

EUROBODALLA SHIRE COUNCIL

PUBLIC FORUM

All members of the community who have registered have been advised that they have a **maximum of seven minutes** to put their case.

Ordinary Meeting of Council on **10 May 2022**

Name	Subject/Comments
Public Forum – 9.00am	
Patricia Hellier	GMR22/053 – Draft Code of Meeting Practice – For Exhibition
Bernie O’Neil (ABE)	GMR22/053 – Draft Code of Meeting Practice – For Exhibition
Jim Bright	GMR22/053 – Draft Code of Meeting Practice – For Exhibition
Peter Cormick	GMR22/053 – Draft Code of Meeting Practice – For Exhibition GMR22/054 - Congo Road North
Lei Parker	GMR22/053 – Draft Code of Meeting Practice – For Exhibition GMR22/054 - Congo Road North
Andrew Scully	GMR22/054 - Congo Road North
Gillianne Tedder	GMR22/054 - Congo Road North
Johanna Weaver	GMR22/054 - Congo Road North
Deborah Stevenson	GMR22/054 - Congo Road North
Catherine Taylor	GMR22/054 - Congo Road North

Good morning Mayor, Councillors, General Manager, Staff, Gallery and those comfortable zooming from home my name is Patricia Hellier from Batemans Bay I would like to speak on item no GMR22/053 Draft Code of Meeting Practice.

As this item will be going out to Public Consultation for 42 days I do not intend to touch on any particular point within this document apart from raising an item that concerned me when I read it contained in the Executive Summary Paragraph 3 – and I ask you the Councillors to think about this statement below - and I QUOTE -

Following extensive consultation, the Office of Local Government (OLG) published a new Code of Meeting Practice for Local Councils in NSW. The new Model Meeting Code contains provisions that allow councils to permit individual councillors to attend meetings by audio-visual link and to hold meetings by audio-visual link in the event of natural disasters or public health emergencies. The provisions governing attendance at meetings by audio-visual link are non-mandatory.

I have concerns about this statement – there is no definition of “meetings” and I ask realistically “if there was a natural disaster” would there be a meetings? Secondly given that there is a provision to allow “councillors to attend meetings by audio link in the event of a natural disasters or public health emergencies” I ask the question why is there not a provision for community members to attend “audio-visual link” in the event of a natural disaster or public health emergencies?

I use the example of the 2020/21 bush fires and lets hope we never experience an event such as this again “if their was a requirement for a Councillor to be given a briefing for example by Emergency Services such as the RFS this is not covered in the Executive Summary”.

Mayor and Councillor I believe at this point in time this issue should be considered and I ask the question “can there be an inclusion of “audio-visual link” to cover Emergency Services and the Community that can be inserted in the Executive Summary?

Patricia Hellier

ABE PUBLIC FORUM PRESENTATION TO EUROBODALLA SHIRE COUNCIL

AGENDA ITEM: GMR22/053 Draft Code of Meeting Practice - For Exhibition.

DATE: 10 May 2022

I am presenting today as the Co-convenor of A Better Eurobodalla, a community forum working to achieve open, accountable and responsive government in Eurobodalla

Today I want to address some decisions points identified for Councillors in the agenda paper *Draft Code of Meeting Practice - For Exhibition* and request some clarity around what is published for community comment.

The recommendations in the General Manager's paper include:

That Council determine:

Whether or not Public Forum sessions and Public Access sessions are live-streamed and

Whether or not a written copy of an approved speaker's address for Public Forum and Public Access sessions is required to be provided by 12.00 noon to Council on the business day prior to the Council meeting.

On the question of whether Public Forum and Public Access sessions are live streamed:

- on 15 November 2021, during the ESC election campaign, all the mayoral candidates attended a candidates' forum hosted by the Tuross Head Progress Association. At that forum all mayoral candidates agreed to support live streaming of both Public Forum and Public Access sessions. That group included Mayor Hatcher, Deputy Mayor Worthington, returning councillor Pollock, new councillors Grace and Harrison and mayoral candidate Karyn Starmer. The answers were taken to represent the position of the other councillor candidates on their group tickets including councillors Diskon, Schutz, Dannock and Mayne

In this agenda paper, Council staff have provided briefing under a discussion of a survey that (again from the agenda paper) 'was developed to ascertain from the community their views about participation in Council meetings and in particular, when meetings should be held, and if Public Forum and Public Access should be live-streamed'. During the survey period, 312 surveys were completed and 59 written responses were received.

