number of issuing tables. The number of issuing tables determines whether a particular polling place requires a deputy polling place manager, a ballot box guard and/or an enquiry officer.

Is it possible to conduct the count and distribution of preferences manually?

No. The weighted inclusive Gregory method used for allocating preferences at elections using the proportional system, uses a fractional transfer system. All ballot papers of the elected candidate are used to distribute the surplus (instead of a sample). The ballot papers are distributed at a reduced rate with each transfer of votes by applying a transfer value, making manual counts impossible.

Councils should ensure that any commercial electoral services provider they engage to conduct their elections is able to undertake a count utilising counting software that allocates preferences using the weighted inclusive Gregory method.

What arrangements should be made for countback elections?

Councils have the option of filling vacancies that occur in the 18 months following the September 2024 council elections using a countback of the votes cast at the ordinary election instead of a by-election. Countback elections are not available for elections using the optional preferential voting system (including elections for popularly elected mayors).

In order to fill vacancies using a countback election, councils must resolve at their first meeting following the ordinary election that any casual vacancy is to be filled by a countback election.

If councils are proposing to fill vacancies using a countback election, they should factor this into their contractual arrangements with commercial electoral services providers. Among other things, the contractual arrangements should ensure the following:

- the retention of all electoral material, information and data for the 18 month period following the ordinary election during which countback elections may be used
- the safe storage and security of electoral material, information and data (including from cyber-attack)
- the council has ongoing access to the electoral material, information and data from the ordinary election.

What other considerations should councils factor into their contractual arrangements with commercial electoral services providers?

Councils should ensure:

- that the commercial electoral services provider has a formal policy that ensures that scrutineers are given as much opportunity as possible to be involved in the counting process by allowing the examination and comparison of ballot papers, the data entry of votes recorded on ballot papers (whether by manual data entry or digital scanning) and electronic or data entry records
- that the commercial electoral services provider has an audit system in place for checking ballot papers against the information entered into the electronic counting system used by the provider and that scrutineers are permitted to observe the audit process and its results
- that the commercial electoral services provider will make full preference data available for publication

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- that the source code of counting software used by the commercial electoral services provider has been independently audited by an accredited source code auditor.

What services will the NSWEC provide to councils that engage an electoral services provider to administer their elections?

The NSWEC provides enrolment services to electoral services providers such as the provision of authorised rolls, candidates' rolls, an online look-up facility for non-residential electors, a list of general postal voters and enrolment declaration envelopes. These products and services will be provided at cost to the relevant councils.

What information are councils required to provide to the NSWEC where they engage another electoral services provider to administer their elections?

Councils that have engaged a provider other than the NSWEC to administer their elections are required to provide certain information to the NSWEC to support it in the exercise of its statutory functions in connection with the administration of candidate registration and other electoral funding and disclosure requirements and the enforcement of the failure to vote provisions of the Act and Regulation.

How should election costs be managed?

General managers should prepare a budget for all facets of council elections, and record and monitor expenditure to ensure a shortfall does not occur. Activity based costing will need to be applied to ensure that all costs and expenses are identified.

Areas to be covered include:

- wages of all electoral officials and any council staff engaged in election-related work
- recruitment and training
- advertising including the placement of statutory advertisements
- candidate and elector information
- hire of venues, furniture and equipment
- production of all election-related material, including forms, envelopes and cardboard material
- printing of ballot papers including in Braille, if requested
- transportation of election-related materials
- IT software and hardware
- administration expenses such as telephone, postage, courier services, photocopyers and printers
- insurance

A number of key variables will not be known until the close of nominations, namely whether an election will be uncontested, whether there will need to be a by-election due to insufficient nominations, whether candidates will form groups and request group voting squares, and whether as a result, ballot papers will need to be printed to allow 'above the line' and 'below the line' voting.

These factors will have an impact on costs. However given the lead time required to ensure voting can go ahead at the prescribed times, provision for all likely costs has to be made.

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What are the reporting requirements on election costs?

Within six months of the election, the general manager must prepare a report for the Minister for Local Government on the conduct of each election. Full and transparent costings for each election must be disclosed in this report.

The following list is not exhaustive but contains a number of items that should be reported on:

- time spent on the election by the general manager as a proportion of the general manager's remuneration,
- time spent on the election by council staff as a proportion of council staff remuneration,
- the remuneration of council staff employed specifically for the purpose of the election,
- the remuneration, recruitment and training costs of election officials,
- the cost of running any candidate information seminars,
- the cost of hiring venues and equipment for the election, including council venues and equipment and any associated costs,
- the cost of any technological support, including the development of any counting software,
- the cost of preparing the written report on the election required under the Regulation,
- any electoral services provided to electors,
- any electoral services provided to candidates,
- operational details of the election,
- an overall evaluation of the conduct of the election, including feedback from stakeholders,
- the number of electors entitled to vote at the election and the number of electors who voted, specifying the number of electors who voted personally or by post,
- the cost to the council of engaging the electoral services provider to administer the election.

What is meant by 'full and transparent costings'?

It needs to be acknowledged that although council staff may be used to undertake administrative tasks related to the conduct of elections, this comes at a cost. Notably any time spent on election-related work is time not spent on other council duties. Similarly use of council office space or office equipment or resources for election-related work is at the expense of other day to day council activities.

The identification of activity-based costs and expenses allows a comparison with the fees charged by the NSWEC, to see whether one option is better value than the other for ratepayers.

Even in the case of an uncontested election or where there are insufficient nominations to enable the election to proceed on election day, there will be costs associated with having reached that stage, which also need to be reported.



**2024 Local Government Election - Cost Estimate
as at 30th January 2023
Shoalhaven Council**

Projects / Deliverables	Amount
<i>Ballot Papers</i>	16,893
<i>Call Centre</i>	28,843
<i>Counting and Results - Centralised</i>	-
<i>Counting and Results - Declaration Voting</i>	19,955
<i>Event Staffing</i>	419,784
<i>Information Technology</i>	29,665
<i>Logistics</i>	58,360
<i>Postal Voting Services</i>	46,050
<i>Venues</i>	105,075
<i>Voter Awareness</i>	49,203
<i>Financial Services</i>	8,470
<i>Constitutional Referendum</i>	-
<i>Council Poll</i>	-
TOTAL (excluding GST)	782,298
GST	78,230
TOTAL (including GST)	860,528

Note

This estimate is based on the Council election being fully contested

Shared resources will be utilised where practical

CL23.22 - Attachment 3

CL23.23 Policy - Public Access to Council Information

HPERM Ref: D23/38275

Department: Business Assurance & Risk
Group: City Performance

Attachments: 1. Public Access to Council Information Policy Draft (under separate cover)

Reason for Report

The purpose of this report is to seek Council's adoption of the Public Access to Council Information Policy (the Policy). It is a public policy and therefore requires formal adoption by the Council.

Recommendation

That Council adopts the revised Public Access to Council Information Policy as attached to this report.

Options

1. Adopt the draft Policy as attached.

Implications: The Policy will be adopted by Council.

2. An alternative recommendation.

Implications: Council can request further details, seek further community input, or make other changes

Background

The Public Access to Council Information Policy is a policy document which provides clear direction to Council employees and the community on the manner in which the Council provides access to records and information held by the Council.

The Public Access to Council Information Policy is attached to this report for reaffirmation, the changes proposed are shown using track changes in the attachment.

The Policy was first adopted 2006 and was last significantly changed 2018.

The changes have been suggested to

- Include position title amendments.
- Include the most relevant and updated Act and Regulation information is referenced within.
- Remove the forms as appendences so that these can be updated and changed as required, without the need to change the Policy.
- And align with our newly adopted Privacy Management Plan

Community Engagement

There is no requirement for community consultation as the intent of the Policy has not been substantially changed. The amendments proposed are agreed by both the Governance

CL23.23

Coordinator and Council's Information and Privacy Officer, who hold the delegation to determine Access to Information Applications received under the Government Information (Public Access) Act 2009. Research has been undertaken to ensure the attached policy captures all Open Access Information listed under both the Act and Regulation and is consistent with other NSW Councils. Prior to this Policy being reported to Council for adoption, it was endorsed by Council's Executive Management Team.

Policy Implications

The changes suggested bring this policy into alignment with our newly adopted Privacy Management Plan and ensure the most relevant and updated legislative requirements are referenced within. The policy in its current format can be viewed [here](#).

CL23.23

CL23.24 LGNSW Rural and Regional Summit - FRANC.2023 Stormwater Conference - Australian Small Bridges Conference

HPERM Ref: D23/42393

Department: Business Assurance & Risk

Approver: Kevin Voegt, Director - City Performance

Reason for Report

To consider Councillor attendance at the following conferences:

- a. LGNSW Rural and Regional Summit scheduled for 20 February 2023 in Sydney.
- b. FRANC.2023 Stormwater Conference scheduled for 28-29 March 2023 in Sydney.
- c. Australian Small Bridges Conference scheduled for 16-17 May 2023 in Broadbeach, QLD.

Recommendation

That Council

1. Notes the details of the following conferences:
 - a. LGNSW Rural and Regional Summit scheduled for 20 February 2023 in Sydney
 - b. FRANC. (Future- Focused, Resilient, Adaptive and Networked Communities.) 2023 Stormwater Conference scheduled for 28-29 March 2023 at Brighton Beach, Sydney.
 - c. Australian Small Bridges Conference scheduled for 16-17 May 2023 in Broadbeach, QLD
2. Authorises available Councillors to attend the conferences and such attendance be deemed Council Business.
3. Travel, registration fees, accommodation and all reasonable out-of-pocket expenses be met in accordance with its adopted policy.
4. Request Councillors attending the conferences to provide a written report within 30 days of returning from the conference.

Options

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

CL23.24

Background

The following conferences are considered relevant to local government, Information in relation to the conferences is available at the following links:

- [LGNSW Rural and Regional Summit](#)
- [FRANC.2023 Stormwater Conference.](#)
- [Australian Small Bridges Conference.](#)

The LGNSW Rural and Regional Summit

Costs associated with the LGNSW Rural and Regional Summit are estimated as follows:

- registration: \$550.00
- travel, accommodation and out of pocket expenses: not yet determined.

The LGNSW Rural and Regional Summit commences at 8.00am and concludes at 7.00pm on Monday 20 February 2023. It will be held at the Sofitel Wentworth Hotel, Sydney.

The following Council Business is scheduled within the period of the LGNSW Rural and Regional Summit:

- Inclusion and Access Advisory Group 20 February 2023.

The FRANC.2023 Stormwater Conference

Costs associated with the FRANC.2023 Stormwater conference are estimates as follows:

- registration: \$995.00
- travel, accommodation and out of pocket expenses: not yet determined.

The FRANC.2023 commences at 9.00am on Tuesday 28 March 2023 and concludes at 5pm on Wednesday 29 March 2023. It will be held at the Novotel, Brighton Beach, Sydney

The following Council Business is scheduled within the period of the FRANC.2023 Stormwater conference:

- Ordinary Meeting 27 March 2023.
- Nowra CBD Revitalisation Strategy Committee 28 March 2023

The Australian Small Bridges Conference and Exhibition

Costs associated with the Australian Small Bridges Conference are estimated as follows:

- registration: Early bird (COB 16 March 2023) \$1,190.00 or \$1,300 (with dinner)
Standard \$1,340.00 or \$1,450 (with dinner)
- travel, accommodation and out of pocket expenses: not yet determined.

The Australian Small Bridges Conference commences 8.45am Tuesday 16 May 2023 and concludes at 4.00pm Wednesday 17 May 2023. It will be held at the Gold Coast Convention and Exhibition Centre, Broadbeach, Queensland.

The following Council Business is scheduled within the period of the Australian Small Bridges Conference

- Inclusion and Access Advisory Group 15 May 2023
- Youth Advisory Committee 17 May 2023
- Councillor Briefing 18 May 2023.

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

Policy Implications

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

Financial Implications:

Funds are available for Councillors to attend this conference.

CL23.25 Appointment of Members - Nowra CBD Revitalisation Strategy Committee

HPERM Ref: D23/34895

Department: Business Assurance & Risk
Approver: Paul Keech, Director - City Services

Reason for Report

To appoint new members to the Nowra CBD Revitalisation Strategy Committee following the recent EOI and due to quorum not being reached at the recent Nowra CBD Revitalisation Strategy Committee meeting scheduled on 31 January 2023 this is being reported directly to Council for resolution.

Recommendation

That the following applicants be appointed to the Nowra CBD Revitalisation Strategy Committee for a period of 12 months:

1. Retail/Business operator (non CBD Property owner) – Jessica Bromley
2. Retail/Business operator (non CBD Property owner) – Jason Cox
3. Community Member – Carlo Di Giulio

Options

1. As recommended

Implications: This will ensure vacant positions on the Committee are filled.

2. Adopt an alternate recommendation

Implications: Adopting an alternate recommendation would result in positions remaining vacant and therefore the possibility of not reaching quorum for future meetings.

Background

Following the recent EOI calling for two (2) Retail/Business Operator (non CBD Property Owner) and one (1) Community Member, Council received three (3) applications.

The three (3) applications received were for the Retail/Business Operator (non CBD Property Owner) and Community Member positions.

The Interview Panel convened and the applicants were recommended by the Panel to become members of the Committee for a period of 12 months.

The recommendation from the Interview Panel was reported to the Nowra CBD Revitalisation Strategy Committee at its meeting of Tuesday 31 January 2023. This meeting did not reach Quorum and the members and Councillors present requested that the Panel's recommendation be reported directly to Council to keep business on track for the Committee in March 2023.

CL23.25

Applicants Background

Jessica Bromley has a strong passion to create a community who can come together and share. Jessica operates a business in the CBD (Bomo Bulk) and has previous experience in Architectural Engineering.

Jason Cox has been involved in a community organisation and is keen to see positive improvements to the CBD. Jason manages a business in the CBD and has a background in Finance, Banking & Real Estate.

Carlo Di Giulio has a background in Urban Design and Town Planning. From previous experience he has an understanding of how town centres are perceived from stakeholders. Carlo is keen to see increased potential of investment and involvement in the CBD.

Prior to the conclusion of the 12-month period, Council will conduct an EOI process and invite the current applicants to re-apply.

Community Engagement

The EOI calling for applications was advertised throughout Council's networks, advertised in local paper two (2) times on 16 November and 30 November 2022. The EOI also appeared on Council's Website - Latest News Feed and on Council's Facebook Page on 11 November 2022.

CL23.25

CL23.26 Investment Report - November/December 2022

HPERM Ref: D23/24237

Department: Finance

Approver: Kevin Voegt, Director - City Performance

Attachments: 1. Shoalhaven Monthly Investment Report - December 2022 (under separate cover) [⇒](#)
2. Record of Investments November 2022 [↓](#)

Reason for Report

In accordance with Section 625 of the Local Government Act 1993 and Clause 212 of the Local Government (General) Regulation 2021, a written report is provided to Council setting out the details of all funds it has invested.

Recommendation

That Council:

1. Receive the Record of Investments for the period to 31 December 2022.
2. Note that Council's total Investment Portfolio (excluding the Long-Term Growth Fund) returned 2.97% per annum for the month of December 2022, just underperforming the benchmark AusBond Bank Bill Index (2.98% pa) by -1 basis point (-0.01%).
3. Note that the portfolio performed slightly below the benchmark in December due to additional increases in the AusBond Bank Bill Index and previous limitations with reinvesting term deposits with lower interest rates causing maturing returns to be below the benchmark.
4. Note that as Council reinvests its maturing term deposits with current increased interest rates, returns will improve back above the benchmark.
5. Note the performance of the Long-Term Growth Fund as presented in the report.

Options

1. The report on the Record of Investments for the period to 31 December 2022 be received for information.

Implications: Nil

2. Further information regarding the Record of Investments for the period to 31 December 2022 be requested.

Implications: Nil

3. The report of the Record of Investments for the period to 31 December 2022 be received for information, with any changes requested for the Record of Investments to be reflected in the report for the period to 31 January 2023.

Implications: Nil

Background

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

Portfolio Return

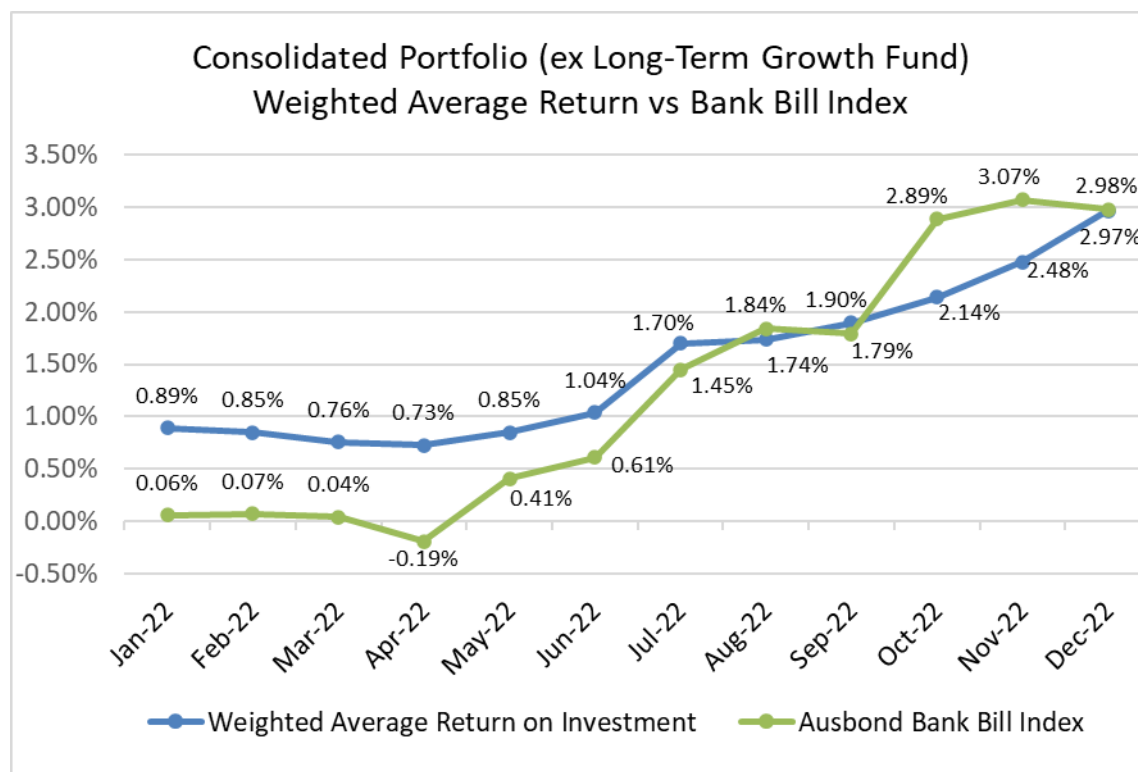
The overall portfolio (excluding cash) returned a negative 1.26% p.a. for the month of December 2022, due to the negative movement of the growth fund.

The investment returns excluding growth fund were a stable 2.97% p.a., just underperforming the benchmark AusBond Bank Bill Index (2.98% p.a.) by -1bp p.a. (-0.01%). Council's portfolio performed slightly below the benchmark in December due to additional increases in the AusBond Bank Bill Index and previous limitations with reinvesting term deposits with lower interest rates causing maturing returns to be below the benchmark. As Council reinvests its maturing term deposits with current increased interest rates, returns will improve back above the benchmark.

The Reserve Bank meeting on 7 February will likely see the cash rate increase from 3.10% to 3.35%. A further increase of 0.25% is predicted prior to June 2023 which would bring the cash rate to an expected peak of 3.60%. However, depending on the prevailing inflation rate, economists generally believe that the Reserve bank will begin to reduce the cash rate towards the end of 2023 or early in 2024.

Investments (Excluding Long-Term Growth Fund)

The following graph shows the performance of Council's Investment Portfolio (excluding Long-Term Growth Fund) against the benchmark on a rolling 12-month basis. As can be seen by the blue line in the below graph, historical performance up to the last quarter, has consistently exceeded the benchmark due to the mix of Council's Investment Portfolio. December has seen the weighted average return to benchmark levels.



CL23.26

Long-Term Growth Fund

Council's investment in TCorp's Long-Term Growth Fund returned a negative -\$603,983 or -30.64% (annualised) for the month of December 2022, bringing the financial year-to-date return to a positive 6.93% and rolling 12 months return to a negative -8.53%.

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

Investment Interest Earned – December 2022

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

Fund	Monthly Revised Budget \$	Actual Earned \$	Difference \$
General	110,114	219,847	109,733
Water	64,208	142,210	78,002
Sewer	35,671	82,826	47,155
Total excluding Long-Term Growth Fund	209,993	444,883	234,890

The interest earned for the month of December, excluding changes in the fair value of the TCorp Long-Term Growth Fund was \$444,883 compared to the monthly revised budget of \$209,993.

It is important for Council to note that in December, Council received a distribution from the liquidator of Lehman Brothers Australia Ltd in the amount of \$592K. This relates to the investments held by Council back in 2008 when Lehman Brothers went into bankruptcy. Relevant budget adjustments will be reported in the Q2 Budget Report.

Investment Interest Earned - Year to Date

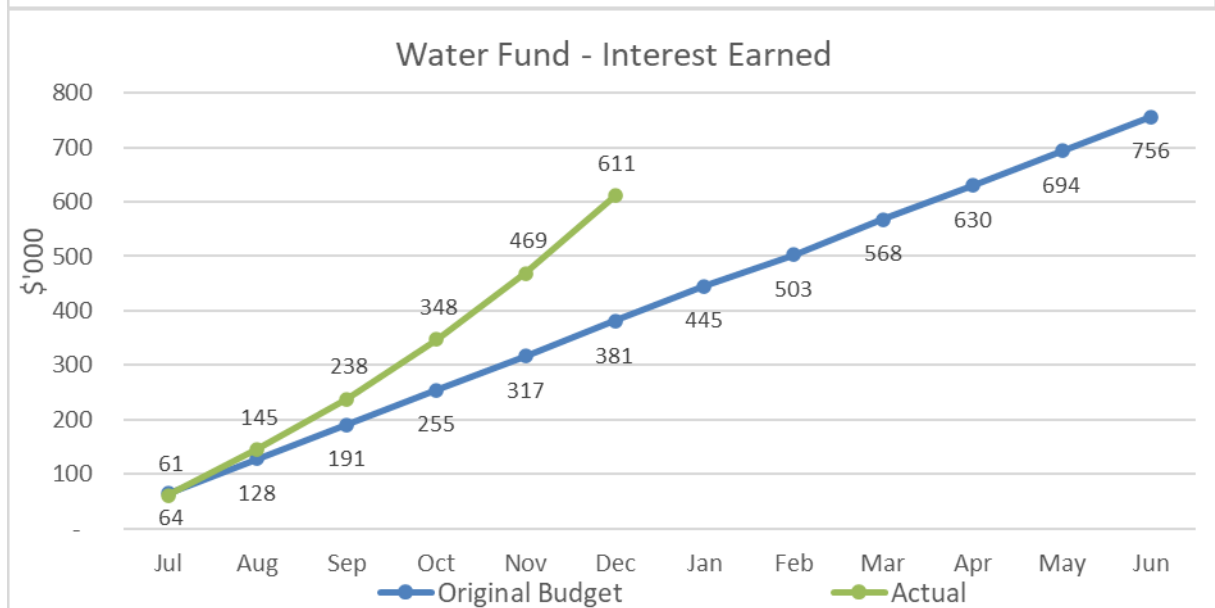
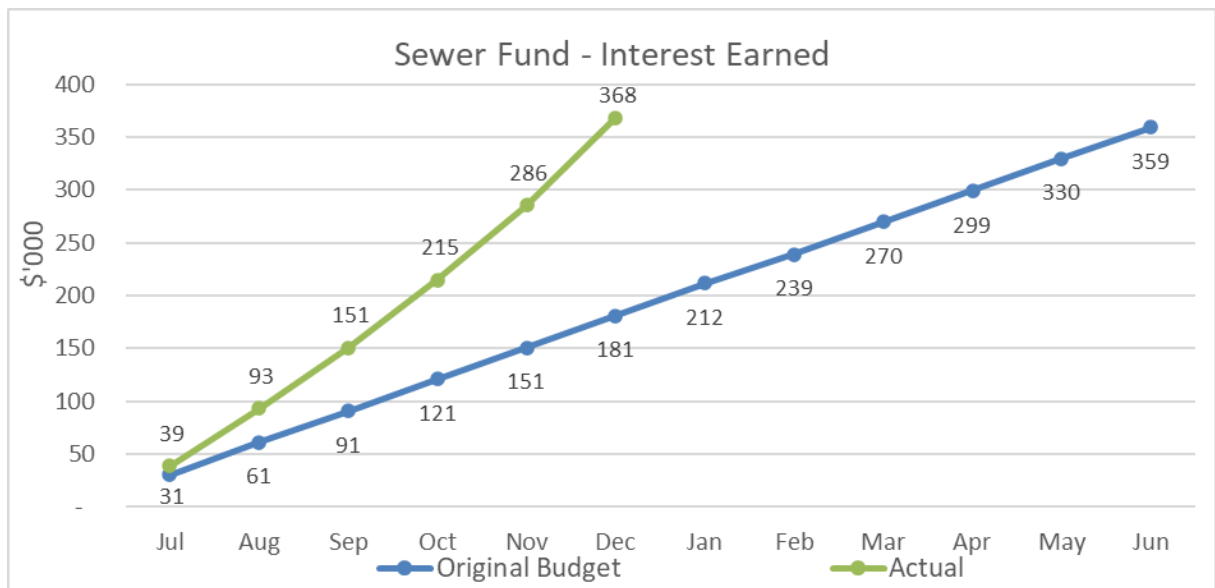
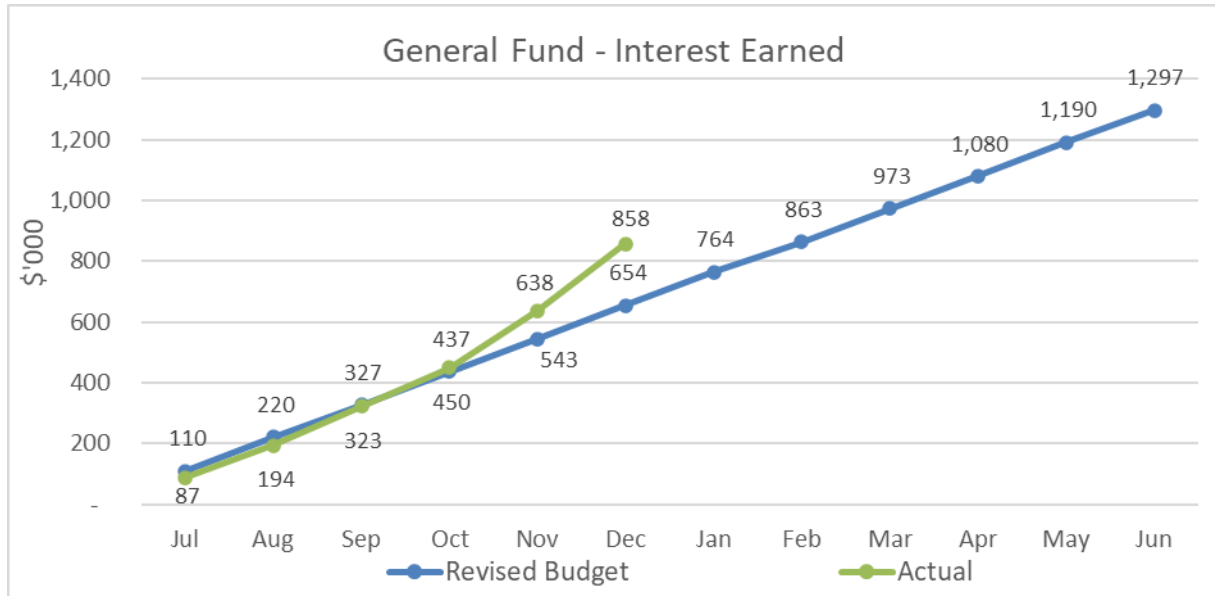
The following table demonstrates how the actual amount of interest earned year to date has performed against the total budget.

Fund	Revised Total Annual Budget \$	Actual YTD \$	% Achieved
General	1,296,500	857,635	66.15%
Water	756,000	611,187	80.84%
Sewer	420,000	368,403	87.71%
Total excluding Long-Term Growth Fund	2,472,500	1,837,225	74.31%

The cumulative interest earned for the year (July to December), excluding the change in fair value of TCorp Long-Term Growth Fund was \$1,837,225 which is 74.31% of the current full year revised budget.

