



# AGENDA

## Ordinary Meeting of Council

**15 August 2023**

### **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 Eurobodalla Shire Council and to faithfully and impartially carry out the functions, powers, authorities and discretions vested in them under the *Local Government Act 1993* 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.



**ORDINARY MEETING OF COUNCIL  
TO BE HELD IN THE COUNCIL CHAMBERS, MORUYA**

**ON TUESDAY 15 AUGUST 2023**

**COMMENCING AT 12.30PM**

**AGENDA**

(Proceedings of this meeting will be recorded as per Eurobodalla Shire Council's Code of Meeting Practice)

- |   |                 |
|---|-----------------|
| <b>1. WELCOME</b>   |                 |
| <b>2. ACKNOWLEDGEMENT OF COUNTRY</b>  |                 |
| <b>3. APOLOGIES</b><br>Nil  |                 |
| <b>4. CONFIRMATION OF MINUTES OF PREVIOUS MEETING</b><br>4.1 Ordinary Meeting held on 25 July 2023                                      |                 |
| <b>5. DECLARATIONS OF INTEREST OF MATTERS ON THE AGENDA</b><br>(Declarations also to be made prior to discussions on each item)         |                 |
| <b>6. PUBLIC FORUM</b>  | <b>Page No.</b> |
| <b>7. MAYORAL REPORTS</b><br>Nil  |                 |
| <b>8. NOTICES OF MOTION</b><br>NOM23/003 Heat Havens .....  | 3               |
| <b>9. QUESTIONS ON NOTICE FROM COUNCILLORS</b><br>Nil   |                 |
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**WARWICK WINN**  
**GENERAL MANAGER**

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**NOM23/003     HEAT HAVENS**

Responsible Officer: David Grace - Councillor

Attachments:        Nil

Councillor David Grace has given notice that at the Ordinary Meeting of Council on 15 August 2023, he will move the following motion.

**MOTION**

THAT a report be prepared for consideration by Council at its 21 November 2023 meeting on the need and suitability of council public facilities, including public halls, to be used as heat havens. The report is to provide discussion on options, costs, possible funding sources, and what facilities could be reasonably made available as heat havens for the future.

**BACKGROUND**

This notice of motion complements the notice of motion agreed to by Council on 25 July 2023 regarding the provision of emergency evacuation centers in the case of emergencies such as bushfires, or floods, and was foreshadowed during that discussion.

One of the “silent killers” in heatwaves is heat exhaustion/heat stroke, where individuals are not able to access suitable accommodation which protects them from heat, especially heat at night. See [https://dea.org.au/wp-content/uploads/2021/01/DEA-Fact-Sheet\\_HeatwavesWEB.pdf](https://dea.org.au/wp-content/uploads/2021/01/DEA-Fact-Sheet_HeatwavesWEB.pdf) for more detail.

See this article on the need for cooler temperatures at night <https://www.scientificamerican.com/article/why-hot-overnight-temperatures-are-so-dangerous/>

Deaths directly attributed to heat has been estimated to be 473 between 2000-2018, in one study. <https://www.sciencedirect.com/science/article/pii/S2212420921006324> . Other studies have a much higher death rate, so this is likely to be a conservative estimate.

Human Rights watch notes that:

“ Heatwaves have caused [more deaths in Australia](#) in the past 200 years than any other natural hazard. Those most at risk of heat stress are children, older people, pregnant people, and people with disabilities. Extreme heat can also [exacerbate](#) existing health conditions and chronic illnesses including diabetes, kidney disease, and heart disease.

The latest Intergovernmental Panel on Climate Change (IPCC) [report](#) predicts significant climate-related health impacts for people in Australia if urgent action is not taken to reduce emissions, including excess heat-related deaths in Australian cities quadrupling between 2031 and 2080 compared with 1971-2020.” <https://www.hrw.org/news/2022/03/21/australia-extreme-heat-threatens-lives>

Heat related illness and death are likely to be one of the hazards we will face in our community as climate change takes hold, and it will mostly affect those whose voices are not heard: the poor, the homeless, those who are ill, elderly people and children. As a council we have a responsibility to do whatever we can to protect these important members of our community as we face a summer which may well break many heat records.

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**PET23/001 PETITION TO REOPEN THE PEDESTRIAN TRACK ON THE CLIFFSIDE WHICH  
CONNECTS LONG BEACH TO NORTHCOVE.**

S012-T00029

Responsible Officer: Mathew Hatcher - Mayor

Attachments: 1. Under Separate Cover - Confidential - Petition

Mayor Mathew Hatcher has given notice that at the Ordinary Meeting of Council on 15 August 2023, he will move the following motion.

**MOTION**

THAT Council receive and note the petition.

**BACKGROUND**

Petition specifically states:

We, the undersigned, petition you to reopen the pedestrian track on the cliffside which connects Long Beach to Northcove. This track was recently closed and removed by Council officials. It had long been an important pedestrian connection between Long Beach and Maloneys Beach communities and is sorely missed. We understand that the track was of an informal nature and now request action that it be formally renewed by Council following all due processes and considering all possible options for its reinstatement.

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**GMR23/031 REVIEW OF BAY PAVILIONS**

**S004-T00008**

Responsible Officer: Warwick Winn - General Manager

Attachments: 1. Under Separate Cover - Bay Pavilions Financial Performance Review, Final Report, 27 June 2023  
2. KPMG Review Engagement Letter

Community Goal: 2 Our community that welcomes, celebrates, and supports everyone

Community Strategy: 2.2 Encourage community spirit and enable healthy lifestyles

Delivery Program Link: 2.2.2 Provide and manage quality community facilities to meet the needs of the current and future communities

Operational Plan Link: 2.2.2.6 Manage the Bay Pavilions

**EXECUTIVE SUMMARY**

The purpose of this report is to present the *Bay Pavilions Financial Performance Review, Final Report, 27 June 2023*.

A Mayoral Report was endorsed by Council on 28 March 2023, seeking Council's support for a thorough review of the Bay Pavilions operations, and for the review to be reported back to Council and placed in the public domain, ensuring transparency. The review was also included in the General Manager's Performance Plan for 2022-23, with a draft report to be prepared by June 2023.

A Request for Quote (RFQ) for the review was undertaken via an approved Council Panel in March 2023, with KPMG being the successful applicant.

The scope of the review includes a factual assessment of the current operating performance of the Bay Pavilions against the outcomes and assumptions of the business model, and a revenue and key cost driver analysis (the Review).

The Review final report includes an Executive Summary of seven (7) key findings that address a range of financial, governance and management issues. The report includes the review scope, review limitations, a project timeline, outlining key documents and decision-making points, as well as financial analysis of actuals against assumptions and revenue and cost driver analysis.

These key findings will also be used to help guide current and future Council projects. In particular, the role of the Audit, Risk and Improvement Committee (ARIC) and the establishment of more robust project and financial management during project inception stages.

Consideration is being given to the creation of a Project Management Office, to be located within the General Manager's office, to further enhance oversight, transparency and public reporting outcomes.

In addition to the Review, Council has conducted two further RFQs, resulting in specialist firms InConsult being engaged to prepare a risk assessment/audit and GHD engaged to undertake an energy audit of the Bay Pavilions. The risk and energy audits have run parallel with the Review, with future service planning and improvements to be informed by the three review processes.

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**GMR23/031 REVIEW OF BAY PAVILIONS**

**S004-T00008**

On 1 August 2023 Council and Council's Audit, Risk and Improvement Committee (ARIC) were briefed on the key Findings of the Review, with a subsequent report back to Council prepared, as endorsed on 28 March 2023.

**RECOMMENDATION**

THAT Council receive and note the *Bay Pavilions Financial Performance Review, Final Report, 27 June 2023*.

**BACKGROUND**

The planning and development of the Bay Pavilions as an arts and aquatic facility commenced in late 2016.

Otium Planning Group (the consultant) was initially contracted in January 2017 to prepare the concept plan and first business case for the project. Otium was further engaged to prepare each subsequent iteration of the business case between 2017 and 2021.

Grant funding of \$51m was secured, with \$26m from the NSW government (MR18/001 27 March 2018) and \$25m from the Australian government (GMR19/009 30 April 2019) towards construction. The remaining construction costs include a \$4m loan and Council cash of \$8.5m, for a total construction cost prior to opening of \$63.5m.

Council endorsed NBRS architects to prepare the detailed design (PSR18/080 11 September 2018) and ADCO was awarded the tender to construct the facility (PSR20/015 28 July 2020).

Council resolved to adopt a fee for service management model (PSR20/001 10 March 2020) and resolved to award Aligned Leisure the contract to operate the facility (CAR21/012), with the Bay Pavilions officially opening on 4 June 2022.

**CONSIDERATIONS**

**Performance**

Since opening, the cost of operating the Bay Pavilions has been significantly higher than estimated. The initial operating deficit for the first full year of operations (2022-23) was estimated at \$3,240,626.

During 2022-23 budget variations have been approved by Council during quarterly reviews in relation to reduced revenue (\$265,423), reduced salary costs (\$25,487) and Aligned Leisure operating costs (\$34,644), and increased energy costs (\$337,116), insurance (\$124,000), and depreciation (\$783,309). This resulted in a revised operating deficit of \$4,690,343 for the year.

The 2023-24 Operational Plan includes budgeted revenue of \$3,947,177 and expenses of \$8,861,822, resulting in an operating deficit of \$4,914,645. This operating deficit is 44% of Council's General Fund (including Waste and Environment Funds) operating deficit of \$8,889,608.

Total expenses include operating and financing costs, management fees, insurance, depreciation, and corporate overheads. The expenditure of \$8,861,822 represents 8.7% of Council's General Fund (including Waste and Environment Funds) total expenditure budget of \$100,997,171.

The significant variation in operating costs and performance (eg, visitation) has informed the decision to engage an external consultant to undertake a review. A key aim has been to



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**GMR23/031 REVIEW OF BAY PAVILIONS**

**S004-T00008**

understand how the project evolved and gain valuable learnings that can be applied to the operation of the Bay Pavilions, as well as to future Council projects, particularly in relation to finance, governance, decision-making processes and project management.

**The review**

The Review commenced in April 2023. To support the process eight staff, Councillors and Aligned Leisure (contractor) staff were consulted and Council provided 200+ documents for review, including Council reports, briefings, minutes; project meeting agendas and minutes; financial data, business cases and correspondence. The list of staff consulted is included as Appendix A (p26), whilst Appendix B lists the 18 Key Documents referred to specifically by KPMG in the Final Report (p27).

**Findings**

The Review report Executive Summary outlines seven (7) Key Findings, supported by an evidence based sub-set of points under each Finding in relation to financial, governance and management issues. The seven Key Findings are:

1. Bay Pavilions' operating loss for the 9 months to 31 March 2023 was \$1.2m per reconstructed actual financial results from Council compared to a baseline financial model forecast loss of \$563K. Financial performance is weaker than anticipated due to revenue targets not being met, and higher than forecast expenditure in the first 9 months of operations.
2. Bay Pavilions was forecast to operate at both an operating and total loss in all of the examined documents since the original financial model and business case was prepared in 2017. Council was presented forecast depreciation charges in March 2020 and July 2021.
3. Council had considered the operating loss (excluding depreciation) in February 2020, based on the documents provided for this review. No explicit consideration of how to fund the ongoing operating losses has been noted in any meeting minutes.
4. No Council briefings sighted as part of this review included the full OLG assessment letter from July 2020. In this letter, the OLG suggested Council should ensure it is satisfied with the community demand for the facility, and its ability to subsidise ongoing losses.
5. The management agreement with the third-party operator of Bay Pavilions does not align with key recommendations relating to the management and operating model endorsed by Council.
6. No documentation sighted as part of this review demonstrates critical review of financial model assumptions by Council.
7. Externally prepared financial models indicate the facility will continue to operate at both operating and total losses over the 10 years forecast period, with many costs being fixed in nature. Council must identify options to minimise the ongoing losses and consider reprioritising or eliminating projects in its long-term financial planning in order to continue to fund the facility.

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**GMR23/031 REVIEW OF BAY PAVILIONS**

**S004-T00008**

**Improvement Opportunities**

Under Finding 7 of the Review report (p6), a range of options are provided for consideration by Council to minimise ongoing losses, including the investigation of cost-saving opportunities, renegotiating the current operating and management model, and conducting a procurement review.

These recommendations will be considered, alongside the outcomes of the risk and energy audits, with the aim of reducing risks and costs to achieve a more financially sustainable outcome for the Bay Pavilions.

**Where to next?**

The Review findings will inform a review of governance and record keeping processes to support future Council projects and service delivery, with the aim of having in place:

- strong Executive ownership,
- a robust Project Management framework, including built in mechanisms to revisit/update/review and challenge assumptions,
- well defined record keeping expectations and accountability,
- clear, well documented processes and pathways for decision making, with defined roles and responsibilities.

Consideration is being given to:

- the creation of a Project Management Office, to be located within the General Manager's office, to further enhance oversight, transparency and public reporting outcomes,
- reassessment of the current management model for the Bay Pavilions, based on actual operating data and analysis,
- customer and community feedback to generate greater utilisation of the facility,
- formalised pathways for ARIC and Council decision-making and review,
- the outcomes and recommendations of the risk and energy audits.

**Financial**

KPMG were appointed after a RFQ process using an approved Council Panel. The cost of the review and preparation of the final report was \$57,475 (excluding GST).

**Community and Stakeholder Engagement**

The Mayoral report (28 March 2023) stated that the results of the review will be reported back to Council. In this way the review is transparent for councillors and the community, and the results of the review will be in the public domain.