It is difficult to have confidence in a survey with questionable methodology – we can see no control over the number of times an individual can respond, and low survey response numbers. Remarkably the staff advice states that 'The results indicate that not livestreaming public forum is slightly favoured during the engagement process' whereas

- on the forum question - 51.3% of respondents voted either Yes: (42.4%) or Optional for presenter: (8.9%) with a no vote of 48.7% and
- on the public access question - 51.2% of respondents voted either Yes: (40.3%) or Optional for presenter: (10.9%) with a no vote of No: 48.9%

Indicating that a majority of respondents **did** favour the possibility of live streaming.

Again, under consideration of live streaming of public forum sessions, staff advice is that 'It should be noted that webcasting of Public Forum not only increases Council's potential liability, but could also cause significant (sic) or offence should a speaker reveal an issue of privacy or state derogatory comments about a person which is based on incorrect, malicious or misunderstood information. In addition, it is acknowledged that many people find public presentations to be stressful enough, without the additional pressure of being webcast, and this presentation being able to be accessed for seven years. Further, webcasting of public forum is not included in OLG best practice guidelines or recommended as an option'

Similar advice is provided by staff for potential live streaming of public access sessions.

In relation to the question of potential liability or causing offence, other councils that are clearly in exactly the same position manage such risks in a simple but professional manner. For example, Shoalhaven Council has directives which set out:

'Is there anything I can't say at the meeting?

- Comments must be relevant to the issue at hand
- You must refrain from making personal comments or criticisms or revealing any private, sensitive or privileged information
- You may not make insulting or defamatory statements
- You may not make personal allegations against Councillors and/or staff or be disrespectful. If/when such statements are made the deputation will cease and the individual will be asked to leave the meeting
- Speakers do not have absolute privilege
- A speaker who makes any offensive or defamatory remarks about another person may be personally liable for their actions'

and further

- Your attendance at the meeting is taken as consent to the possibility that your image and/or voice may be recorded and broadcast to the public.

<https://webcast.shoalhaven.nsw.gov.au/video.php>

A similar approach by Eurobodalla Shire Council should alleviate the staff, and any councillor, concerns.

The staff statement that 'it is acknowledged that many people find public presentations to be stressful enough, without the additional pressure of being webcast' is not supported by any survey results or analysis that might indicate that this is true.

A review of surrounding councils shows that the 3 councils adjoining our shire all provide webcasting for public presentations under various titles. So, Shoalhaven, Bega and Snowy Monaro councils are not overly concerned by the Office of Local Government best practice guidelines. In 2019, even before the pandemic, a majority of NSW councils provided webcasting of public presentations, similarly not overly deterred by the OLG best practice guidelines.

Briefly, in response to some of the other issues under consideration:

- ABE does not support speakers being obliged to provide a copy of their address for Public Forum and Public Access sessions to Council by 12.00 noon the business day prior to the meeting. Instead, ABE believes that this should be optional.
- Remarkably in item 3.27 there is a recommendation relating to public forum that states: 'If a written copy of the presentation is not provided then this will be ruled a breach of this Code and (at the ruling of the Chairperson) the presenter may not be allowed to address Council at future meetings'.

This is inappropriate and punitive response to what might be an innocent error or oversight.

- There is what appears as a new provision at '3.28 When a person is speaking on behalf of a person or group, Councillors are not permitted to ask questions, unless that speaker is a formal representative of the group'.

Having been subject to confusing and inconsistent interpretations of this, or a similar ruling by Council, ABEs view is that it is an unnecessary provision. Rather, Councillors should be able to ask any relevant questions and simply ask the presenter to identify whether she or he is responding as an individual or on behalf of their group.