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

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Cash and Restricted Assets

Record Of Investments		
Cash and Investment Balances		
	\$ December 2022	\$ November 2022
Cash and Investments Held		
Cash at Bank - Transactional Account	10,676,598	14,501,860
Cash on Hand	20,191	20,191
Other Cash and Investments	184,627,090	196,994,853
	195,323,879	211,516,904
Fair Value Adjustment	(189,779)	(179,279)
Bank Reconciliation	(218,663)	483,603
	(408,442)	304,324
Book Value of Cash and Investments	194,915,437	211,821,228
Less Cash & Investments Held in Relation to Restricted Assets		
Employee Leave Entitlements	5,880,448	5,880,448
Critical Asset Compliance	406,625	420,901
Other Internal Reserves	2,796,725	3,189,974
Section 7.11 Matching Funds	212,932	302,621
Strategic Land Development Reserve	5,258,340	6,210,189
Plant Replacement	558,203	566,586
S7.11 Recoupment	326,807	274,516
Water Communication Towers	5,209,961	5,148,250
Commitment To Capital Works	1,672,520	1,732,753
Property Reserve	715,349	723,494
Total Internally Restricted	23,037,910	24,449,732
Loans - General Fund	34,610,381	29,923,571
Self-Insurance Liability	4,161,576	4,517,375
Grant reserve	14,725,050	25,553,380
Section 7.11	18,212,739	18,585,045
Special Rate Variation	1,923,218	3,081,108
Storm Water Levy	388,998	451,902
Trust - Mayors Relief Fund	108,587	108,334
Trust - General Trust	4,959,544	4,954,628
Waste Disposal	12,553,662	13,113,766
Sewer Fund	21,312,529	21,217,555
Sewer Plant Fund	4,984,753	4,960,633
Section 64 Water	19,818,497	19,682,195
Water Fund	28,515,656	28,739,358
Water Plant Fund	4,503,839	4,837,697
Total Externally Restricted	170,779,029	179,726,547
Total Restricted	193,816,939	204,176,279
Unrestricted Cash Balance - General Fund	1,098,498	7,644,949

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Restricted Asset Movements

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

Total Cash	(16,905,791)	December is not a rate instalment month. As well as expenditure on major capital projects.
Strategic Land Development-Reserve	(951,849)	Placemaking for Vincentia Village (\$0.6M) & AATP Stage 5 - Subdivision (\$0.3M).
Loans - General Fund	4,686,810	Loan for Holiday Haven received \$9.2M less expenditure on loans - Artie Smith (\$1.2M), Materials Recovery Facility (\$1.1M), Shoalhaven Fire Control Centre (\$0.5M), Boongaree (\$0.3M) and various other projects.
Grant reserve	(10,828,330)	Far North Collector Road (\$2.9M), Flinders Roadworks (\$0.6M), Worrigea Road (\$0.5M) and various other projects
Special Rate Variation	(1,157,890)	Various roads and drainage projects funded by SRV.
Unrestricted cash	(6,545,451)	December is not a rates month.

Liquidity Indicators

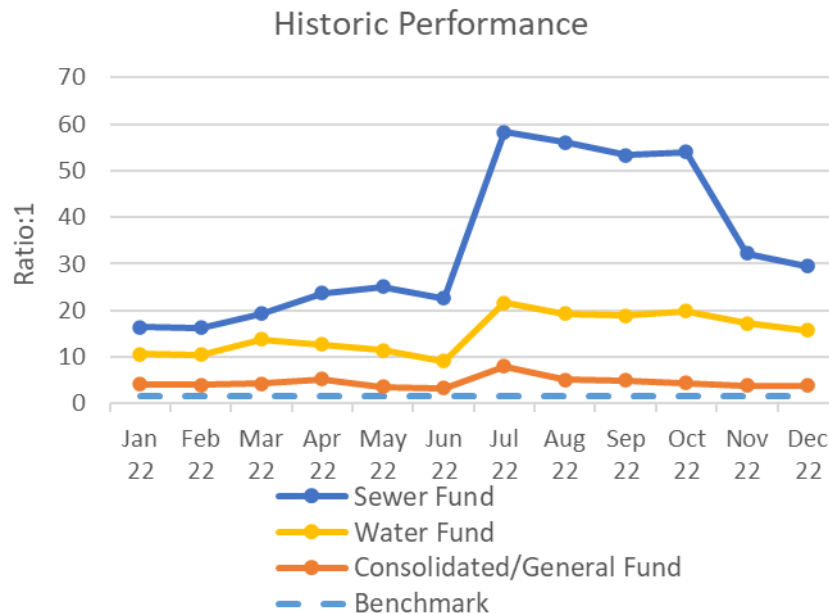
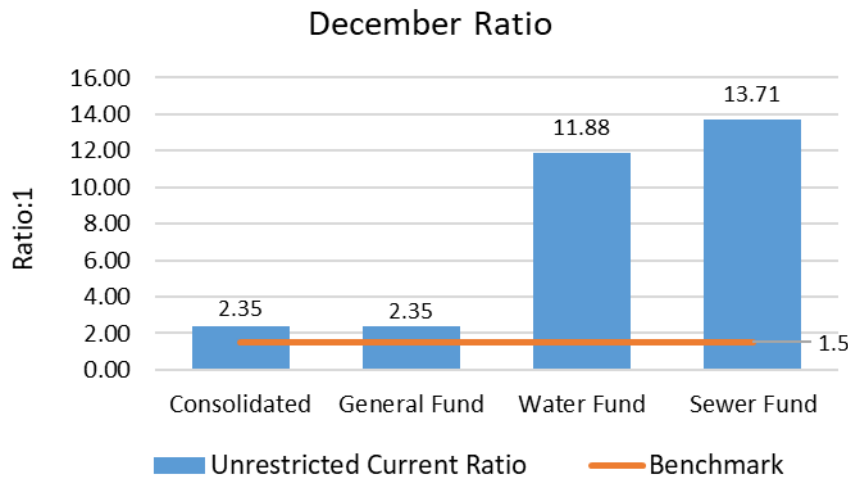
In accordance with the Liquidity Contingency Plan as endorsed by Council, the following liquidity indicators are included in the Monthly Investment Report to enhance the transparency of Council's financial reporting.

With the exception of the Unrestricted Cash ratio all liquidity ratios remain above their respective benchmarks. The value of unrestricted cash traditionally falls in the month of December. It is important to note this is not a liquidity issue, rather Council meeting its obligations, ensuring supplier payments are met in a timely manner and processed prior to the Christmas closedown period. December is also a month Council receives less income than normal due to other businesses Christmas closedown periods. Cash flow will improve in subsequent months and as such Council remains in a sound financial position.

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

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Unrestricted Current Ratio



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

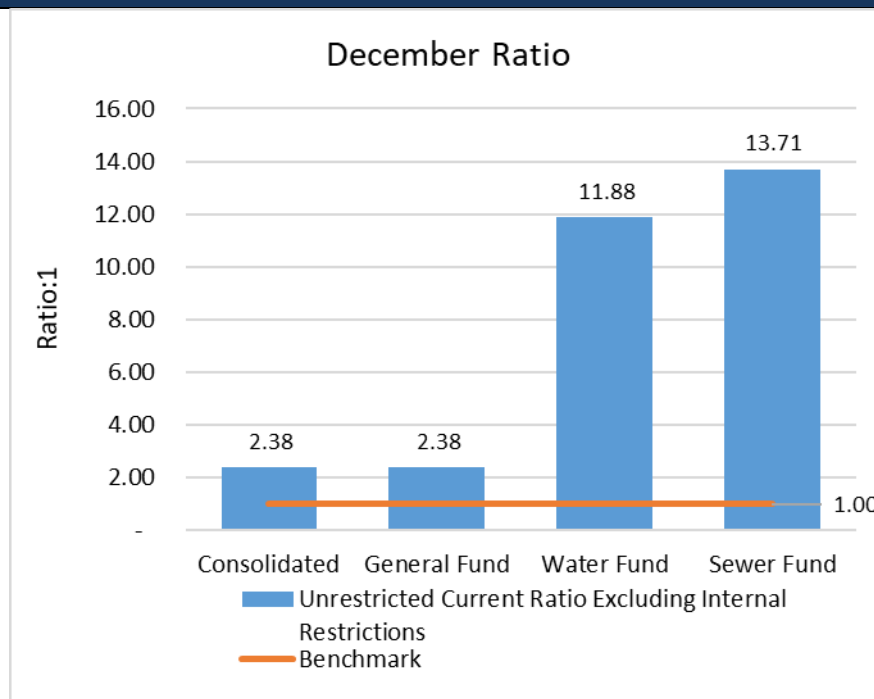
Unrestricted Current Ratio = (Current Assets less all external restrictions) / (Current Liabilities less specific purpose liabilities)

The ratio remains above the benchmark for all funds.

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

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Unrestricted Current Ratio Excluding Internal Reserves



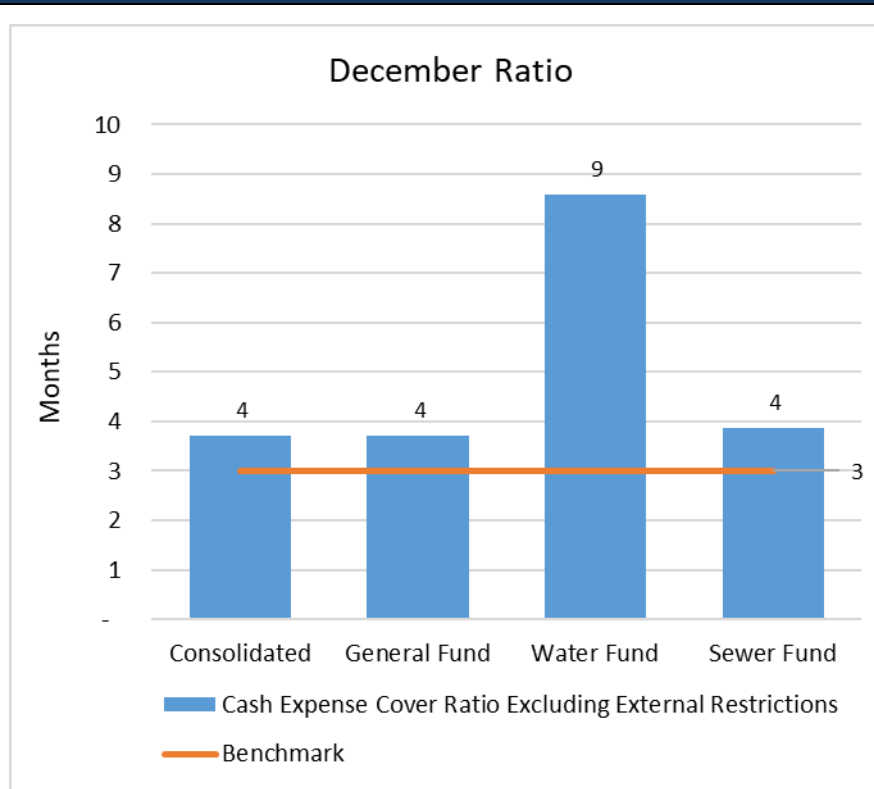
Unrestricted Current Ratio Excluding Internal Reserves is an indicator used to assess the adequacy of working capital and its ability to satisfy obligations in the short term for the unrestricted activities of Council.

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

The ratio remains above the benchmark for all funds.

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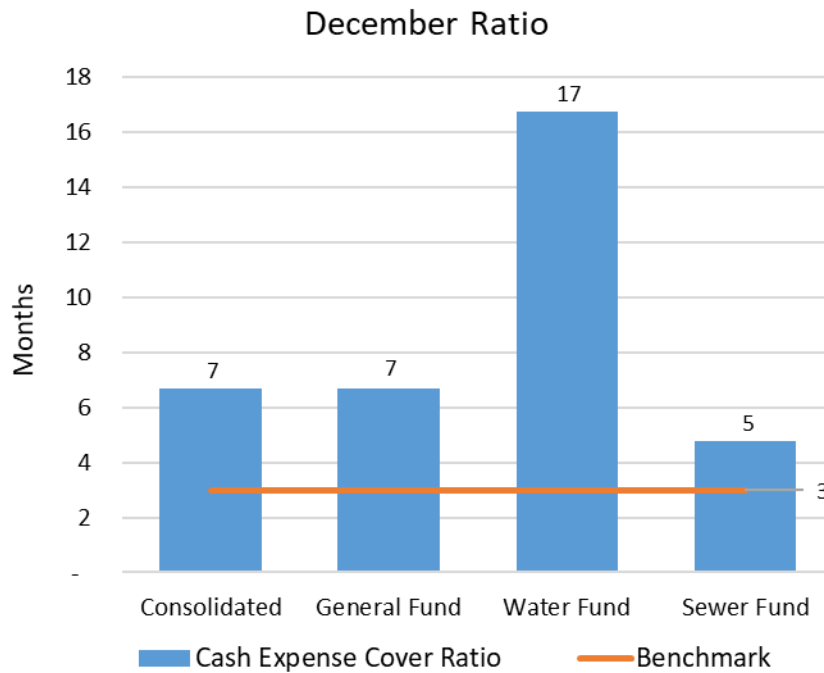
Cash Expense Cover Ratio Excluding External Restrictions



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

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

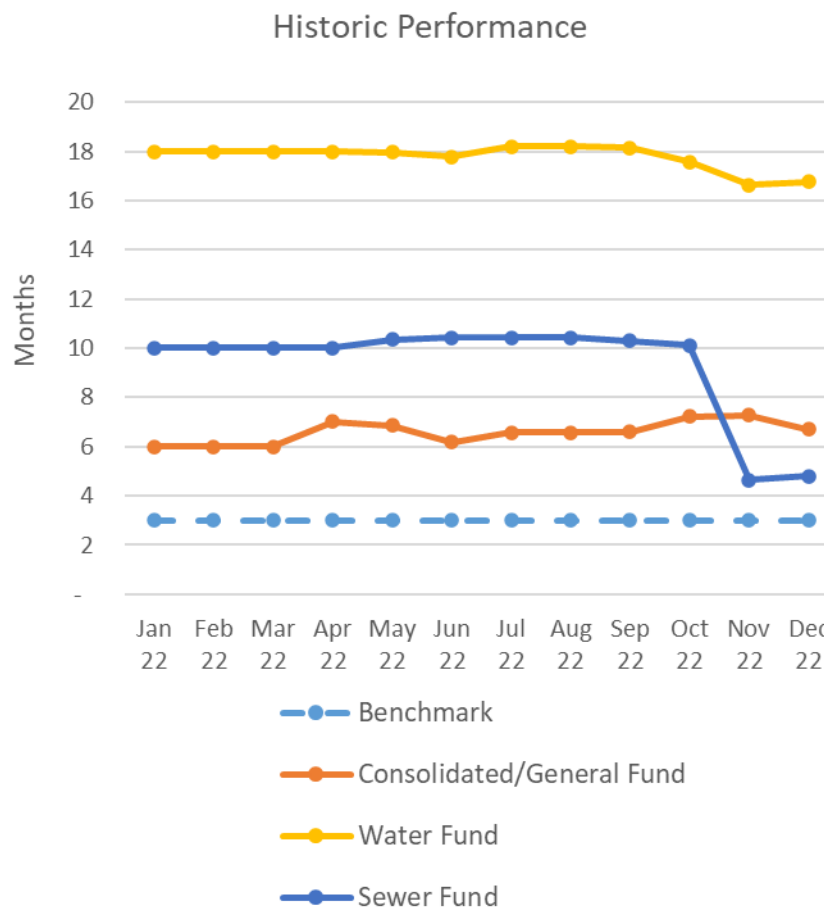
Cash Expense Cover Ratio



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

Cash expense cover ratio = (Cash equivalents, TDs and FRNs x 12) / (Payments from cash flow of operating and financing activities)

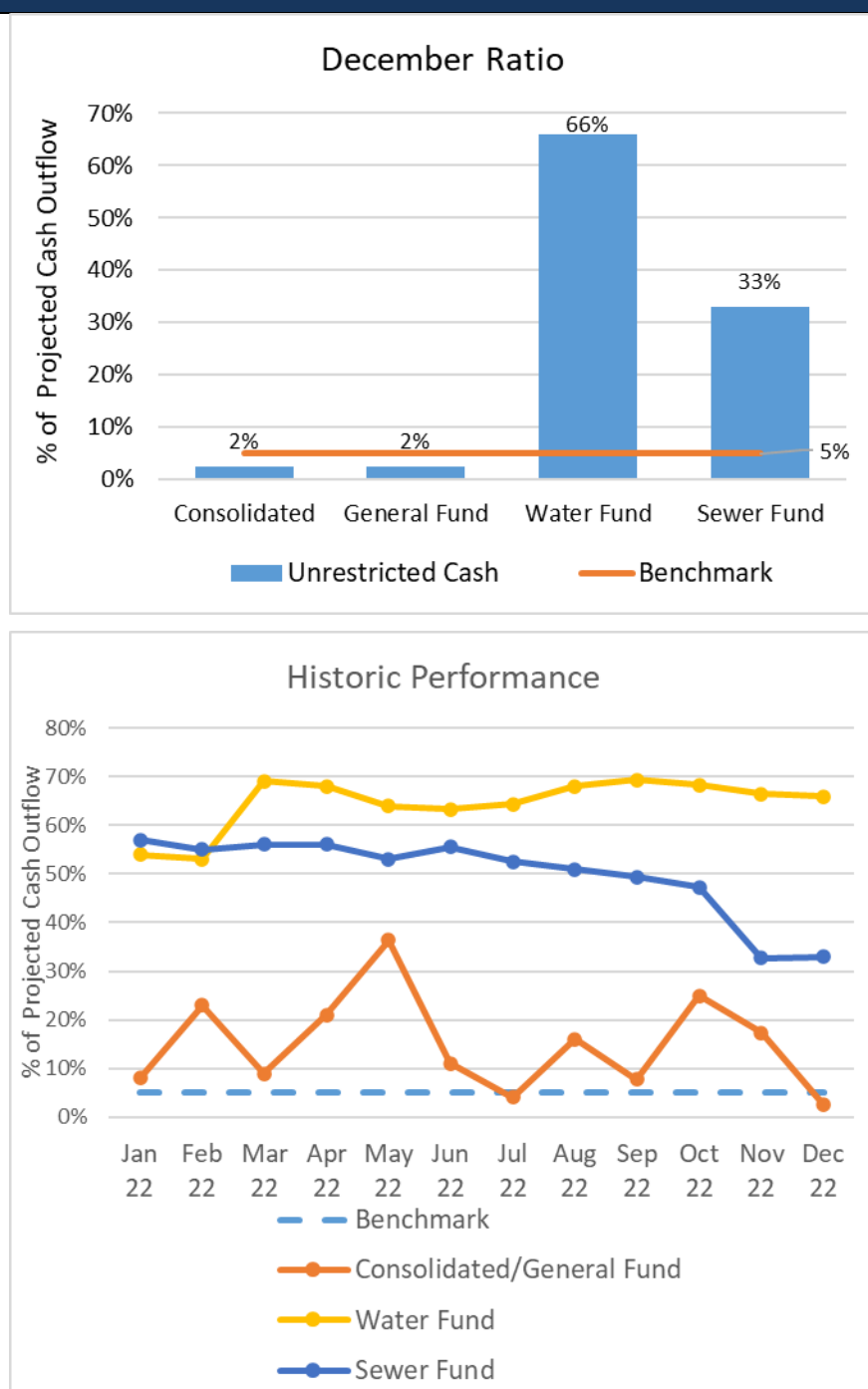
The ratio remains above the benchmark of 3 months as at the end of December 2022 for all funds.



The first graph displays the December 2022 Cash Expenses Cover Ratio and, the second graph displays the previous rolling 12-months Cash Expenses Cover Ratio by fund.

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Unrestricted Cash



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

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

The General fund unrestricted cash is traditionally low in December due to timing of meeting Councils obligations to suppliers prior and during the Christmas closedown period as well as the low receipts received from rates during December.

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

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

Statement by Responsible Accounting Officer

I hereby certify that the investments listed in the attached report have been made in accordance with Section 625 of the Local Government Act 1993, Clause 212 of the Local Government (General) Regulations 2021 and Council's Investments Policy POL 22/78.

Olena Tulubinska
2023

Date: 23rd January

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Cash and Restricted Assets

Record Of Investments		
Cash and Investment Balances		
	\$	\$
	November 2022	October 2022
Cash and Investments Held		
Cash at Bank - Transactional Account	14,501,860	19,653,716
Cash on Hand	20,191	20,191
Other Cash and Investments	196,994,853	190,536,166
	211,516,904	210,210,073
Fair Value Adjustment	(179,279)	(303,165)
Bank Reconciliation	483,603	151,995
	304,324	(151,170)
Book Value of Cash and Investments	211,821,228	210,058,903
Less Cash & Investments Held in Relation to Restricted Assets		
Employee Leave Entitlements	5,880,448	5,880,448
Critical Asset Compliance	420,901	463,064
Other Internal Reserves	3,189,974	3,449,277
Section 7.11 Matching Funds	302,621	278,689
Strategic Land Development Reserve	6,210,189	6,397,562
Plant Replacement	566,586	512,487
S7.11 Recoupment	274,516	550,474
Water Communication Towers	5,148,250	5,065,635
Commitment To Capital Works	1,732,753	1,901,234
Property Reserve	723,494	783,107
Total Internally Restricted	24,449,732	25,281,977
Loans - General Fund	29,923,571	4,071,439
Self-Insurance Liability	4,517,375	4,430,959
Grant reserve	25,553,380	33,490,896
Section 7.11	18,585,045	19,268,552
Special Rate Variation	3,081,108	4,382,471
Storm Water Levy	451,902	418,712
Trust - Mayors Relief Fund	108,334	108,098
Trust - General Trust	4,954,628	4,720,316
Waste Disposal	13,113,766	11,471,013
Sewer Fund	21,217,555	30,629,771
Sewer Plant Fund	4,960,633	4,884,084
Section 64 Water	19,682,195	19,594,156
Water Fund	28,739,358	29,501,097
Water Plant Fund	4,837,697	6,815,826
Total Externally Restricted	179,726,547	173,787,390
Total Restricted	204,176,279	199,069,367
Unrestricted Cash Balance - General Fund	7,644,949	10,989,536

CL23.27 Road Dedication Pursuant to Section 16 and 17 of the Roads Act 1993 - Unmade Road - Greens Rd Greenwell Point

HPERM Ref: D22/462382

Department: Technical Services

Approver: Paul Keech, Director - City Services

Reason for Report

This report provides Council with an opportunity to confirm the public road status via dedication of road reserve in accordance with Section 16 and 17 of the Roads Act 1993, intersecting with Greens Road Greenwell Point and heading in a northeast direction and terminating at Crookhaven River. The road reserves adjoins both Lot 1 DP 557868 and Lot 4 DP 551396 (shown highlighted in blue below). This will formalise Shoalhaven City Council as the Roads Authority, to proceed with the road closure and sale as per resolution MIN21.662.

Recommendation

That Council:

1. Dedicates the land identified as unmade road adjoining Lot 1 DP 557868 and Lot 4 DP 551396 Greens Road, Greenwell Point as public road pursuant to Section 16 & 17 of the Roads Act 1993;
2. Authorises by notice in the Government Gazette the dedication of land known as the unmade road adjoining Lot 1 DP 557868 and Lot 4 DP 551396 Greens Road, Greenwell Point in accordance with Section 16 of the Roads Act 1993, and serve 28 days notice of the intention to do so as per Section 17 of the Roads Act 1993.
3. Affixes the Common Seal of the Council of the City of Shoalhaven to any documents required to be sealed, otherwise the Chief Executive Officer is authorised to sign any documentation necessary to give effect to this resolution.

Options

1. Adopt the recommendations

Implications: The dedication of public road will clarify any doubt that Council is the legal authority of the land, as per the intention of Section 16 and 17 of the Roads Act 1993, which will then allow the resolved matter of road closure and sale to proceed as per MIN21.662.

2. Not adopt the recommendations

Implications: The legal status of ownership will not be clearly defined. Council will be unable to proceed with road closure and sale to adjoining landowner as per resolution MIN21.662.

Background

Council resolved via MIN21.662 to proceed with the closure and consolidation of the unmade Council road and sale to the adjoining landowner of Lot 1 DP 557868 . The subject unmade

CL23.27

road is highlighted below in blue and the adjoining Lot 1 DP 557868 owned by the applicant is highlighted in yellow.



As part of the road closure process, the surveyed road closure plan was lodged at Land Registry Services for registration, in preparation for the land transfer. At this point, the legal status of road was requisitioned by Land Registry Services.

Council had considered the subject land to be a public road, as it is shown in parish maps as a 'Lane 50 links wide', provided for in a private subdivision in around 1892. However, whilst this may be taken as manifestation of an intention to dedicate the road, evidence of formal acceptance by Council of the dedication is required. This evidence is unable to be found. Whilst it cannot be proven that dedication has taken place, it also cannot be certain that it did not take place, as dedication of the road may have occurred by methods outside the control of Land Registry Services, such as by expenditure of public monies. Despite this, without any evidence of dedication, Land Registry Services considers the land to be technically in residual ownership of the original owner, and therefore the intended land transfer cannot be effected by Council.

Sections 16 & 17 of the Roads Act, 1993 specifically relates to land in this situation, and provides for the removal of any doubt over road status. It allows Council to dedicate certain land as "Public Road" by notice in the Government Gazette. This applies to land that is set aside for the purposes of a road left in a subdivision of land affected before 1 January 1907 (the date of the commencement of the Local Government Act 1906) or in a plan of subdivision that was registered by the Register-General before 1 January 1920 (the date of the commencement of the Local Government Act 1919).

Prior to dedication of the land as Public Road, Council must serve at least 28 days' notice of its intention to do so to on the owners of the land. Council engaged a consultant who has located the legal representative of the registered proprietor of the subject land, being the Trustee of the Estate of David Berry (deceased) in order to effect this notice upon Council resolution.

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Community Engagement

No community engagement is required for dedication of land for road purposes. In accordance with sections 16 and 17 of the Act, Council will serve 28 days notice of its intention to dedicate the land as public road on the registered proprietor.

Policy Implications

There are no Policy implications.

Financial Implications

There are no financial implications for Council regarding the dedication of land.

Risk Implications

There is no risk to Council in the dedication of the road as 'Public Road'.

CL23.28 Update - School Safety Improvements - Culburra Public and All Other Schools

HPERM Ref: D23/20124

Department: Technical Services

Approver: Paul Keech, Director - City Services

Attachments:

1. Resolution - TC21.54 - Road Safety Improvements - Fairlands Street, Culburra Beach (PN 3673) - Shoalhaven Traffic Committee 12 October 2021 [↓](#)
2. Letter - Pedestrian Access Improvements - Funding Opportunities - Shelley Hancock MP [↓](#)
3. 2021-2022 - School Road Safety Reviews Report [↓](#)

Reason for Report

To provide Council with an update on MIN21.87 - Notice of Motion - Pedestrian Safety upgrades - Culburra Beach Public School - Kerb & Gutter / Footpath Fairlands St - All Schools Drop off / Pick up Review - Report request and MIN21.749 Notice of Motion - Safety Upgrades - Culburra Beach Public School - Kerb & Guttering - Fairlands St - Council funded.

Recommendation

That Council note the extensive work undertaken in 2022 to improve safety around school access points, in particular the receipt of 8 grants totalling \$2,801,875.

Options

1. As recommended
Implications: Council can note the work completed
2. An alternate recommendation could be put forward.
Implications: Unknown at this stage.

Background

This report outlines the actions and results of investigations for 2 Notices of Motion resolved by Council relating to road safety around schools being:

RESOLVED (Clr Pakes / Clr Watson)

MIN21.87

That:

1. Shoalhaven City Council commit to the following safety upgrades for the Culburra Public school in the 2021/2022 budget:
 - a. Kerb and gutter Fairlands Street (House Numbers, 29, 31, 33, 35, 38, 40, 42) and formalise street parking for pick up and drop off.
 - b. Construct a pathway from the Culburra Beach public school along Fairlands Street (finish Fairlands Street and Cross Street.)
2. The Shoalhaven Traffic Committee provide any further feedback on measures to improve pedestrian safety around the school access point.

CL23.28

3. Council make representations to the State Member for South Coast seeking any funding opportunities to assist with improving pedestrian access.
4. Council commit to commencing the works in the first quarter of 2021/2022 financial year.
5. Council receive a report from the Traffic Safety Officer following a review of the school drop off and pick up areas of all Primary Schools in the Local Government Area.
 - a. The report should identify any and all schools that require improved traffic management solutions to ensure pedestrian safety in these areas.
 - b. The report can then be presented to The Hon. Shelley Hancock, State Member for the South Coast, seeking grant contributions to ensure the safety of children and pedestrians outside all Shoalhaven Local Government Area primary schools.