The *Bay Pavilions Financial Performance Review, Final Report, 27 June 2023* has been placed on Council's website and is available to the community.

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**GMR23/031 REVIEW OF BAY PAVILIONS**

**S004-T00008**

**CONCLUSION**

The Bay Pavilions project commenced in late 2016, with the facility opening to the public on 4 June 2022.

Council endorsed a Mayoral report on 28 March 2023, seeking Council's support for a thorough review of the Bay Pavilions operations, and for that report to be reported back to Council and placed in the public domain, ensuring transparency. The review was also included in the General Manager's Performance Plan for 2022-23, with a draft report to be prepared by June 2023.

The Review final report includes an Executive Summary of seven (7) Key Findings that identify a range of financial, governance and management issues, a project timeline, outlining key documents and decision-making points, as well as financial analysis of actuals against assumptions and revenue and cost driver analysis.

The Final report has been placed on Council's website and is available to the community.



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DX: 1056 Sydney  
www.kpmg.com.au

Attention: Kathy Arthur  
Eurobodalla Shire Council  
Vulcan Street  
Moruya NSW 2537

Our ref Eurobodalla Shire Council -  
20206723 – Engagement Letter  
- 2023

Contact Khoury, Dale (+61 2 8865 6162)

13 April 2023

Dear Kathy

### **Engagement for Financial Performance Review of Bay Pavilions Arts+Aquatic Centre for Eurobodalla Shire Council**

Thank you for the opportunity to provide Eurobodalla Shire Council (ABN 47 504 455 945) (**ESC** or **you**) with services to conduct a review of the financial performance of the Bay Pavilions Arts+Aquatic Centre (Bay Pavilions) and document fact-based findings (**Engagement**).

This letter (**Engagement Letter**), together with KPMG's Terms and Conditions of Business, as attached in Appendix 1 (**Terms**) (together, the **Agreement**), confirms our understanding of the services to be provided (**Services**) and the terms of the Engagement.

Please indicate your acceptance of the terms by signing the acknowledgement at the end of the Engagement Letter and returning the signed Engagement Letter to me.

#### **1. Scope**

The purpose of the Engagement is to assist you with understanding the current state performance of the Bay Pavilions compared with your original business case, identifying the key cost drivers for the variations and implications for future financial performance.

The scope of the Engagement in phases with specific checkpoints, at which time you will be advised of the progress of the Engagement is agreed as follows:

#### **Phase 1: Current State Assessment**

##### **1.1 Mobilisation**

- Mobilise the project team and conduct engagement kick-off. Confirm the scope and key ESC stakeholders. Prepare and send request for information (to be provided before the project commencement). Develop a stakeholder consultation schedule, and confirm stakeholder availability.

##### **1.2 Desktop Review of Information**

- Review the original business case and other information (e.g. current management contract, business plan) to understand the assumptions, projections and cost estimates used to justify the construction of the Bay Pavilions.

*Eurobodalla Shire Council  
Engagement for Financial Performance  
Review for Eurobodalla Shire Council  
13 April 2023*



### 1.3 Variance analysis

- Compare the actual costs incurred during the first six months of operation to the original business case projections to identify key variances;
- Socialise the key variances with the Project Sponsor and project team to ensure alignment. Understand current hypothesis for key variances.

## **Phase 2: Cost Driver Analysis & Service Delivery Options**

### 2.1 Identify Key Cost Drivers

- Analyse the data to identify the key drivers of the costs, including factors such as energy consumption, staffing levels, maintenance, and management costs.
- Assess Bay Pavilions' key financial metrics and performance ratios identifying financial risk indicators.
- Compare and contrast performance of both the leisure and arts facility for the organisation.
- Document factual findings, noting the potential implications of cost variances on financial sustainability.

### 2.2 Stakeholder interviews

- Conduct interviews with key stakeholders as identified in consultation with you, including the agreed Aligned Leisure and Council staff to gather additional insights about the cost drivers and any other factors that may have contributed to the higher-than-anticipated costs. Discuss any current plans for cost control in the upcoming period.
- Conduct a workshop to review the centre's operations across the Business Model in the 9 Levers of Value and understand key challenges facing the organisation.

## **Phase 3: Report Findings & Next Steps**

### 3.1 Draft Report findings

- Document a summary report based on the factual cost variation analysis, cost drivers, and cost risk assessment;
- Review the report with the Project Sponsor and project team and obtain feedback. Update the final report;
- Develop the Deliverables as defined below in section 2.

### 3.2 Present final report

- Present the final reports, including financial sustainability impacts, to the Executive and/or Councillors as required,

(collectively, **Scope**).

Please note that the Scope will exclude the following areas:

- A market assessment or a review of alternate service delivery options for similar centres.

*Eurobodalla Shire Council  
Engagement for Financial Performance  
Review for Eurobodalla Shire Council  
13 April 2023*



- The validation, warranty of completeness, accuracy, reasonableness or reliability of assumptions used in the business case and financial model, we will compare the assumptions used in the business case with current performance and identify variances.
- We will also not represent nor warrant that the forecasts, projections or estimations included in the business case and the financial model.

Because the scope above does not constitute either a reasonable or limited assurance engagement in accordance with Auditing and Assurance standards issued by the Australian Auditing and Assurance Standards Board (AUASB), we will not provide assurance on the integrity of the business case in accordance with those standards.

## **2. Deliverables**

The deliverables for the Engagement will consist of the following, as requested by you:

- a Non-KPMG final report for internal use by Eurobodalla Shire Council

(collectively, **Deliverables**).

A draft of the Deliverables will be provided to you for review and comment prior to final delivery.

## **3. Use of Deliverables**

The Deliverables provided to you, as part of the Engagement, are solely for the purposes set out in the *Scope* Section of the Engagement Letter.

### **3.1. Non-KPMG branded deliverables**

When a deliverable is non-KPMG branded, or is prepared with your branding applied, or is unbranded (i.e. plain paper), once it is provided to you in final form, the deliverable becomes your internal working document for which you are responsible, and which you may alter or amend as you consider appropriate, provided that you do not reference KPMG. For the avoidance of doubt, nothing in this paragraph affects KPMG's ownership of its internal working documents and the intellectual property rights in the Services.

Subject to the above, we consent to KPMG being named as Eurobodalla Shire Council professional adviser. For the avoidance of doubt, this consent does not extend to the use of the KPMG logo and we will retain all editorial rights and final approval concerning the use of our name in the Deliverable. We retain all discretionary rights concerning the use of KPMG name in any other Eurobodalla Shire Council documents and any consent will be agreed in writing.

*Eurobodalla Shire Council  
Engagement for Financial Performance  
Review for Eurobodalla Shire Council  
13 April 2023*



#### **4. Timetable**

The anticipated timetable for the Engagement is as follows:

<b>Milestone</b>	<b>Estimated Timing (days)</b>
Phase 1 – Current State Assessment	w/c 10 April (~1 week)
Phase 2 – Cost Driver & Service Delivery Options	w/c 17 April (~2 weeks)
Phase 3 – Reporting & Next Steps	w/c 1 May (~1 week)

You will be provided with periodic updates on the progress of the Engagement as necessary. In conducting the Engagement, we shall use all reasonable endeavours to meet the anticipated timetable and, if required, we will advise you of any milestones of the Engagement that we feel are at risk of not being met.

#### **5. Engagement team**

Our proposed team will consist of KPMG professionals with the appropriate knowledge and experience in business performance improvements. I will service as the overall engagement relationship Partner. Director Tamara Djokic will lead the Engagement. We will draw upon additional KPMG resources as considered appropriate.

#### **6. Professional fees, expenses and invoicing**

##### **6.1. Fees**

Our fees with respect to the engagement will be fixed at \$55,000, plus expenses (including a technology & administration charge of 4.5%), plus GST.

##### **6.2. Expenses**

Please note that any Expenses incurred as part of our work will be re-charged on the basis of costs incurred.

##### **6.3. Invoices**

The fee amount of \$55,000 agreed in relation to the engagement will be billed on delivery of the final report.

#### **7. General Matters**

We look forward to the continuation of our association with you and welcome the opportunity to provide you with any additional services that you may require in the future.

**Eurobodalla Shire Council**  
*Engagement for Financial Performance Review  
for Eurobodalla Shire Council  
13 April 2023*



Please contact us if you require clarification of the above matters.

Yours sincerely

*Dale Khoury*

Dale Khoury  
Partner

*Enclosures:*  
Appendix 1: KPMG Terms and Conditions of Business



**Eurobodalla Shire Council**  
Engagement for Financial Performance Review  
for Eurobodalla Shire Council  
13 April 2023



**Acknowledgment**

The terms of the Engagement, as provided in the above Engagement Letter and the attached Terms, are understood and accepted for and on behalf of Eurobodalla Shire Council (ABN 47 504 455 945), for whom I am duly authorised.

*K.A.*

Signed: .....

Kathy Arthur

Name: .....

Ms

Position: .....

17-Apr-2023

Date: .....

GMR23/031 REVIEW OF BAY PAVILIONS  
ATTACHMENT 2 KPMG REVIEW ENGAGEMENT LETTER



INTERNATIONAL CONFEDERATION OF ACCOUNTANTS

Appendix 1  
1 July 2022**1. Introduction**

- 1.1. This Agreement governs the provision of the Services.
- 1.2. You can accept this Agreement as described in our engagement letter, or by continuing to instruct us in relation to the Services. This Agreement applies to all Services, including those provided prior to such acceptance.

**2. Our Services**

- 2.1. We may engage Assisting Parties to assist us in performing the Services.
- 2.2. Unless expressly specified in the engagement letter, the Services are not performed in accordance with any auditing, review or assurance standards, and the use of the terms "audit", "assurance", "review" or similar in any materials, including the engagement letter or any Deliverable, or in any other form, whether express or implied, written or verbal, is not intended to suggest otherwise. The Services do not include the provision of legal advice or services.
- 2.3. We may provide services to persons whose interests compete or conflict with yours, provided that where we determine that the provision of such services gives rise to a specific and direct conflict of interest we will put in place appropriate ethical dividers.
- 2.4. Our provision of the Services is subject to any assumptions, dependencies, limitations or similar qualifications set out in this Agreement.

**3. Information and access provided by you**

- 3.1. You agree to promptly provide us and any Assisting Parties with all relevant assistance, information, access to personnel, systems, technology, equipment and other materials, as well as safe access to premises, reasonably required by us to provide the Services.
- 3.2. We will rely on the accuracy and completeness of Your Materials and we will not verify them. You must notify us in writing of any changes to Your Materials that may affect our Services.
- 3.3. In providing the Services, we will only be regarded as having or knowing information provided to or known by the Personnel providing the Services. This is the case even if other Personnel have separately been provided with or know additional information.
- 3.4. Information obtained in connection with the Services, including Confidential Information, may be Used by us and Assisting Parties:
  - a) to perform the Services;
  - b) for Administrative Purposes;
  - c) for Risk and Quality Review Procedures; and
  - d) for Business Purposes, provided that any output is anonymised or aggregated so that no Personal Information or information relating specifically to you is reasonably identifiable.
- 3.5. We will store information obtained in performing the Services in accordance with our policy set out at [www.kpmg.com/au/3Pcloudproviders](http://www.kpmg.com/au/3Pcloudproviders).

**4. Use of our Services**

- 4.1. The Services are provided for your sole use and benefit and may only be used for your internal business purposes, any other purposes set out in this Agreement or otherwise as agreed by us in writing.
- 4.2. You must comply with all applicable laws in using the Services. Subject to clauses 6.2 and 6.3, you may not provide any Deliverable to a third party, or use our name, logo or trademarks in any marketing, promotional material or other publication, unless required by law or with our prior written consent.
- 4.3. We will not update the Deliverables after we have delivered them in final form, and will not be responsible for any changes you make to them without our prior written consent.
- 4.4. You are responsible and accountable for managing your business and affairs and deciding what to do after receiving the Services, including whether to implement our advice or recommendations and complying with laws and regulations that affect you.

**5. Our fees**

- 5.1. You agree to pay:
  - a) our fees as set out in the engagement letter and any reasonable expenses incurred in connection with the Services;
  - b) our technology and administration charge (being 4.5% of our fees); and
  - c) where applicable, compliance charges as detailed in clause 5.4.
- 5.2. Our fees, expenses and charges are exclusive of GST (unless stated otherwise). In addition to the amount payable, you must pay us any GST applicable to any Taxable Supplies we make, and we will provide you with tax invoices for those supplies.

- 5.3. You agree to pay our fees, expenses and charges, plus any applicable GST, within 14 days from the date of issue of our invoice.

- 5.4. If we are required by law or by reason of any judicial, regulatory, professional or administrative process to produce documents, provide information or give evidence in connection with the Services, or if we determine it is necessary to investigate any matter disclosed to us as an Eligible Recipient, you agree to:
  - a) pay for the time spent by us at our then-current rates, and any expenses incurred by us, in complying with that requirement, except where a claim or regulatory action is against us; and
  - b) promptly cooperate with us, including providing any consent, to the extent necessary for us to comply with that requirement.

**6. Confidentiality and IP**

- 6.1. Each party will keep the other's Confidential Information confidential and use it only for the purposes permitted in this Agreement, including performing or receiving the Services. Each party will protect the other's Confidential Information as it would protect its own, using at least a reasonable standard of care.