Finally, in the interests of clarity and transparency, the draft that goes for public exhibition should be accompanied by a statement that comment is invited on all provisions apart from those identified as mandatory under the OLG Model Meeting Code. The design of the current presentation is confusing as it speaks of 'Council's previously adopted provisions' without identifying that those provisions were agreed to by the previous Councillors, not those elected in 2021.

Thank you.

Bernie O'Neil
Co-convenor
A Better Eurobodalla

ESC MEETING - 10 MAY 2022

DRAFT CODE OF MEETING PRACTICE

My name is Jim Bright. I'm a resident of Narooma.

I'm here to comment on some of the matters that the councillors are being asked to decide today in respect of the draft of the Code of Meeting Practice that is about to be circulated to our community for comment.

I'll start by repeating a couple of the points that I made in my presentation to the previous councillors at the council meeting on 11 June 2019. (That was the council meeting that approved most of the content of the current code including the highly controversial decision to cease the webcasting of the Public Forum.)

The first point is that the staff report that is before you today makes frequent references to OLG's claims about (so called) "best practices". In my presentation in 2019, I explained the background to this "best practice" concept and the processes that are normally undertaken by (say) some appropriate central government agency to identify the particular practices that might reasonably justify the use of the word "best". The point I made in June 2019 was that there was no evidence at all that OLG had ever undertaken any acceptable process for the identification of such practices. As I said at that time -

"I expect that what is claimed by OLG to be "best practice" is probably little more than the views of some officers in the Council Governance Unit of OLG."

I continue to hold that view.

The other important point that I wish to make is that, yet once again, the staff report fails to advise you that it appears that all the other surrounding councils in the south east have continued to livestream their public forums. As I said at the 11 June 2019 meeting -

"Now if I was a councillor being confronted with the clearly controversial and unpopular proposition that I should approve the cessation of livestreaming of Public Forum ... I would expect to have been provided with this type of information. The GM's failure to have done this is remarkable and you should be demanding an explanation and assurances about future practices."

Well - that 2019 comment is even more relevant to today's consideration of the Public Forum livestreaming issue by councillors given that each of you had specifically and publicly addressed this

particular issue during the recent election campaign. Never-the-less, the GM has again apparently decided not to bring the livestreaming practices of all the surrounding councils to the attention of you - the decision-makers!

In closing, I would strongly recommend that, after the completion of the community consultation period on 22 June, a workshop should be convened involving councillors, council staff and members of the community in order to properly work the issues and complexities associated with this crucial matter before any final recommendations are put to the body politic for decision on 26 July.

Jim Bright

PUBLIC FORUM PRESENTATION 10 MAY 2022, BY PETER CORMICK

ITEM GMR22/053: DRAFT CODE OF MEETING PRACTICE – FOR EXHIBITION

Councillors, as I am sure you are already aware, your task in this matter is simple. Nothing could be more straightforward, despite the seeming complexity of the multi-coloured documentation you have been presented with.

It is simple because each of you who are here to reform this Council, have already declared your governance principles, in the course of your respective election campaigns. In adhering to those principles, you know what needs to be done.

You have made it perfectly clear that you are committed to an open, accountable council in which its deliberations and all community input to those deliberations must be available to the whole community by every means available.

Not that many years ago this Council, with quite a different majority to the one we now have, fought tooth and nail against the webcasting of council meetings. Eventually, with a new council, webcasting commenced and shortly after, the OLG made webcasting of meetings mandatory.

And the webcasting of Public Forum was included, because for a while Public Forum took place at the commencement of a meeting, within the meeting. Then, with a revised Code of Meeting Practice, it was taken outside the meeting and took place just before the meeting commenced, as we now have it.

Then, at the Ordinary meeting of Council on 11 June 2019, the General Manager recommended the adoption of our current Code of Meeting Practice, which included the removal of the live streaming of Public Forum, as well as the removal of Public Access. A majority of councillors voted in support of that recommendation though, subsequently, before the publication of the revised Code, then-Councillor Pat McGinlay convinced the majority of councillors to retain Public Access.