RESOLVED (Clr Pakes / Clr Gash)

MIN21.749

That in addition to the original Notice of Motion carried by Council the following be added:

1. Council cover the full cost of the kerb and guttering required to ensure pedestrian access and safety, noting that as it is a Council initiative, the circumstances warrant this to be dealt with as a variation by the Council to the Kerb and Guttering - Charges Applicable policy POL16/148.
2. Due to parking constraints and storm water runoff issues, continue the kerb and guttering on the Southern side of Fairlands Street to the corner of Cross Street and Fairlands Street.
3. Council seek further clarification on the letter that was sent to the Minister regarding reimbursement.

The actions completed for each of the numbered resolutions above are:

MIN21.87

1. a) Construction of kerb & gutter and the formalisation of street parking for a pickup and drop off zone along Fairlands Street (House Numbers, 29, 31, 33, 35, 38, 40, 42) was completed in early 2022.
b) Construction of a pathway from the Culburra Beach public school along Fairlands Street (finish Fairlands Street and Cross Street) was completed in early 2022.
2. The Shoalhaven Traffic Committee endorsed the proposed (now constructed) school safety upgrades at Culburra Public School on 12/10/2021. (Attachment 1).
3. Representations were made to the State Member for South Coast seeking any funding opportunities to assist with improving pedestrian access on 09/08/2022. (Attachment 2). To date no response has been received.
4. Construction of the safety upgrades were completed in early 2022.

A review of safety around schools has been completed (Attachment 3). At a similar time to the Notice of Motion being resolved Technical Services staff were approached by representatives from bus companies requesting that Council work with them to address safety concerns at both high schools and primary schools. As such, high schools have also been included in the review. It should be noted that undertaking this review required observing schools operating in normal circumstances, school holidays and disruptions caused due to COVID (learning from home/lockdowns) increased the time required to complete the review.

Twelve (12) grant applications have been applied for to improve safety around schools for projects identified in the review, with 8 being successful. Funding options for other identified projects continue to be explored through both grant funding and Council's capital works program.

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Grants received from the Federal Stimulus Road Safety Program:

Name	Amount
Thomas Street Raised Pedestrian Crossing	\$100,000
Victoria Street Pedestrian Crossing	\$120,000
Main Rd Raised Pedestrian Crossing	\$150,000
Pine Forest Rd Footpath Connection to School	\$60,000
George St Footpath Connection to School	\$60,000
Ulladulla High School Safety Improvements	\$1,750,000
Thompson Street Sussex Inlet Public School Safety Improvements	\$500,000
George Caley Place Vincentia Public School Footpath Construction and Bus Bay Delineation	\$61,875
Total	\$2,801,875

MIN21.749

1. Council funds were used to cover the full cost of the now completed kerb and gutter works in Fairlands Street, Culburra.
2. Due to parking constraints and storm water runoff issues, the kerb and guttering on the Southern side of Fairlands Street was extended to the corner of Cross Street and Fairlands Street.
3. Representations were made to the State Member for South Coast seeking any funding opportunities to assist with improving pedestrian access on 09/08/2022. (Attachment 2). To date no response has been received.

Community Engagement

The school safety review was conducted in partnership with Schools, Bus Companies and Transport for New South Wales.

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SHOALHAVEN TRAFFIC COMMITTEE**12/10/2021**

Subject:	Road Safety Improvements - Fairlands Street, Culburra Beach (PN 3673)
HPERM Reference	68490E
Related Report	D21/425390
Item Number	TC21.54

RECOMMENDATION (By consent)

That the:

1. Chief Executive Officer (Director City Services) be advised that the Shoalhaven Traffic Committee has no objection to the proposed road safety improvements at Fairlands Street, Culburra as per Plan No D21/425609.
2. Recommendation be approved by the Director City Services under delegated authority from Shoalhaven City Council - refer MIN21.411.

CARRIED*Note: This Recommendation was approved by the Director City Services 14 October 2021.*

CL23.28 - Attachment 1

Council Reference: 19631E (D22/333203)

09/08/2022

Shelley Hancock
NSW Member for South Coast
PO Box 1436
NOWRA NSW 2541

Dear Shelley

Pedestrian Access Improvements

As per notice of motion (MIN21.87 CL21.23) from Council's Ordinary meeting held 23 February 2021, Council resolved to make representation to yourself, the State Member for South Coast seeking advice on funding opportunities that may assist with improving pedestrian access in the Shoalhaven Local Government area.

Funding opportunities would assist Shoalhaven City Council with improving pedestrian access for:

- New path infrastructure
- Upgrading existing path infrastructure to achieve DSAPT compliance (Disability Standards Accessible Public Transport)
- Improving pedestrian safety in villages and CBD's
- Improving pedestrian safety around schools and bus stops.

Your assistance with this matter would be greatly appreciated. Should you require further information about this matter, please contact Simon Holt, City Services on 1300 293 111. Please quote Council's reference 19631E (D22/333203).

Yours faithfully



Trevor Dando
Acting Director - City Services

School road safety audit report
September 2022

Council has partnered with Schools, Bus companies, Transport for NSW (TfNSW) and other stakeholders to conduct road safety review of 36 primary and high schools within the Shoalhaven. This round of road safety reviews for all 36 schools has now been completed.

Twelve grants were applied for, and eight successful grants were received and works have been completed or are planned for implementation. The successful grants pertained to Berry Public School x 2, Cambewarra Public School, Milton Public School, Sussex Inlet Public School, Tomerong Public School, Ulladulla High School, and Vincentia Public School. Funding opportunities will continue to be sought for any proposed safety improvements not yet implemented.

Back ground information

Each school was formally contacted by HR Premier Transport Group on Wednesday 5th May 2021 inviting schools to provide input regarding any safety concerns in the school pick up and drop off areas or access for parents and buses.

Schools that had not provided a response were contacted with a follow up email and phone call by Council. Independent investigations were conducted by Council in instances where no responses were received.

Schools addressed

Primary schools – 26 in total - 23 x public primary and 2 x Catholic primary and NAC (pre-K to Yr. 6)

1. Berry Public School
2. Bomaderry Public School
3. Callala Public School
4. Cambewarra Public School
5. Culburra Public School
6. Falls Creek Public School
7. Greenwell Point Public School
8. Havenlee School
9. Huskisson Public School
10. Illaroo Road Public School

11. Kangaroo Valley Public School
12. Milton Public School
13. North Nowra Public School
14. Nowra Anglican College
15. Nowra East Public School
16. Nowra Hill Public School
17. Nowra Public School
18. Sanctuary Point Public School
19. Shoalhaven Heads Public School
20. St Georges Basin Public School
21. St Michael's Catholic School
22. Sussex Inlet Public School
23. Terara Public School
24. Tomerong Public School
25. Ulladulla Public School
26. Vincentia Public School

High Schools – 8:

1. Bomaderry High School
2. Nowra Christian School
3. Nowra High School
4. Shoalhaven High School
5. St John's Catholic High School
6. Ulladulla High School
7. Vincentia High School
8. Nowra Anglican College

School	Issues	Proposed actions	Grant Funding Acquired	Outcome	Investigation Complete?
Berry Public School	Pedestrian access issues.	Raised crossing and footpath connection on Victoria Street.	Yes	In progress – Construction 22/23	Yes
Bomaderry High School	Pedestrian access and safety- speed humps and pedestrian island request at the Lyndhurst Drive and Cambewarra Road intersection	Investigated.		With District Engineer to pursue funding opportunities.	Yes
Bomaderry Public School					
Bundawang School	No issues noted.	Bundawang School is relocating from Ulladulla to the former Shoalhaven Anglican School site on Croobyar Rd, Milton and road safety issues have been considered during the development process.		Investigation complete.	Yes
Callala Public School	No issues noted.			Investigation complete.	Yes
Cambewarra Public School		Raised crossing.	Yes	In progress - Scheduled for Construction 22/23.	Yes
Culburra Public School	Pedestrian access	New footpath on Fairlands Street (North side) between cross Street and Black Swan Way.	Council Funded	Work Completed. Investigation complete.	Yes

Falls Creek Public School	Pedestrian access, no line marking at and in the vicinity of the children's crossing. Request to move children's crossing.	Line marking completed. Request to move children's crossing and pedestrian access investigated and is not recommended.		Work Completed (August 2022). Investigation complete.	Yes
Greenwell Point Public School	Re-mark faded line marking and signage. Request for bus zone on Jervis Street. Footpath requested.	Line marking and signage work maintenance undertaken by TfNSW. Bus companies advised and asked to comment. Footpath in PAMP.		Maintenance actions planned. Bus zone request with District Engineer for consideration. Investigation complete.	Yes
Havenlee School	Kiss and drop location – limited space and traffic congestion	Linemarking and Signage improvements proposed.		Work completed November 2021. Investigation complete.	Yes
Huskisson Public School	Parking concerns, pedestrian access and no footpath.	Illegal parking issues raised with Principal. Additional kerb, shoulder widening parking improvements proposed.		Enquiries into Grant Funding sources are being undertaken by District Engineer. Investigation complete.	Yes
Illaroo Road Public School	Congestion on Illaroo Road due to traffic lights. No other issues raised.	Traffic light cycle to be assessed.		Addressed by TfNSW. Investigation complete.	Yes
Kangaroo Valley Public School	Lack of tactile indicators near children's crossing and request to install a pedestrian crossing.	Pedestrian crossing not recommended on classified road.		District Engineer to consider installing TGSIs.	Yes

		TGSIs request sent to District Engineer for consideration.		Proactive investigation grant funding unsuccessful.	
Milton Public School	Parking concerns. Request for raised crossing.	Raised crossing to be installed. Parallel parking on southern side of Thomas Street near the pool. Bus zone to be retained.	Yes	Investigation complete. In progress - Scheduled for Construction 22/23. Investigation complete.	Yes
North Nowra Public School	Pedestrian and vehicle congestion. Issues with bus zone.	Sign posting and line marking. Bus zone on Page Avenue extension.		Work completed November 2021. Investigation complete.	Yes
Nowra Anglican College	Congestion in school grounds with students and vehicles mixing. Congestion on West Bunberra Street with students parking here. People not using the children's crossing. School expansion and bus movements.	School closed upper gate on west Bunberra Street directing pedestrians to pedestrian crossing. School preparing DA.		With the Anglican Schools Corporation Project Manager to drive. Proactive investigation grant funding unsuccessful. Investigation complete.	Yes
Nowra East Public School	No safety issues raised. Side request to remove 'Bus Zone' signage on Journal Street.	Unused Bus Zone on Journal Street to be removed. This will be addressed independently of these Road Safety Reviews as it not a safety matter.		Investigation complete.	Yes

Nowra Christian School	No issues raised.			Investigation complete.	Yes
Nowra Hill Public School	Access, parking, and pedestrian movements.	Informal parking issues relates to Department of Defence as this is their land. District Engineer to inform with School.		Investigation complete.	Yes
Nowra High School	Student safety concerns expressed with bus bays located on Brereton Street.	Bus bay locations were investigated and consulted with TfNSW and Bus Company. All were in agreement that the existing bus bays on Brereton St provide the safest outcome with Moss St not being as suitable for bus pick up of students.		Investigation complete.	Yes
Nowra Public School		School zone infrastructure grant application submitted for raised pedestrian crossing on Osborne Street.	No	Funding applications to date have been unsuccessful.	Yes
Sanctuary Point Public School	No issues raised.			Investigation complete.	Yes
Shoalhaven Heads Public School	Line marking at and on approach to children's crossing.	Line marking and signage work maintenance undertaken by TfNSW. Flagpole Holder by Council.		Maintenance actions planned. Investigation complete.	Yes
Shoalhaven High School		Roundabout and shared user path proposed.	No		Yes

St John's Catholic High School - John Purcell Way.	Pedestrian access, bus movements and congestion	School zone infrastructure grant funding applied for proactive investigation.		Funding applications to date have been unsuccessful. Roundabout under design. Grant funding applied for. SUP under design. Grant funding to be applied for in January 2023. Investigation Complete	
St Georges Basin Public School	Pedestrian access and safety concerns	Raised crossing and footpath connection.	No	Funding application for raised crossings and footpath connection to date have been unsuccessful. Investigation Complete.	Yes
St Mary's Star of the Sea Catholic School	Pedestrian concerns	Pedestrian fencing and footpath works at intersection of Corks Lane and Princes Highway.		Funding to be sought by District Engineer. Investigation complete.	Yes
St Michael's Catholic School	Crossing roads safety, line marking, signage and bus bay length	School zone infrastructure grant funding applied for a raised crossing on Osborne Street. Maintenance work required on the children's crossings located on Osborne and North Streets.	No	Maintenance work planned. Applications for grant funding for raised crossing have been unsuccessful to date. Investigation complete.	Yes

Sussex Inlet Public School	Pedestrian access and parents and carers crossing between buses instead of using the children's crossing.	Shared user path and kerb and guttering. School zone infrastructure grant funding sought for raised median and footpath.	Yes	Variation sought – construction planned for 2022-23FY.	Yes
Terara Public School	Line marking	Grant funding applied for gateway threshold treatment. Faded linemarking to be maintained.	No	Investigation complete. Applications for grant funding have been unsuccessful to date. With District Engineer to maintain linemarking. Investigation complete.	Yes
Tomerong Public School	No issues raised by school or bus companies. Potential Pedestrian Access Improvements.	Footpath connectivity improvements proposed.	Yes	Construction planned for 2022-23FY. Investigation complete.	Yes
Ulladulla High School	Request for raised crossings, traffic signals and SUP.	Raised Crossings Intersection Upgrade (Signals), and SUP links	Yes	Construction work planned. Investigation complete.	Yes
Ulladulla Public School	Pedestrian and bus movements on Green Street at the front to the school. Parking issues in Bus zone and No Parking zone.	Behavioural programs to be run targeting safety around schools.		Road Safety Officer to provide support to school via behavioural programs targeting school safety. Investigation complete.	Yes
Vincentia High School	Pedestrian and bus movements.	Line marking and bus zone signage in bus zone,		Linemarking & signage improvements planned for 2022-23FY.	Yes

	Parking issues and vehicles entering bus zone. New drop-off facilities.	disabled parking bay and pedestrian fencing. Potential drop-off facilities part of ongoing investigation by District Engineer.		Investigation complete.	
Vincentia Public School	Congestion in school car park with pedestrians, cyclists, vehicles, and buses. Issues with bus movements in bus bay due to vehicles and pedestrians.	Grant funding application for shared user path link. Sign posting, line marking and bus bay delineation.	Yes	Signage and line marking improvements complete. Footpath extension planned 22-23FY. Investigation complete.	Yes

CL23.29 Maintenance Options - Carrington Rd Beaumont - Gravel Road (Approximately 1.2 to 1.6 km from MR261)

HPERM Ref: D23/25753

Department: Technical Services

Approver: Paul Keech, Director - City Services

Attachments:

1. Sketch Plan - Location Plan - Carrington Rd [↓](#)
2. Council Response - SCC Obligation & Maintenance Responsibilities - Carrington Rd - Barefoot Springs [↓](#)
3. Road Status Plan - Carrington Rd [↓](#)

Reason for Report

The purpose of this report is to allow Council to consider a road maintenance responsibilities along Carrington Road Beaumont

Recommendation

That Council

1. Authorises the CEO (Director City Services) to negotiate and determine an agreement with affected property owner(s) with the intention of converting approximately 400m of the private Right of Way (approximately 1.2 to 1.6 km from the MR261) turnoff to a Public Road as per the Roads Act 1993 No 33. The road to be then managed by Council as part of the local road network. With the affected property owners(s) meeting at least the following reasonable conversion costs, as determined by the CEO (Director City Services).
 - a. Survey and Legal costs.
 - b. Land boundary adjustments.
 - c. Any costs to bring drainage structures and the road up to a minimum Council standard.
 - d. Any costs associated with relocating fence lines due to changing property boundaries.
2. Grants Authority to affix the Common Seal of the Council of the City of Shoalhaven to any documents required to be sealed and that the CEO be authorised to sign any documents necessary to give effect to this resolution.
3. Continues to only maintain the first 1.2km of Carrington Road until agreement is reached and the conversion occurs.

Options

1. As Recommended

Implications: The existing formed road would eventually, after some complex land dealings become a public road with Council bearing ongoing management responsibilities.

CL23.29

2. Council continues its practice of not maintaining the ROW

Implications: Maintains the strategy and relevant responsibilities when the Lots were originally created, i.e., provision of land and road assets. A suitable resolution to enact this option would be;

That Council advises the Property Owners of Carrington Road Beaumont that its maintenance responsibility for Carrington Road extends to a point 1.2km from the MR21 turnoff. After this point access responsibilities are as per the existing ROW agreements and easement instruments shown in the photo below.



CL23.29

Background

There are numerous emails and documents in Council's system demonstrating frustration and confusion in relation to the status of approximately 400m of gravel road that is 1.2 to 1.6 km (even 1.8km, in some correspondence) from the MR261 turnoff. Attachment 1 (D23/8327) is a map showing the site being considered.

Listing all these emails and documents would not be practical however the following sums up the history and current predicament. The full email trail is provided as Attachment 2 (D23/8443). The essential component of the email is extracted below for Councillors convenience:

"Council acknowledges the conflicting information regarding responsibilities around this road and that this has been created by Council. We are keen to formalise an outcome so this can be clarified for all parties. The basis of the concern is the formed road is not located within a Road Reserve, but in a Right of Way (ROW) to which Council has no responsibilities.

There is a Road Reserve of the property, but it does not correspond to the formed road.

I have attached the Deposited Plan for your property which shows the ROW (highlighted yellow) and in pink highlight, on the same plan, is the description of that

easement. Also attached is the correspondence 88B Instrument, which outlines the details of each easement. For reference, I have highlighted the subject easement in Pink on the 88b document. You will note Lot 102 is burdened by the easement and lot 101 benefits from it. Council is not nominated as having any responsibilities and it would be unusual for Council to have an interest in a ROW. Where it is intended for Council to have an ongoing role, a Public Road would be dedicated.

Also highlighted in purple on the plan is the description of a ROW that was created in an earlier subdivision (circa 1992) which provides legal access to Mr [REDACTED] land over your land. This ROW duplicates the yellow one for most of its length. The 88B for this is also attached.

The Section 94 Project for 'Ocean View Road' may have contemplated this road being a Public Road, but this is not what has transpired when the subdivision was undertaken.

For Council to meet its legislative obligations for the ongoing maintenance of this section of road (ROW), Option 2 or 4 are possible solutions. I would be pleased to catch up with you to work through this issue further or if you have any further information, please provide so we can review.

Section Manager, Works & Services
Shoalhaven City Council
1 June 2018"

The four options proposed in 2018 were (note, the numbering has been converted to lettering to avoid confusion in this report):

- A. Council immediately cease any maintenance activities on the ROW. (**Option 2 in this Report**)
- B. Council resolve to undertake ongoing maintenance to the ROW as *Private Works* in accordance with Section 67 of the Local Government Act.
- C. Council undertake to repair the culvert ('bridge'), resurface ('reseal') the sealed section, undertake a maintenance grade of the gravel section and then cease any further maintenance activities. The management of the ROW then becomes the responsibilities of the property owners benefiting from the ROW.
- D. The ROW be dedicated as a Public Road as per the Roads Act 1993 No 33 Division 1 Section 9 and then be managed by Council as part of the local network. (**Option 1 in this report**)

It appears that in the initial years after the ROW was created (circa 1998) the District teams were unaware of its existence (as evident in some correspondence in 2001). Over the years, and generally coinciding with staff turnover, or intense representation from property owners, Council has reluctantly, inadvertently or and in good faith undertaken a few maintenance activities. This has only increased the confusion and frustration. The fact remains that despite all this confusion the formal instrument and ROW still stands.

Council records show that contributions collected by Council as part of the developments along the road were (total \$15,078.08) well short of the \$42,640 estimated cost of the road at the time the contributions plan was created. However, Council did spend approximately \$30,000 on the upgrades from the Section 7.11 (previously known as Section 94) funds collected and money in trust collected under the Local Government Act.

01ROAD0030 'Carrington Road – Upgrade Gravel Pavement' (formerly 'Oceanview Road – Upgrade Gravel Pavement') was deleted from the Shoalhaven Contributions Plan 1993 on 30 November 2005 as part of Amendment No.77 (Major Review of Area 1 Road Projects), for the reason of 'Benefit Area developed', by a combination of Road Reserve and ROW.

CL23.29

Of the above four options only A and D are considered long term viable options (based on the history and ongoing representations) and thus only these two options will be explored further in this report.

Consideration

Option 1 – Approximately 400m of the ROW be dedicated as a Public Road as per the Roads Act 1993 No 33 Division 1 Section 9 and then be managed by Council as part of the local network.

This option involves some complex land transactions however the essence is that it would involve extinguishment of a ROW that serves at least three lots (to varying lengths) and replaces that ROW with a 20m road reserve over the existing gravel track which would essentially be central to the new road reserve.

Given that this arrangement would incur costs that would have ordinarily been met at the lot creation stage this option has been developed on the basis that the property owners(s) would incur those costs which are essentially;

- a) Survey and Legal costs
- b) Land boundary adjustments (essentially a net zero adjustment as approximately the same size of road reserve will be closed as is created).
- c) Any costs to bring drainage structures up to a minimum Council standard or address any particular safety issue with the road geometry.
- d) Any costs associated with relocating fence lines due to changing property boundaries

A ballpark estimate of the likely total property owner(s) costs would be approximately \$170,000. This could be achieved by the affected property owner(s) engaging experts and sharing the cost of that engagement as the property owner(s) saw fit or paying Council to undertake this work.

It should be noted that, as is the case when ROW's are created, the current geometry of the gravel track does not meet Council's road standards (for example the width of the track is narrower than the allowable minimum for a Council Road). The conversion of the ROW to road reserve would also see the affected property owners fund this upgrade.

This option is outlined in Drawing D23/8349 as Attachment 3. The actual boundary adjustments after the closure of the road reserve would be negotiated in detail with the affected property owner(s).

This is the preferred option

Advantages

Nil to Council but would address the fundamental concern and frustration of the property owner(s). Note if agreement with the property owner(s) on cost apportionment can't be met Option 2 is the preferred option. If necessary, this would be reported back to Council for further consideration.

Disadvantages

This option extends Council's Road network and maintenance responsibilities.

Option 2 - The ROW stands.

This option is self-explanatory and essentially this maintains the strategy and relevant responsibilities when the Lots were originally created, i.e. provision of land and road assets.

Advantages

Does not increase the Council Road network and maintenance responsibilities. No cost to Council, property owners bear the maintenance costs of the road as per the original Lot Creation strategy.

This option would clarify any confusion.

Disadvantages

None to Council however based on correspondence received, affected property owners will remain dissatisfied.

Community Engagement

Nil specifically in relation to this report. Based on the extensive correspondence on file, it's clear that the residents preferred option will be Option 1, with the best case for them being that Council meets all costs.

Financial Implications

Option 1 - Maintenance increase per annum likely to be less than \$3,000 per year on average. Reconstruction of the section (when the time comes) would be of the order of \$30,000. Ultimately in the long term the road would most likely be sealed.

Note: this represents a lifetime windfall for the affected residents who currently bear the lifetime cost of this as a ROW.

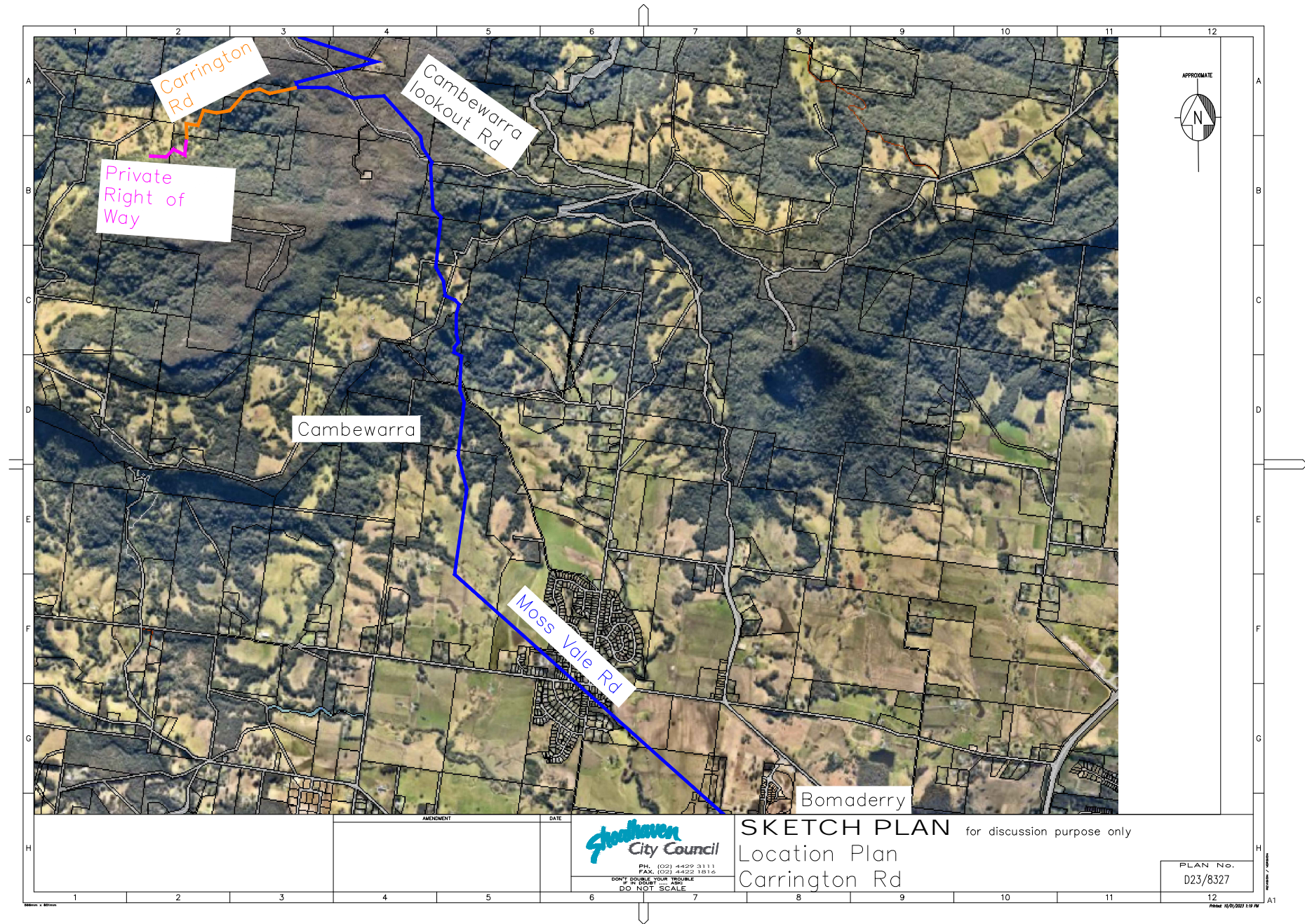
Option 2 - Nil

Risk Implications

Option 1 - Minor liability increase with the minor road network increase.

NOTE: there is a number of these ROW issues across the region, and many will require extensive roadworks and drainage works to achieve a similar outcome to this option. Council needs to be mindful that transitioning a Right of Way to Road Reserves without the benefiting owner(s) covering the cost to create the road reserve and the public assets to Council's standards (as would have been the case at the time of lot creation) could expose Council to a substantial financial risk.

Option 2 - Nil to Council although it's very likely that residents will not accept this option, and there would be an ongoing cost of managing this dispute.



From: Tony Fraser
Sent: Friday, 1 June 2018 3:51 PM
To: [REDACTED]
Subject: FW: Carrington Road Beaumont - 1.66Km PUBLIC Road
Attachments: 88B Instrument 98 Subdivision.pdf; 88B Instrument (92 Subdivision).pdf; Deposited Plan - Carrington Road.pdf

Council acknowledges the conflicting information regarding responsibilities around this road and that this has been created by Council. We are keen to formalise an outcome so this can be clarified for all parties. The basis of the concern is the formed road is not located within a Road Reserve, but in a Right of Way (ROW) to which Council has no responsibilities.

There is a Road Reserve of the property, but it does not correspond to the formed road.

I have attached the Deposited Plan for your property which shows the ROW (highlighted yellow) and in pink highlight, on the same plan, is the description of that easement. Also attached is the correspondence 88B Instrument, which outlines the details of each easement. For reference, I have highlighted the subject easement in Pink on the 88b document. You will note Lot 102 is burdened by the easement and lot 101 benefits from it. Council is *not* nominated as having any responsibilities and it would be unusual for Council to have an interest in a ROW. Where it is intended for Council to have an ongoing role, a Public Road would be dedicated.