- 6.2. Each party may disclose the other's Confidential Information:
  - a) to its legal advisers and external auditors;
  - b) where we are the recipient of the Confidential Information:
    - i. to any Assisting Party;
    - ii. to our insurers, professional advisers or financiers;
    - iii. to the extent necessary for us or Personnel to comply with applicable professional and ethical standards or codes, or where we are required to do so by a regulatory or disciplinary body; or
    - iv. in accordance with clause 3.4;
  - c) to the extent required by law; or
  - d) with the prior written consent of the disclosing party.

- 6.3. Notwithstanding any other provision of this Agreement, where the Services are tax services and either:
  - a) you are:
    - i. an entity that is registered with the United States Securities and Exchange Commission (an **SEC Registrant**); or
    - ii. an affiliate of an SEC Registrant, that is audited by a Member Firm; or
  - b) the Services involve providing advice on a transaction or event, the consequences of which may be reflected on a US tax return, you may disclose to any third party any part of the Deliverables that relate to the tax treatment and structure of any transaction to which the Services relate (**Tax Deliverables**).

- 6.4. Where clause 6.3 is applicable:
  - a) you must promptly notify us of who the Tax Deliverables have been disclosed to and any confidentiality conditions imposed at any time in relation to those Tax Deliverables; and
  - b) if you disclose any Tax Deliverables to any third party you must (where legally permissible to do so and prior to disclosing any Tax Deliverables) notify the recipient in writing and obtain the recipient's written acknowledgement that the recipient: (i) may not rely upon the Tax Deliverables; and (ii) may not hold Member Firms liable for any liability arising in connection with the Services. You must promptly provide us with a copy of the written acknowledgement.

- 6.5. We may use and disclose:
  - a) knowledge, experience and skills of general application gained through the provision of the Services; and
  - b) your name, contact details, logo and a description of the Services for marketing purposes.

- 6.6. We own our internal working documents and we or our licensors own, or have appropriate rights relating to, all Intellectual Property Rights in the Services. We grant you a non-exclusive, non-transferable, royalty-free licence to use the Deliverables as described in clause 4.1.
- 6.7. This Agreement does not affect the ownership of any Intellectual Property Rights in Your Materials. You grant us a non-exclusive, non-transferable, royalty-free licence to Use Your Materials as described in this Agreement, including to provide the Services. You must

GMR23/031 REVIEW OF BAY PAVILIONS  
ATTACHMENT 2 KPMG REVIEW ENGAGEMENT LETTER



INTERNATIONAL CONFEDERATION OF ACCOUNTANTS

Appendix 1  
1 July 2022

ensure Use of Your Materials in accordance with this Agreement does not infringe the rights of any third party, including Intellectual Property Rights or privacy rights.

### 7. Privacy

- 7.1. We may Use (including disclosing to persons located outside Australia) Personal Information as set out in our privacy policy at [www.kpmg.com.au](http://www.kpmg.com.au).
- 7.2. You agree to provide all necessary notifications and obtain any necessary permissions or consents in connection with our Use of Personal Information or Confidential Information as contemplated by this Agreement.

### 3. Liability

- 3.1. Where any scheme approved under professional standards legislation applies to any Services, our liability in relation to the Services to which the scheme applies is limited in accordance with the scheme.
- 3.2. Where clause 8.1 does not apply, to the extent permitted by law our maximum aggregate liability is limited to the lesser of 10 times the fees paid by you for the Services or \$20 million.
- 3.3. To the extent permitted by law, we are not liable for any: (a) indirect or consequential loss or damage; (b) loss of or damage to business, goodwill, or reputation; (c) loss of revenue or profits; (d) loss of, damage to, or unauthorised access to data; or (e) business interruption.
- 3.4. If a guarantee or other provision is implied or imposed by law in connection with the Services or this Agreement, and we are permitted to do so, our liability for breach of that guarantee or other provision is limited to one or more of the following at our option:
  - a) in the case of goods: the replacement or repair of the goods or the supply of equivalent goods; or the payment of the cost of replacing or repairing the goods or acquiring equivalent goods; and
  - b) in the case of services: the re-supply of the services; or the payment of the cost of having services re-supplied.
- 3.5. This clause 8 applies to any claim or liability in connection with the Services or this Agreement, regardless of the basis on which it arises, whether in contract, tort (including negligence), under statute or otherwise.
- 3.6. You agree not to bring any claim against any Member Firms (other than us) or Personnel in connection with any Services they perform which fail to meet the requirements of the Agreement. You acknowledge that damages are unlikely to be an adequate remedy for your breach of this clause 8.6, and we may enforce this clause 8.6 on behalf of other Member Firms and Personnel.

### 3. Suspension and termination

- 3.1. We may suspend the Services for so long as: any fees payable by you are overdue; you fail to provide us with assistance, information or access required under clause 3; or there is a dispute the subject of clause 10.
- 3.2. Either party may terminate this Agreement immediately by written notice to the other if: the other materially breaches this Agreement and fails to remedy that breach on 14 days' notice; the other becomes insolvent; or the Services are suspended for more than 21 days under clause 9.1.
- 3.3. We may also terminate this Agreement immediately by written notice if, in our reasonable opinion, our provision of Services:
  - a) does or would breach or is inconsistent with any applicable laws, regulations, professional or ethical standards or codes or internal directions or policies (including any requirements relating to independence);
  - b) has the potential to bring us into disrepute; or
  - c) may expose Personnel to unreasonable physical or personal risk.
- 3.4. Termination does not affect any accrued rights of either party, including your obligation to pay our fees, expenses and charges for work performed up to the effective date of termination.

### 10. Dispute Resolution

- 10.1. If any dispute arises in connection with this Agreement or the Services (**Dispute**):
  - a) the party raising the Dispute must notify the other party of the Dispute, with sufficient detail to enable the dispute to be considered (**Dispute Notice**); and
  - b) the parties must engage in confidential senior level negotiations with a view to resolving the Dispute.

- 10.2. If a Dispute has not been resolved within 14 days after the Dispute Notice is given, the parties agree to refer the Dispute to mediation, as soon as practicable, in accordance with such rules as the parties may agree, or failing such agreement, as specified by the President of the Law Society of New South Wales.
- 10.3. If a Dispute has not been resolved following mediation, the Dispute must be referred to arbitration conducted in English, in Sydney and in accordance with the ACICA Arbitration Rules.
- 10.4. The number of arbitrators will be one if the amount in Dispute is under \$10 million or three if the amount in Dispute is \$10 million or more.
- 10.5. In making an award in the arbitration, the tribunal must:
  - a) determine the rights and liabilities of the parties in the same way as if Proportionate Liability Legislation applied to each claim in the arbitration, irrespective of whether or not the tribunal is otherwise bound or entitled to apply Proportionate Liability Legislation and whether or not the claim is an apportionable claim under Proportionate Liability Legislation;
  - b) in so doing, have regard to the comparative responsibility of the parties to the arbitration and of any concurrent wrongdoer who is not a party to the arbitration; and
  - c) give full effect to this clause notwithstanding any provisions in Proportionate Liability Legislation which express a contrary intention or which are inconsistent with this clause, and notwithstanding the inability of the parties in the arbitration to join any concurrent wrongdoers in the arbitration.

It is the intent of this clause to apply proportionate liability to all claims within the arbitration, even if they would not be subject to proportionate liability if made in court.

- 10.6. No court proceedings may be commenced in relation to a Dispute other than in accordance with section 34A of the *Commercial Arbitration Act 2010* (NSW) or to seek Urgent Relief.

### 11. Collaboration Tools

- 11.1. In connection with the supply of the Services, we may offer access to third party tools such as collaboration, data visualization and online reporting tools (**Tools**), some of which may be hosted offshore. Unless we provide Tool-specific terms and conditions, where we grant you access to a Tool the terms set out at [www.kpmg.com/au/collabtools-terms](http://www.kpmg.com/au/collabtools-terms) apply, and you agree to comply with those terms. We may change those terms by providing you 30 days' notice, or such shorter period as we may reasonably require. If you do not accept those changes you must cease using the Tools.

### 12. General

- 12.1. This Agreement is governed by the laws of New South Wales and subject to clause 10 the parties unconditionally submit to the exclusive jurisdiction of the courts sitting in New South Wales.
- 12.2. This Agreement does not limit or exclude any liability of a party that cannot be excluded or limited by law.
- 12.3. Subject to clause 12.2 this Agreement constitutes the entire agreement between the parties regarding the provision of the Services, and supersedes all previous agreements or understandings relating to the Services. Except as otherwise expressly stated, no variation of this Agreement is effective unless agreed by the parties in writing.
- 12.4. If there is any inconsistency between these terms and the engagement letter provided with these terms, the engagement letter prevails.
- 12.5. Clauses 3.4, 4, 5, 6, 7, 8, 9.4, 10, 11, 12 and 13 survive termination or expiry of this Agreement, together with any other clause which by its nature is intended to do so.
- 12.6. Any term of this Agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this Agreement or term is not affected.
- 12.7. Neither party will be liable for any failure to perform its obligations (other than an obligation to pay) under this Agreement to the extent that performance is delayed, prevented, restricted or interfered with for any reason beyond the reasonable control of that party.
- 12.8. Nothing in this Agreement is intended to constitute a fiduciary relationship, relationship of employment, or an agency, partnership, franchise or trust.
- 12.9. A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- 12.10. The term "including" is not a term of limitation.



12.11. We:

- a) will perform the Services in accordance with our Human Rights Policy, available at [www.kpmg.com.au](http://www.kpmg.com.au);
- b) are undertaking an ongoing process to identify Modern Slavery risks in our operations and supply chain; and
- c) will report on the Modern Slavery risks in our operations and supply chain in our annual modern slavery statement, in accordance with our obligations under the Modern Slavery Act.

12.12 The supply of the Services may involve us receiving a percentage-based referral fee or value added commission.

### 13. Definitions

**Administrative Purposes** means to facilitate and support Member Firms' business operations including personnel management, client relationship management, financial reporting and information technology operations.

**Agreement** means these terms and the engagement letter provided with these terms.

**Assisting Parties** means (i) Member Firms; and (ii) our third party contractors and suppliers, including cloud computing providers; those who assist us in performing the Services; and those engaged to facilitate and support Member Firms' businesses.

**Business Purposes** means to enable Member Firms, including with the assistance of Assisting Parties: (i) to develop, provide and enhance services, technology and deliverables for clients (including you); (ii) to develop thought-leadership, expertise and know-how; and (iii) to analyse trends, perform comparative analysis, train cognitive systems, conduct data analytics and derive non-attributable insights and provide benchmarking services.

**Confidential Information** means information disclosed in connection with this Agreement which by its nature is confidential, is designated as confidential, or which the recipient knows or reasonably ought to know is confidential, but does not include information that is in the public domain without a breach of confidence, is obtained from a third party without an obligation of confidence, or is independently developed without breach of this Agreement.

**Deliverable** means any advice, recommendation, information or other deliverable made available to you in any form, whether electronic, digital, hard copy or otherwise (including any draft).

**Eligible Recipient** has the meaning given to that term in the *Corporations Act 2001* (Cth) and the *Taxation Administration Act 1953* (Cth).

**Entity** means an organisation of any nature (whether incorporated or not) including any partnership or company.

**Intellectual Property Rights** means all and any patents, patent applications, trade marks, service marks, trade names, registered designs, unregistered design rights, copyright, know how, trade secrets, business and domain names, internet addresses, and all and

any other intellectual property rights, whether registered or unregistered, and including all applications and rights to apply for any of the same now or in the future.

**KPMG Global Organisation** means, as applicable, any or all of: KPMG International Limited (an English company limited by guarantee); KPMG International Services Limited (an English company limited by guarantee); KPMG International Cooperative (a Swiss entity); and their respective subsidiaries.

**Member Firms** means us, KPMG Global Organisation, and any Entities that are: (i) members of KPMG Global Organisation (**Members**); (ii) parties to a participation agreement which permit it to be part of the KPMG network (**Sublicensees**); or (iii) directly or indirectly, wholly or dominantly owned or controlled by any Member, Sublicensee or KPMG Global Organisation.

**Modern Slavery** means conduct defined as "modern slavery" in the Modern Slavery Act.

**Modern Slavery Act** means the *Modern Slavery Act 2018*(Cth).

**Personal Information** has the meaning given to that term in the *Privacy Act 1988* (Cth).

**Personnel** means the partners, officers, employees, contractors, secondees and agents of us and our Assisting Parties.

**Proportionate Liability Legislation** means any legislative provisions relating to proportionate liability which are applicable to a claim, which would be applicable to the claim if it were made in a court, or which would be applicable to the claim if it were an apportionable claim.

**Risk and Quality Review Procedures** means to: (i) perform client and engagement acceptance procedures; (ii) perform internal risk assessments and reviews; and (iii) support the maintenance of quality and professional standards in the conduct and delivery of the Services.

**Services** means the services and Deliverables that we provide to you in connection with the engagement letter.

**Taxable Supplies** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Urgent Relief** means urgent injunctive, interlocutory or declaratory relief in respect of a Dispute or the enforcement of a payment due under this Agreement.

**Use** means collect, use, access, modify, transfer, sublicense and disclose.

**We, us (or derivatives)** means the KPMG contracting party identified in the engagement letter, except in clauses 3.4, 5.4, 6.5, 8.1, 8.2, 8.3, 8.4 and 9.3(b) where they mean Member Firms.

**Your Materials** means any data, information, materials, systems, technology or equipment provided or made available to us by you or by third parties on your behalf in the performance of the Services.