I believe that our council stands alone as the only one in NSW to have removed the live-streaming of Public Forum.

And so, here we are today re-visiting this issue of the webcasting of Public Forum, and considering for the first time the webcasting of Public Access, as well as the frequency of Public Access, and a number of other aspects of the Code, as set out in the recommendation on page 8 of the agenda.

The survey, conducted to ascertain views on some of the issues before you, most significantly the live-streaming of Public Forum and Public Access, has produced results which cause me to wonder just how this survey was conducted.

The results fly in the face of rationality. They show that a majority of those who clicked their way through the survey thought it was a bad idea for the wider community to see and hear members of the community address councillors, without the need to attend the chamber. Maybe these people misunderstood the question to mean that it was one or the other: either one can attend a meeting in the chamber

and witness Public Forum there or, instead, one can watch it from home. Entertainment of this possibility is the only way that I can begin to make sense of the complete nonsense of the survey results on this issue.

To cut to the chase, looking at the items to be determined, as listed from 1 to 11, I want to address just items 1,4,5,6, 7, 8 and 11 – because of the limited time available.

Taking each in turn:

No. 1: It makes perfect sense to resume the earlier practice of **holding Public Access immediately before Public Forum, prior to each meeting of council**. The schedule presented in column 3 at the top of page 19 of the agenda seems to me to be a sensible one.

Nos. 4 & 5: There is no question that **both Public Forum and Public Access should be webcast**. The time available for this presentation does not permit me to address the arguments against livestreaming of these forums but I am more than happy to take questions on that later.

Nos. 6 & 7: I am strongly of the view that all that should be required of someone wishing to make a presentation at either Public Forum or Public Access is that they provide a description of the item or items they wish to present on. **There should be no requirement for a written copy of the intended presentation.**

No. 8: This issue, of the period in which a notice of motion to alter or rescind a resolution relating to a DA may be made, is referred to at clause 16.11 of the draft Code, as shown at page 43 of the Code and referred to at page 21 of the agenda. I suggest that the period be up to **48 hours** from the conclusion of the meeting at which the resolution in question was made.

No.11: I ask that you amend this proposed action to read as follows:

“Following a workshopping of the draft Code, a further report be presented to Council on 26 July 2022 to consider adoption of the draft Code of Meeting Practice.”

There is much more that I would like to say on the matter of the Code of Meeting Practice but that will need to wait for the next occasion.

ITEM GMR22/054: CONGO ROAD NORTH

I must declare that until this item appeared in today's agenda, I was not acquainted with the matter except peripherally.

But when I saw that staff have presented you with the option of either washing your hands of it and having nothing more to do with it – being messy and too hard – or the clearly unacceptable option of having to part with many millions of ratepayer dollars, well, I felt compelled to say something, starting with suggesting a third option.

And that option could read as follows:

That in consultation with the local community, Council liaise with Crown Lands and the owner of Lot 197 DP752151, to provide a realigned Crown Road reserve across the subject land for which Council would assume responsibility for construction and maintenance, with the costs associated with the realignment to be met by the owner.

Barring the adoption of such a motion, I dare to recommend that you **DEFER** a decision on this item, for the following reasons.

- There is **no urgency**, and, it appears to me, you may not have been provided with all the information required to make an informed decision.
- In my view, the report you have been provided with is flawed. It makes no more than a passing reference to what is, in my view, the most significant aspect of this whole matter: **the existence of a public road through the property**; being a Crown Road reserve, referred to at the top of page 27 of the agenda. This unformed, so-called paper road is the elephant in the room.
- According to the [Dictionary](#) within the *Roads Act 1993* a Crown Road is a public road and by [section 5](#) of that Act members of the public are entitled to walk, ride, drive, etc along such a road.
- This Crown Road could well have been utilised by the public, but it has been almost wholly removed through mining operations. Notwithstanding the minerals below it, **the owner of the property in question does not own this road, but has nonetheless removed it**. How can that have happened? No member of the public is even permitted to close off a public road with a locked gate, let alone actually remove the road. But that is what has happened here. What part has Council played in allowing this to happen, either actively or passively?
- **Having deprived the public of access to the public Crown Road reserve, it is surely the owner who must compensate the public; not the public to compensate the owner**. What a madness, in these circumstances, to be proposing that the public compensate the owner!
- At page 24 of the agenda, the staff report advises you that:

“Council has not been able to establish evidence, including through research by a specialist firm, to confirm the existence of a public road, through prior use of the physical Congo Road North, under *The Roads Act 4 William IV No 11 1833*. This means the land over the physical road is private land.” (emphasis added)

No, the present absence of evidence, either ‘for or against’, **does not mean that it is private land**. It means that the status of the physical road is presently unknown. Old survey plans could well provide useful information on this question.

- Throughout the report it is very clear that the owner’s interests and preferences are given priority over those of the public. Yet, to repeat, the owner has actually removed what could easily have become a well-formed Crown Road reserve. Rather than talk of accommodating the owner’s wishes and of the payment of compensation by the public, there should surely be talk of penalties for the destruction of a public road, albeit unformed, and of the provision of a replacement public road, through the re-alignment of the now-destroyed public Crown road.
 - Finally, while there are Congo residents on the north side of the closed road who are no doubt very happy with the absence of through-traffic, there are many more residents, south of the closure, who have been enormously inconvenienced. As their representatives, you have obvious responsibilities to become fully informed on the matter and to do what is within your power to set things right, rather than to wash your hands of it by adopting Option 1 of the staff report.
-

Presentation to Eurobodalla Council – Public Forum – May 10th 2022

GMR22/053 Draft Code of Meeting Practice - For Exhibition .

and

GMR22/054 Congo Road North

Councillors,

Firstly, in regard to your report on the Code of Meeting Practice.

YOU are being asked to VOTE on whether or not Public Forum sessions are live-streamed and whether or not Public Access sessions are live-streamed

Staff have advised you that during an online community survey period, 312 surveys were completed and 59 written responses were received.

In regards to the question “Do you think Public Forum should be livestreamed and recorded?”

Apparently 133 said Yes and 153 said No. The report offers nothing more of any reasoning behind these responses. Instead the report offers the staff’s opinion of why you should seriously consider voting NO by leading in with “The results indicate that not livestreaming public forum is slightly favoured during the engagement process.

The report then dares to mimic the ex-mayor saying “It should be noted that webcasting of Public Forum not only increases Council’s potential liability, but could also cause significant or offence should a speaker reveal an issue of privacy or state derogatory comments about a person which is based on incorrect, malicious or misunderstood information”.

The same response is tabled for webcasting of Public access but this time the vote for is 126 and the No's are the same 153 faceless citizens.

I remind you Councillors that each and everyone of you stood on a platform of openness and transparency and each one of you declared

that you would, as a matter of importance ensure that Public Forum is web cast, recorded and archived.

I remind you that the community voted for you on that mandate and they did not vote for 153 faceless survey respondents.

GMR22/054 Congo Road North

In regards to openness and transparency I must advise my absolute disappointment that YOU have failed already in this regard.

In November 2021 your staff advised that they had “legal advice” that basically authorised them to proceed with the removal of 10 trees on private property stating that it was deemed “public road”.

Their statement was delivered with an audacity that dared challenge, but challenged they were over their legal right, and they withdrew. As it turned out, if council had removed a single branch they would have been in breach of the law.

So what was this legal advice they declared they had?

In order to know what the advice was, and the context of the question asked and response given I applied under the GIPA Act, only to be told that Council retains legal privilege and will not advise “word for word” what the advice was.

“Under clause 5(2) of Schedule 1 to the GIPA Act, Council must consider whether it is appropriate to waive privilege before it decides to refuse access to the information. As Council declines waiving privilege, a copy of the legal advice cannot be disclosed to you”.

This response came from your staff.

The last time I looked YOU were Council. But here we have a staff member advising that YOU, as Council, declines waiving privilege.