Also highlighted in purple on the plan is the description of a ROW that was created in an earlier subdivision (circa 1992) which provides legal access to [REDACTED] land over your land. This ROW duplicates the yellow one for most of its length. The 88B for this is also attached.

The Section 94 Project for 'Ocean View Road' may have contemplated this road being a Public Road, but this is not what has transpired when the subdivision were undertaken.

For Council to meet its legislative obligations for the ongoing maintenance of this section of road (ROW), Option 2 or 4 are possible solutions. I would be pleased to catch up with you to work through this issue further or if you have any further information, please provide so we can review.

Tony Fraser
Section Manager, Works & Services
Shoalhaven City Council

02 4429 3302 [REDACTED]
tony.fraser@shoalhaven.nsw.gov.au
www.shoalhaven.nsw.gov.au

Sent: Tuesday, 15 May 2018 6:09 PM
To: Council Email <Council@shoalhaven.nsw.gov.au> [REDACTED]

Cc: [REDACTED]

Subject: RE: Carrington Road Beaumont - 1.66Km PUBLIC Road

[REDACTED]
I was dismayed to receive your email letter of May 10th 2018 (see below) and read that you have decided not to honour SCC's obligation and maintenance responsibilities for the approx. 450metre final section of the 1.66kms of road leading to the driveways/gates of Nos. 155, 164 & 167 .

I have received 3rd party professional advice that in section 94 of Shoalhaven City Council's Plan, Carrington Road is listed under its previous name "Ocean View Road , project No. 01 Road 0030 for a distance of 1.8kms from Moss Vale Road".

I am also advised that section 94 contributions were made to SCC when deposited plans 877319 and 881064 were registered. These plans created concessional allotments and on receipt of those contributions plans were released for registration purposes, and the contributions used solely for the upgrading by SCC of the 1.8kms of what is now known as Carrington Road.

Not only is SCC legally obligated to maintain this road but, as I have previously supplied to you, I have a letter dated 20/11/2001 acknowledging SCC's "responsibility" to maintain the 1.7km of Carrington Road from Moss Vale Road through to the gate at No. 164,(from [REDACTED] Northern Maintenance Manager, addressed to the previous owners of Barefoot Springs). I understand that [REDACTED] of No. 164 Carrington Road has also supplied you with similar correspondence from [REDACTED] dated in July 2012, conceding that the maintenance of the whole 1.66km length of Carrington Road to his gateway is SCC's responsibility.

I would therefore appreciate your supplying "chapter and verse" to support how you have now made this Right of Way assumption and why you consider SCC's obligations under section 94 are not applicable?.

I am extremely concerned that you are now attempting to exempt SCC from its acknowledged and legal obligations to maintain the full 1.66 distance of Carrington Road. Should you continue to insist on pursuing your Right of Way proposition, I will have no compunction but to take legal action against you and SCC to enforce your legal obligations and I will also seek compensation for costs and damages.

I therefore consider there is no purpose in meeting to discuss the options you have proposed, as I consider they are unnecessary in the circumstances and you should just proceed with the road repairs as outlined in the first sentence of your option #3, as a minimum, to fulfil your legal responsibilities under section 94.

I would appreciate your early response acknowledging your agreement to fulfil your legal obligations to properly maintain the full 1.66km length of Carrington Road from the entrance from Moss Vale Road.

Yours sincerely,

[REDACTED]
Barefoot Springs

[REDACTED]
Sent: Thursday, 10 May 2018 1:55 PM

[REDACTED]
Subject: Carrington Road Beaumont - Right of Way

Dear [REDACTED]

Council has investigated the Right Of Way located within Lot 102 DP881064 (see attached map) with regard to maintenance responsibilities. This investigation included reviewing the correspondence provided by yourselves and Deposited Plans.

It is acknowledged that Shoalhaven City Council has been maintaining the road within this Right Of Way (ROW), however it has been determined that Council has no obligations in the ROW and maintenance responsibilities lie with the parties benefiting from the road.

The ongoing management of this road needs to be formally resolved. There are four options available at this point, broadly these are:

1. Council immediately cease any maintenance activities on the ROW.
2. Council resolve to undertake ongoing maintenance to the ROW as *Private Works* in accordance with Section 67 of the Local Government Act.
3. Council undertake to repair the culvert ('bridge'), resurface ('reseal') the sealed section, undertake a maintenance grade of the gravel section and then cease any further maintenance activities. The management of the ROW then becomes the responsibilities of the property owners benefiting from the ROW.
4. The ROW be dedicated as a Public Road as per the Roads Act 1993 No 33 Division 1 Section 9 and then be managed by Council as part of the local network.

Following discussions with the owners of the benefiting lots, being Lots 101 & 102 of DP 881064101 and Lot 251 of DP 751264 (Por 251), it is likely the matter will be referred to the full Council for a formal resolution.

Melissa Dunn and I would like to discuss these options with you. It would be appreciated if you could please call Janice on 4429 3218 to arrange a meeting at a time convenient to yourselves.

Tony Fraser
Works & Services Manager
Shoalhaven City Council

p 02 4429 3305

council@shoalhaven.nsw.gov.au
www.shoalhaven.nsw.gov.au



This message may contain both confidential and privileged information intended only for the addressee named above.
If you have received this email in error, please notify the sender immediately then destroy the original message.

Req:R288018 /Doc:DP 0881064 B /Rev:30-Oct-1998 /Sts:OK.OK /Pgs:ALL /Prt:15-Mar-2018 14:19 /Seq:1 of 5
Ref:GIS /Src:M

*** INSTRUMENT SETTING OUT TERMS OF EASEMENTS AND RESTRICTION ON THE USE OF LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT, 1919.**

Length are in metres

Sheet 1 of 5 Sheets

DP 881064

Subdivision of Lot 93 DP 751264 covered by Council Certificate No. 7780.

PART 1

Full name and address of proprietor of the land.



1. Identity of Easement to be created and firstly referred to in abovementioned plan.

Easement for Overhead Power Lines

Schedule of Lots etc. Affected

Lots Burdened

102

Name of Authority Benefited

Integral Energy Australia

2. Identity of Easement to be created and secondly referred to in abovementioned plan.

Right of Access 10 wide, 13.2 wide and Variable

Schedule of Lots etc. Affected

Lot Burdened

102

Lot Benefited

101

3. Identity of Restriction to be created and thirdly referred to in abovementioned plan.

Restriction on the Use of Land

Schedule of Lots etc. Affected

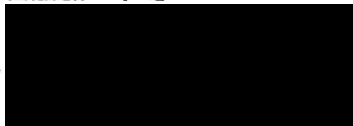
Lots Burdened

101

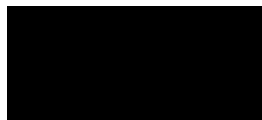
Name of Authority Benefited

Shoalhaven City Council

Approved by the Council of the City of Shoalhaven



dated 18-6-98



PC 17 C:\OFFICE\WPWIN\888'S\22210.88B

CL23.29 - Attachment 2

Req:R288018 /Doc:DP 0881064 B /Rev:30-Oct-1998 /Sts:OK.OK /Pgs:ALL /Prt:15-Mar-2018 14:19 /Seq:3 of 5
Ref:GIS /Src:M

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS AND RESTRICTION ON THE USE OF
LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING
ACT, 1919.**

Length are in metres

Sheet 3 of 5 Sheets

Plan: D.P. 881064

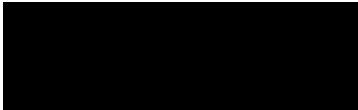
Subdivision of Lot 93 DP 751264 covered
by Council Certificate No. 7780.

PART 2 (continued)

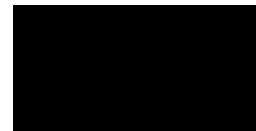
- (b) to cut, trim, remove, and lop trees, branches, roots, foliage and other vegetation on the lot burdened which encroach on or may interfere with or prevent reasonable access to the easement site or the electricity equipment, and
 - (c) to remove any encroachments from the easement site, and
 - (d) to excavate the easement site for the purposes of this easement.
2. In exercising its rights under this easement the Authority Benefited will take reasonable precautions to minimise disturbance to the surface of the lot burdened and will restore that surface as nearly as practicable to its original condition.
3. The Owner of the lot burdened covenants with the Authority Benefited that the Owner:
- (a) will not erect or permit to be erected any structure on or over the easement site, and
 - (b) will not alter the surface level of the easement site or carry out any form of construction affecting its surface, undersurface or subsoil, and
 - (c) will not do or permit anything to be done or fail to do anything whereby access by the Authority Benefited is restricted,
- without the written permission of the Authority Benefited and in accordance with such conditions as the Authority Benefited may reasonably impose.
4. **"Authority Benefited"** means Integral Energy Australia (and its successors) and its employees, agents, contractors, and persons authorised by it.
- "Owner"** means the registered proprietor from time to time of the lot burdened (including those claiming under or through the registered proprietor).
- "Electricity equipment"** means electricity transmission poles, towers, wires, cables, and ancillary electrical equipment.
- "Erect"** includes construct, repair, replace, maintain, modify, use, and remove.
- "Easement site"** means that part of the lot burdened subject to the easement.

The terms implied by s.88A (2A) and Schedule 4A Part 8 of the Conveyancing Act 1919 are excluded.

Approved by the Council of the City of
Shoalhaven, /



.....dated.....18-6-99.....



PC 17 C:\OFFICE\WPWIN\88B'S\22210.88B

Req:R288018 /Doc:DP 0881064 B /Rev:30-Oct-1998 /Sts:OK.OK /Pgs:ALL /Prt:15-Mar-2018 14:19 /Seq:5 of 5
Ref:GIS /Src:M

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS AND RESTRICTION ON THE USE OF
LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING
ACT, 1919.**

Length are in metres

Sheet 5 of 5 Sheets

Plan: D.P. 881064

Subdivision of Lot 93 DP 751264 covered
by Council Certificate No. 7780.

Signed in my presence by
[REDACTED] who
is personally known to me:

Signature of Witness

[REDACTED]

Proprietor

[REDACTED]

Name of Witness

[REDACTED]

Address of Witness

[REDACTED]

Occupation of Witness

[REDACTED]

Approved by the Council of the City of
Shoalhaven

[REDACTED]

dated 18-6-98

REGISTERED 28.1.1998

PC 17 C:\OFFICE\WPWIN\88B'S\22210.88B

CL23.29 - Attachment 2

Req: P288017 / Doc: DP 0646251 B / Rev: 13-Jan-1993 / Sts: OK, OK / Pgs: ALL / Ppt: 15-Mar-2018 14:19 / Seq: 2 of 2
Ref: GIS / Src: M

INSTRUMENT SETTING OUT TERMS OF EASEMENTS AND RESTRICTIONS AS TO USER
INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING
ACT, 1919.

PART 1

(SHEET 1 OF 3 SHEETS)

Plan: DP 0646251

of Easement within Portions 252
& 253 in the Parish of Cambewarra
County of Camden being the land
comprised in Certificate of Title
Volume 2550 Folio 46 and within
Lots 93 & 251, D.P. 751264.

Full name and address of
proprietor of the land



1. Identity of Easement
firstly referred to
in abovementioned plan.

Right of Way variable width

Schedule of Lots affected

Lots burdened

Portion 253 in the Parish
of Cambewarra County of
Camden being part of the
land comprised in
Certificate of Title
Volume 2550 Folio 46.

Lots benefited

Portion 252 in the Parish of
Cambewarra County of Camden being
part of the land comprised in
Certificate of Title Volume 2550
Folio 46.

Lot 251 D.P. 751264

Lot 93 D.P. 751264

Portion 20 in the Parish of
Cambewarra County of Camden being
the land comprised in Certificate
of Title Volume 5369 Folio 211. ϕ

Portion 94 in the Parish of
Cambewarra County of Camden being
the land comprised in Certificate
of Title Volume 15147 Folio 232. ϕ

Portion 307 in the Parish of
Cambewarra County of Camden being
the land comprised in Certificate
of Title Volume 15147 Folio 233. ϕ

Portion 4 in the Parish of
Cambewarra County of Camden being
the land comprised in Certificate
of Title Volume 15147 Folio 231. ϕ

Portion 252 in the Parish of
Cambewarra County of
Camden being part of the
land comprised in
Certificate of Title
Volume 2550 Folio 46

Lot 251 D.P. 751264

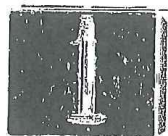
Lot 93 D.P. 751263

Portion 20, 94, 307 & 4 in the
Parish of Cambewarra County of
Camden.



9 NOV 94/751264
4 NOV 20/751264
4 NOV 4/751264
4 NOV 307/751264
4 NOV 231/751264

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CL23.29 - Attachment 2

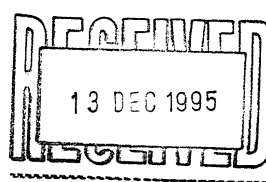
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SHOALHAVEN CITY COUNCIL

RURAL ROAD

REGISTER

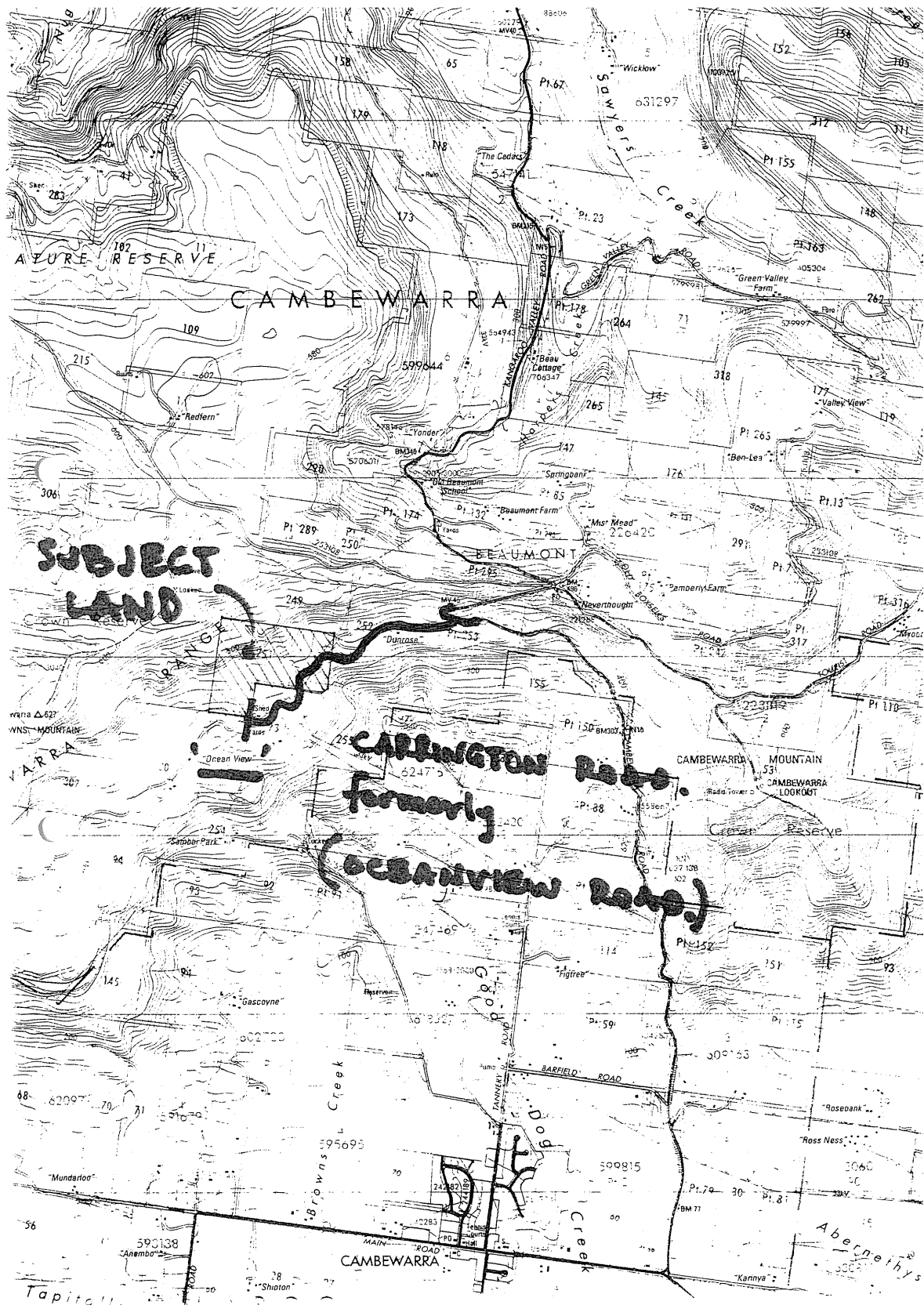


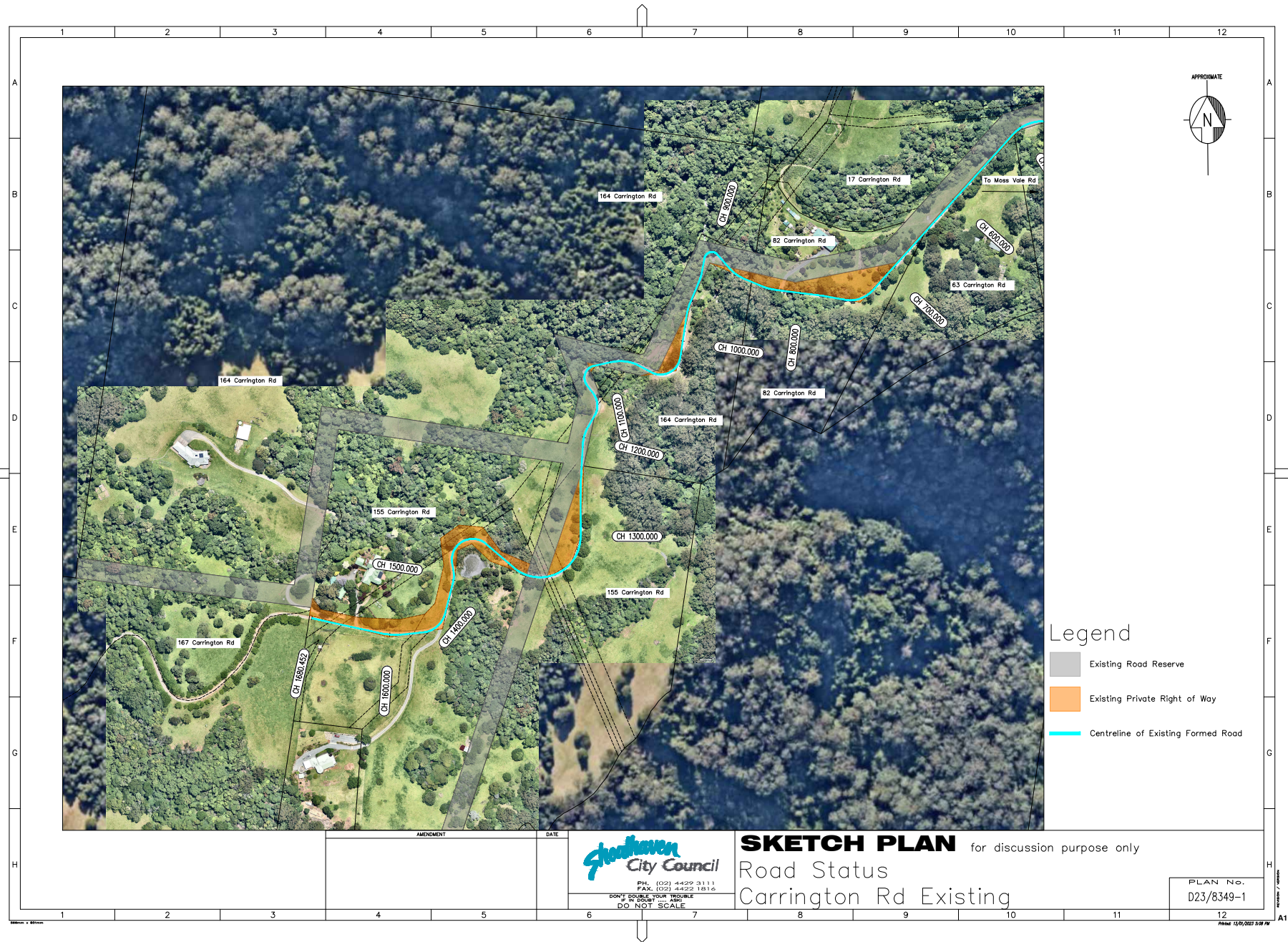
ALLEN, PRICE & ASSOCIATES
Consulting Surveyors
Engineers & Planners
PO BOX 73, NOWRA 2541

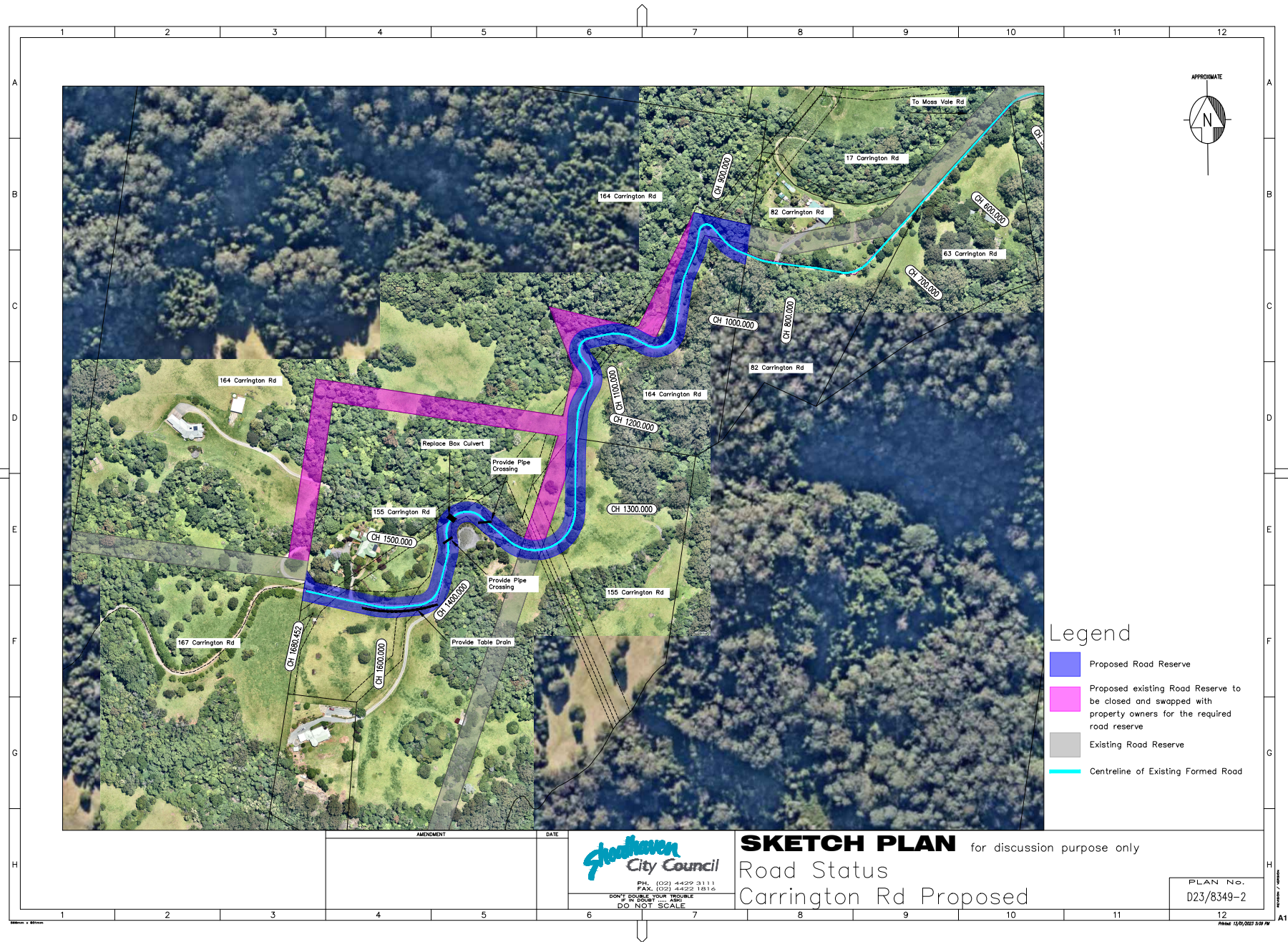
UPDATED DECEMBER 1990

CL23.29 - Attachment 2

NO.	NAME	OF	ROAD FROM	TO	LENGTH IN KM	
					GRAVEL	BITUMEN
103	TOURIST RD (D)		Cambewarra Lookout Rd	Kangaroo Valley Rd	1.40	5.20
104	OLD BOXSELLS RD (D)		M.R. 261	Gate	0.50	
105	GREEN VALLEY RD (D)		M.R. 261	(To second gate at foot of hill past "Green Valley Farm")	2.60	
106	EMERY'S RD (D)		Bugong Rd	Gate - "The Plateau"	4.26	0.04
107	KOLOONA DRIVE		Bangalee Rd	Lot 7 DP 247301	2.55	1.75
108	MOEYAN RD (D)		Coolangatta Rd	Nth boundary Por 27	0.96	
109	IRONBARK RD (D)		Illaroo Rd	Sth east cnr of Por 126	0.40	
110	GYPSY POINT RD		Illaroo Rd	Nth boundary of Por 154	1.00	
111	AUSTRAL PARK RD		S.H. 1	To first corner	0.10	
112	SUNNYMEDE LN		Beach Rd	Turning circle	0.24	
113	LILLY-PILLY LNE (UD)		Illaroo Rd	Por 265	0.37	
114	UNNAMED RD (UD)		M.R. 261	"Oceanview" - Gate at cattleyard & Silo	1.80	
115	SWAMP RD		Coolangatta Rd	Nth end Sth end	0.05 0.02	
116	HILLANDALE RD (INCL BRYAN CLSE)		Broughton Vale Rd	Turning circle		0.55
117	TULLOUCH RD		Boundary Rd	Gate at "Tullouch"	1.00	
118	BINGARRA LN		Illaroo Rd	To end	0.50	
119	BEN DOOLEY RD		Kangaroo Valley Rd	To sealed R.O.W. top of hill	0.60	
120	RADIATA RD		Tallowa Dam Rd	Cul-de-sac	1.20	







CL23.30 Progress Update - Infrastructure Recovery Works - Natural Disaster

HPERM Ref: D23/41046

Approver: Paul Keech, Director - City Services

Reason for Report

To provide Council with an update on the progress of public infrastructure reconstruction works as a result of the severe weather natural disaster events occurring during February 2022, June 2022, and September 2022 in the Shoalhaven LGA.

Recommendation

That Council:

1. Receives the February 2023 update on the progress of public infrastructure reconstruction works following the February 2022, June 2022, and September 2022 severe weather Natural Disaster events.
2. Notes that the majority of this information is now drawn from Council's webpage "Severe weather events reconstruction work – 2022".

Background

Since the 2019/20 Bush Fire crisis, the worst in NSW history, there have been many significant severe weather events that have impacted the Shoalhaven, ten of which included damages significant enough to have the Shoalhaven LGA declared a Natural Disaster area, the most recent being the September 2022 event where the Shoalhaven was deemed eligible for Natural Disaster funding.

<https://www.nsw.gov.au/disaster-recovery/natural-disaster-declarations>

The report focuses on the more significant 2022 East Coast Low events which caused extensive damage by way of major landslips, pavement failures, bridge, and causeway damage.

- AGRN1012 February 2022,
- AGRN1025 June 2022 ongoing, and
- AGRN1034 September 2022,

Natural Disaster Reconstruction Team

As reported in June 2022, SCC has formed a Natural Disaster Reconstruction Team (NDRT) to undertake the enormous task of managing the reconstruction of all eligible public infrastructure works following declared natural disaster events. The NDRT works closely with Council's four Engineering Districts and Council's Community Recovery Team. A summary of the NDRT status is as follows.

- Senior Project Manager – 1x recruited
- Program Manager – 1x recruited
- Major Project Manager – being recruited
- Project Managers – 3 recruited, 1 being recruited
- Communication Officer – 1 recruited

CL23.30

- Business Support Officer – 1 x recruited
- Administrative Assistant – 3 x recruited
- Surveillance Officers – 3 recruited, 1 x being recruited

In addition to these positions, Council's four District Offices have recruited administration staff to assist with customer and maintenance enquiries in natural disaster affected areas.