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**PSR23/027 EXEMPTION TO ALCOHOL RESTRICTION - BATEMANS BAY  
WATERFRONT RESERVE**

**S024-T00014**

Responsible Officer: Lindsay Usher - Director, Planning and Sustainability Services

Attachments: Nil

Community Goal: 3 Our region of vibrant places and spaces

Community Strategy: 3.2 Support diversified industry and thriving businesses

Delivery Program Link: 3.2.5 Encourage a variety of quality events to drive economic development as guided by the Events Strategy

Operational Plan Link: 3.2.5.1 Support and provide resources for event organisers to deliver hallmark, destination, sports tourism and community events

### **EXECUTIVE SUMMARY**

The purpose of this report is to seek Council's endorsement to provide an exemption to the alcohol prohibition on the Batemans Bay Waterfront Reserve (Reserve) so that Batemans Bay Rotary can run Bay Night Markets in September 2023 and again in January 2024.

Rotary approached Council seeking permission to hold two night markets on the Reserve with tentative dates of 30 September 2023 and either 6 or 13 January 2024. It is proposed that these markets will run from 6pm until 10am and have a range of stalls including those that sell food and beverages, inclusive of alcohol.

The current alcohol prohibitions that apply to this Reserve are from 8pm until 8am. The exemptions sought relate to a small portion of time being 8pm until 10pm for these events, at which time the markets will cease.

Council has engaged with NSW Police who have raised no objection to the proposed exemption.

It is recommended that Council provide an exemption to the current alcohol restrictions on the Reserve, for Rotary to conduct their Night Markets.

### **RECOMMENDATION**

THAT Council endorse an exemption from the alcohol prohibition areas imposed on the Batemans Bay Waterfront reserve, in order for Rotary to conduct night markets on 30 September 2023 and on 6 or 13 January 2024 to be held from 6pm until 10pm.

### **BACKGROUND**

At the request of the NSW Police, Council imposed alcohol prohibition areas on the Batemans Bay Waterfront Reserve from 8pm until 8am (PSR18/091 Minute 18/356). The purpose for this imposition was to alleviate antisocial behaviour attributed to alcohol consumption and give the Police power to deal with the offenders.

The proposal to impose alcohol restrictions was publicly advertised and no submissions were received.

Recently, Council was approached by Rotary regarding a market envisaged for the Batemans Bay Waterfront area. It is proposed that the market will include food and alcoholic beverage providers and it is intended that the hours of operation will be from 6pm until 10pm. It is

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**PSR23/027 EXEMPTION TO ALCOHOL RESTRICTION - BATEMANS BAY  
WATERFRONT RESERVE**

**S024-T00014**

proposed that Rotary will hold these night markets on the foreshore Reserve on 30 September 2023 and either 6 or 13 January 2024.

**CONSIDERATIONS**

**Legal**

The imposition of alcohol restrictions on Council reserves falls under Section 632A of the Local Government Act. The hours of restriction of alcohol consumption are at the discretion of Council and there is no legal requirement to publicly advertise imposition of restrictions. All restrictions on reserves in the Eurobodalla are conducted with the support and guidance of the NSW Police.

In regard to this proposed exemption on the Batemans Bay Waterfront Reserve, Council has been in liaison with the NSW Police who support the exemptions from the alcohol restrictions placed on the Batemans Bay Waterfront reserve for the purpose of Batemans Bay Rotary conducting night markets (6pm-10pm) on 30 September 2023 and either 6 or 13 January 2024.

**Social Impact**

Alcohol prohibited areas can be used by councils to prohibit alcohol consumption in public places to reduce anti-social behaviour and crime. These measures help keep public spaces safe and enjoyable for the community and visitors.

In liaison with the NSW Police, it was decided that the Reserve be deemed alcohol prohibited area from 8pm until 8am.

The Rotary conducted night markets on 20 September 2023 and either 6 or 13 January 2024, are considered to be a family affair that can be enjoyed by both the community and visitors alike. These events are supported by the NSW Police.

**Economic Development Employment Potential**

Undertaking the night markets will activate the Waterfront, bringing residents and visitors to the Batemans Bay town centre, encouraging and providing opportunity for economic activity.

**Community and Stakeholder Engagement**

The imposition of alcohol prohibition on Council reserves falls under Section 632A of the Local Government Act. The hours of restriction of alcohol consumption are at the discretion of Council and there is no legal requirement to publicly advertise imposition of restrictions.

It is considered that the Rotary-run night markets will be well attended and supported by the community and visitors alike and create an atmosphere whereby people can partake of the view, the markets and the food and drinks in a safe and enjoyable manner.

**CONCLUSION**

The proposed Rotary-run night markets (6pm until 10pm) to be held on 20 September 2023 and either 6 or 13 January 2024, require an exemption from alcohol restrictions that apply to this Reserve. The restrictions apply from 8pm until 8am. The exemptions sought relate for a small portion of time being 8pm until 10pm, at which time the markets will cease.

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**PSR23/027 EXEMPTION TO ALCOHOL RESTRICTION - BATEMANS BAY  
WATERFRONT RESERVE**

**S024-T00014**

It is recommended that Council endorse the exemption from alcohol restrictions that apply to the Batemans Bay Waterfront reserve for the purposes of the Rotary conducted night markets (6pm until 10pm) to be held on 20 September 2023 and either 6 or 13 January 2024.

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**PSR23/028 FOOD INSPECTION PROGRAM STATUS REPORT 2022-23**

**S024-T000033**

Responsible Officer: Lindsay Usher - Director, Planning and Sustainability Services  
Attachments: Nil  
Community Goal: 2 Our community that welcomes, celebrates, and supports everyone  
Community Strategy: 2.4 Foster a safe community  
Delivery Program Link: 2.4.2 Deliver legislated health protection and regulatory programs  
Operational Plan Link: 2.4.2.1 Promote and undertake the food inspection program in accordance with the Food Authority guidelines and Scores on Doors program

### **EXECUTIVE SUMMARY**

The purpose of this briefing is to provide an update on Council's Food Inspection Program for the 2022-23 financial year.

Under the provisions of the *NSW Food Act 2003*, Council has a statutory obligation to implement a program of food premises inspections. The aim of the program is to reduce the risk of unsafe or unsuitable food being sold, thereby maintaining public confidence in the retail food sector. This is extremely important to the Eurobodalla given the significance of the tourism and associated food sector to the region.

Currently there are 280 fixed-food businesses registered in Eurobodalla, as well as 38 registered temporary food stalls (operate at markets and events) and 33 mobile food vendors. During the 2022-23 financial year, 213 of the 226 fixed food businesses requiring inspection were formally inspected under the program.

In general, food businesses were found to adhere to good hygiene practices with 94% of those businesses inspected achieving ratings of 'excellent' or 'very good'.

### **RECOMMENDATION**

THAT the Food Inspection Program Status Report 2022-23 be received and noted

### **BACKGROUND**

Council undertakes a food inspection program in partnership with the NSW Food Authority. The risk-based Food Inspection Program incorporates the *Scores on Doors* Program and provides incentives for businesses to maintain a high level of compliance. Council awards certificates and eligible five-star premises inspections are reduced from two to one inspection per year, providing a cost saving for businesses.

### **CONSIDERATIONS**

Compliance with the *Food Standards Code* provides significant health benefits for our community and visitors by reducing the risk of food borne illness for consumers. The retail food sector is an important source of income and employment in Eurobodalla.

In the 2022-23 reporting period 94% of fixed food businesses registered with Council requiring inspection were inspected. Follow-up and second inspections will extend into the first half of the 2023-24 financial year.



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**PSR23/028 FOOD INSPECTION PROGRAM STATUS REPORT 2022-23**

**S024-T000033**

The number of temporary food stalls and mobile food vendors registered in the Eurobodalla has increased in 2022-23 reporting period and is consistent with the growing trend for mobile food trucks seen throughout NSW.

Food Inspection Program

At the end of the 2022-23 financial year there were 280 registered fixed food businesses:

- 13 high risk: handle and serve foods that may contain pathogens and large scale operations
- 213 medium risk: handle and serve foods that may contain pathogens and small to medium operations
- 54 low risk: serve food unlikely to contain pathogens eg service stations selling packaged. Inspected in response to incident or complaint only.

In addition, there were 38 registered temporary stalls and 33 mobile food vendors registered with the Council.

Temporary stalls are inspected at the various markets, festivals and events held in Eurobodalla. Mobile food vendors registered with the Council are inspected annually when they apply for their approval to operate in Eurobodalla and are also inspected at markets and events. Mobile food vendors operating from private land are not required to have approval from the Council, however, are required to be registered with Council.

Table 1 shows that there were 226 fixed food businesses requiring inspection and in total 351 retail food businesses registered with the Council at the time of this report. Due to the transitory nature of businesses in the retail food industry the actual number of businesses operating at any given time can be variable.

**PSR23/028 FOOD INSPECTION PROGRAM STATUS REPORT 2022-23**

**S024-T000033**

Table 1 : Food premises in Eurobodalla

<b>Fixed premises risk rating</b>	<b>Number of businesses</b>
High risk (e.g., childcare centres and aged care facilities)	13
Medium risk (e.g., restaurants, cafes, etc,)	213
<b>Total premises requiring routine inspection</b>	<b>226</b>
Low risk (e.g., service stations, cinemas etc, complaint only inspections)	54
<b>Non-fixed businesses</b>	<b>Number of non-fixed businesses</b>
Temporary Stalls	38
Mobile	33
<b>Total number of food premises</b>	<b>351</b>

Table 2 shows the number of inspections undertaken in the reporting period and the *Scores on Doors* results of these inspections. Food businesses are also inspected when the Council receives a complaint and Table 2 provides a summary of complaint-based inspections undertaken in the reporting period.

Table 2: Data by inspection

<b>Star rating</b>	<b>Number of inspections</b>
5-star: 0 -3 points	174
4-star: 4 -8 points	26
3-star: 9 – 15 points	8
No grade >15 points	5
<b>Total number of inspections</b>	<b>213</b>
<b>Inspection type</b>	<b>Number of inspections</b>
Scheduled fixed	213
Re-inspection fixed	13
<i>Complaint</i>	
Hygiene – 5	
Foreign Material – 0	
Labelling – 1	
Illness – 5	
Temperature control - 1	
Mobile inspections	65
Temporary stall inspections at markets	51
<b>Total number of inspections</b>	<b>354</b>

Council also inspects temporary food stalls at markets and events such as the Narooma Oyster Festival. Mobile food vendors are inspected annually and can also be inspected at markets and events. The number of inspections of temporary food stalls and mobile food vendors are also provided in Table 2.

Council has submitted the annual report to the NSW Food Authority, providing data on the Food Inspection Program for the financial year.

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**PSR23/028 FOOD INSPECTION PROGRAM STATUS REPORT 2022-23**

**S024-T000033**

Enforcement action

Where collaboration and education do not achieve safe food handling practices, enforcement action may be taken. Enforcement action can include (in order of escalation):

- Warning letter (8 issued)
- Improvement Notice (3 issued)
- Fines (1 issued)
- Prohibition Order (1 issued)
- Seizure of food items (0 seizures).

Re-inspection: may be required to achieve compliance to the *Food Standards Code 2016*. Where a re-inspection identifies non-compliance, an inspection fee is charged for each re-inspection.

Warning letters: are used in conjunction with re-inspections where there is a public health risk or persistent failure to comply, which provides advice on the actions required to improve compliance. Warning letters may also be issued if a food business receives a 3-star rating at inspection.

Improvement Notices: are issued where food businesses score greater than 15 points and do not achieve a star rating. They are used when urgent action is required, or unsatisfactory and/or structural defects have been identified.

Fines: may be issued where non-compliance is considered an immediate threat to public health or where a premise has repeated non-compliance.

Prohibition Orders: are issued where an Improvement Notice has not been complied with and/or it is necessary to prevent or mitigate a danger to public health.

## **Legal**

Council is required to undertake the Food Inspection Program under the NSW *Food Act 2033*.

## **Policy**

Council developed a risk-based Food Inspection Policy designed to comply with the *Scores on Doors* Program and reward food businesses that continually achieve high compliance by reducing the frequency of inspections, thereby saving on inspection costs. Due to the high level of compliance most food businesses had one inspection per annum, where previously two inspections per annum had been undertaken.

## **Social Impact**

Compliance with the *Food Standards Code 2016* provides significant health benefits for our community and visitors by reducing the risk of food borne illness for consumers. This was particularly significant during the COVID pandemic period.

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**PSR23/028 FOOD INSPECTION PROGRAM STATUS REPORT 2022-23**

**S024-T000033**

**Economic Development Employment Potential**

The retail food sector is an important source of income and employment in Eurobodalla. A high level of compliance with food safety requirements is essential for the continued success of this sector.

**Financial**

Fees are charged for administration and inspections in accordance with the *Food Act 2003* provisions and Council's fees and charges for 2022-23.

The inspection fee was \$207, and the administration fee was \$212. A statutory fee of \$330 is associated with Improvement Notices.

**Community and Stakeholder Engagement**

Council provides education and technical information to food businesses. An inspection is evenly divided between observing practices and providing practical advice on safe food handling. This means that in most cases any unsafe practices are rectified at the time of inspection.

Food businesses are alerted to changes in NSW Food Authority guidelines and provided with information on how to keep up-to date between inspections. Guidelines for high-risk products are regularly researched and updated and can be quite detailed and complex.

Council provides updates on changes to the program or legislative requirements through the website, media and by letters directly to food businesses.

**CONCLUSION**

The Food Inspection Program has been implemented successfully resulting in a high level of compliance in food businesses in the Eurobodalla. Council continues to implement a food inspection program in partnership with the NSW Food Authority.

The community can be confident that food business operating in the Eurobodalla provide safe food, which has a flow-on effect for the region's tourism and recreational industries.