The following summarises the extent of the of damage as result of the February, June and September 2022 natural disasters:

460	Emergency Works (EW) identified
586	Immediate Reconstruction Works (IRW) identified
189	Essential Public Asset Reconstruction Works (EPARW) identified
95	Sites having specific funding approved to the total value of just under \$11.6M, including the costs related to the Natural Disaster Reconstruction team
37	Geotechnical inspections, assessments and reports have been completed, not including the assessments for the 38 major landslips to be managed within the upcoming major landslip repair works project
20	Road pavement repair projects completed
46	Minor slip repairs completed
8	Roads currently affected by load limits as a result of the severe weather impacts

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Consideration

Master Pages and Roadworks Pages

The Natural Disaster Reconstruction Team aims to provide current and timely update on planning and progress under individual roadworks web pages.

[Road Works | Shoalhaven City Council \(nsw.gov.au\)](https://www.shoalhaven.nsw.gov.au/road-works)

However, a status summary of all works associated with the 2022 Natural Disasters as well as overall project information is the on the Master Project Page.

[Severe weather events reconstruction work - 2022 | Shoalhaven City Council \(nsw.gov.au\)](https://www.shoalhaven.nsw.gov.au/severe-weather-events-reconstruction-work-2022)

Residents, Councillors and interested people are encouraged to subscribe to this **Master Project page** and relevant **Road Works pages**.

Major Landslip Repair Package

Webpage: [Severe weather events reconstruction work - 2022](https://www.shoalhaven.nsw.gov.au/severe-weather-events-reconstruction-work-2022)

This package of work includes the restoration of 38 landslips classified as “major severity”, primarily in the Kangaroo Valley locality but also affecting the localities surrounding Tomerong and Burrier. This is the most critical infrastructure reconstruction program, due to the potential for isolation and severe access restrictions on residents and businesses affected by the 38 major landslip sites (from a total of 98 landslip sites). A list of major landslip repair work can be found [here](#).

Working collaboratively with NSW Public Work Advisory (NSW PWA) and Transport for NSW (TfNSW) and following a rigorous investigation, design, governance, risk and request for

tender process, a preferred tenderer has been identified for the major landslip repair package. A report relating to this tender is being prepared for Council consideration on 13 February 2023.

Moderate Landslip Repair Package

A second package of landslip repairs has been identified. Prior to calling tenders, the landslip sites need to be evaluated in terms of risk and then prioritised before ground investigation and detailed design work can commence and before cost estimates can be firmed up and repair work approved by TfNSW. This preliminary will take at least 6 months before public tenders can be called for the moderate landslip repair package. A draft list of moderate landslip repair work is available [here](#).

Scott St, Shoalhaven Heads Sinkhole Repairs

Webpage: [Scott Street - Shoalhaven Heads remediation works](#)

A 240m long stretch of 1050mm diameter stormwater pipeline from Noakes St to Discovery Place traversing several private properties has suffered significant ground subsidence as a result of the recent natural disasters. There are several major engineering challenges that are being managed and include the 4m depth of the stormwater pipeline, excavation in deep unstable sand, ground water infiltration and close proximity to homes. Urgent work is well underway.

Roskell Rd to Greenway Rd, Callala Beach Sinkhole Repairs

Webpage: [Roskell Road - Callala Beach - Stormwater drain](#)

A 470m long stretch of stormwater pipe varying from 375mm diameter to 900mm diameter between Roskell Rd and Greenway Rd (crossing public road and private property) experienced ground subsidence in various locations as a result of joint movement in the pipe and loss of sand, gravel, and other material into the pipe. This loss of sand had also caused heavy blockage of the stormwater pipe requiring the pipe to be cleaned before it can be properly inspected with pipe cameras to identify exactly where the pipe joints had opened to allow sand to enter the stormwater system. Once the locations of all joint failures are identified, it is proposed to identify repair options and estimate the cost of repair before submitting the scope of work for final approval by TfNSW for Natural Disaster funding.

Wattamolla Rd

Webpages: [Wattamolla Road \(Smaller Landslips\) – Wattamolla](#) & [Wattamolla Road \(Major Landslips\) - Woodhill](#)

There is a total of nine moderate to major landslips requiring repair along Wattamolla Rd as result of the 2022 severe weather events. Two landslips are classified as major and are included in the Major Landslip repair package to commence March 2023. Locations are rural addresses 13 and 356. A further six landslips are classified as “moderate” and are included in a separate landslip repair work package still being developed. Locations are rural addresses 310, 366, 388, 396, 404 and 405. Another landslip at rural address 681 is now also classified as major. The original rectification solution for this landslip site was to re-align and shift the road away from the landslip. However, upon further investigation, this road realignment option was deemed unviable due the presence of public utilities adjacent to the road. As a result, the realignment solution has been reconsidered and it is now instead proposed to stabilise the existing road embankment using structural engineering solutions such as soil nailing, bored piers or retaining walls. Once the design solution is finalised, rectification works will be costed before construction work is carried out by mid to late 2023. In the meantime, the current load limit of 9 tonnes, associated traffic management, and vehicle weight limit exemption application process will remain in place.

Croziers Rd Bridge, Jaspers Brush

Webpage: [Croziers Road - Jaspers Brush - Bridge Repair](#)

Following completion of investigation and design work and the calling of quotations, repair work to Croziers Rd bridge has commenced and will take four weeks to complete. Work involves the construction of a rock / concrete retaining wall to stabilise creek bank against erosion that had already started to undermine the bridge.

Road Pavement Repair Packages

The road pavement of many local and regional roads managed by Council have been severely impacted and some road pavements partly destroyed as a result of the severe and persistent wet weather and prolonged saturated ground. Major repairs & construction work is now well underway following ground investigation, road pavement design and calling of tenders. A full list of road pavement work completed and work in progress can be found on the [Master Project Page](#).

Other Work

It is worth noting that this repair work is being managed and undertaken in parallel with other natural disaster repair work including the 2019 Currowan Bushfire Clean-up & repair work that is almost complete including the:

- Clean up of standing and overhead deadwood – 75 local and regional road over a distance of 271kms;
- Boolijah Creek Bridge, Braidwood Rd – repairs and protection of the existing rock filled “gabion” wire baskets weakened by the bushfire;
- Wheelbarrow Rd landslip – damaged in the February 2022 severe weather event and is in progress to complete prior to the deadline for works of 31 March 2023.
- Porters Creek & Bugong Rd landslips – damaged in the August 2020 severe weather event and is in progress to complete prior to the deadline for works of 30 June 2023.

Load Limit Restrictions

A process has been implemented to manage the implementation of load limits on certain roads.

This process includes:

- 24/7 traffic management – affecting Wattamolla Rd, Upper Kangaroo River Rd and Bunkers Hill Rd.
- Weight Limit Exemption Applications – Following an application to council, on some roads, under certain scenarios and timeframes, and when deemed safe by Councils geotechnical consultants, allowance has been given to increase short term vehicle loads on a one-off basis.

Meetings

The ***Natural Disaster Reconstruction team*** meets weekly with Council District Engineers to plan, coordinate, and communicate reconstruction efforts. Information is gathered to provide regular updates on the status of planned works on various roads which is used to update specific Road Works pages on Council’s website.

Council also has a ***Natural Disaster Recovery Team*** Chaired by the NSW Reconstruction Authority (formerly Resilience NSW) and meets with Council’s Recovery Officer, the Natural Disaster Reconstruction Team, representatives from the Local Emergency Management Committee (LEMC) and Council’s management team to discuss and plan assistance in relation to human and animal welfare. The Natural Disaster Recover Team was meeting once a week prior to Christmas but will now be meet on a monthly basis.

Further, prior to Christmas, Council's Mayor, CEO and Senior Staff met regularly with State and Federal Members of Parliament to discuss progress of reconstruction and recovery efforts and work together to address and concerns.

Community Engagement

Extensive community engagement has been undertaken including:

- Two (2) village gatherings in Kangaroo Valley (29 Mar & 26 Apr 2022);
- One Berry Forum (12 May 2022);
- Presentation to Kangaroo Valley Community Meeting with representatives of Kangaroo Valley Community Consultative Body and the Upper Kangaroo River Progress Association Inc (16th Sep 2022);
- Cuppa & Cake Kangaroo Valley Hall (20 Dec 2022); &
- Presentation to Kangaroo Valley Community (22nd Nov 2022).

A community gathering with Burrier residents is tentatively planned for mid-February and a further community meeting with Kangaroo Valley residents is planned for early March. Residents at both meetings will be brought up to date with the planned commencement date of the major landslip repair works.

Opt In / Opt Out to new Natural Disaster Funding Arrangements & Implications

The NSW Government and the Australian Government introduced new arrangements to provide financial assistance to Local Government for the restoration of damaged essential public assets in the event of Natural Disasters in 2018. Details of the current arrangements can be found at:

- [Commonwealth Disaster Funding Recovery Arrangements 2018 \(DRFA\)](#)
- [NSW Disaster Assistance Arrangements](#)

Councils had the opportunity to "opt in" to the new Disaster Assistance Arrangements (NSW DAA) or stay with the previous NSW DAA (i.e. opt out). On 1 November 2022, Council was approved to "opt in" to the NSW DAA, which was backdated to 1 January 2022. to permit inclusion of all 2022 severe weather events into the funding arrangement.

Under these new arrangements, Council may be eligible to claim funding for the following additional items:

- The use of normal-hours staff ('day labour') for Emergency Works, Immediate Reconstruction Works, and Essential Public Asset Reconstruction Works.
- The use of Council's own plant and equipment for Emergency Works, Immediate Reconstruction Works, and Essential Public Asset Reconstruction Works.
- An extended period for Emergency Works on essential public assets (including clean-up) – from 21 days for up to three (3) months from the time that the asset becomes accessible.

However, under these new funding arrangements, Councils must contribute funding for a proportion of the total cost to restore damaged essential public assets. The amount of the council's co-funding contribution will be deducted from the overall Natural Disaster Assistance grant amount that is offered to council for each declared natural disaster event. The current co-contribution amount that will be required since becoming an "opt in" Council effective 1 January 2022, which amounts to *the lesser of 0.75% of the council's total rate revenue in the financial year two (2) years prior or \$1 million (ex GST) [\$579,683 for Mar-22 event]* per natural disaster event.

Expenditure to date

The total damage bill is likely to exceed \$79 Million which includes landslips, road pavement bridge, levee, and other infrastructure repair work. Expenditure including commitments to date is summarised as follows:

District	Emergency Works & Immediate Restoration Mar-22	Emergency Works & Immediate Restoration Jul-22	Repair of Essential Public Assets
Basin	\$1,649,573.45	\$1,356,999.76	Landslips \$7,117,679.98
Central	\$2,734,316.11		
North	\$2,723,321.47		
South	\$544,514.15		Sinkholes \$546,521.14 Causeway / Bridge \$446,539.46
TOTALS	\$7,651,725.18	\$1,356,999.76	Not fully tallied

Funding

Shoalhaven has opted into the Natural Disaster Funding Arrangements and therefore all of the above expenditure should be claimable and refunded to Council, less the fee per event.

Additionally, the following has been provided to date:

Funding Value	Month Paid	Distribution
\$2,000,000 (Local Government Recovery Grants)	Mar-22 Jul-22	\$104,091 – Kangaroo Valley Business Recovery Plan \$500,916 – Social Recovery (July event) \$200,000 – Martinvale Causeway - stabilise the creek where the water flow used to be \$1,194,993 – Cover any funding deficits for emergency and immediate reconstruction works
\$5,000,000 (Pre-payment of Natural Disaster claims for February event only)	Jun-22	Pre-funding of first \$5M of upcoming claims – to be offset against Natural Disaster Reconstruction team and landslip costs incurred to date
\$7,000,000		

Financial Implications

A Notice of Natural Disaster Declaration was made by Resilience New South Wales for the Shoalhaven LGA inclusion in AGRN1012 (Feb 22), AGRN1025 (Jun 22) and AGRN1034 (Sep 22). As a result, Council is eligible to receive funding under the Australian Government Disaster Recovery Funding Arrangements (2018) to cover the costs associated with restoration of roads to the pre-condition before the event.

The Opt in Contribution for Council for ARGN1012 is;

Minimum \$ 579,683.00 (0.75% Rate Revenue) for each event in each financial year
Maximum \$1,545,821.33 (2.00% Rate Revenue) for any financial year.

These contributions are typically funded from projects within the roads re-sheet, reseal or reconstruction program that are now surplus as they are covered by the Natural Disaster funding. Thus, the net effect to Council is zero. The details of this contribution will be the subject of a Quarterly Review process.

CL23.30

CL23.31 Tenders – Shoalhaven Area - Remediation of Multiple Landslips - RFT - 10053781

HPERM Ref: D23/39319

Approver: Paul Keech, Director - City Services

Reason for Report

To inform Council of the tender process for Shoalhaven Area - Remediation of Multiple Landslips - RFT - 10053781

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

This information will be considered under a separate confidential report.

Recommendation

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

Options

1. Accept the recommendation

Implications: Consider a separate confidential report on the matter.

2. Council make a different resolution

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

Background

The February (onwards) and June (onwards) 2022 natural disaster events (AGRN1012 and AGRN1025 respectively) brought torrential rain, damaging winds and floods that resulted in widespread landslips, road damage and isolation of some of the Shoalhaven community.

Further rain occurred in September 2022 resulting in yet another Natural Disaster Declaration (ARGN1034)

Funding to repair this damage has been made available in accordance with the *NSW Natural Disaster Essential Public Asset Restoration Guidelines 19 October 2018*. Damage can be roughly categorised as Road or Landslip works.

The Landslip Works comprised of over 90 slips at 38 different locations. This repair solutions includes several slope stabilisation techniques including bored piers, soil nails and gabion baskets.

Given the specialist nature of this Landslip Work Council worked closely with the NSW Public Works and SLR Geotechnical Consultants to document repair place and put together tender documents.

Tendering

A request for Tender was issued on 31 October 2022 and this process closed at 9:30am on 6 December 2022. Four tenders were received at the time of closing as follows;

Tenderer	Location
Dale and Hitchcock Civil Pty Ltd	Canberra
Delaney Civil Pty Ltd	Baulkham Hills, Sydney
Piling & Concreting Australia	Seven Hills, Sydney
Symal Infrastructure Pty Ltd	Newcastle

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

Policy Implications

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

Financial Implications

As Shoalhaven City Council successfully gained eligibility to Natural Disaster Events AGRN1012 (Feb ongoing Event) and AGRN 1025 (Jun ongoing Event) the funding for the works is fully funded under Commonwealth Disaster Recovery Funding Arrangements 2018 up to the agreed upper fee limit except for Shoalhaven City Council Opt-in contribution for each event.

Risk Implications

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

CL23.32 Policy - Fireworks Policy

HPERM Ref: D22/509650

Department: Environmental Services

Approver: James Ruprai, Director - City Development

Attachments: 1. Draft Fireworks Policy [↓](#)

Reason for Report

Council's resolution MIN22.258, 11 April 2022 resolved as follows:

That the Fireworks Policy (POL21/26) be placed on Public Exhibition for 28 days, if no submissions are received then the Policy be adopted without further report to Council.

The Fireworks Policy was placed on Public Exhibition with 105 submissions received. This report summarises these submissions and outlines the proposed amendments to the Fireworks Policy.

Recommendation

That Council adopt the revised Fireworks Policy as attached.

Options

1. As recommended

Implications: The Fireworks Policy will be adopted and provide clear guidance to licensed pyrotechnicians submitting notifications to Council for fireworks displays in accordance with SafeWork NSW licensing processes.

2. Council does not adopt the Fireworks Policy.

Implications: The status quo remains where licensed pyrotechnicians notifying Council of proposed fireworks displays continue to provide insufficient details.

3. Council provides and alternative resolution.

Implications: Unknown

Background

SafeWork NSW is the responsible agency that issue approvals for fireworks displays under the *Explosives Act 2003* (NSW) and *Explosives Regulation 2013* (NSW). Local councils must be notified by licensed pyrotechnicians for fireworks displays in accordance with the SafeWork NSW licensing processes.

This policy aims to address any adverse impacts of fireworks displays on the community and the environment by providing a consistent approach to the operation of fireworks on both Council owned and managed land and private property. This policy outlines where Council may make objections to firework displays if assessment identifies potential and foreseeable impacts on the environment and community. Such an objection is triggered by the licensed pyrotechnician carrying out the mandatory notifications to Council as a component of the SafeWork NSW licensing processes.

The draft Fireworks Policy was placed on a 28-day public exhibition in accordance with MIN22.258. The exhibition period received 105 submissions with only half of these providing feedback directly related to the policy contents and Council's role in the fireworks display approvals process. In summary, there was a general misunderstanding that Council regulates illegal fireworks activity, and undertakes a role as an approval authority for fireworks displays. These points prompted further review of the Fireworks Policy to make Council's jurisdictional role clearer.

The Draft Fireworks Policy, reported to Council in April 2022 has been revised and the changes are outlined in the following table.

Section	Amendment
1. Purpose	The Purpose has been simplified to provide clear guidance on Council's role in the assessment of fireworks on Council owned and managed land, as well as private land.
2. Statement	<p>2.1 Scope</p> <p>Scope articulates the role of Council in relation to licensed pyrotechnician displays on owned or managed land and also private lands. Statement simplified to explain that Council is not responsible for fireworks displays applications under the <i>Explosives Regulation 2013</i> (NSW). This assessment is the responsibility of SafeWork NSW. Council may submit an objection to SafeWork NSW if an assessment foresees impacts on the environment, domestic livestock, companion animals or the broader community.</p> <p>2.2 Background</p> <p>Potential environmental impacts and the aesthetic values pertaining to the utilisation of fireworks by licensed pyrotechnicians has been stated. The intention of this is to maintain the balance in the economic, cultural, environmental, and social values of the Shoalhaven.</p> <p>2.3 Legislative context</p> <p>Relevant legislation has been quoted to corroborate the role of Council in the SafeWork NSW fireworks licensing process.</p>
3. Provisions	<p>This section now includes information on:</p> <ul style="list-style-type: none"> • Policy Principles • SafeWork NSW • Event application - registering events with Council's City Futures Directorate through the Shoalhaven City Council Event Application process for proposed fireworks displays on Council owned or managed lands. • Environmental considerations – the need for consultation and the seeking of appropriate licenses from relevant State Government agencies has been mentioned. Mitigation measures for impacts of fireworks on the community and environment are documented.
4. Events on council land	Condensed into Section 3.
5. Community notification	Condensed into Section 3.

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Section	Amendment
6. Environmental considerations	Condensed into Section 3.
7. Implementation	Now Section 4.
8. Relevant Legislation	Condensed into Section 3.
9. Review	Now Section 5.
10. Application of ESD principles	This section has been removed to align with other policies adopted over the past year. ESD are core guiding principles for Council's under the Local Government Act 1993, and do not need to be explicitly referenced in each policy document. The section is therefore redundant as it is covered under our guiding legislation.
11. Glossary	Removed.

Community Engagement

The Draft Fireworks Policy was placed on 28 days public exhibition from 2 May 2022 in accordance with MIN22.258. A total of 105 submissions were received. This response represents approximately 0.06% of the Shoalhaven population.

Of the 105 submissions received, 62 provided feedback with 28 being supportive and 34 not in support of the policy. The remaining submissions commented on issues outside of the scope to the policy.

Submissions in support of the policy identified the following key points:

- Safety concerns for domestic animals and livestock who may be startled by fireworks.
- Impacts from fireworks on native fauna including threatened and migratory shorebirds.
- Impacts from fireworks on the local amenity relating to noise and smoke emissions.
- The potential health impact on people who suffer from medical conditions such as autism or post-traumatic stress disorder (PTSD).
- The importance regulating against all non-approved "illegal" private fireworks displays.
- Concern about community safety issues e.g., Fireworks displays during total fire bans.

Submissions not in support of the policy identified the following key points:

- Concern that the policy will prevent landowners from enjoying firework displays on private land or at private functions.
- General feedback suggesting that fireworks displays are not an important issue, thus suggesting that Council should not need a policy to restrict their use.

Overall, the submissions highlighted a general lack of community understanding of Council's role in the approval of fireworks displays. Accordingly, the "Purpose" and "Statement" sections to the policy have been amended to provide clearer guidance on Council's role in the assessment of fireworks on Council owned and managed land, as well as private land.

Policy Implications

Operationally fireworks are regulated by SafeWork NSW under the *Explosives Regulation 2013*. This Regulation requires licensed pyrotechnicians to notify SafeWork NSW and local authorities of fireworks display at least seven (7) business days prior to the event.

CL23.32

This policy aligns with Council's Events Policy, which in addition to the SafeWork NSW notification process requires the event organiser to complete an Event Application form 90 days prior to commencement of the fireworks display.

Financial Implications

SafeWork NSW is the consent authority for issuing permits to conduct fireworks displays. There are no fees and charges for notifying Council of proposed fireworks. There is no operational budget allocated to implement this policy.

Risk Implications

Endorsing a policy that ensures appropriate mitigation measures is integral to maintaining a balance in the economic, cultural, environmental, and social values of the Shoalhaven.

Fireworks Policy

Adoption Date:	
Amendment Date:	
Minute Number:	
Review Date:	
Directorate:	City Development
Record Number:	POL21/26

Fireworks Policy

Contents

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2.2 Background	2
3. Provisions	3
3.1 Policy principles	3
3.2 SafeWork NSW	3
3.3 Event Application	4
3.4 Environmental considerations	4
4. Implementation	5
5. Review	5

CL23.32 - Attachment 1

Fireworks Policy

1. Purpose

This policy has been prepared to provide clear guidance on how Council will consider notifications for firework displays conducted by licensed pyrotechnicians under the *Explosives Regulation 2013* (NSW) and regulated by SafeWork NSW.

Council is committed to ensuring that all events with proposed firework/pyrotechnic displays held on Council owned or managed land exercises an appropriate level of due diligence and identifies and mitigates all potential impacts on the community and the environment.

2. Statement

2.1 Scope

This policy aims to provide a consistent approach to the operation of fireworks on Council owned and managed land across the Shoalhaven City Council local government area (LGA).

Council must be notified by licensed pyrotechnicians via the SafeWork NSW application process for all fireworks displays held in the LGA. Council has the right to issue objections in relation to fireworks/pyrotechnics displays held on private land if assessment demonstrates potential and foreseeable impacts on the environment, domestic livestock, companion animals and the broader community.

Council does not assess fireworks applications for compliance to the requirements of *Explosives Regulation 2013* (NSW) associated with the use and storage of fireworks. This assessment is the sole responsibility of SafeWork NSW.

It is illegal to buy, possess or discharge fireworks unless a [pyrotechnicians or single use licence](#) is obtained from SafeWork NSW. SafeWork NSW must be notified of all fireworks displays. Authorised events can be found using the SafeWork NSW [fireworks display search](#).

Unauthorised events are to be reported to the NSW Police as the appropriate regulatory authority.

2.2 Background

Fireworks comprise aluminium, iron, zinc or magnesium dust encapsulated in a low explosive pyrotechnic mechanism in order to produce bright and shimmering sparks. Fireworks displays still feature in many aesthetic and entertainment related functions and are considered the focal point of these celebrations.

The use of fireworks must be authorised by SafeWork NSW. Their use poses a risk on the environment and the community, predominantly through the noise emitted, but also due to the need for the appropriate management of community and visitor congregations.

As such, assessing the risks imposed by fireworks displays on the environment and the community, and their appropriate mitigation, is integral to maintaining and continuing a balance in the economic, cultural, environmental, and social values of the Shoalhaven.

Fireworks Policy

2.3 Legislative context

The following legislation, Australian Standards and Codes are relevant to fireworks displays:

- *Explosives Act 2003* (NSW)
- *Explosives Regulation 2013* (NSW)
- *Environmental Planning and Assessment Act 1979* (NSW)
- *Rural fires Act 1997* (NSW)
- *Biodiversity Conservation Act 2016* (NSW)
- *National Parks and wildlife Act 1974* (NSW)
- *Fisheries Management Act 1994* (NSW)
- *Environment Protection and Biodiversity Conservation Act 1999* (Cth)
- *Australian Standard AS 2187.4 Storage, Transport, and Use – Pyrotechnics – Outdoor Displays*
- *Australian Explosives Code Operational Conditions for Pyrotechnician's and Single Use Fireworks Licences*

3. Provisions

3.1 Policy principles

Shoalhaven City Council may issue a permit approving firework displays by licensed pyrotechnicians on Council owned or managed land subject to the following conditions:

- Fireworks/pyrotechnics displays are for the specific purpose of public/community events only.
- The event organiser/licensed pyrotechnician has exercised an appropriate level of due diligence to avoid impacts on the environment and community.
- The process and supporting application are fully supported by SafeWork NSW authorisations.
- Relevant State Government agencies have been consulted with in relation to areas within their jurisdiction and where relevant, licenses and permits have been obtained.

Council is entrusted to ensuring that all events held on Council owned or managed land are safe, accessible, well planned and take into consideration and manage potential impacts. SafeWork NSW set the requirements that event organisers must meet when applying for firework approval.

Any unauthorised use of fireworks/pyrotechnics must be referred to the NSW Police Force for legal prosecution.

3.2 SafeWork NSW

As the use of fireworks is regulated by SafeWork NSW under the *Explosives Regulation 2013*, more information pertaining to licensing, eligibility criteria and application process can be located on the SafeWork NSW website - [SafeWork NSW Explosives and fireworks licences](#).

A [SafeWork NSW Fireworks Display Checklist](#) must be completed and submitted to SafeWork NSW at least seven (7) business days prior to **any** fireworks display event. It is used to identify

Fireworks Policy

areas of potential risk for firework displays and to assist licence holders when developing a written risk assessment required by SafeWork NSW.

Authorities (including Council) must be included in the notification, and these are outlined in the checklist. A letter from Council must be submitted to SafeWork NSW by the applicant stating there is no objection from Council before SafeWork NSW can process the application. Proof of stakeholder consultation and notification must be demonstrated before Council reviews the Council Event Application as per Section 3.3.

3.3 Event Application

In addition to the SafeWork notification process outlined in section 3.2, a [Shoalhaven City Council Event Application](#) in accordance with Council's Events Policy must be submitted to Council at least 90 days prior to commencement of the firework displays if they are proposed to occur on Council owned or managed land. The Event Application must include:

- a. A completed copy of the [SafeWork NSW Fireworks Display Checklist](#)
- b. A copy of current SafeWork NSW pyrotechnicians licence
- c. Mitigation measures for all relevant environmental aspects
- d. Confirmation that surrounding residents and any sensitive receivers will be notified between 14 days to a month prior to the event.
- e. Environmental considerations as outlined in section 3.4.

Surrounding residents shall be notified between 14 days to a month prior to the event as follows:

- 1) minimum 1km radius in residential areas; and
- 2) minimum 2km radius in rural areas
- 3) or as specified in the Council issued permit for the approved event.

This notification must include:

- a. Date, time and location of the proposed fireworks.
- b. Tips and links to resources for protection of pets and livestock during fireworks displays.
- c. Contact details for Wildlife Rescue South Coast and local veterinary clinics in the event that residents find injured or disorientated wildlife during or following a fireworks display.
- d. The licensed pyrotechnicians details, including a phone number to make representations.
- e. State that any concerns about the display may be raised with Shoalhaven City Council if they are unable to be resolved with the licensed pyrotechnician.

3.4 Environmental considerations

Council is committed to ensuring that licensed pyrotechnicians exhibit an appropriate level of due diligence and compliance with relevant environmental legislation. This includes the provision of licenses and/or permits from State Government agencies for relevant environmental aspects within their jurisdictional control when an Event Application is submitted to Council.

The [NSW Government Directory](#) should be used to determine the relevant State Government agencies that need to be consulted in the preparation of a fireworks notification and the completion of a Council Event Application for firework displays.

Fireworks Policy

Noise emitted from fireworks is an important consideration in this assessment and how it impacts on animals – wildlife, pets, and domestic livestock. Impacts on animals from fireworks may include loss of hearing, death by fright, significantly elevated heart rate, collisions with objects and infrastructure associated with a flight response, dependent juvenile abandonment and long-term increased panic reactions to future loud noises, such as thunder.

Other impacts on the environment from fireworks displays include:

- air and water pollution (e.g. micro and meso litter from fireworks tubes and fireworks plastic pieces).
- public health concerns (e.g. respiratory disease and asthma trigger).
- waste management.
- pedestrian and traffic control.
- Threats imposed on biodiversity and cultural heritage (e.g., barge mobilisation and anchoring where there are seagrasses present, trampling of vegetation from fireworks spectators).
- Bushfire risk.

To help mitigate these impacts of fireworks displays on the environment, the following considerations and actions should be implemented (but not be limited to) by the licensed pyrotechnician:

- Delineate and implement appropriate controls and adhere to stipulated conditions imposed by Council and State Government agencies for the relevant environmental aspects.
- Undertake a database search for threatened flora and fauna species and threatened ecological communities likely to be affected by the proposed fireworks display.
- Temporary fencing of exclusion zones to ensure sensitive areas such as beach nesting and roosting areas, natural vegetation and any culturally sensitive sites are not impacted or trampled by bystanders.
- Amending proposed displays to minimise impacts, such as lowering noise levels and shortening the display.
- Relocation or postponement based on location of sensitive sites and/or times of the year when threatened species are breeding/nesting.
- Cancellation of the event where impacts on threatened species or sensitive sites are unavoidable and cannot be adequately mitigated.