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**PSR23/029 ON-SITE SEWAGE MANAGEMENT SYSTEM STATUS REPORT 2022-23**

**S029-  
T00012**

Responsible Officer: Lindsay Usher - Director, Planning and Sustainability Services

Attachments: Nil

Community Goal: 1 Our sustainable shire celebrates our natural environment and outdoor lifestyles

Community Strategy: 1.2 Value, protect, and enhance our natural environment

Delivery Program Link: 1.2.2 Maintain healthy waterways and catchments by finalising and implementing estuary management plans and monitoring impacts

Operational Plan Link: 1.2.2.7 Deliver the Onsite Sewage Management System inspection program

### **EXECUTIVE SUMMARY**

The purpose of this report is to summarise the On-site Sewage Management (OSSM) system approvals and inspection program for the 2022-23 financial year.

OSSM systems refer to systems that treat wastewater and dispose of the effluent within the premises and occur primarily where there is no connection to reticulated sewer.

There are currently 4,806 approved systems in Eurobodalla, and these include systems such as: septic tanks; Aerated Wastewater Treatment Systems (AWTS); wet and dry composting systems; effluent pump-out systems; pit toilets, and greywater treatment systems.

Under NSW Government legislation, Council is required to approve and inspect OSSM systems to ensure that they operate effectively and to reduce incidents impacting on public and environmental health and safety.

A total of 87 OSSM system approvals and 138 development application referrals were received and processed by the Public and Environmental Health Team in 2022-23.

Council conducted 1,663 inspections in 2022-23, an increase from the 2021-22 year and a significant increase from the two years prior to 2021-22. An emphasis was placed on the inspections during the past two years to capture those properties not inspected in previous years where Council was assisting through bushfire recovery efforts to identify OSSM systems impacted by the fires.

An overall compliance rate of 96% was observed through the OSSM system inspection program during 2022-23, which is slightly higher than the previous year.

### **RECOMMENDATION**

THAT the On-site Sewage Management Status Report 2022-23 be received and noted.

### **BACKGROUND**

The OSSM system inspection program has been operating since 1999 following changes to the *Local Government Act 1993*, which gave councils greater responsibility in monitoring and ensuring compliance of these systems.

**PSR23/029 ON-SITE SEWAGE MANAGEMENT SYSTEM STATUS REPORT 2022-23**

**S029-  
T00012**

The 4,806 approved OSSM systems are categorised into three risk categories according to the type, location of the system, and proximity to waterways. Inspections and re-inspections are conducted according to the date of the previous inspection and the risk rating.

These categories are:

- high risk requiring annual inspections
- medium risk requiring inspections every second year
- low risk requiring inspections every fifth year.

Re-inspections are also required where systems require follow-up due to identified operational issues.

Council's scheduled inspection program for 2022-23 was completed. Approximately 500 inspections that were overdue resulting from interruption to the inspection program the previous years, were also completed. The inspection program for 2019-20 and 2020-21 was interrupted due to bushfire recovery efforts, the COVID pandemic and staff shortages.

**Table 1 - A comparison of OSSM program activities undertaken over the previous five years**

	2018-19	2019-20	2020-21	2021-22	2022-23
Approvals	66	110	137	104	87
Referrals	115	196	224	175	138
Inspections	1336	845	811	1451	1663
Compliance (%)	93	90	93	94	96
Downgrades	6	7	10	11	8
Re-inspections	4	18	3	8	3
Show cause letters	-	30	5	3	4
Notices/Orders	2	3	0	5	8
Penalty Infringement Notices	2	0	0	0	1

Approvals and referrals

A total of 87 OSSM system approvals were issued for new systems in 2022-23.

A total of 138 development assessment (DA) referrals were received. DA referrals involve providing advice to planners in relation to OSSM systems associated with development applications.

Inspections

An overall compliance rate of 96% was achieved for the 2022-23 inspection program, which is slightly higher than the previous financial year. Eurobodalla owners have a very high level of

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satisfactory systems and Council works with owners to assist and ensure maintenance requirements, upgrades or works are completed to achieve compliance.

A total of 1,663 inspections were completed, which is above Council's normal inspection program due to increased efforts to manage OSSM systems that were not inspected in previous periods.

Risk rating downgrades

Owners of systems with 'high' or 'medium' risk ratings can apply to Council to downgrade the risk rating of their OSSM system where consistent compliance can be demonstrated. These downgrades reward owners who are managing their systems well by reducing the frequency of required inspections and hence, reducing the cost.

A total of 10 applications to downgrade OSSM system risk ratings were received in 2022-23 and 8 were approved.

Compliance action

Three properties were re-inspected as part of the OSSM system inspection program for non-compliance and charged an additional fee, with all proceeding towards resolution.

Enforcement action was undertaken in relation to twelve OSSM systems. All of these were identified through Council's OSSM system inspections.

Table 2 - Enforcement action for non-compliant OSSM systems

<b>Enforcement action</b>	<b>System type</b>	<b>Description of non-compliance</b>
5	AWTS	Effluent being disposed outside approved effluent management area / Operate OSSM system not in accordance with approval
6	Septic tank to subsoil disposal (effluent absorption trenches)	Failure to operate OSSM system in a healthy and safe manner / Operate OSSM system not in accordance with approval
1	Pump-out	Failure to operate OSSM system in a healthy and safe manner
<b>TOTAL 12</b>		

Compliance action was initiated with a Show Cause letter or Notice of Intention to issue an Order. Seven of the twelve matters have been resolved, with information provided to Council in response to the Show Cause/Notice of Intention to issue an Order. The remaining five matters are working towards resolution.

**CONSIDERATIONS**

During the 2022-23 financial year, various measures have been undertaken for the continual improvement of the OSSM system inspection and assessment program, including:

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- improvement of administration processes to enable customised reports to ensure that all OSSM systems are captured in the inspection program
- Record and monitor AWTs servicing records to ensure these secondary treatment systems are being serviced in accordance with NSW Health requirements, and with manufacturer's specifications
- updating information on Council's website
- testing use of technology in the field to replace paper-based inspection sheets
- participation in regional meetings between Council officers of the South Coast and Southern Highlands to enable information and resource sharing on OSSM related matters.

### **Legal**

Council is required to process approvals and undertake inspections of OSSM systems in accordance with the *Local Government Act 1993* and the *Local Government (General) Regulation 2021*.

The Department of Local Government Circular to councils 98/27 (issued 1 April 1998) outlines Councils' requirements for the monitoring of OSSM systems.

### **Policy**

Eurobodalla Shire Council's Onsite Sewage Management Code of Practice was initially adopted by Council on 27 July 1999, with reviews in 2003, 2008, 2013 and 2018. A review for the Code of Practice will occur in 2023-24. This has been deferred from the 2021-22 period to align with the review of primary reference document 'Environment and Health Protection Guidelines: On-site Wastewater Management' (the Silver Book).

### **Environmental**

Due to the sensitive environmental nature of much of Eurobodalla, particularly in relation to waterways, including oyster farming, fisheries and recreational use, continual monitoring of OSSM systems is important to ensure that such areas are protected from potential contamination.

The Local Government Compliance and Enforcement Regulation Review (IPART 2014) recognised Council's OSSM system Inspection Program as a 'best practice' regulatory program.

Undertaking the OSSM system program demonstrates Council's commitment to protecting the environment and the local industries who depend upon it.

### **Social Impact**

There are potential health risks for users and those in the vicinity of OSSM systems. Council is obligated to demonstrate that it has met its duty of care in mitigating health concerns associated with the operation of OSSM systems.

### **Financial**

The OSSM systems program aims to operate at a full cost recovery to Council and in accordance with the legislation. During 2022-23, the primary inspection fee was \$140 and re-inspection incurred a cost of \$183, as identified in Council's fees and charges.



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**Community and Stakeholder Engagement**

Customers are notified of the approval and inspection requirements and information is provided in person, phone and on Council's website.

**CONCLUSION**

The overall level of compliance of 96% demonstrates that the majority of OSSM systems are operating effectively and there are minimal public and environmental health impacts.

Inspection results indicate 'High,' 'Medium,' and 'Low' risk systems are being managed equally well (93%, 96% and 96% compliant respectively).

Council aims to continually improve processes and procedures to ensure OSSM systems are operating in a healthy and safe manner.

Council has ensured that the program is consistent with NSW Government requirements and the program is generally well received by property owners, with OSSM systems ensuring any risk to public and environmental health is minimised.

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**S018-T00016**

Responsible Officer: Lindsay Usher - Director, Planning and Sustainability Services

Attachments: Nil

Community Goal: 1 Our sustainable shire celebrates our natural environment and outdoor lifestyles

Community Strategy: 1.2 Value, protect, and enhance our natural environment

Delivery Program Link: 1.2.3 Work in partnership to provide natural resource management to develop community awareness of environmental opportunities, issues and impacts

Operational Plan Link: 1.2.3.3 Monitor, inspect and respond to public and environmental health matters

**EXECUTIVE SUMMARY**

This report details the activities of the Public and Environmental Health and Compliance Team (the Team) for the 2022-23 financial year. The activities are to ensure public and environmental health and safety are maintained in our community in accordance with NSW Government legislation and Council policies.

The Team dealt with 9,193 telephone calls and 1,785 items of incoming correspondence during 2022-23.

An estimated 27% of telephone calls and mail items generated 2,977 formal Customer Request Management (CRMs) requests; 73% of telephone calls are resolved at the time of the call.

Compliance and enforcement actions are undertaken by authorised officers in accordance with legislation and Council's policy to ensure the health and safety of the public and the environment.

Updates on the Food Inspection and On-site Sewage Management System Programs are provided in separate reports to Council.

**RECOMMENDATION**

THAT the Regulatory Action Status Report 2022-23 be received and noted.

**BACKGROUND**

Public, environmental health and compliance is a broad area of operations and necessitates implementation of legislative requirements and Council policies, in a fair, equitable and consistent manner.

The Team is responsible for routine monitoring and the provision of advice and education for areas such as:

- animal control
- beach watch
- estuary health programs
- illegal waste dumping

**PSR23/030 REGULATORY ACTION STATUS REPORT 2022-23**

**S018-T00016**

- obstruction on public land (shopping trolleys, abandoned vehicles etc)
- parking enforcement, including school zones
- pollution
- public swimming pools
- sediment and erosion controls
- stormwater matters
- underground petroleum storage systems
- water quality

In addition, support services are provided to Waste, Water and Sewer Services to meet Environmental Protection Licence requirements.

The following data provides a summary of CRMs and compliance activity during the 2022-23 financial year.

Officers also attend to additional matters during their normal duties and patrols, such as dealing with residents and visitors in the field, ad hoc animal related issues, and addressing emergency situations.

Customer Requests Management CRMs (requests)

The breakdown of the total 2,977 of customer requests is:

- Animals: 1288 (44%) includes items like nuisance animals (cats, dogs, poultry, stock) with most complaints related to barking, straying and dogs on beaches.
- Public health: 214 (25%) includes air, food, waste, noise, on-site sewage management systems, overgrown blocks, stormwater, trees, water complaints.
- Regulatory: 714 (24%) includes abandoned vehicles, illegal camping, parking, signage complaints.
- Development/building: 214 (7%) unapproved, illegal development, sediment and erosion controls can be seen in Figure 1 and the comparison over five years in Table 1.

Table 1: Customer Service Requests 2018-19 to 2022-23 financial years.

	2018-19	2019-20	2020-21	2021-22	2022-23
Animal control	1,372	1,392	1,322	1,179	1288
Development	269	232	155	271	214
Public health*	469	603	690	859	761
General regulatory	608	667	564	731	714
<b>TOTAL</b>	<b>2,718</b>	<b>2,894</b>	<b>2,731</b>	<b>3,040</b>	<b>2977</b>

\* Public health consists of health matters, pollution and trees collectively

Compliance activity

A number of matters (990) were dealt with via Penalty Infringement Notices (PINs) and Orders, in line with relevant regulations and legislation.

**PSR23/030 REGULATORY ACTION STATUS REPORT 2022-23**

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Table 2: Compliance activity report 2022-23.

Sector	Activity	Infringements	Orders and Notices	Total action
Roads	Parking	733	0	733
Animals	Companion animals	55	46	101
Health	Premises/food	1	12	13
Environment	Air/land/water/ Illegal Dumping	8	26	34
Development	Land	23	70	93
Other	Public Land	16	0	16
<b>TOTAL</b>		<b>836</b>	<b>154</b>	<b>990</b>

Most infringements relate to traffic offences, parking, 733 (74%). The remaining 257 (26%) instances of compliance activity are detailed as follows:

Animals:

101 (40%) actions relate to animal control including: lifetime registration enforcement; barking dogs; stray animals; endangering safety of person or animal; and restricted or dangerous dogs.

Health and environment (sectors combined):

47 actions (18%) relate to waste issues including illegal dumping, health (e.g., overgrown premises), food shops, on-site sewage management systems, public swimming pools and environmental issues such as pollution matters.

Development:

93 actions (36%) relate to development without consent or contrary to consent conditions.

Most customer requests are resolved without any requirement to utilise formal regulatory actions.

Other:

16 actions (6%) relate to abandoned vehicles; fail to comply Section 68 approval, and unlawful remove plant/animal/rock/soil from public place.

Special programs

During the 2022-23 financial year, specific projects were conducted such as:

1. Ongoing animal shelter upgrades and maintenance
2. Regular patrols of beaches, pathways, and reserves to ensure adherence to dog restrictions
3. Preparation for free microchipping day conducted in partnership with the local branch of the Animal Welfare League conducted 3 July 2023.
4. Estuary health monitoring to assist with increasing knowledge of bushfire impacts
5. Beach watch monitoring undertaken
6. Technology improvements – in-field technology in use and progression across the teams.