4. Implementation

City Development (Environmental Services) will administer the policy. City Future (Tourism) will assist in the implementation of the policy through advice, information sharing and event bookings.

5. Review

The Policy will be reviewed within one year of the election of every new Council.

CL23.33 Variations to Development Standards - December Quarter 2022

HPERM Ref: D22/500354

Department: Development Services

Approver: James Ruprai, Director - City Development

Attachments: 1. Planning Circular - PS20-002 Variations to Development Standards [↓](#)

Reason for Report

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

Council is required to consider variations to development standards (contained in an environmental planning instrument such as the *Shoalhaven Local Environmental Plan 2014*) which exceed 10%, with lesser variations able to be dealt with by staff, under delegation.

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

This is a regular information report.

Given that there was only one Development Application with a clause 4.6 variation in the last quarter, the spreadsheet that is forwarded to the Department has not been attached to this report. A summary of the matter (which has also been reported to Council given that it was a Regional Application) is provided at the end of the report.

Recommendation

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

Options

1. Receive the report for information.

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

2. Resolve an alternative and provide details to staff.

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

Background

Procedural and reporting requirements

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

- A written application (by an applicant) must be made to support a variation.

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

Summary of reportable variations

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

There was one reportable variation for the December Quarter.

Table – Variations December Quarter 2022

DA	Lot	DP	Street Name	Suburb	Post Code	Description	Standard Varied	Extent of Variation	Decision	Date
RA21/1002	436	808415	Flatrock Rd	MUNDAMIA	2540	Industrial	Height	9.6%	Assumed concurrence. Delegation.	22/12/2022

Regional Development Application RA21/1002 for an "*Integrated development to construct and operate a Materials Recycling Facility (MRF) with a processing capacity of up to 24,000 tonnes per annum of waste materials*" was approved by the Regional Planning Panel on 22 December 2022. The application was also reported to Council's Ordinary Meeting on Monday 10 October 2022 in accordance with the protocol for Regional Applications.

In summary:

The site is located approximately 3km west of the city of Nowra within the existing West Nowra Waste Facility.

The site contains an existing landfill and recycling facility owned and operated by Shoalhaven City Council with a number of approved developments associated with the ongoing operations of the facility. Key features associated with the site or in proximity to the proposal include:

- Vegetation adjacent to the site (running along the western and northern boundaries).
- A creek running adjacent to the site to the west.
- Category 1 and Category 2 bush fire prone land on the proposed MRF site.

RA21/1002, sought and obtained approval for construction and operation of a Materials Recycling Facility (MRF) within the existing West Nowra waste and recycling facility.

The land is zoned SP2 Infrastructure under the *Shoalhaven Local Environmental Plan 2014* (SLEP 2014), under which land within the Land Zoning Map including development that is ordinarily incidental or ancillary are permitted with the consent of Council. A request for exceedance of the permitted 11 metre building height pursuant to clause 4.6 of SLEP 2014 accompanied the application.

As the investment value (CIV) is more than \$5 million, in accordance with section 3(b) of Schedule 6 of SEPP (Planning Systems) 2021, the application constituted a Regional Development Application, and the Southern Regional Planning Panel was therefore the determining authority for the application.

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The DA was notified in accordance with the *Environmental Planning and Assessment Regulation 2000* (EP&A Regs) and Council's Community Consultation Policy for Development Applications from 22 December 2021 to 21 January 2022.

No submissions were received for the proposal.

Comments received from agencies and internal council referrals were assessed as being either acceptable matters on their merits or capable of being resolved via conditions.

Conclusion

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



Planning circular

PLANNING SYSTEM

Varying Development Standards

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

Variations to development standards

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

Overview of assumed concurrence

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

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

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

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

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

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

Assumed concurrence conditions

Lot size standards for dwellings in rural areas

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

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

RU4 Primary Production Small Lots, Zone RU6 Transition

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

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

Numerical and non-numerical development standards

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

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

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

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

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

Independent hearing and assessment panels

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

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

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

Regionally significant development

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

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

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

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

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

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

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

Notification of assumed concurrence

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

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

Procedural and reporting requirements

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

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

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

Audit

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

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

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

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

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

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

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

Further information

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

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

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

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

Authorised by:

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

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

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ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

Assumed concurrence notice

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

Notice

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

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

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

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

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

Dated: 21 February 2018



Carolyn McNally
Secretary, Department of Planning and Environment

CL23.34 Development Application - SF10958 - 31 Porter Circuit Milton - Lot 319 DP 123292

DA. No: SF10958

HPERM Ref: D22/523291

Department: Development Services

Approver: James Ruprai, Director - City Development

Attachments: 1. Planning Report - S4.15 Assessment (under separate cover) [⇒](#)
2. Draft Notice of Determination (under separate cover) [⇒](#)
3. Plan of Subdivision [↓](#)

Description of Development: One into two lot Torrens title subdivision

Owner: T L Houston & M J Malone

Applicant: Jervis Bay Town Planning

Notification Dates: 12 to 30 August 2022

No. of Submissions: Four (4)

Purpose / Reason for consideration by Council.

The Development Application was called in for determination on public interest grounds at the Ordinary Council Meeting on 12 September 2022 (MIN22.615)

Recommendation

That Development Application (SF10958) to subdivide 31 Porter CT, Milton into two Torrens Titled lots be approved subject to the conditions of consent provided at Attachment 2.

Options

1. Approve the development application (DA) in accordance with the recommendation of this report.

Implications: This would allow the applicant to pursue construction of the development.

2. Refuse the development application (DA).

Implications: Council determine the grounds on which the application is refused, having regard to section 4.15 considerations. A refusal enables the applicant to lodge a section 8.2 Review and / or appeal with the Land and Environment Court of NSW (LEC).

3. Alternative recommendation.

Implications: Council specify an alternative recommendation and advise staff accordingly.

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Location Map



Figure 1 – Subject Site Shown Highlighted in Yellow



Figure 2 – Vacant Lot at 31 Porter CT

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Figure 3 – Site Photograph of Vacant Lot at 31 Porter Circuit – Looking Towards Street

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Background

Proposed Development

In accordance with the Plans depicted at Attachment 3, the application proposes a subdivision of the land to create two Torrens Title allotments, both fronting Porter Circuit, Milton.

Lot 319 DP 1232292 has an area of 1,002.00m² and the proposal intends to create the following allotments:

	Lot 1	Lot 2
Area	500m ²	502m ²
Width	12.8m	11.8m
Average Depth	39.6m	42.8m

The proposed subdivision can be seen in Figure 4 below:

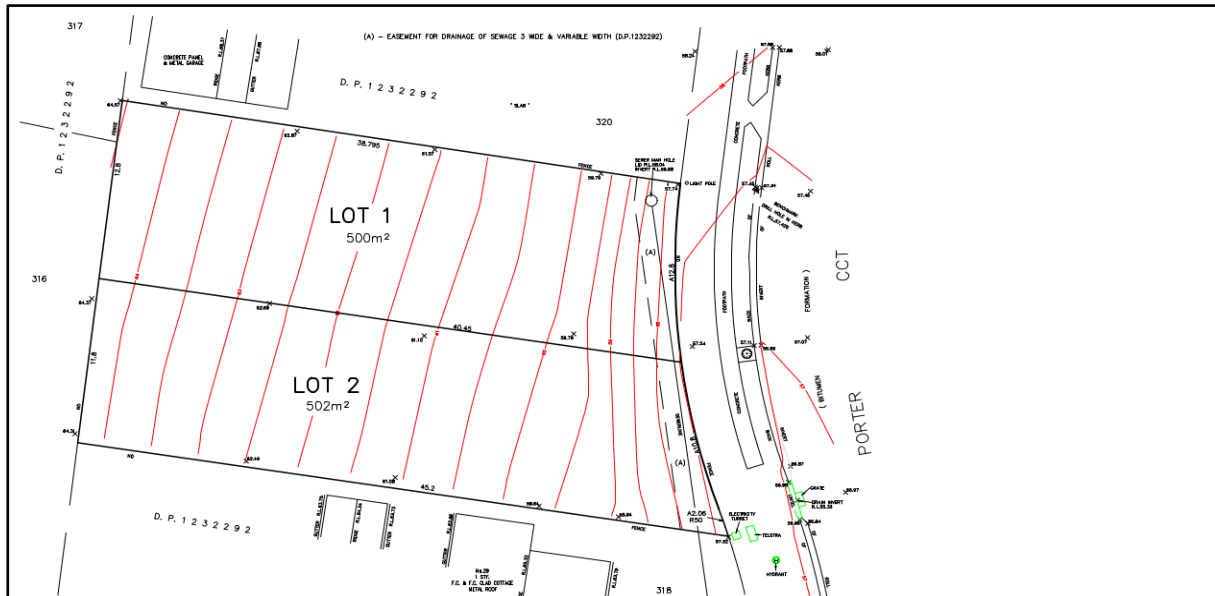


Figure 4 – Proposed Subdivision

Subject Land & Context

The site is known as Lot 319 DP 1232292 - 31 Porter Circuit, Milton.

The overall development site measures 1,002m² and is predominantly rectangular in shape.

The site is vacant and is bounded by residential development to the north, south, and east containing principally dwellings.

The site is zoned R1 General Residential under the *Shoalhaven Local Environmental Plan 2014*.

The area is largely made up of residential development including dwelling houses and dual occupancy developments.

The site is cleared and slopes steeply from west to south with a fall of approximately 6.8 metres or 17%.

History

DA NO.	Description	Lodgement	Determined	Decision
SF10958	Two (2) Lot Torrens title Subdivision	12/08/2022	-	-
DA21/1991	Multi Dwelling Development & Community Title Subdivision	23/08/2021	23/05/2022	Refused by Council

Discussion Item 1 – Lot Width Requirements

The Shoalhaven Development Control Plan (SDCP) 2014 has an acceptable solution (A79.2) which outlines that one of way of achieving compliance with the development control is as follows:

A79.2 prescribes the following lot shape requirements for rectangular non-corner lots:

- 30m minimum depth

- 16m square width minimum

The proposed subdivision will result in two (2) lots.

- Lot 1 – 500m² / Lot depth (Average) 39.6m and width 12.8m
- Lot 2 – 502m² / Lot depth (Average) 42.8m and width 11.8m

Where the proposal is non-compliant with the acceptable solution (A79.2), Council must consider the proposal against the performance criteria (P79), which is the second means of demonstrating compliance with the development control (i.e. a performance-based solution).

P79 states the following:

Lots have the appropriate area and dimensions for the siting and construction of a dwelling and ancillary outbuildings, the provision of outdoor space, convenient vehicle access and parking.

Applicants Submission

Despite the width of the allotment being less than 16m, it is clear that a modern family home could be constructed on each proposed lot without complication. The width of the allotments are not unusual in the context of a contemporary subdivision.

The maximum floor space ratio applicable to the site for R1 zoned land (0.5:1) allows for a dwelling of up to 250m² + garage to be built with appropriate setbacks (front 7m, rear 3m, side 900mm) on each proposed lot. This translates to a comfortable 3-4 bedroom home + garage. Even with larger homes constructed on the site, there will be ample space available for generously proportioned private open space areas. The depth of the proposed lots ensures this.

Discussion

The heads of consideration for this performance-based solution is whether the Lots have appropriate area and dimensions for the siting and construction of a dwelling and ancillary outbuildings, the provision of outdoor space, convenient vehicle access and parking as per P79 of G11.

The applicant has provided an indicative building layout plan which denotes that a dwelling could be sited on the respective lots. A screenshot of this plan can be seen below:

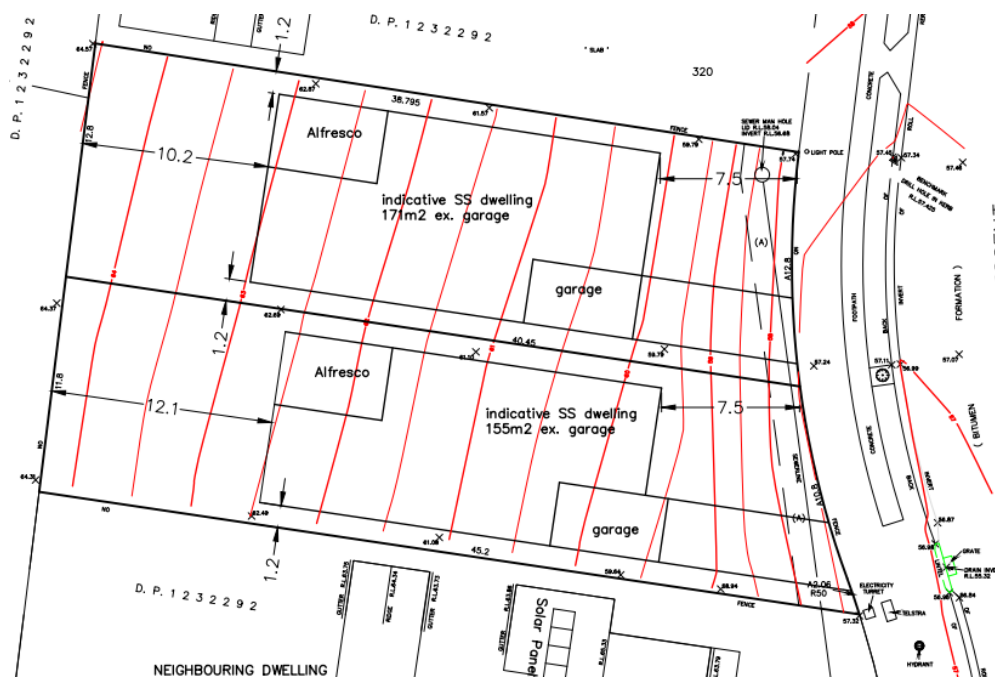


Figure 5 – Indicative Dwelling Locations

Furthermore, there are several designs for dwelling houses from kit and/or project home providers for 'narrow blocks'. Under these circumstances, it is considered that the proposed lots can facilitate the construction of dwelling houses with ancillary outbuildings, the provision of outdoor space, convenient vehicle access and parking.

It is worth noting that in **Parrott v Kiama [2004] NSWLEC 77** Senior Commissioner Dr John Roseth created the planning principle that a subdivision application should provide constraints on future buildings when the proposed allotments are smaller than usual, or environmentally sensitive or where significant impacts on neighbours is likely and needs careful design to minimise them.

In the circumstances of this case, it is noted that the lots are narrower in width than the surrounding lots, and that the topography of the site is sloping. To reduce the likelihood of an adverse impact to the amenity and solar access on adjoining properties a restriction on the use of land will be imposed limiting any future development to that of a typical single storey construction. This is consistent with the built form requirements of S7 for development in the Corks Lane Precinct.

It is further noted that the creation of lots of the proposed size would enable the R1 General Residential land use zone objective, "To provide for a variety of housing types and densities" to be achieved. The creation of lots would permit appropriately considered and designed dwellings to be constructed on the site which suit the shape and area of the lot. The layout is also considered to be appropriate having regard for the need for additional housing stock to enter the local market which provides opportunities for different housing typologies and sizes.

On balance between facilitating the construction of dwellings with an acceptable level of impact on adjoining properties and achieving the zoning objective for providing a variety of housing types and densities, it is considered that the proposal has appropriately considered both interests and is therefore acceptable and warrants approval. The suitability of future dwelling construction on the lots would also be considered at that time of future assessment to ensure interests including solar access, overshadowing, and privacy have been considered.

Discussion Item 2 – Consistency with Area of Surrounding Lots

Section 3.43(5) of the *Environmental Planning and Assessment Act 1979* prescribes that a development control has no effect to the extent that it is inconsistent with an Environmental Planning Instrument.

Chapter S7 Development Guidelines for Certain Residential Zoned Land in Milton Ulladulla applies to the subject site.

Council's assessment undertaken against Chapter S7 has found that there is an inconsistency with the following Acceptable Solution (A4.1 of Section 7.1.2 Residential Subdivision), which prescribes that the lots in the Corks Lane Precinct are to be 'large' urban residential, which is inconsistent with the mapped minimum lot size under the Shoalhaven Local Environmental Plan (SLEP) 2014.

A 4.1 Prescribes the following:

Lots should be subdivided to a size applicable to 'large' urban residential, unless geotechnical and drainage advice states to the contrary. Suitability will be determined at the development assessment stage

Large urban residential lot size is defined under Chapter S7 as follows:

Large urban residential lots are defined as having an average minimum area of 750m², with a maximum of 20% of lots between 650-750m².

CL23.34

Lots within the Corks Lane Precinct are typically consistent with the lot sizes prescribed by A 4.1. This is due to the subdivision which created the Corks Lane Precinct (SF9459) was approved under the SLEP 1985.

Under the SLEP 1985, there was no prescribed minimum lot size for the creation of Lots for land zoned 2(c). The Corks Lane Precinct was zoned 2(c) (Residential “C” (Living Area) Zone).

Since this approval, the strategic direction for lot sizes has changed. Upon review of the lot size as part of the formulation of the SLEP 2014, it was found that a minimum lot size of 500m² would represent the most appropriate area for future lots developed within the locality.

Where the proposal is non-compliant with the acceptable solution (A4.1), Council must consider the proposal against the performance criteria (P4), which is the second means of demonstrating compliance with the development control (i.e. a performance-based solution).

Performance Criteria P4 states the following:

Residential lot sizes should enable generous front and side setbacks, while remaining relevant to the village context.

Having regard to the performance criteria above for A 4.1, it is considered that the proposed lots would be consistent with this criterion.

The indicative dwelling locations on the lots, which can be seen in Figure 5 above, detail that generous front and rear setbacks can be achieved. Dwelling 1 and 2 could have front setbacks of 7.5m and rear setbacks in excess of 10m. The side setbacks would be consistent with the surrounding lots and be 0.9m.

These setbacks are relevant and consistent with the village context and character of Milton.

In summary, Council cannot enforce a DCP requirement if it is inconsistent with an LEP development standard. Nevertheless, the proposed lots have been considered to be consistent with the respective performance criteria.

Applicants Submission

This acceptable solution is inconsistent with the provisions of the Shoalhaven Local Environmental Plan 2014 which sets a minimum lot size of 500m² for the land. Council would know that Section 3.43 (5) of the Environmental Planning and Assessment Act 1979 (as amended) states that:

A provision of a development control plan (whenever made) has no effect to the extent that—

- a) it is the same or substantially the same as a provision of an environmental planning instrument applying to the same land, or*
- b) it is inconsistent or incompatible with a provision of any such instrument.*

In other words, where a DCP provision is inconsistent with an LEP, that provision of the DCP has no effect. The 750m² minimum lot size as set out within the DCP is a control that the Council therefore cannot reasonably require compliance with. The only appropriate mechanism to enforce a specific minimum lot size in this instance is the Shoalhaven LEP 2014

Discussion

It is accepted that there is a clear inconsistency between the mapping under the Shoalhaven Local Environmental Plan (SLEP) 2014 and the lot sizes prescribed under Chapter S7 of the SDGP 2014 for the Cork Lane Precinct.

CL23.34

The minimum lot size prescribed by the SLEP 2014 is 500m² and section 3.43(5) of the *Environmental Planning and Assessment Act 1979* prescribes that a development control has no effect to the extent that it is inconsistent with an Environmental Planning Instrument.

Under these circumstances, the prescribed minimum lot size detailed in the Acceptable Solution (Chapter S7 Topic 7.1.2) has no effect and Council cannot require that a lot must meet a lot size of 750m², with a maximum of 20% of lots being between 650-750m², when the Local Environmental Plan permits lot sizes of 500m².

Consideration of a suitable performance-based solution is considered appropriate in this instance. Noting that a suitably sized dwelling is able to be erected on the site as described in Discussion Point 1, it is considered that appropriate setbacks would be able to be achieved to enable orderly development of the land (Note: subject to the lodgement of a future application).

On balance, despite the lots being smaller than the majority of lots found within the Corks Lane Precinct, the deliberate strategic direction of the Local Environmental Plan must be adhered to. Thus, the proposed lots are considered to be consistent with the desired and to emerge, future character of the locality under the current planning regime.

Planning Assessment

The Development Applications have been assessed under s4.15(1) of the Environmental Planning and Assessment Act 1979. Please refer to **Attachment 1**.

The proposed application has been assessed against the relevant planning instruments and have been found to be satisfactory.

Policy Implications

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

Strategic Planning have advised that the controls in DCP Chapter S7 were transferred from Shoalhaven Planning Policy No.1 in a 'like for like' manner when the current DCP was adopted in 2014. DCP Chapter S7 was most recently updated with some minor housekeeping amendments in 2015.

Strategic Planning intend to undertake broad housekeeping amendments to area specific chapters in the DCP including S7, subject to competing priorities in the Strategic Planning Works Program. Although the proposed amendments to the DCP are not yet finalised, Strategic Planning are aware of the inconsistencies between the minimum lot size in SLEP 2014 and the relevant controls in DCP Chapter S7.

Consultation and Community Engagement:

Four public submissions were received in relation to Council's notification of the development.

Four were objections to the development.

The notification was made in accordance with Council's Community Consultation Policy.

The key points from the subdivisions are summarised below:

- Traffic/Parking impacts
- Future development
- Overshadowing, privacy, and amenity impacts
- Inconsistent with surrounding lot sizes

The assessment of the application considered the matters raised in the submissions (as prescribed by s4.15(d) and concluded on balance having regard to all the heads of consideration (section 4.15 Evaluation), that the application can be approved. A detailed analysis can be found in the attached section 4.15 assessment reports.

Financial Implications:

The applicant is entitled to appeal a decision of Council. In the event of an appeal being lodged with the NSW Land and Environment Court, Council would be responsible for covering its costs through proceedings.

Legal Implications

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

Summary and Conclusion

The proposed development has satisfied the provisions of SLEP 2014, and the overall objectives and provisions contained within Shoalhaven Development Control Plan (SDCP) 2014.

It is recommended that approval be issued subject to the recommended conditions of consent contained at Attachment 2.

CL23.34



REVISION		BY	DATE
SUBDIVISION SKETCH PLAN 31 PORTER CCT, MILTON LOT 319 DP1232292 FOR MR M. MALONE		DATE: 19 JULY 2022	
		RATIO: 1: 200	
		REF: JB006	

CL23.35 RA21/1003 – 41 Main Road Cambewarra – Lot 4 DP 542936, Taylors Lane Cambewarra – Lots 1 & 2 DP 1256748, 126 Taylors Lane Cambewarra – Lot 6 DP 1256748, 49 Hockeys Lane Cambewarra – Lot 7 DP 1256748, Hockeys Lane Cambewarra – Lot 1191 DP 1256749, 15 & 15A Main Road Cambewarra – Lots 1271 & 1272 DP 1264383**DA. No:** RA21/1003/4**HPERM Ref:** D23/23116**Department:** Development Services
Approver: James Ruprai, Director - City Development**Attachments:** 1. Consultant Planning Report (under separate cover) [↗](#)
2. Draft - Determination (under separate cover) [↗](#)**Description of Development:** Staged residential subdivision to create 256 Torrens Title allotments and provision of associated civil infrastructure and landscaping**Owner:** E W Mobbs, E J Reid & S A Hay
Shoalhaven City Council
R & M Penfold
C Evison**Applicant:** Newquest Property Pty Ltd C/- Maker Eng Pty Ltd**Notification Dates:** 12/01/2022 – 11/02/2022
17/10/2022 – 07/11/2022**No. of Submissions:** 35 submissions**Purpose / Reason for consideration by Council**

To review the section 4.15 assessment report and determination prepared by an independent consultant which is to be submitted to the Southern Regional Planning Panel for consideration.

Recommendation

That:

1. Council receive and note the report RA21/1003 – 41 Main Road Cambewarra – Lot 4 DP 542936, Taylors Lane Cambewarra – Lots 1 & 2 DP 1256748, 126 Taylors Lane Cambewarra – Lot 6 DP 1256748, 49 Hockeys Lane Cambewarra – Lot 7 DP 1256748, Hockeys Lane Cambewarra – Lot 1191 DP 1256749, 15 & 15A Main Road Cambewarra – Lots 1271 & 1272 DP 1264383.
2. Council support the referral of RA21/1003, for staged residential subdivision to create

256 Torrens Title allotments and provision of associated civil infrastructure and landscaping, to the Southern Regional Planning Panel for determination on the basis that it has been satisfactorily assessed pursuant to section 4.15 of the *Environmental Planning and Assessment Act 1979*.

3. The resolution made by Council be submitted to the Southern Regional Planning Panel prior to their consideration and determination of RA21/1003.

Options

1. Support the referral of the application to the Southern Regional Planning Panel (SRPP) for determination and advise the SRPP accordingly.

Implications: The recommendation would be provided to the SRPP for their information as part of their consideration of the regional application.

2. Make an alternative resolution and make a separate submission to the SRPP.

Implications: The alternative resolution would be provided to the SRPP for their consideration. The SRPP will be the determining authority for the application.

Location Map



Figure 1 – Site location / Aerial view

Background

Why this DA is being reported to the Regional Planning Panel

- The capital investment value (CIV) of the proposed development is more than \$5 Million and the DA involves works on Council owned land, being Lot 1 and Lot 2 DP1256748, and part Lot 1271 DP1264383.

CL23.35

- The Southern Regional Planning Panel is the determining authority for the application in accordance with section 3(b) of Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021*, (SEPP).

3 Council related development over \$5 Million

Development that has a capital investment value of more than \$5 Million if:

- (a) a council for the area in which the development is to be carried out is the applicant for development consent, or*
- (b) the council is the owner of any land on which the development is to be carried out, or***
- (c) the development is to be carried out by the council, or*
- (d) the council is a party to any agreement or arrangement relating to the development (other than any agreement or arrangement entered into under the Act or for the purposes of the payment of contributions by a person other than the council).*

The determination by a Panel adds a layer of transparency to the assessment process. Furthermore, the application was also independently assessed by a reputable Planning Consultancy – Mecone, engaged by the Department of Planning and Environment to complete the assessment on behalf of Council as it was included in the Department's Expert Assessment Program (EAP).

The EAP is intended to provide help for councils to progress large and complex housing development applications 'in the system, that have the potential to significantly increase the supply of new housing. Expert Assessment is part of the Unblocking Homes Program, an \$11.5 Million (for the 2022/23 Financial Year) coordinated package of initiatives to boost resourcing for councils to help progress the backlog of planning proposals and development applications to help drive the supply of new houses needed in the state over the next four years.

Proposed Development

Council is in receipt of a development application (DA) which seeks approval for staged residential subdivision to create 256 Torrens Title allotments, including:

- Residential lots ranging from 405m² to 1,149m², with the majority of lots oriented north-south, and only a small remainder of approximately 11 oriented east-west;
- One super lot (Lot 800) with an area of 4,795m² which is intended to facilitate any potential road alignment changes that may be required along Taylors Lane, as well as for future small lot residential use for increased yield;
- The remainder of the site is proposed to retain the existing riparian corridor and drainage basins for the subdivision;
- The residential lot types proposed within the subdivision include medium density/integrated housing in the south-eastern extent of the site, with five (5) of these anticipated to be dual occupancy lots; standard lot residential sized lots contained within the interior in a standard grid pattern; and large lot residential placed along the northern boundary extent to offer larger lot lifestyle living.
- The road layout that services these lots has been designed to provide access to lots in line with the road layout for Stage 4 of Council's DCP Indicative Layout Plan (ILP) for traffic moving between Moss Vale Road and Taylors Lane;
- Provision of associated civil infrastructure and landscaping;
- Construction of landscaped open space and associated embellishment on Council land;

- The subject site is in the north-western portion of the Moss Vale Road South Urban Release Area (URA) and connects with the approved development to the east being DA SF10804 and SF10895; and
- The site is to be developed following construction of these developments, with connectivity via Roads 01, 03, 14, 19 and 22.
- Development of the site has been divided into six stages, as follows:
 - Stage 1 – Creation of 70 residential allotments (Lots 200-238 and Lots 300-330), provision of roads, drainage and utility infrastructure along with associated landscaping works;
 - Stage 2 – Creation of 35 residential allotments (Lots 400-434), provision of roads, drainage and utility infrastructure along with associated landscaping works;
 - Stage 3 – Creation of 56 residential allotments (Lots 500-555), provision of roads, drainage and utility infrastructure along with associated landscaping works;
 - Stage 4 – Creation of 34 residential allotments (Lots 600-633), provision of roads, drainage and utility infrastructure along with associated landscaping works;
 - Stage 5 – Creation of 56 residential allotments (Lots 700-755), provision of roads, drainage and utility infrastructure along with associated landscaping works; and
 - Stage 6 – Creation of 5 residential allotments (Lots 800-804), provision of roads, drainage and utility infrastructure along with associated landscaping works.