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**PSR23/030 REGULATORY ACTION STATUS REPORT 2022-23**

**S018-T00016**

7. Database improvements for functions across the Team

Development of new templates and operating procedures to align with the implementation of new legislation, *Public Spaces (Unattended Property) Act 2021*.

**CONSIDERATIONS**

An important role is played by Council in responding to customer requests concerning alleged illegal activities and the potential impacts to the community and/or the environment.

Council's Compliance Policy outlines the processes for Council officers regarding the implementation of legislation, with consideration given to the severity of the activity, impacts on individuals, community, and the environment. Officers endeavour to achieve a balance between enforcement and education by working collaboratively to provide a consistent regulatory approach for compliance and enforcement activities.

Council has relationships with agencies, such as:

- NSW Food Authority
- NSW Health
- NSW Department of Planning and Environment
- NSW Environment Protection Authority (EPA)
- NSW Crown Lands
- NSW Natural Resources Access Regulator (NRAR)
- NSW National Parks & Wildlife Services
- NSW Police
- Canberra Regional Joint Organisation (CRJO) – Contaminated Lands and Underground Petroleum Storage System
- Regional Illegal Dumping Program with Southeast Councils
- Southeast Local Land Services
- RSPCA and Animal Welfare League and other animal rescue organisations.

**Legal**

Staff operate under a wide range of legislation and regulations and in accordance with Council's Compliance Policy which focuses on a graduated approach to achieve positive regulatory outcomes with a high emphasis placed on communication and education. The legislation includes, but is not restricted to, the following:

- *Protection of the Environment Operations Act 1997*
- *Environmental Planning and Assessment Act 1979*
- *Local Government Act 1993*
- *Roads Act 1993*
- *Food Act 2003*
- *Swimming Pools Act 1992*
- *Surveillance Devices Act 2007*
- *Companion Animals Act 1998*
- *Public Spaces (Unattended Property) Act 2021*
- *Rural Fires Act 1997*

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**PSR23/030 REGULATORY ACTION STATUS REPORT 2022-23**

**S018-T00016**

- *Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019.*

**Policy**

Council officers observe and comply with a range of adopted Council policies, including the Compliance, Local Orders and Clean Air Policies, and the Companion Animal Management Plan when undertaking their duties. These policies have been reviewed and updated where required.

**Environmental**

Council is focused on public health, safety, and protection of the environment. As such, maintaining and protecting the natural environment in the Eurobodalla local government area is important and is of major concern to the community.

**Social Impact**

Council considers the impact of an offender's actions on other individuals, the community, and the environment.

**Community and Stakeholder Engagement**

Council staff regularly seek opportunities to engage with the community through education programs, dedicated workshops, and networking face to face with individuals, while undertaking compliance functions to assist in achieving positive public, health and safety outcomes.

**CONCLUSION**

The Public and Environmental Health and Compliance Team's primary objective is to implement legislation and Council policy in response to community needs, ensuring that the health, safety and amenity of the community and environment is protected.

Council actions and regulatory processes are undertaken in accordance with the relevant legislation, adopted policies and codes of practice.

**FCS23/018 INVESTMENTS MADE AS AT 31 JULY 2023**

**S011-T00006,S012-T00025**

Responsible Officer: Stephanie Speedy - Director of Finance and Corporate Services

Attachments: Nil

Community Goal: 5 Our engaged community with progressive leadership

Community Strategy: 5.3 Work together to achieve our collective vision

Delivery Program Link: 5.3.1 Provide strong corporate and financial management that is ethical, fair, transparent and accountable

Operational Plan Link: 5.3.1.1 Provide sound and strategic financial management and reporting

**EXECUTIVE SUMMARY**

The purpose of this report is to:

- certify that Council's investments in financial instruments have been made in accordance with legal and policy requirements
- provide information and details of investments
- raise other matters relevant to investing.

**RECOMMENDATION**

THAT the certification of investments as at 31 July 2023, made in accordance with the *Local Government Act 1993*, Council's Investment Policy and the provision of Clause 1

(Reg. 212) of the *Local Government (General) Regulation 2005*, be received.

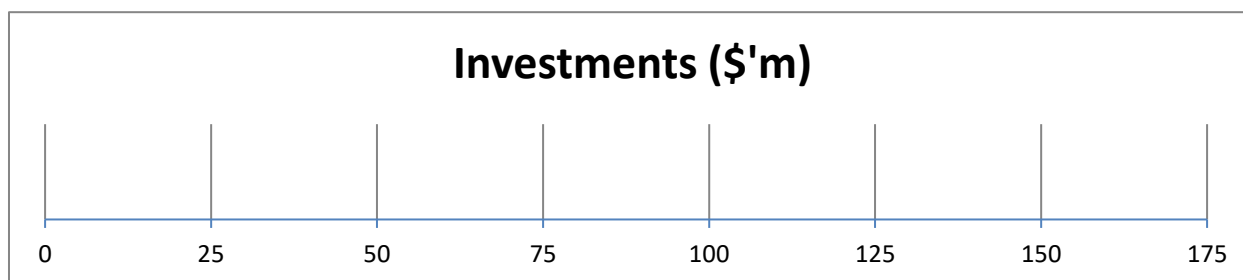
**CONSIDERATIONS**

**Policy**

The portfolio is compliant with Council's Investment Policy adopted by Council on 9 August 2022 (Minute 22/190).

**Financial**

Council investing overall



Council has \$158.51M (100%) invested in bank deposits. The bank deposits are held in banks rated A or greater, or covered by the AAA rated Government guarantee, except for \$40.5M invested in banks rated below A, and in the 'some limited risk' category of the policy.

**FCS23/018 INVESTMENTS MADE AS AT 31 JULY 2023**

**S011-T00006,S012-T00025**

Investments decreased by \$13m in July 2023 due to contractor installments for the Southern Water Storage Facility project, and normal variations in timing of cash flows.

The 'some limited risk' category is now restricted to BBB+ rating institutions which allows up to 30% of all investments. Currently there is 25.55% invested in BBB+ rating category. Investment in Government guaranteed deposits is \$1.75M representing 1.10% of the portfolio.

There are \$64.0M (40.38%) of funds invested in institutions which either have no direct financing exposure to projects in the fossil fuel sector or no longer directly finance projects in the fossil fuel sector but still have some exposure from historical funding.

The weighted average return for all investments for the month is 4.82%, which is above the Council policy benchmark of bank bill swap rate (BBSW) + 0.25% (4.31%).

Summary investment information

The following table is a summary of investment categories and balances at month end.

<b>CATEGORY</b>	<b>(\$)</b>
At call deposit	2,246,353
Term deposits	154,510,000
Term deposits Government guaranteed	1,750,000
	<b>158,506,353</b>
<i>Weighted average interest %:</i>	4.82%
<i>Average 90 day BBSW + 0.25%</i>	4.31%

Policy and liquidity risk

The investment policy is divided into two risk categories of credit risk (risk of ultimately not being able to redeem funds) and liquidity risk (risk of loss due to the need to redeem funds earlier than the investment term). Our investments comply with the risk policy as shown in the following table.

<b>Policy risk</b>	<b>Low liquidity risk %</b>	<b>Total % of investments</b>	<b>Policy risk % (max holdings)</b>
<b>Remote risk</b>	1.10	1.10	100.00
<b>Near risk free</b>	73.35	73.35	100.00
<b>Some limited risk (BBB+)</b>	25.55	25.55	30.00
<b>Grand total</b>	<b>100.00</b>	<b>100.00</b>	



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**FCS23/018 INVESTMENTS MADE AS AT 31 JULY 2023**

**S011-T00006,S012-  
T00025**

The unrestricted current ratio is the amount of unrestricted current assets compared to each dollar of current liability. The Office of Local Government suggests a minimum 1.5:1, and the audited unrestricted current ratio as at 30 June 2022 is 3.63:1. Council therefore has approximately \$3.63 of current assets for each \$1 of current liabilities.

**CONCLUSION**

Pursuant to provision of Clause 1 (Reg. 212) of the *Local Government (General) Regulation 2005*, I hereby certify that these investments have been made in accordance with *the Local Government Act 1993* and related regulations.

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**IR23/014 REQUEST FOR TENDER NO. 2223-176 - CONSTRUCTION OF SHARED  
PATHWAY, GEORGE BASS DRIVE, LILLI PILLI**

**S030-  
T00019**

- Responsible Officer: Graham Attenborough - Director Infrastructure Services
- Attachments: 1. Confidential - RFT No. 2223-176 Construction of Shared Pathway, George Bass Drive, Lilli Pilli
- Community Goal: 4 Our connected community through reliable and safe infrastructure networks
- Community Strategy: 4.1 Provide integrated and active transport networks to enable a connected and accessible Eurobodalla
- Delivery Program Link: 4.1.5 Promote active and inclusive transport through the provision and enhancement of the pathway network, as guided by the Pathway Strategy and asset management plan
- Operational Plan Link: 4.1.5.2 Build and renew the pathway network

### **EXECUTIVE SUMMARY**

Council has committed to delivering construction of 1.4km of three metre wide concrete shared pathway along the western side of George Bass Drive, Lilli Pilli. The work will be funded under the Australian Government's Stronger Country Communities program and NSW Government's Get Active program and will enable Council to complete a link in the pathway network between Beach Road roundabout, Surf Beach to Fairview Drive, Lilli Pilli.

Request for Tender (RFT) No. 2223-176 Construction of Shared Pathway George Bass Drive, Lilli Pilli, includes requirements for constructing four sections of concrete pathway with a total length of 1.4km, eight pram ramps and re-establishment of the site with topsoil and hydroseeding.

This report outlines the evaluation of offers submitted in response to RFT No. 2223-176 and provides a recommendation for the preferred tenderer.

### **RECOMMENDATION**

THAT:

1. Council endorses the selection of the preferred tenderer listed for Request for Tender No. 2223-176 Construction of Shared Pathway George Bass Drive, Lilli Pilli, within the confidential attachment; and
2. Accordingly approves the entering into of a contractual arrangement with the preferred tenderer, subject to the terms specified in the Request for Tender.

### **BACKGROUND**

Council recently undertook roadworks to upgrade and realign a section of George Bass Drive at Grandfathers Gully Bends. The completion of the roadworks now provides Council with the opportunity to complete a further link in the pathway network by enabling construction of a shared pathway in this location on the western side of George Bass Drive to enhance pedestrian and cyclist connectivity between suburbs.

**IR23/014 REQUEST FOR TENDER NO. 2223-176 - CONSTRUCTION OF SHARED  
PATHWAY, GEORGE BASS DRIVE, LILLI PILLI**

**S030-  
T00019**

Council sought grant funding in February 2022 under Transport for NSW's Get Active program, and in September 2022 under the Australian Government's Stronger Country Communities program, to fund construction of a shared pathway from the roundabout on George Bass Drive/Beach Road Surf Beach, to Carramar Drive Lilli Pilli. Council was successful in securing funding under each program to fund the works.

This project will connect with the existing shared pathway at Beach Road Surf Beach, and completes a section of pathway identified in the adopted Eurobodalla Pathways Strategy.

A map of the project location is shown below.



RFT No. 2223-176 Construction of Shared Pathway George Bass Drive, Lilli Pilli, was open for submissions from 6 June 2023 with a closing date of 27 June 2023. Upon close of tender, four (4) tenders were received from the following tenderers:

- Cleary Bros Bombo Pty Ltd Port Kembla, NSW
- Coordinated Construction Pty Ltd Regents Park, NSW
- Narooma Concreting Pty Ltd Narooma, NSW
- Smithies Excavations and Concreting Pty Ltd Batemans Bay, NSW.

A summary of the evaluation including each tenderer's scoring against the evaluation criteria is provided in the Confidential Attachment to this report.

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**IR23/014 REQUEST FOR TENDER NO. 2223-176 - CONSTRUCTION OF SHARED  
PATHWAY, GEORGE BASS DRIVE, LILLI PILLI**

**S030-  
T00019**

## **CONSIDERATIONS**

### **Legal**

RFT No. 2223-176 Construction of Shared Pathway George Bass Drive, Lilli Pilli, was advertised in accordance with Local Government (General) Regulation 2005 REG 167 and Local Government Act 1993. The tender was advertised on Council's Tenderlink web portal: ([www.tenderlink.com/eurobodalla](http://www.tenderlink.com/eurobodalla))

Upon release of the RFT a Tender Evaluation Plan (TEP) was distributed amongst the Tender Evaluation Board (TEB). Declarations of Confidentiality and Interest Forms were completed and signed by the TEB.

The offer submitted by the preferred tenderer has been assessed as representing best value for money for Council.

### **Policy**

The procurement activity for which this report applies has been conducted in accordance with Council's Procurement Policy, Code of Practice – Procurement, Code of Practice – Tendering, the Local Government Procurement Guidelines, Local Government (General) Regulation 2021 and the Local Government Act 1993.

### **Asset**

The construction of four sections of concrete pathway with a total length of 1.4km on George Bass Drive, Lilli Pilli, will contribute to Council's Asset Management Plan. The construction of the pathway assists Council in delivering its objectives under the Eurobodalla Pathways Strategy.

### **Social Impact**

The construction of the shared pathway extends the current pathway network and improves connectivity between suburbs. The provision of shared pathways linking suburbs contributes to community wellbeing by fostering greater accessibility and active modes of transport.

### **Economic Development Employment Potential**

The construction of the pathway using contractors increases economic opportunity for the local workforce.

### **Financial**

The project delivery is fully funded by a combination of two grant programs, and ongoing maintenance will be accommodated within Council's maintenance budget.

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**IR23/014 REQUEST FOR TENDER NO. 2223-176 - CONSTRUCTION OF SHARED  
PATHWAY, GEORGE BASS DRIVE, LILLI PILLI**

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T00019**

**Community and Stakeholder Engagement**

The pathway project completes an objective of the Eurobodalla Pathways Strategy, which was developed through a process of public consultation.

The community will be informed of the tender outcome(s) via Council's contract register found in Council's 'Public Access to Information' web link.

**CONCLUSION**

The tender process has been conducted in accordance with mandatory Council and Local Government requirements and the preferred tenderer has been assessed, through an extensive evaluation as representing best value for money.

The preferred tenderer as identified in the Confidential Attachment is therefore recommended for the awarding of a contract for the requirement.

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**IR23/015 LOCAL TRAFFIC COMMITTEE NO 1 FOR 2023-24**

**S030-T00018**

Responsible Officer: Graham Attenborough - Director Infrastructure Services

Attachments: 1. Confidential - Crank It Up event approval - local businesses

Community Goal: 4 Our connected community through reliable and safe infrastructure networks

Community Strategy: 4.1 Provide integrated and active transport networks to enable a connected and accessible Eurobodalla

Delivery Program Link: 4.1.1 Plan for an integrated and active local transport network, guided by the NSW Government's Future Transport 2056 Strategy

Operational Plan Link: 4.1.1.3 Coordinate the Local Traffic Committee

**EXECUTIVE SUMMARY**

The Local Traffic Committee is primarily a technical review committee. It advises Council on traffic control matters that relate to prescribed traffic control devices or traffic control facilities for which Council has delegated authority.

The minutes of the Eurobodalla Local Traffic Committee meeting are included in this report. The main issues covered at the Eurobodalla Local Traffic Committee meeting held 6 July 2023, are as follows:

- Signage and Line marking – Baringa Crescent, Lilli Pilli
- Signage – Field Street, Narooma.

**RECOMMENDATION**

THAT:

1. That Council Plan 5388 Set D, Sheet 12 detailing Give Way signage and line marking on Baringa Crescent, Lilli Pilli be approved.
2. That Council Plan 5172 Set A, Sheet 9 detailing Keep Left and Left Turn signage and extension of concrete island across Lynch Street intersection with Field Street, Narooma, be approved.

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**IR23/015 LOCAL TRAFFIC COMMITTEE NO 1 FOR 2023-24**

**S030-T00018**

**BACKGROUND**

The Eurobodalla Local Traffic Committee Meeting No 10 for 2022-23 was held on 6 July 2023. The meeting was attended by Councillor Amber Schutz (Chair), Senior Sgt Angus Duncombe (NSW Police), Emma Pietruska and Emma Cavalier (Transport for NSW), Kate McDougall (Traffic Officer), Tom Franzen (Division Manager Technical Services), Sheree Ward (Infrastructure Support Officer).

**APOLOGIES**

Karen Shea (representative for Michael Holland MP).

**DEPUTATIONS**

Nil

**MINUTES OF PREVIOUS MEETING**

The minutes of the Eurobodalla Local Traffic Committee Meeting No 10 for 2022-23 held on 1 June 2023 were confirmed and accepted.

**OUTSTANDING ITEMS FROM PREVIOUS MEETING**

Nil

**ROAD TRANSPORT (SAFETY AND TRAFFIC MANAGEMENT) ACT FOR DETERMINATION**

**5.1 2023.RT.030 Signage and Line marking – Baringa Crescent, Lilli Pilli**

As part of our regular Urban Road Reconstruction program Council is currently reconstructing the full length of Baringa Crescent. As part of this project the signage and line marking will be upgraded as follows:

- Intersection Baringa Crescent and George Bass Drive (north and south) – install Give Way signage and associated line marking. This is to reinforce the existing priority at these two intersections.
- Intersection of Baringa Crescent and Fairview Drive – install Give Way signage and associated line marking. This intersection is currently a Y junction and the priority is not well defined. Recent consultation with residents has indicated that the proposed priority is the most appropriate.
- Installation of double barrier line marking on the approaches to these three intersections. This is to help define travel paths.

LTC Recommendation:

That Council Plan 5388 Set D, Sheet 12 detailing Give Way signage and line marking on Baringa Crescent, Lilli Pilli be approved.

**INFORMAL ITEMS FOR DISCUSSION**

**5.2 2023.RT.031 Signage – Field Street, Narooma**

Council had been advised that road users were exiting the Riverside Drive roundabout into Lynch Street without giving way to traffic in Field Street that was approaching the Riverside Drive Roundabout. These actions created a conflict in road use. To reduce the number of near misses and potential crashes at the intersection of Field and Lynch Streets, the existing concrete

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**IR23/015 LOCAL TRAFFIC COMMITTEE NO 1 FOR 2023-24**

**S030-T00018**

island on Field Street will be extended to the double barrier lines, preventing vehicles from turning right into Lynch Street after exiting the roundabout. A Left Turn arrow sign will be erected on the extended island advising road users to turn left only at the extended concrete island. Council sought consultation within the community, and all feedback received was positive with the exception of one community member who uses this as a shortcut to their home.

LTC Recommendation:

That Council Plan 5172 Set A, Sheet 9 detailing Keep Left and Left Turn signage and extension of concrete island across Lynch Street intersection with Field Street, Narooma, be approved.

**INFORMAL ITEMS FOR DISCUSSION**

**6.1 2023.SE.014 Special Event – Tilba Festival**

That the Traffic Management and Control Plans for the 2023 Tilba Festival, to be conducted at Central Tilba on Saturday 29 July 2023 be approved.

**BACKGROUND**

A Traffic Management Plan has been received for the 2023 Tilba Festival to be conducted in Central Tilba on Saturday 29 July 2023.

The event is conducted by the Tilba Festival Committee (sub-committee of Tilba Chamber of Commerce) and consists of stalls and activities set up using the length of Bate Street in Central Tilba.

The Traffic Management and Control Plans are based upon measures put in place during previous years that were conducted successfully. The length of Bate Street through Central Tilba will be closed to traffic during the event. A length of Corkhill Drive between the villages of Central Tilba and Tilba Tilba will become one-way southbound. A shuttle bus will be provided to transport people between parking areas and the event area.

The Traffic Management and Control Plans have been circulated to committee members prior to the meeting via email.

Due to the impact on the Princes Highway, a separate Road Occupancy License was required from Transport for NSW (TfNSW), which has now been approved.

**CONCLUSION**

The 2023 Tilba Festival will be held on Saturday 29 July 2023 consists of stalls and activities set up using the length of Bate Street in Central Tilba.

To facilitate the event, Bate Street will be closed. Additionally, a length of Corkhill Drive between Central Tilba and Tilba Tilba will become one-way southbound with a shuttle bus providing transport between parking areas and the event area.

**6.2 2024.SE.01 Special Event - Crank It Up**

That the Crank it Up Rock and Roll Event, to be conducted in the Batemans Bay CBD on 17 – 19 November 2023 on Clyde Street and Orient Street, based on the submitted Traffic Management and Control Plans, be approved. The Traffic Committee requested additional information in relation to the traffic control measure through the Bridge Plaza carpark.



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**IR23/015 LOCAL TRAFFIC COMMITTEE NO 1 FOR 2023-24**

**S030-T00018**

**BACKGROUND**

A special event application that includes Traffic Management and Control Plan documentation has been received for the Crank it Up Rock and Roll Event to be conducted in the Batemans Bay CBD. Traffic management will be in place on Saturday 18 November 2023 in Clyde Street and Orient Street.

Crank it Up is a three-day rock n roll event to be conducted between Friday 17 November and Sunday 19 November 2023. It will be held in the Batemans Bay CBD and presented by Batemans Bay Rock n Rollers in partnership with the Batemans Bay Soldiers Club.

Various activities are proposed including unique food experiences, eight bands and custom car showings.

The part of the event that requires traffic management on Saturday 18 November on Clyde Street Batemans Bay will be closed for through traffic from the intersection of North Street to the Bridge Plaza carpark exit. The road closure times are:

Saturday 18<sup>th</sup> 7:00am -4:00pm  
Sunday 19<sup>th</sup> 7:00am – 3:00pm.

Access to north Clyde Street for residents, accommodation, and event vehicles, is via the Bridge Plaza Carpark under traffic control.

One lane will always remain clear on Clyde Street to allow Emergency Services access if required.

Extended parking times are required for November 18 and 19 for event vehicles in Clyde Street within the event site.

The event will use the Soldiers Club shuttle bus to move event patrons to site, thereby minimising traffic impact of patrons' vehicles.

Between 19 - 25 June, all businesses on Clyde Street were consulted by way of direct walk-in and meetings with business owners or on-site authorised manager. The consultation included:

- Impact of parking restrictions and vehicle access
- Timing of the event
- Pedestrian movements
- Traffic control measures
- Emergency services contingency.

All businesses provided a positive response to the event and encouraged further events of a similar nature in Batemans Bay. In addition, the Batemans Bay Chamber of Commerce is in full support of the event.

Attached is the Crank it Up Batemans Bay Festival Details of Proposed Changed Traffic Conditions 18-19 November 2023. Signed by businesses located along Clyde Street Batemans Bay to confirm their acknowledgement of notification of change of traffic conditions.

The Traffic Management and Control Plans will be circulated to committee members prior to the meeting via email.

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**IR23/015 LOCAL TRAFFIC COMMITTEE NO 1 FOR 2023-24**

**S030-T00018**

**GENERAL BUSINESS**

**Bring forward from LTC No 10 for 2022-2023 amendment to minutes for**

**General Business 7.2 Princes Highway North Batemans Bay, Cors Parade, Clyde Road**

TfNSW is currently undertaking a review of the approximate 4km length of existing 100km/h speed zone on the Princes Highway north of Batemans, from 150m north of the intersection with Cullendulla Drive to just north of the Kings Highway at change of speed zone.

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**IR23/016 AFGHAN VETERANS MARCH - 2 SEPTEMBER 2023**

**S030-T00018**

Responsible Officer: Graham Attenborough - Director Infrastructure Services

Attachments: 1. Traffic Management Plan for Afghan March 2 September 2023

Community Goal: 4 Our connected community through reliable and safe infrastructure networks

Community Strategy: 4.1 Provide integrated and active transport networks to enable a connected and accessible Eurobodalla

Delivery Program Link: 4.1.1 Plan for an integrated and active local transport network, guided by the NSW Government's Future Transport 2056 Strategy

Operational Plan Link: 4.1.1.3 Coordinate the Local Traffic Committee

**EXECUTIVE SUMMARY**

An Afghan Veterans March is planned for 2 September 2023 in Batemans Bay. The Eurobodalla Local Traffic Committee considered and approved the event's traffic management and control plans at its meeting on 3 August 2023. This report is to recommend Council's endorsement of the event's traffic plans.

Due to the tight timing and to ensure the event can proceed on 2 September 2023, this report seeks Council's endorsement of the plans ahead of the complete Traffic Committee minutes being presented to Council at the Council Meeting on 19 September 2023.

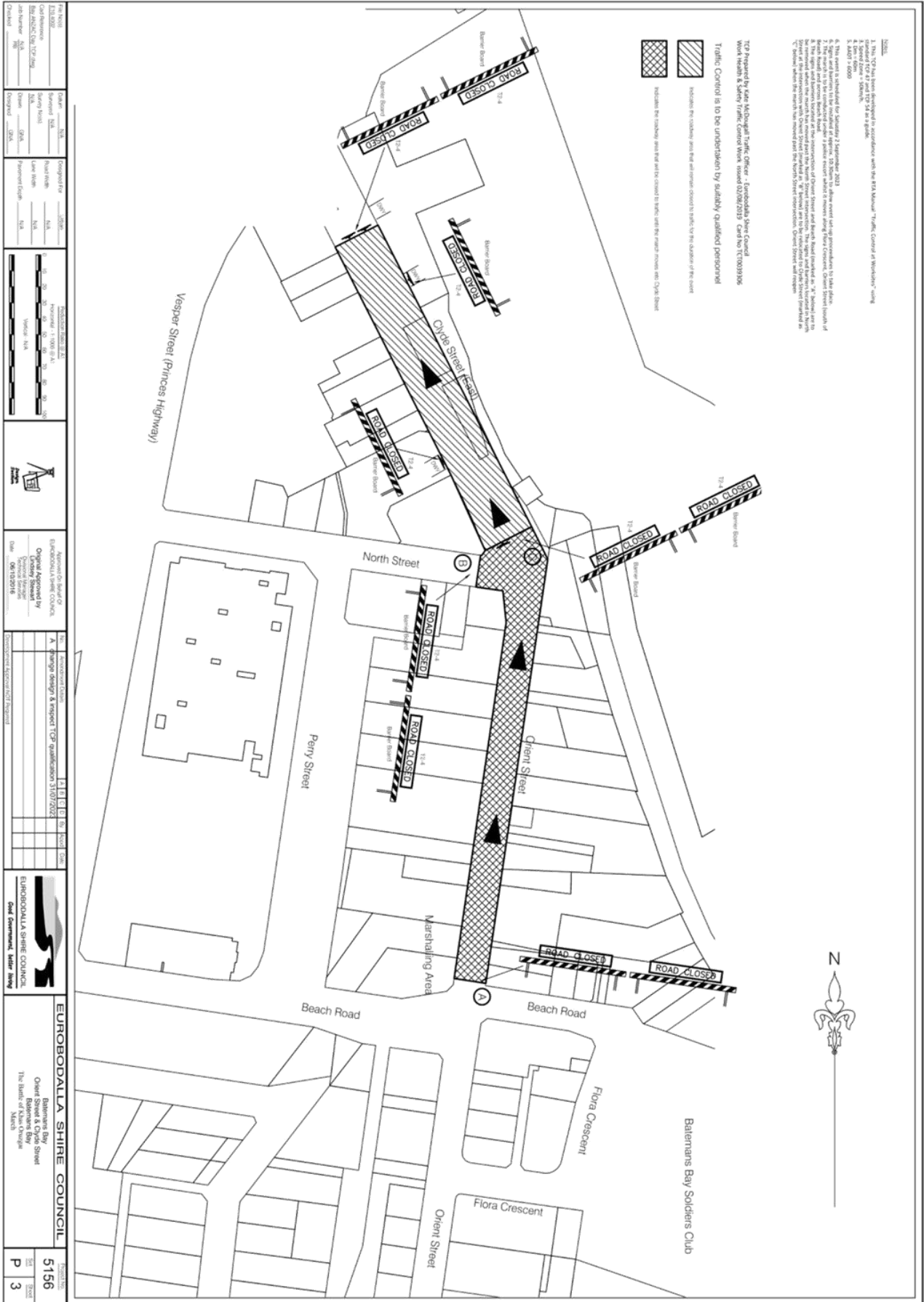
**RECOMMENDATION**

THAT Council approve the submitted traffic management and control plans for the Afghan Veterans March for 2 September 2023.