The proposed site plan is provided in **Figure 2**.

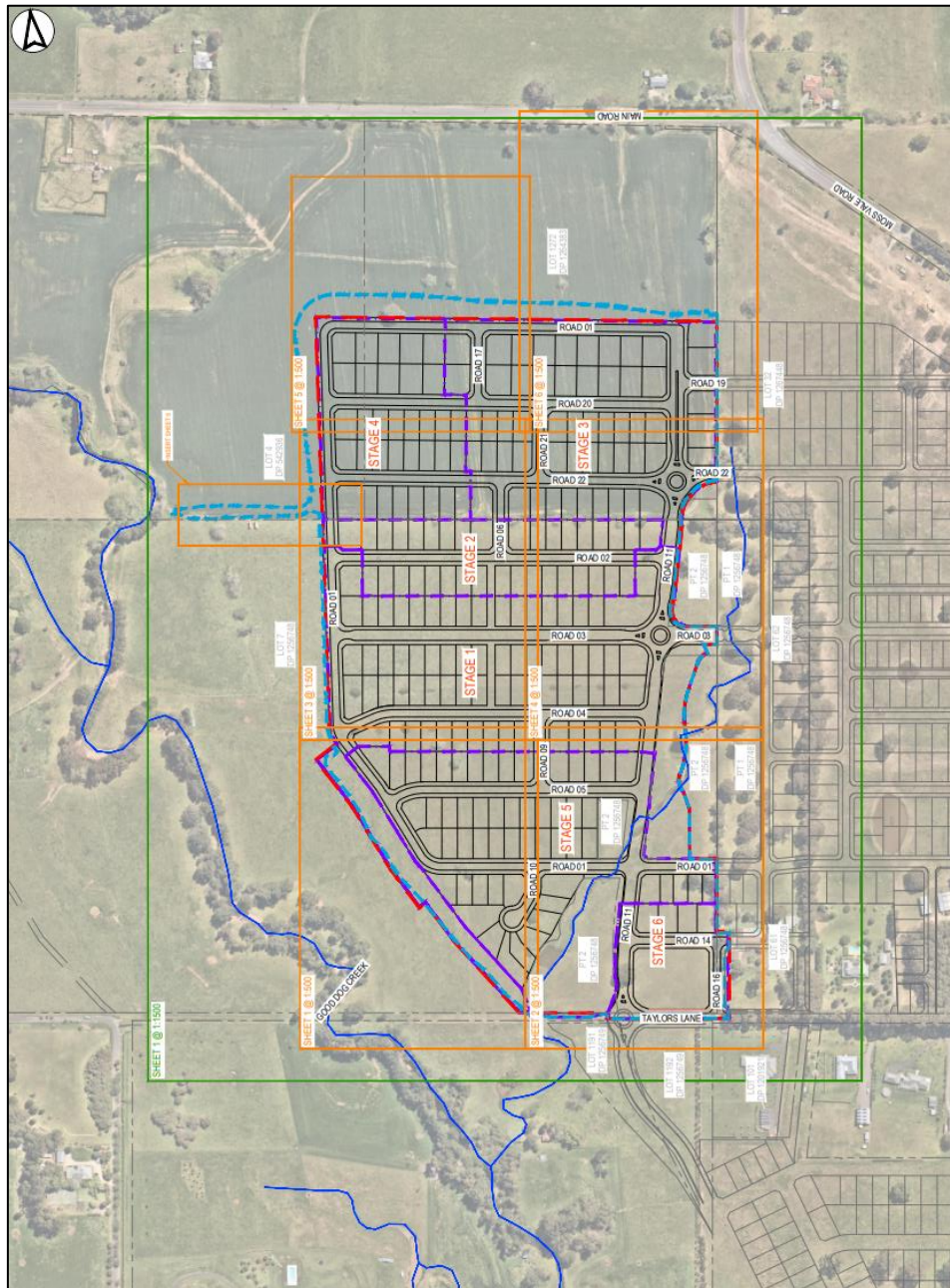


Figure 2 – Key Plan by Maker ENG (dated 16 September 2022)

Subject Land and Surrounds

The subject land is approximately 367m east of the edge of Cambewarra village and is within Stage 4 of the Moss Vale Road South Urban Release Area (URA). The land is predominantly cleared and contains a homestead with associated sheds, dams and a stream.

Historically, the land has been used for agricultural purposes, predominantly grazing. An unnamed 1st order stream identified as “Watercourse Category 3” traverses the eastern portion of the land.

The development site is located in the following land parcels:

- 41 Main Rd, Cambewarra - Lot 4 DP 542936
- Taylors Lane, Cambewarra - Lot 1 DP 1256748
- 126 Taylors Lane, Cambewarra - Lot 6 DP 1256748

- Taylors Lane, Cambewarra - Lot 2 DP 1256748
- 49 Hockeys Lane, Cambewarra - Lot 7 DP 1256748
- Hockeys Lane, Cambewarra - Lot 1191 DP 1256749
- 15A Main Rd, Cambewarra - Lot 1271 DP 1264383
- 15 Main Rd, Cambewarra - Lot 1272 DP 1264383

The site is identified as being bush fire prone land, flood prone land and of Aboriginal cultural heritage significance.

The site is zoned part R1 General Residential, C3 Environmental Management, C2 Environmental Conservation, RU1 Primary Production and SP2 Infrastructure (Road) under the *Shoalhaven Local Environmental Plan 2014* (SLEP 2014), under which “*subdivision of land*” including associated “*roads*” and “*water supply systems*” are permitted with consent.

The proposal does not include or provide access onto Taylors Lane. Condition No. 6 in the draft suite of conditions specifically states that there is to be no access to and no construction with the Lane.

Planning Assessment

The DA has been (independently) assessed under s4.15 of the *Environmental Planning and Assessment Act 1979*.

Consultation and Community Engagement:

The DA was first notified in accordance with the *Environmental Planning & Assessment Regulation 2021* (the EP&A Regs) and Council's Community Consultation Policy for Development Applications on **12 January 2022** to **11 February 2022**. A total of 27 public submissions were received during the notification period.

Following amended documentation being provided by the applicant, the application was renotified between **17 October 2022** to **7 November 2022**. Eight additional submissions were received.

The submissions identified the following items:

- Impact to Good Dog Creek and riparian zone;
- Development of viable agricultural land;
- Impacts to rural amenity and setting of Cambewarra village;
- Impacts to local wildlife and environment, noting particularly Powerful Owl, Pink Robin, Square tailed Kite or the White Throated Needle tails, Gang Gang cockatoos, Peregrine falcons, Wedge Tailed Eagles, migratory Dollarbirds all of which have frequently visit the site over the last 40 years;
- Lack of shared bike/footpaths and recreational areas;
- The majority of this development is situated in a flood zone requiring significant earthworks and remedial works to correct, altering the natural water courses and local wildlife habitats and exacerbating flooding of Main Road;
- Lack of existing infrastructure with increase demand on roads and facilities between Cambewarra/Bomaderry and the Nowra township;
- Lack of assessment and detail with regard to staging and timing in relation to adjoining developments;
- Inconsistency with regard to what is proposed as part of this application, as some of the documentation indicates that 290 lots are proposed;
- Timing for construction and completion of the proposed roundabout at Moss Vale Road associated with Stage 1 of URA and legal access for this development;

- Layout inconsistent with Council’s masterplan for this site (i.e. ILP);
- Impact on ‘Scenic Protection Area’.

These issues have been assessed as being either acceptable matters on their merits or matters that are capable of being resolved via conditions.

Financial Implications:

There are potential cost implications for Council in the event of an appeal of decision of this application. Such costs would be associated with defending an appeal in the Land and Environment Court, should the applicant utilise appeal rights afforded under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Legal Implications

Pursuant to section 8.2 of the EP&A Act, a decision of the SRPP may be the subject of a review by the applicant in the event of approval or refusal. If such a review is ultimately pursued, the matter would be put to the SRPP for consideration.

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

Summary and Conclusion

This application has been satisfactorily assessed having regard for section 4.15 (Evaluation) under the *Environmental Planning and Assessment Act 1979*. Based upon the recommendations of the s4.15 Assessment Report (**Attachment 1**), Development Application No. RA21/1003 is recommended to the SRPP for conditional development consent.

The draft conditions of development consent are contained in **Attachment 2** to this report.

CL23.35

CL23.36 Bay and Basin Leisure Centre Redevelopment Design

HPERM Ref: D22/489858

Department: Community Planning & Projects
Approver: Stephen Dunshea, Chief Executive Officer

Attachments: 1. Concept Options Report (under separate cover) [⇒](#)
2. Councillor Briefing (under separate cover) [⇒](#)

Reason for Report

The Bay and Basin Leisure Centre Redevelopment is currently in the concept design phase. Several concept design options were presented at a Councillor Briefing on 8 September 2022 (see Attachment 1 Concept Report and Attachment 2 Councillor Briefing). The purpose of this report is to seek endorsement to proceed with Option 4; the preferred option from the briefing.

Recommendation

That Council:

1. Endorse Concept Design Option 4 for the redevelopment of the Bay and Basin Leisure Centre to be progressed to the detailed design phase.
2. Endorse the commencement of community engagement and consultation for this project.

Options

1. Adopt the recommendation - Progress detailed design of Option 4.

Implications: This option best meets the key objectives of the project and received support at the Council Briefing dated 8 September 2022.

2. Progress detailed design of Option 3 – not recommended

Implications: This option does not achieve all of the required objectives, and creates some potential issues:

- Disruption of service continuity with the demolition of the existing gym and creche
- Limited provision of space for netball / multi-court change facilities
- Does not provide access for a 24/7 gym access
- Is challenging from a staging perspective

3. Progress detailed design of Option 1 or Option 2 – not recommended

Implications: These options do not achieve all the required objectives and would lead to a sub-optimal development.

Potential issues of Option 1 include:

- Requires significant reconfiguration of existing pool hall which may limit service continuity and increase construction costs
- Arrangement of pool hall and slide limits potential for outdoor recreation space.

Potential issues of Option 2 include:

- Design and layout of the pool hall and learn to swim is not readily accessible from the entry point into the facility
- Requires reconfiguration of existing pool hall which may limit service continuity and increase construction costs
- Has a single storey development footprint on a constrained and environmentally sensitive site
- Entry to the facility is remote and not visible from main car park
- Arrangement of pool hall and slide limits potential for development and use of the outdoor recreation space.
- Community room more remote and not readily accessible from entrance/foyer

Background

Shoalhaven City Council is seeking to refurbish the existing Bay and Basin Leisure Centre (BBLC) which is located approximately 1.2km from the Vincentia Town Centre. The refurbishment will seek to upgrade and extend the existing footprint of the Centre, this is to meet the growth in demand and increasing population and requirements therein since the facility was first opened in in 2001. It will also consider the integration with the co-located skatepark and Vincentia Sportsground. Currently Bay and Basin Leisure Centre is considered a Regional Aquatic facility and the co-located Vincentia Sportsground is a District Sports park.

This upgrade responds to population forecasts and demographic changes that will be experienced by this area. Specifically, the Bay and Basin precinct, located in planning area 3, in Shoalhaven City Council's Community Infrastructure Strategic Plan (CISP), is the second largest planning area in the Shoalhaven Local Government Area (LGA) and has an expected population growth of approximately 10% between 2021 and 2036. The population is expected to grow from 22,147 in 2021 to 24,529 by 2036 according to Profile ID.

Additionally, data from the 2016 census, shows that the Shoalhaven City Council area has a median population age of 49, with approximately 42% between the age of 50 and 80 years. As such, a highlight of this refurbishment will be the equal access considerations, that seek to encourage the older population in the Shoalhaven community to participate, while simultaneously appealing to a younger audience.

Accordingly, in 2016 Council engaged consultants Group GSA to develop a Master Plan. The Master Plan proposes leveraging this precinct to become a key community destination and community and sporting hub for surrounding suburbs.

The Bay and Basin Leisure Centre will be a benchmark facility in the Australian community aquatic facility landscape; providing expanded health and wellbeing related facilities and services, incorporating a unique offering that will encourage participation, social inclusion and community wellbeing. An aim for the Bay and Basin Leisure Centre is to reposition the traditional Australian aquatic and leisure centre to a 'next generation' facility with a focus on preserving the health of the older local population, while becoming an attraction for the younger population and potential tourists.

Key recommendations from the CISP is that this masterplan:

- Relocates the netball courts from Wool Lane Sporting Complex
- Develops a regional sized skate/scooter/BMX facility (construction of this is a separate project)
- Improves subsoil drainage
- Ensures a level of service continuity for customers during the construction stages.

In February 2022 Council resolved (MIN22.147C) to appoint Co-Op Studio to undertake the design of the redevelopment of the Bay and Basin Leisure Centre for Architectural Services, preparation and submission of a Development Application to enable Construction Certification to be obtained and preparation of Tender and Construction documentation.

Co-Op Studios have now reached the concept design stage. At the Councillor briefing on 8 September 2022, the concept design options were presented, considered and discussed with Design Option 4 being preferred option, as it best meets the key objectives of the project. This was supported by Councillors in attendance.

The concept design work undertaken to date by Co-Op Studios, along with the presentation to Councillors at the September 2022 briefing at attachments 1 and 2 respectively.

Overview of the Concept Design Options

The 4 concept design were reviewed the considered and a summary of each is provided. This process identified concept design option 4 being the preferred option. It is proposed that this option be the preferred option to progress to detailed design stage which will involve community and stakeholder consultation to more fully inform the final design of the facility which will be reported back to Council at a future meeting.

Concept Design Option 1:

This option does not achieve all the required objectives and would lead to a sub-optimal development. Concerns with Option 1 include:

- The requirement to significantly reconfigure the existing pool hall which may limit service continuity, resulting in closure of the facility, loss of revenue and increased capital cost of development
- The design and layout of new pool hall and slide limits potential for development and use of the outdoor recreation space
- Potential foot traffic issues, congestion and conflict between users caused by cafe location on either side of main circulation areas and reception.

Concept Design Option 2:

This option does not achieve all the required objectives and would lead to a sub-optimal development. Concerns with Option 2 include:

- The design and layout of the new pool hall and the learn to swim pool is not readily accessible from the entrance / reception point
- The requirement for some reconfiguration of existing pool hall will limit service continuity resulting in closure of the facility, loss of revenue and increased capital cost of development
- The design and layout of the pool hall and slide limits potential for the development and use of the outdoor recreation space.
- The health and fitness facilities within a single storey development significantly increases the building footprint on a constrained and environmentally sensitive site
- The main entrance to the facility is not readily accessible or visible from the car park with poor connectivity
- The location and access to the community room is not readily accessible from the entrance / reception point

Concept Design Option 3:

This option does not achieve all of the required objectives, and creates some potential issues:

- There will be disruption of service continuity and loss of programs and revenue with the demolition of the existing gym and creche during construction stage
- The design and layout does not provide adequate space for provision of change facilities to support the outdoor courts
- The layout and design does not facilitate or provide for 24/7 access to the gym
- This will be challenging from a staging perspective to concurrently manage construction whilst continuing to operate the centre and keep services open to the public.

Concept Design Option 4 – Preferred:

Option 4 is the preferred option as it:

- Provides the preferred design solution, layout and mix of facilities over 2 storey making best use of the space on a constrained and environmentally sensitive site
- Fosters inclusivity, safety and incorporates plaza space in the entry
- Considers and incorporates the adopted design for the Bay and Basin Skate Park
- Has a highly visible entrance to the facility which faces the car park, is accessible and incorporates the plaza entry, alfresco seating whilst offering passive surveillance of the skate park creating a greater sense of communal space and connection to the southern green space
- Minimises impact on the existing pool hall and the design and layout provide the new learn to swim pool adjacent to the existing swimming facilities. This will also provide an accessible warm up / cool down space during swimming carnivals
- Considers the design and layout of the new slides and provides for the retention and development of the outdoor space for complementary uses
- Provides health and fitness facilities on a second storey (accessible lift) with a design a layout that will provide views over the pool and southern green space. These facilities will be accessible 24/7
- Provides accessibility to the community room and the ability to use outside of times when the centre is open
- Offer a key benefit as there will be limited impact on the existing pool hall and use of the building, therefore there will be minimal impact on service continuity and access to the public during the building process.

Community Engagement

Co-Op Studio will be assisting Council Officers in undertaking the community consultation and engagement activity. A key task during the design development activity will be the engagement of the community in achieving a shared vision for the development of the facility. Consultation for this project will begin in the first half of 2023. A Communications Plan is in development to guide this next stage of the process.

Policy Implications

Nil implications.

Financial Implications

The project is adequately funded for the design phase.

The design budget is provided for in the 22/23 financial year.

Construction budget has not been allocated but has been identified as a future need in the 10-year plan. The upgrade to the facility will also be noted for inclusion in future updates of Council's Advocacy Projects document.

Risk Implications

Sufficient community consultation is required to ensure that the facility meets the needs of the user groups and is accepted and welcomed by the community. This might impact project timelines.

CL23.37 Policy - Access Areas For Dogs Policy Review - Project Update and Progression to Public Exhibition

HPERM Ref: D22/413139

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

Attachments: 1. Existing Methodology / Timeline - Access Areas for Dogs Policy Review
↓
2. Access Areas for Dogs Policy - DRAFT for Public Exhibition (under separate cover) ⇨

Reason for Report

This report provides an update on the progress of the *Access Areas for Dogs Policy* review and seeks Council's approval to proceed to public exhibition of the draft Policy.

Recommendation

That Council:

1. Receive this report for information as an update on the review of the Access Areas for Dogs Policy.
2. Receive this report for information on the status of environmental assessments prepared to designate 'dog off-leash' and 'dog prohibited' areas to ensure compliance with relevant state and federal environmental legislation.
3. Approve release of the draft Access Areas for Dogs Policy for public exhibition for a period of 42 days (6 weeks), during which submissions may be made to Council.
4. Receive a future report at the conclusion of the public exhibition period, summarising feedback received, with a recommendation to adopt the proposed Access Areas for Dogs Policy OR a revised version of the Policy in response to feedback received during the public exhibition period whilst ensuring compliance with relevant state and federal environmental legislation.

Options

1. Adopt the recommendation.

Implications: This will allow the policy review process to progress to public exhibition.

This will facilitate a review of the draft Policy by the general public, and for submissions to be made to Council regarding the draft Policy and related matters, in accordance with the precedent established under Section 160 of the *Local Government Act 1993* (NSW).

This will enable an understanding of the methodology that is utilised to prioritise:

- Environmental assessments to ensure compliance with relevant state and federal legislation, and;
- To facilitate adaptive management associated with the designation of 'dog off-leash' and 'dog-prohibited' areas.

CL23.37

The existing Access Areas for Dogs Policy will remain in place until a new version is adopted by Council.

2. Withhold approval to release the draft Policy for public exhibition until all relevant environmental assessments have been completed.

Implications: This would facilitate the publication of any and all recommendations relating to adjustments to existing designated 'dog off-leash' and 'dog-prohibited' areas in conjunction with publication of the draft Policy.

This may not be in line with public expectations and would not be in accordance with the adopted methodology for this policy review. This option would delay the release of the draft Policy for public review.

3. Adopt an alternative recommendation.

Implications: This may not be in line with community expectations related to the policy review and will further delay release of the draft Policy for public review.

The elected Council will need to provide direction in relation to actions to be undertaken as part of the Policy review.

Background

The draft Access Areas for Dogs Policy (Policy) provides the basis for designating 'dog off-leash' and 'dog prohibited' areas in the Shoalhaven local government area (LGA), in accordance with the *Companion Animals Act 1998* (NSW) (herein the 'Act') and other relevant legislation.

In accordance with the Act, Council must provide at least one dog off-leash area within the Shoalhaven LGA. Councils therefore have discretion to determine the number and distribution of 'dog off-leash' exercise areas in addition to the legislated minimum.

In accordance with the 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 Council.

All other matters relating to dog ownership (such as collars, microchipping, registration, etc.) are defined under the Act, and are therefore outside of the remit of this Policy.

The Policy is developed in accordance with 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, and;
- 4.3 Inform and engage with the community about the decisions that affect their lives.

Council's policies are subject to review every four years, in line with the Local Government election cycle, and within 12 months of the election of a new council.

Ordinary Council Meeting, 26 April 2022

An overview of engagement activities undertaken to date and a proposed methodology for review of the Policy was reported to the Ordinary Council Meeting held on 26 April 2022 (ref. MIN22.298).

In accordance with Part 3 of the resolution (ref. MIN22.298), Council endorsed a methodology for reviewing the Policy. The endorsed methodology, including an updated timeline, can be viewed in **Attachment 1**.

Councillor Briefing, 17 November 2022

An overview of the content of the draft Access Areas for Dogs Policy and summary of the changes made from the previous Policy, was presented to Councillors.

Objectives of the Policy review

- a) Ensure the Policy remains focused and up-to-date with respect to Council's obligations to the community, in relation to:
 - i. provision of 'dog off-leash' exercise areas to support community health and wellbeing, and;
 - ii. protection of the environment through the designation of 'dog-prohibited' areas.

- b) Streamline the Policy, to ensure policy content does not 'overlap' with matters regulated by other legislation (such as requirements relating to collars, microchipping, registration, and more). Such chapters have therefore been removed from the proposed Policy.

- c) Provide for the designation (establishment) of 'dog off-leash' and 'dog-prohibited' area on a case-by-case basis and as needed.

The existing Access Areas for Dogs Policy (last reviewed 1/12/2021) identifies specific 'dog off-leash' and 'dog-prohibited' areas within the Shoalhaven LGA (provided as a list in chapters 5.3 and 5.4 of the existing Policy).

The provision (listing) of designated 'dog off-leash' and 'dog-prohibited' areas within the body of the Policy is no longer considered appropriate, nor aligned with contemporary best-practice approaches to dog management and environmental management, as it does not facilitate adaptive management required to ensure Council's compliance with relevant state and federal environmental legislation.

It is therefore recommended site-specific lists be removed from the body of the Policy. Supporting documentation, such as communications materials, mapping, and guidelines, will be developed outside of, and in accordance with, the Policy. These materials will be made available to the general public but will remain separate from the Policy. They can therefore, be updated and enhanced as required and in accordance with the Policy, without being constrained by policy review procedures or timetables.

- d) Establish a framework for adaptive management of 'dog off-leash' and 'dog-prohibited' areas.

Environmental assessments, and ongoing monitoring of all designated 'dog off-leash' and 'dog-prohibited' sites, will be utilised to inform an adaptive management approach, as outlined in section 3.7 of the Policy. Key factors to inform the adaptive management approach, and related outcomes, are:

- i. Threatened and migratory shorebird nesting, foraging and sheltering sites;
- ii. Threatened biodiversity (other threatened species, threatened ecological communities);
- iii. Indigenous heritage;
- iv. Social needs of shared public space, and;
- v. Warnings/penalty notices issued.

- e) Ensure the Policy instruments (provisions) are clearly linked to statements and objectives outlined in Council's Integrated Planning and Reporting (IP&R) framework, such as:

i. *The Shoalhaven 2023 Community Strategic Plan (CSP).*

This is achieved by clearly identifying relevant key priorities from the CSP in the Purpose (ref. section 1 of the Policy).

- f) Align terminology utilised within the body of the Policy with precedents established in relevant legislation, to minimise confusion and to support effective enforcement of the Policy.

Definitions provided in the Policy align with terminology utilised in the Act. This will support effective enforcement of the Policy through public education campaigns and when issuing penalties.

- g) Provide context for the Policy provisions by providing a series of clear and concise statements within the Policy recognising:

- i. the benefits of dog ownership;
- ii. that the presence of dogs within the public domain can create barriers to participation for some cohorts within the community, and;
- iii. Council's legal obligations with respect to dog management and environmental protection.

This is achieved by providing a clear policy statement (ref. section 2 of the Policy) and a series of concise objectives (ref. section 2.1 of the Policy). The community can therefore have confidence provisions outlined within the Policy are linked to aims and objectives in a transparent way.

- h) Provide a clear scope for application of the Policy (ref. section 2.2 of the Policy).
- i) Establish a suite of provisions (ref. section 3) within the Policy to provide a transparent and accessible framework for decision making related to:
 - i. Council's obligations (with respect to the establishment of 'dog off-leash' areas and 'dog-prohibited' areas);
 - ii. Responsibilities of dog owners and people who take dogs into public places (regarding expectations relating to behaviour and conduct), and;
 - iii. Enforcement of the Policy and related legislation for which Council is the regulating authority.
- j) Establish a classification system for all dog access areas:
 - i. Dog Prohibited Areas – Red Category;
 - ii. Dog On-Leash Areas – Orange Category, and;
 - iii. Dog Off-Leash Areas – Green Category.
- k) Clearly outline the breadth of legislation, and other Council policies, related to this Policy. This will give confidence to the community that decisions are taken in accordance with all relevant commonwealth and state legislation and Council policy (ref. sections 4.1 and 4.2 of the Policy).
- l) Provide a clear pathway for accountability related to implementation of the Policy (ref. sections 4.3 through 4.5 of the Policy).

The proposed draft Access Areas for Dogs Policy can be viewed in **Attachment 2** (track changes is unavailable, due to scope of amendments).

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Scope and timeline of Environmental Assessments

In accordance with part 6 of the 26 April 2022 resolution (ref. MIN22.298), a future report was to be presented to Council that identified the scope of environmental assessments and an associated timeline for completion of the Policy review.

This information is provided in the tables below.

Recruitment of suitably qualified environmental specialist staff to undertake environmental assessments pertaining to the requirements of the Policy has been completed. These staff are preparing environmental assessments concurrently with the Policy review for existing 'dog off-leash' and 'dog-prohibited' areas, prioritising existing unfenced off-leash areas in coastal locations.

Based on this criteria, 15 sites (of the over 20 dog off-leash areas within the LGA) have been prioritised for the preparation of environmental assessments, see Table 2 below.

Environmental assessments for 13 (of 15 priority sites) are substantially complete.

Further investigations, including follow-up site visits, are scheduled to be carried out in January 2023 to facilitate assessment of use levels and patterns of behaviour during the peak summer season. It is anticipated all relevant environmental assessments for existing off-leash areas will be completed by 30 June 2023.

Review of Environmental Factors (REF)

Under Clause 2.73(3) of the *State Environmental Planning Policy (Transport and Infrastructure) 2021* (NSW), Council can establish 'dog off-leash' areas as development permitted without consent on public reserves, as this includes development for purposes such as recreation areas and recreation facilities (outdoor). This, together with such activities not involving an enlargement, expansion, or intensification of the use of the land for the purpose of recreation (i.e., a continuing use), means that Council will assess existing 'dog off-leash' areas under Part 5 of the *Environmental Planning and Assessment (EP&A) Act 1979* (NSW).

Accordingly, Council must examine, and take into account to the fullest extent possible, all matters affecting or likely to affect the environment by reason of the activity in accordance with s5.5 of the EP&A Act. Clause 171 of the *Environmental Planning and Assessment Regulation 2021* (NSW) lists the following environmental factors that need to be considered in an environmental assessment in the form of a REF prepared by Council as the determining authority for these activities:

- Environmental impact on the community;
- Transformation of the locality;
- Environmental impact on the ecosystems of the locality;
- Reduction of the aesthetic, recreational, scientific or other environmental quality or value of the locality;
- Effects on any locality, place or building that has:
 - i. aesthetic, anthropological, archaeological, architectural, cultural, historical, scientific or social significance; or
 - ii. other special value for present or future generations.
- Impact on the habitat of protected animals, within the meaning of the [Biodiversity Conservation Act 2016](#) (NSW);
- Endangering of a species of animal, plant or other form of life, whether living on land, in water or in the air;
- Long-term effects on the environment;
- Degradation of the quality of the environment;
- Risk to the safety of the environment;
- Reduction in the range of beneficial uses of the environment;
- Pollution of the environment;

- Environmental problems associated with the disposal of waste;
- Increased demands on natural or other resources that are, or are likely to become, in short supply;
- The cumulative environmental effect with other existing or likely future activities;
- Impact on coastal processes and coastal hazards, including those under projected climate change conditions;
- Applicable local strategic planning statements, regional strategic plans or district strategic plans, and;
- Other relevant environmental factors.

Environmental assessments will also include an assessment against the requirements of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Existing 'dog off-leash' and 'dog-prohibited areas'

All existing 'dog off-leash' and 'dog-prohibited' areas will be carried forward wherever possible, but only in accordance with the Policy. Outcomes of all relevant environmental assessments are detailed in the following tables.