**BACKGROUND**

About 35,000 defence personnel, officials, police, and diplomats served in what was called Operation Slipper during the Afghanistan War. It is not known exactly how many veterans of this conflict actually live within the Eurobodalla or surrounding areas, as many have not joined or associated with the local RSL Sub Branches.

It is the initiative of the combined RSL Sub Branches (Batemans Bay, Tomakin, Moruya and Narooma) to officially seek out and recognise all ex-servicemen and women, as well as others who served during this period. The Afghan Veterans March on 2 September 2023 will support this endeavour.



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**CAR23/011 ARTS EXCHANGE VISIT TO MICHIGAN USA**

**S026-T00022**

Responsible Officer: Kathy Arthur - Director Community, Arts and Recreation Services

Attachments: Nil

Community Goal: 3 Our region of vibrant places and spaces

Community Strategy: 3.3 Embrace and value our creative arts

Delivery Program Link: 3.3.3 Exhibit the arts at Council Facilities

Operational Plan Link: 3.3.3.1 Implement the Basil Sellers Exhibition Centre arts program

**EXECUTIVE SUMMARY**

This report outlines the opportunity for a study trip for Creative Arts staff to Michigan USA suggested and sponsored by Mr Basil Sellers.

In June 2023 Mr Sellers indicated that he had a colleague that donated to a community arts facility in the USA – the Krasl Art Centre in St Joseph Michigan. The centre was very close in style and set up to the Basil Sellers Exhibition Centre (the Bas), and has been well established for many years.

Mr Sellers wished to support the opportunity for staff to participate in a professional development experience, information exchange and exploration of other opportunities to collaborate.

Mr Sellers has donated the funds to fully cover the cost of the trip.

**RECOMMENDATION**

THAT Council receive and note the report on the Arts Exchange visit to Michigan USA.

**BACKGROUND**

The Bas opened in February 2019 to great acclaim but 2020 onwards saw the natural disasters and the Covid pandemic which closed operations for some time. However, since reopening, the Bas has provided an engaging and diverse range of exhibitions and workshops for the community, showcasing exceptional local artists as well as artists from around the country and internationally.

The Bas has also developed a series of other programs including the Little Sellers Art Prize, broadening the Basil Sellers Art Prize to go national, the Saturday Sessions of creative workshops in the workshop rooms, and Bas About Town which has activated the Mechanics Institute for exhibitions and arts events.

Mr Sellers has been a supporter of regional arts in the Eurobodalla for over 20 years via the contribution of funds for the biennial Basil Sellers Art Prize as well as a contribution to the construction of the Bas. He also recently donated sculptures that sit at the front of Council and behind the Bas.

Mr Sellers latest philanthropic assistance comes in the form of supporting a staff professional development visit to the Krasl Arts Centre in St Joseph Michigan where a similar facility to the Bas has been established for many years. The opportunity will provide learning and opportunities between the two centres, and also sow seeds of creative prospects for the Bas as it develops.

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**CAR23/011 ARTS EXCHANGE VISIT TO MICHIGAN USA**

**S026-T00022**

**CONSIDERATIONS**

The Creative Arts team manage the Bas exhibitions and programs, a range of arts programs and shire wide activities, as well as public art and advisory committee. This professional development opportunity will support new ideas and insight on processes and arts planning, enabling further growth and development of creative arts in this shire.

Staff are currently working on a schedule with the Krasl Arts Centre that incorporates information exploration on people and governance, programming, artist engagement and development, facility management and funding models.

Staff have also researched a best practice model for junior arts development to visit whilst in the vicinity.

A visit to the city of Kalamazoo to meet with representatives of The Kalamazoo Regional Educational Service Agency that provides educational services and support to students, families, school districts, and communities will be scheduled. The Education for the Arts (EFA) program provides a program of excellence in the nine public school districts in Kalamazoo County.

Staff will meet with program staff and visit some of the school sites with a view to developing the Little Sellers program Council currently offers.

The trip is expected to be undertaken from 8 – 23 October 2023.

**Social Impact**

It is anticipated that there will be many positive outcomes from the visit which may result in artist exchange, improved knowledge on processes and systems, philanthropic opportunities and development of partnerships that can assist the Bas to grow and therefore provide better outcomes for creative arts development in our community.

**Financial**

The travel and accommodation costs for the professional development trip is fully funded by Mr Sellers.

**Community and Stakeholder Engagement**

We will inform the community through a media release and a news item in Council News.

**CONCLUSION**

The opportunity to develop an international connection with a community arts centre via a professional visit provides great prospects for staff and the service into the future.

The learnings on offer will help shape the future strategic direction of the service via insights and experiences gained.

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**CAR23/012 ABORIGINAL ADVISORY COMMITTEE RECOMMENDATION**

**S003-T00035**

Responsible Officer: Kathy Arthur - Director Community, Arts and Recreation Services

Attachments: Nil

Community Goal: 2 Our community that welcomes, celebrates, and supports everyone

Community Strategy: 2.1 Acknowledge our beginnings, embrace our diversity

Delivery Program Link: 2.1.1 Acknowledge and involve the traditional custodians of Eurobodalla and deliver the outcomes of the Aboriginal Action Plan

Operational Plan Link: 2.1.1.1 Coordinate the Aboriginal Advisory Committee and associated projects

### **EXECUTIVE SUMMARY**

The Aboriginal Advisory Committee (AAC) held an extraordinary meeting on Monday 24 July 2023 to discuss the Voice to Parliament.

With the ensuing referendum being held later this year, members of the AAC requested an extraordinary meeting to discuss the issues and as an advisory committee put a view to Council via the formation of a recommendation for Council consideration.

Members attended and discussed for and against issues and unanimously voted for the recommendation to be put to Council.

### **RECOMMENDATION**

THAT Council consider the following recommendation:

1. We the members of the Aboriginal Advisory Committee recommend that the Eurobodalla Shire Council supports a 'yes' vote in the referendum for an Aboriginal and Torres Strait Islander Voice to Parliament. Also, that the Council advises all residents of Eurobodalla Shire about this decision and advertises this decision in signs on the council's properties".

### **BACKGROUND**

The national referendum being held at a date yet to be determined later this year, will provide the Australian voting public with the opportunity to vote for constitutional change to support or deny an Aboriginal and Torres Strait Islander (ATSI) Voice to Parliament.

The referendum has been instigated by the current Australian government as a result of the three objectives espoused via the Uluru Statement of the Heart developed in 2017 at the First Nations National Constitutional Convention. These being:

1. Voice to Parliament
2. Treaty
3. Truth-telling.

If successful, the Voice will be constitutionally protected. This means successive governments cannot overturn it. It will be established as a new constitutional body with no approval or prevention powers, but have a say in policy or decisions that affect them.

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**CAR23/012 ABORIGINAL ADVISORY COMMITTEE RECOMMENDATION**

**S003-T00035**

**CONSIDERATIONS**

Council has received presentations via Public Access forums to support the 'yes' vote and has remained neutral in the space as a government agency.

Council has sought to promote awareness on the referendum by placing information on its website that links to important and credible places of information so that the community can research and develop an informed perspective on the issue.

In addition, Council has offered venues for information exchange for groups in the community and sought advice from national Aboriginal agencies for information sources and any programs or forums that could be promoted – if any.

The members of the AAC are concerned about the messaging and campaigning for the referendum and feel that there are a lot of members in the community, both Aboriginal and non-Aboriginal, that do not know enough about the Voice to Parliament. They are hopeful that constitutional recognition may be the first positive step to listening to community and therefore having a more positive impact on 'closing the gap'.

The AAC aim to represent the ATSI community positively, as a united group. The AAC voted unanimously in support of the recommendation.

**Community and Stakeholder Engagement**

We have collaborated with the community by seeking advice, ideas, and recommendations from Council's Aboriginal Advisory Committee to bring focus on the issue.

**CONCLUSION**

As a result of the extraordinary meeting of the Aboriginal Advisory Committee on 24 July 2023 the range of perspectives on the Voice to Parliament were discussed with a recommendation being unanimously supported to present to Council for consideration.

With the referendum getting closer, the committee is hopeful that Council will consider and provide support for their recommendation.



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## DEALING WITH MATTERS IN CLOSED SESSION

In accordance with Section 10A(2) of the *Local Government Act 1993*, Council can exclude members of the public from the meeting and go into Closed Session to consider confidential matters, if those matters involve:

- (a) personnel matters concerning particular individuals; or
- (b) the personal hardship of any resident or ratepayer; or
- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business; or
- (d) commercial information of a confidential nature that would, if disclosed;
  - (i) prejudice the commercial position of the person who supplied it, or
  - (ii) confer a commercial advantage on a competitor of the council, or
  - (iii) reveal a trade secret,
- (e) information that would, if disclosed, prejudice the maintenance of law; or
- (f) matters affecting the security of the council, councillors, council staff or council property; or
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege or information concerning the nature and location of a place; or
- (h) an item of Aboriginal significance on community land.

and Council considers that discussion of the material in open session would be contrary to the public interest.

In accordance with Section 10A(4) of the *Local Government Act 1993* the Chairperson will invite members of the public to make verbal representations to the Council on whether the meeting should be closed to consider confidential matters.

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## EUROBODALLA SHIRE COUNCIL

### ETHICAL DECISION MAKING AND CONFLICTS OF INTEREST

#### A GUIDING CHECKLIST FOR COUNCILLORS, OFFICERS AND COMMUNITY COMMITTEES

#### ETHICAL DECISION MAKING

- Is the decision or conduct legal?
- Is it consistent with Government policy, Council's objectives and Code of Conduct?
- What will the outcome be for you, your colleagues, the Council, anyone else?
- Does it raise a conflict of interest?
- Do you stand to gain personally at public expense?
- Can the decision be justified in terms of public interest?
- Would it withstand public scrutiny?

#### CONFLICT OF INTEREST

A conflict of interest is a clash between private interest and public duty. There are two types of conflict: Pecuniary – regulated by the *Local Government Act* and Department of Local Government; and Non-Pecuniary – regulated by Codes of Conduct and policy, ICAC, Ombudsman, Department of Local Government (advice only).

#### THE TEST FOR CONFLICT OF INTEREST

- Is it likely I could be influenced by personal interest in carrying out my public duty?
- Would a fair and reasonable person believe I could be so influenced?
- Conflict of interest is closely tied to the layperson's definition of "corruption" – using public office for private gain.
- Important to consider public perceptions of whether you have a conflict of interest.

#### IDENTIFYING PROBLEMS

- 1st** Do I have private interests affected by a matter I am officially involved in?
- 2nd** Is my official role one of influence or perceived influence over the matter?
- 3rd** Do my private interests conflict with my official role?

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Whilst seeking advice is generally useful, the ultimate decision rests with the person concerned.

### AGENCY ADVICE

Officers of the following agencies are available during office hours to discuss the obligations placed on Councillors, Officers and Community Committee members by various pieces of legislation, regulation and Codes.

CONTACT	PHONE	EMAIL	WEBSITE
Eurobodalla Shire Council Public Officer	4474-1000	council@esc.nsw.gov.au	www.esc.nsw.gov.au
ICAC	8281 5999	icac@icac.nsw.gov.au	www.icac.nsw.gov.au
The Office of Local Government	4428 4100	dlg@dlg.nsw.gov.au	www.dlg.nsw.gov.au
NSW Ombudsman	1800 451 524	nswombo@ombo.nsw.gov.au	www.ombo.nsw.gov.au

Reports to Committee are presented generally by 'exception' - that is, only those items that do not comply with legislation or policy, or are the subject of objection, are discussed in a report.

Reports address areas of business risk to assist decision making. Those areas include legal, policy, environment, asset, economic, strategic and financial.

#### Reports may also include key planning or assessment phrases such as:

- Setback* Council's planning controls establish preferred standards of setback (eg 7.5m front; 1m side and rear);
- Envelope* taking into account the slope of a lot, defines the width and height of a building with preferred standard of 8.5m high;
- Footprint* the percentage of a lot taken up by a building on a site plan.