Table – Dog Off-leash Areas

DOG OFF-LEASH AREAS					
(as listed in the existing Access Areas for Dogs Policy, with additional comments relating to REFs being undertaken as part of this policy review process)					
	Suburb / locality	Location	Comments	R.E.F. Commenced Y/N	Comments arising as result of REF investigations to date (preliminary only, pending finalisation of REF process)
1	Basin View	Basin View foreshore reserve west of boat ramp, bordered by Basin View Parade.	Off-leash 24 hours	Y	No major changes anticipated. Recommendations likely to relate to provision of adequate signage.
2	Bawley Point	Cormorant Beach	Off-leash 24 hours	Y	Site backed by coastal wetland. May require development consent. Advice sought (and received) from NSW Department of Primary Industries and others. Further advice, , required (pending). REF to be completed upon receipt of all relevant advice.
3	Bendalong	Washerwomans Beach	Off-leash 24 hours	Y	No major changes anticipated. Recommendations likely to relate to provision of adequate signage.
4	Berry	Camp Quality Park	Off-leash 24 hours	N	
		Boongaree (planned future works)	Fenced	N	
5	Bomaderry	Cricket oval immediately	Off-leash 24 hours when	N	

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	Suburb / locality	Location	Comments	R.E.F. Commenced Y/N	Comments arising as result of REF investigations to date (preliminary only, pending finalisation of REF process)
		adjacent to the Bomaderry Aquatic Centre.	no used by user groups.		
		Bomaderry ('Bomo') Dog Bowl	New site (not listed in current Access Areas for Dogs Policy). Bound by Tarawara Street, Bowada Street, Bolong Road.	N	REF completed April 2021. To be reviewed as part of policy review process.
6	Burrill Lake	Public reserve east of Princes Highway, bounded by Racecourse Creek & opposite Kings Point Drive.	1 October to 30 April: off-leash from 4pm to 8.00am. 1 May to 30 September: off leash from 3pm to 10am.	N	Not in use.
7	Callala Beach	Callala Beach foreshore reserve between Callala Creek and Currumbene Creek.	1 October to 30 April: off-leash from 4pm to 8.00am. 1 May to 30 September: off leash from 3pm to 10am.	Y	No major changes anticipated. Recommendations likely to relate to provision of adequate signage.
8	Culburra	Culburra Beach and foreshore reserve between Gateway Caravan Park & Tilbury Cove.	1 October to 30 April: off-leash from 4pm to 8.00am. 1 May to 30 September: off leash from 3pm to 10am.	Y	No major changes anticipated. Recommendations likely to relate to provision of adequate signage.
9	Currarong	Currarong Beach and foreshore reserve from Currarong Creek extending	1 October to 30 April: off-leash from 4pm to 8.00am.	Y	No major changes anticipated. Recommendations likely to relate to provision of adequate signage.

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	Suburb / locality	Location	Comments	R.E.F. Commenced Y/N	Comments arising as result of REF investigations to date (preliminary only, pending finalisation of REF process)
		westwards to Peel Street.	1 May to 30 September – off leash from 3pm to 10am.		
10	Greenwell Point	Fenced public reserve south of Caravan Park on West Street.	Off-leash 24 hours.	N	REF completed July 2020. To be reviewed as part of policy review process.
11	Huskisson	Huskisson Beach and foreshore reserve between Nowra Street & Tapalla Avenue.	1 October to 30 April: off-leash from 4pm to 8.00am. 1 May to 30 September – off leash from 3pm to 10am.	Y	No major changes anticipated. Recommendations likely to relate to provision of adequate signage.
12	Milton	Milton Showground	Off-leash 24 hours except during scheduled events.	N	
13	Mollymook	Public reserve adjacent to Mitchell Parade and south east of buildings and playing fields off (north of Donlan Road).	1 October to 30 April: off-leash from 4pm to 8.00am. 1 May to 30 September – off leash from 3pm to 10am.	Y	No major changes anticipated. Recommendations likely to relate to provision of adequate signage.
		Collers Beach	Off-leash 24 hours.	Y	No major changes anticipated. Recommendations likely to relate to provision of adequate signage.
14	Narrawallee	Beach access via Victor Avenue steps to the un-named Island.	Australian Eastern Daylight Savings Time: off leash from 4pm – 8am. Australian Eastern Standard Time: off leash from	Y	REF complete. No major changes anticipated. Recommendations likely to relate to provision of adequate signage.

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	Suburb / locality	Location	Comments	R.E.F. Commenced Y/N	Comments arising as result of REF investigations to date (preliminary only, pending finalisation of REF process)
			3pm – 10am.		
15	Nowra	Area north of Worrigee Street at the Nowra Showground.	Off-leash 24 hours. To be revised in accordance with Nowra Showground Master Plan (endorsed).	N	
16	Sanctuary Point	Clifton Park	Off-leash 24 hours.	N	
17	Shoalhaven Heads	Jerry Bailey Reserve cricket oval (within fenced area).	Off-leash 24 hours when not used by sporting groups.	Y	No major changes anticipated. Recommendations likely to relate to provision of adequate signage.
		Shoalhaven Head Beach 200m north of the Surf Club building to the public access way through the Shoalhaven Heads Golf Course.	Off-leash 24 hours.	Y	Initial investigations indicate need to review status of 'dog off-leash' areas to Shoalhaven Heads Beach. Further investigations required.
		River Road Reserve adjacent to the river edge - from the boat ramp in the east to the wharf at the end of Jerry Bailey Road.	Off-leash 24 hours.	Y	Likely to remain unchanged.
18	Swan Lake	Swan Lake foreshore reserve between northern boat ramp (end of Yarroma Avenue) and SLWSC boat ramp.	1 October to 30 April: off-leash from 4pm to 8.00am. 1 May to 30 September: off leash from 3pm to 10am.	Y	No major changes anticipated. Recommendations likely to relate to provision of adequate signage.
19	Ulladulla	Beach north of the Northern Breakwater in Ulladulla Harbour.	Off-leash 24 hours.	Y	No major changes anticipated. Recommendations likely to relate to provision of adequate signage.

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	Suburb / locality	Location	Comments	R.E.F. Commenced Y/N	Comments arising as result of REF investigations to date (preliminary only, pending finalisation of REF process)
20	Vincentia	Nelson Beach and foreshore reserve.	1 October to 30 April: off-leash from 4pm to 8.00am. 1 May to 30 September: off leash from 3pm to 10am.	Y	No major changes anticipated. Recommendations likely to relate to provision of adequate signage.
21	Worrigee	Ratcliff Park cricket field.	1 October to 30 April: off-leash from 4pm to 8.00am. 1 May to 30 September: off leash from 3pm to 10am.	N	

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Dog Prohibited Areas

Environmental due diligence investigations are being undertaken as part of the policy review process for all dog-prohibited areas identified in the existing Policy. These investigations will help to determine the ongoing suitability of these sites as dog-prohibited areas.

Table - Dog Prohibited Areas

DOG-PROHIBITED AREAS (as listed in the existing Policy)	
Suburb / locality	Location
Bendalong	Flat Rock Beach
Berrara	Berrara Beach
Callala Beach	Callala Beach between Parkes Crescent and Centre Street.
	Southern end of Callala Beach south of the Beach Street car park at Myola.
Culburra	Lake Wollumboola Foreshore Reserve - southern end of The Lake Circuit to Kiah Lane.
Huskisson	Huskisson sand / rock foreshore area between Currumbene Creek and Nowra Street.
	Moona Moona Creek sand/rock foreshore area between Jarvis Street and northern end of Ilfracombe Avenue.
	Council managed land which forms Currumbene Creek Mudflats Sanctuary Zone.
Lake Conjola	Lake Conjola Spit
Lake Tabourie	Within the reserve north of Lake Tabourie entrance – foreshore

Suburb / locality	Location
	adjacent to Lake Tabourie Tourist Park.
Mollymook	Mollymook Beach - North and South ends.
Narrawallee	Narrawallee Beach and reserve from Narrawallee Creek to the unnamed Island. Narrawallee Beach and reserve from the northern end of Victor Avenue to Surfers Avenue.
Sanctuary Point	Palm Beach and Red Head Reserve to the headland stairs and the southern end of John Williams Reserve.
Shoalhaven Heads	Shoalhaven River entrance sand spit at the southern end of Seven Mile Beach southeast of the River Road car park.
Vincentia	Within Blenheim Beach Reserve - Fredrick Street to Elizabeth Drive. Vincentia foreshore and reserve from northern end of Ilfracombe Avenue to the boat ramp at the end of Holden Street, Vincentia, including Collingwood Beach and foreshore excluding the Collingwood cycleway which is an on-leash area.

Supporting Documentation

A suite of supporting documents will be developed to support implementation of the revised Policy.

Table – Supporting Documentation

Rank	Document Name	Description	Draft for Public Exhibition (Feb./March 2023) – Y/N
1	<i>Access Areas for Dogs Policy</i>	The Policy	Y
2	<i>Mapping</i>	GIS (internal) and public facing maps.	Y
3	<i>Implementation Plan</i>	Identifies strategies, guidelines, and actions relating to: 1. Communications and engagement; 2. Education; 3. Signage; 4. Enforcement; 5. Resourcing; 6. And more...	N (will be reported to Council in due course)
4	<i>Implementation Funding Plan</i>	Outlines costs associated with discrete projects identified in the Implementation Plan.	N (will be reported to Council in due course)
5	<i>Evaluation Plan</i>	Identifies measures against which the Policy review project will be assessed.	N (will be reported to Council in due course)

The community will be notified of any changes to ‘dog off-leash’ areas, ‘dog-prohibited’ areas, or the formation of new areas, via media campaigns and related communications material (including signage and guidelines) in accordance with Council’s Community Engagement Policy on a case-by-case basis as the need arises.

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Community Engagement

A summary of consultation conducted to date was reported to, and accepted by Council, at the Ordinary Council Meeting held on 26 April 2022 (ref CL22.196).

Community engagement activities are grouped into two phases; Phase 1 and Phase 2.

Phase 1 was undertaken between December 2020 and October 2021. An overview of Phase 1 is provided below.

Table – Community Engagement Phase 1

Method/Activity	Participants/Respondents
Community Working Group	123 Expressions of Interest
Internal Stakeholder Workshop	Eight (8) Council sections represented
External Stakeholder Workshop	Seven (7) key agencies represented
Community Focus Groups	Round 1 (in-person) – 69 participants Round 2 (online) – 51 participants
Online Community Survey	1,396 responses
Public Drop-In Sessions	216 attendees
Written Submissions	108 submissions (to 26 July 2021)

Main themes emerging from the Phase 1 consultation activity are summarised in the [Access Areas for Dogs Policy – Community Engagement Summary Report](#) (Engagement Summary). This report is available to download on the 'Get Involved' page for this project:

<https://getinvolved.shoalhaven.nsw.gov.au/review-of-access-areas-for-dogs-policy>

The Engagement Summary is an important, centralised source of information about dog access to public places in Shoalhaven and related matters. It will continue to play a vital function in relation to the policy review and future decisions regarding 'dog off-leash' and 'dog-prohibited' areas.

The Engagement Summary outlines feedback about a wide array of matters, including: signage; communication; education; enforcement; requests for new sites; requests to close existing sites; suggested changes to existing sites; and much more.

Feedback received during Phase 1 has been utilised throughout the policy review process. It has informed the policy statement and provisions.

The proposed draft Policy will underpin *how* 'dog off-leash' and 'dog-prohibited' areas are designated. It does not include a static list of sites. Therefore, all feedback about matters outside the scope of the proposed draft Policy (such as requests for changes to existing designated 'dog off-leash' and/or 'dog-prohibited' sites) can be further considered upon adoption of a final version of the Policy.

This will give surety to respondents, and the constituency more broadly, that decisions relating to 'dog off-leash' and 'dog-prohibited' areas align with feedback received, a Policy developed based on that feedback, and principles of good governance.

Further community consultation will occur as part of Phase 2, which will include public exhibition of the draft Policy (see part 3 of the recommendation on page 1 of this report).

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Phase 2 will involve placing the draft Policy on public exhibition for a minimum of six (6) weeks. The exhibition period and invitation to provide feedback to Council will be promoted to all stakeholders, including special interest groups/organisations, registered community members, and the general public.

Next Steps:

1. Develop Implementation Plan and Implementation Funding Plan;
2. Coordinate and complete mapping in accordance with outcomes of REFs;
3. Prepare mapping to accompany release of the draft Policy, clearly identifying 'dog off-leash' and 'dog-prohibited' areas;
4. Public exhibition of draft Access Areas for Dogs Policy (February – March 2023);
5. Collation of submissions received during public exhibition;
6. Prepare Implementation Plan;
7. Prepare Implementation Funding Plan;
8. Initiate any relevant actions arising from Implementation Plan, and;
9. A further report to Council summarising feedback and seeking endorsement of the proposed Policy.

Policy Implications

This Policy has been designed and developed to align with all relevant Shoalhaven City Council plans & policies, including:

- *Shoalhaven 2023 Community Strategic Plan*
- *Companion Animals (Impacts on Native Fauna) – conditions of development consent*
- *Compliance and Enforcement Policy*
- *Foreshore Reserves Policy*
- *Community Engagement Policy*

In addition to the policies listed above, Council is required to provide and manage dog-controlled areas in accordance with, but not limited to, the following legislation:

- *Biodiversity Conservation Act 2016*
- *Civil Liability Act 2002*
- *Coastal Management Act 2016*
- *Companion Animals Act 1998 (the Act)*
- *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*
- *Public Spaces (Property Act) 2021*
- *Local Government Act 1993*
- *Marine Estate Management Act 2014*

- *National Parks and Wildlife Act 1974*
- *Prevention of Cruelty to Animals Act 1979*
- *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*

Financial Implications

In accordance with Part 5 of MIN22.298, \$180,000 has been allocated to fund additional fixed-term positions to facilitate the completion of environmental assessments 'in-house' (substantially complete).

It is anticipated the following actions will arise upon Council's endorsement of a final version of the Policy:

- To give effect to the revised Policy, an Implementation Plan has been foreshadowed;
- An Implementation Funding Plan (Funding Plan) will be developed to identify funding sources for all the Implementation Plan actions. A draft Funding Plan will be reported to Council in due course;
- Updates to Council's website (to be funded primarily within existing operational budgets);
- New signage in accordance with the updated Policy (subject to future funding requests, pending preparation and acceptance of an Implementation Plan and associated Implementation Funding Plan);
- Installation of infrastructure to support dog off-leash exercise areas (on an ongoing, basis), which may include dog waste dispensers, water fountains, shade, seating, and fencing;
- The 2022/23 Delivery Program Operational Plan (DPOP) includes an allocation of \$50,000 for dog exercise areas (ref. item 222, p. 123), and;
- Future funding is required to implement the above actions – funding submissions have been prepared for consideration by Council as part of the 2023/24 budget process.

Risk Implications

Dog ownership is increasing in the Shoalhaven LGA. There are currently in excess of 57,000 dogs registered in the Companion Animals Register within the Shoalhaven LGA. Furthermore, visitors to the region may also bring their dogs with them and thus, these numbers may be significantly higher during peak holiday periods.

The Policy must therefore be fit-for-purpose to ensure overall policy operation allows for the safe shared use of public space, while permitting regular monitoring and effective enforcement in line with Council's environmental management obligations.

The Policy has therefore been significantly revised to facilitate compliance with relevant legislation. The proposed revisions are considered to adequately minimise the organisation's exposure to legal and reputational risk.

Status of Land and Environment Court – Class 4 Proceedings

Class 4 proceedings were commenced in the Land and Environment Court by way of Summons filed by Narrawallee Beach Environment Group on 11 March 2022. Council staff

briefed Councillors on these proceedings in March and April 2022. The Court has made orders for the parties to file and serve evidence and listed the matter for a 3-day contested hearing in Sydney commencing 22 May 2023.

The basis of this position stems from the decision of Preston CJ in *Palm Beach Protection Group Incorporated v Northern Beaches Council* [2020] NSWLEC 156 (Palm Beach Case). This case has established that Councils have a duty to either obtain development consent for the use of the land for public recreation under Part 4 of the EPA Act or assess the environmental impacts of activities under Part 5 of the EPA Act before it approves such uses or activities.

Access Areas for Dogs Policy Review - Methodology and Timing

Tasks	Engagement	Timing	Status / Actions
Develop Project Plan Establish Project Team Desktop review of Policy and Guide LGA-Wide Dog Signage Audit Engagement of Consultant Develop Engagement Plan	<ul style="list-style-type: none"> Announcement of project commencement Establish Get Involved page Receipt of Expressions of Interest to form Community Working Group 	December 2020-April 2021	Complete
Initial Community Consultation Phase	<ul style="list-style-type: none"> Regular Get Involved updates Internal/External Stakeholder Workshops Community Working Group Focus Groups – 2 Rounds Public drop-In Sessions Council 1 on 1 sessions Receipt of submissions (ongoing)	May-November 2021	Complete
Receive final Community Engagement Outputs Summary Report from Gauge Consulting		December 2021	Complete
Request for Internal Review of Community Engagement Outputs Summary Report Receipt of Internal Feedback	Internal Council sections request for feedback	January-February 2022	Complete
Collation of Internal Feedback Analysis of Consultation Feedback Preparation of approach and considerations to revised Policy Preparation of Briefing and Report		February-April 2022	Complete
Briefing to Council on: <ul style="list-style-type: none"> Outcome of the Community Consultation Presentation of Community Engagement Outputs Summary Report 	Briefing to Councillors	21 April 2022	Complete
Report to Council: <ul style="list-style-type: none"> To seek endorsement of Community Engagement Outputs Summary Report To seek direction for the approach to revised Policy 	<ul style="list-style-type: none"> Announcement of Council meeting date and release of Agenda and attachments Release of Gauge Report 	26 April 2022	Complete

<p>Identification of scope of environmental assessments</p> <p>Report to Council on scope of environmental assessments and associated timeline for completion.</p>	<ul style="list-style-type: none"> Announcement of Council meeting date and release of Agenda and attachments 	<p>June / July 2022</p> <p>This will inform the timeline for the preparation of the revised draft Policy and take into consideration the number, type and detail of assessments required.</p>	Substantially complete
<p>Preparation of the revised draft Policy</p> <p>Environmental assessments</p> <p>Internal review and feedback on revised draft Policy</p>	<ul style="list-style-type: none"> Receipt of feedback on Gauge Report Internal Council and key external Agency review and feedback on draft revised Policy 	<p>May- November 2022</p> <p>(anticipated)</p>	
<p>Briefing to Council on revised draft Policy</p> <p>Report to Council to seek endorsement of revised draft Policy and place associated documents on public exhibition</p>	<ul style="list-style-type: none"> Briefing to Councillors Announcement of Council meeting date and release of Agenda and attachments 	<p>30 Jan. 2023</p>	Current
<p>Public Exhibition of documents (min 28 days) in concurrence with submissions accepted to receive feedback on revised draft Policy and public drop-in sessions and community survey</p>	<ul style="list-style-type: none"> Announcement / media release of public exhibit of documents specifying exhibition dates Internal Council and key external Agency review and feedback Online survey (to include feedback on specific dog access areas) Detailed submissions accepted Public drop-in sessions 	<p>TBA – anticipate Feb./March 2023</p>	
<p>Collation of feedback received during public exhibition period</p> <p>Update of draft Policy in accordance with feedback received</p>	<ul style="list-style-type: none"> Internal Council and key external Agency review and feedback (if required) 	<p>TBA – anticipate April 2023</p>	
<p>Report to Council with final draft Policy to seek endorsement</p>	<ul style="list-style-type: none"> Announcement of Council meeting date and release of Agenda and attachments (to include final draft Policy) 	<p>TBA – anticipate May/June 2023</p>	
<p>Pending Council's resolution, implementation of new Policy along with erection and installation of associated infrastructure.</p>	<ul style="list-style-type: none"> Announcement / media release on endorsement of Policy and timeline of infrastructure roll-out 	<p>TBA – anticipate from July 2023</p>	

CL23.38 Tenders - Establishment of a Panel of Suppliers to Provide Food and Beverages (Small Goods) to Council Facilities

HPERM Ref: D23/7868

Department: Shoalhaven Entertainment Centre
Approver: Jane Lewis, Director - City Lifestyles

Reason for Report

To inform Council of the tender process for “Panel of Suppliers to Provide Food and Beverages (Small Goods) to Council Facilities.”

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

Recommendation

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

Options

1. Accept the recommendation

Implications: Consider a separate confidential report on the matter.

2. Council make a different resolution

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

Details

Project Description

Council recently undertook a tender process to establish a panel of suppliers for the Provision of Food and Beverages (Small Goods) to Council facilities for the next 5 years.

These include items such as bread, fruit, vegetable, meats, ice creams, soft drinks, confectionary etc. The panel of suppliers will be accessed by Council’s service areas where cafes, food and beverage or catering operations are provided.

Tendering

Council called tenders for a Panel of Suppliers to Provide Food & Beverages (Small Goods) to Council Facilities on 8 November 2022 which closed at 10:00 am on 14 December 2022. Six (6) tenders were received at the time of closing. Tenders were received from the following:

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Tenderer	ABN
Australian Food Group Pty Ltd T/a Peters Ice Cream	11 154 314 913
Bidfood Australia Limited	33 000 228 231
JB Metropolitan Distributors	72 088 821 023
VC Foods	70 101 133 029
Youfoodz	Not provided
Cream of the Coast	62 087 864 006

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

Community Engagement:

This tender for a Panel of Suppliers to Provide Food & Beverages (Small Goods) to Council Facilities was advertised through Tenderlink. All existing current suppliers were contacted to inform them of this opportunity.

Policy Implications

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

Financial Implications:

No financial implications as this is for a Panel of Suppliers to Provide Food & Beverages (Small goods) to Council Facilities.

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CL23.39 Telstra Lease Kangaroo Valley - Mobile Phone Black Spot Program

HPERM Ref: D23/33162

Department: Water Business Services

Approver: Andrew McVey, Section Manager - Water Operations & Maintenance

Reason for Report

To provide an update on the work to support the Kangaroo Valley Community and Telstra to deliver a mobile phone telecommunication tower identified in the Commonwealth Government's Mobile Phone Black Spot Program and inform Council that Telstra have advised they will not proceed with this project.

Recommendation

That Council

1. Notes the negotiations that have occurred and express disappointment that Telstra have advised they will not proceed with the project.
2. Make representation to the Commonwealth Mobile Phone Black Spot Program to advocate for the continued inclusion of the Kangaroo Valley area targeting Bendeela, Tallowa Dam and Budgong.
3. Continues to support Telecommunication Network Providers that propose projects to improve mobile phone coverage under the Mobile Phone Black Spot Funding Program.

Options

1. As recommended.

2. Council could build a communications tower at the Jacks Corner Road.

Implications: This option is not recommended as Council has not budgeted for this works and there is no guarantee that any mobile service providers would be interested in leasing space on the tower.

Background

The Commonwealth Government through the Mobile Phone Black Spot Program identified an area within Kangaroo Valley targeting Bendeela, Tallowa Dam and Budgong as a priority location in the 2018 funding for the Program. The objective of the Program is to substantially enhance mobile phone coverage in this area.

The area identified was awarded to Telstra Corporation to deliver. Since 2018, we understand representatives of Telstra have assessed 30 possible locations on which to construct a mobile tower that will provide the coverage required by the Black Spot Program.

In the middle of 2021, representatives of Telstra approached Council to assess a site at Jacks Corner Road in Kangaroo Valley (Shoalhaven Water – Water Treatment Plant). This site is constrained by both the sloping topography and the existing infrastructure associated with the treatment plant and the construction of an additional reservoir on the site (currently

under construction). The site has an existing communications tower that holds Council communication equipment.

Council staff provided options for Telstra to consider including, a capital contribution to fund the construction of a new tower that would meet Telstra's requirements and the leasing of a portion of land to allow Telstra to build their own tower on the site. Telstra advised their preference was to build and own the tower on this site and that the lease fee for the land would need to be significantly below the commercial lease value as the project was funded under the Black Spot Program and the community benefit that would be gained from the project.

Council staff in negotiations recognised the community benefit that would be gained from the project and offered options at a significantly reduced value. In September 2021, the representatives of Telstra that had led the negotiations with Council advised that their preferred model was to lease a piece of land and build their own communications tower and they wanted to explore alternative sites in the area to deliver the required mobile phone coverage. At the time, Council staff confirmed that the Jacks Corner Road continued to be available for Telstra to consider as a site.

On 28 October 2022, Council's Executive Manager of Shoalhaven Water was contacted by a second set of Telstra representatives inquiring on the Jacks Corner Road site for the purpose of building a communications tower. Several video conferences were held between the parties to determine the most suitable and cost-effective method for the project to proceed. From these discussions, Telstra confirmed they wished to proceed with the leasing of a portion of the Jacks Corner Road site and they would build their own communications tower.

A lease schedule was prepared and issued to Telstra on the 16 December 2022, with a site inspection scheduled for the 19 December 2022 between Shoalhaven Water staff including the Executive Manager of Shoalhaven Water. This inspection confirmed the most suitable options available to meet the needs of Telstra to lease. Telstra's proposal response was that they could not accept the terms offered despite the already significant reduction in the value of the lease that had been offered.

After a series of correspondence with Telstra representatives concerning the terms of a lease, Telstra advised they would not accept the terms as they revealed the site would only produce 22% of the originally intended coverage under the Mobile Black Spot Funding Program. Both Council's CEO and Executive Manager of Shoalhaven Water continued to engage with Telstra representatives in early January 2023 to negotiate an outcome that would allow the project to move forward.

This report provides a summary of the negotiations that have been undertaken to reach an agreement and to advise, that despite Council's significantly reduced value offered for the lease of land, an amicable agreement has not been reached. Telstra have advised they will not proceed with the lease and have advised the Commonwealth Mobile Phone Black Spot Program that they will not proceed based on the reduced coverage footprint of 22% that can be achieved from this site.

Community Engagement

Senior Council staff have provided updates to the Kangaroo Valley Community Consultative Body, on the progress that was made to identify a potential site and the negotiation of a lease that would allow the project to proceed. This group had advocated for this area to be added to the Blackspot Funding Program and continued to engage with Telstra on the progress they had made on identifying a suitable site.

Policy Implications

Nil

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Financial Implications

The leasing of operational land at the Jacks Corner Road site is not a commercial opportunity that was budgeted for. Not receiving a nominal amount of income from this lease has no impact, as it was not budgeted or planned for in Shoalhaven Water's budget.

Risk Implications

As the leasing of this site to Telstra will not proceed, the community of Bendeela, Tallowa Dam and Budgong in Kangaroo Valley will continue to have poor mobile phone coverage.

To manage this risk, the recommendation to Council is to maintain support to this community and advocate for this area to continue to be included in the Commonwealth Mobile Phone Black Spot Funding Program so an alternative site or telecommunications network provider can be identified.

CL23.40 Rescission Motion - CL23.12 Notice of Motion - Sporting User Fees

HPERM Ref: D23/33380

Submitted by: Cllr Paul Ell
 Cllr Greg Watson
 Cllr John Wells

Purpose / Summary

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

Recommendation

That Council rescind the Motion relating to Item CL23.12 Notice of Motion – Sporting User Fees of the Council Meeting held on Monday 23 January 2023.

Background

The following resolution was adopted at the Ordinary Meeting held Monday 23 January 2023 (MIN23.25)

That Council:

1. *Re-endorse the existing policy of not charging sporting user fees for our sports grounds and that Council continue to cover the cost of sporting field lighting.*
2. *Receives a briefing on what it would look like to have sporting user fees as a part of the budget.*

CL23.40

CL23.41 Notice of Motion - CL23.12 Sporting User Fees

HPERM Ref: D23/33812

Submitted by: Cllr Paul Ell
Cllr John Wells
Cllr Greg Watson

Purpose / Summary

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

Recommendation

That Council:

1. Re-endorse the existing policy of not charging sporting user fees for our sports grounds and that Council continue to cover the cost of sporting field lighting.
2. Receive a briefing on the subject of sporting user fees after this year's budget.

Note by the CEO

This Notice of Motion will be dealt with if the preceding Rescission Motion is carried.

For clarification, it is suggested that Part 2 above be amended to read "*Receive a briefing on the subject of sporting user fees following the adoption of Council 2023/24 Budget.*"

CL23.41

CL23.42 Notice of Motion - 'Call In' - DA22/2290 - 5 Treetops Crescent Mollymook

HPERM Ref: D23/34390

Submitted by: Cllr Patricia White

Purpose / Summary

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

Recommendation

That Council "Call In" DA22/2290 5 Treetops Crescent, Mollymook due to the public interest.

CL23.42

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.