What I did discover from that GIPA request was that Council has sought “advice” a full two and a half months before the November action to

remove trees.

Oddly, Council advises that it was not required to pay for the advice.

Council has not divulged if the advice was written or verbal. Unsurprisingly much of the advice Council claims to receive is verbal rendering it untraceable under GIPA requests.

The issue of the claimed “legal advice” (that was proven to be in error) is just a small part in the overall treatment of the community in how Council acts and communicates.

A simple question “Why haven’t the community been consulted”, asked by a Councillor at the time of the removal received a blunt response of “We do not consult on Operational Matters”.

The report before you does not do justice to the history of this issue. Staff have failed to explain to the community why they ignored a directive given by a previous term of Council

In March 1999 the Council of the day gave a very clear instruction in regards to tidying up the road anomalies that were to be found on the Congo Road North including two part-lot acquisitions (Lot 24 and Lot 181) for the purpose of Congo Creek Bridge.

MINUTE NO 96

A8 PROPOSED LAND ACQUISITION - ROAD OPENING
CONGO ROAD 81.1540.E; 85.1710.E; 94.6320.E

96 **MOTION** moved by Councillor Green

THAT:

1. A Plan of Survey be prepared to redefine that part of Congo Road within Lot 24 DP 825436 which was previously defined under Act 4 William 4.
2. Actions be taken to acquire that part of Congo Road which does not form part of the Act 4 William 4 road within Lot 24 DP 825436 for existing and future road requirements in accordance with Council policy.
3. Actions be taken for the acquisition of part of Lot 181 DP 752151 for existing and future road requirements in accordance with Council policy.
4. Actions be taken for the road opening/closing of road within Lot 197 DP 752151 when the final detailed design has been carried out to determine the area to be acquired for future road requirements.
5. Authority be given to affix the Common Seal of Council to the necessary documentation in association with the acquisition of part of Lot 24 DP 825436 and Lot 181 DP 752151 for road purposes.

(The Motion on being put was declared **CARRIED.**)

As with any report presented by staff it is essential to read between the lines and to ascertain the reasoning behind their “recommendations”.

I raise again the issue of staff controlling the information required for the community to be fully informed of an issue so that a collective open discussion can be brought to the table.

You may have stood on a platform of openness and transparency but according to your staff “ Council declines waiving privilege”

Did your staff ever ask you if you waived legal privilege?

Given that YOU have been vested with the authority of the GIPA Act and have only delegated this to staff do you believe that the staff may have

acted above their authority when they advise a member of the public that Council declines waiving privilege without actually talking to YOU, The Council?

Lei Parker

8/5/2022

Dear Councillors,

The closure of the North Congo Rd has been a sad and inconvenient event in the lives of our family. We live to the South of Congo and used to regularly ride bicycles to commute to Moruya for work. We and many other residents of Meringo and Bingi can no longer do this. The alternative route on the highway is unsuitable for bicycles. The easy and quiet access of North Congo Rd is a reason many people have chosen to live in this area and that asset has been taken from us.

I find the two options presented both unacceptable. I would prefer that Council compulsorily acquires the land that the road is on or reroutes the road over areas that have already been mined and maintains that as the North road access. There are many solutions to this problem and we are only offered 2.

Option 1.

The permanent closure of the North Congo is not acceptable for a number of reasons.

It leaves the village of Congo with only one access which is a problem if and when there is a bushfire. The offer by the landowner to give access to the emergency services to allow access in an emergency is a short term solution. It is a real possibility that a Southerly wind change could push a fire from the National Park in the South , closing South Congo rd and leave residents trapped. Who is going to maintain that road on private property in the long term? It is likely there will be a sand mine in the way.

It is a waste of the considerable resources that council has spent on upgrading the North Congo rd over recent years. It will turn that road into a driveway for those landowners.

Once all the sand has been removed from the site there still will be no road. Forever. It is a short-term plan. Council states that option 1 requires zero funding allocation. There is a significant cost, however, we lose the road, the lifestyle benefits and, I assume, the trees as they make way for the sand mining.

Option 2

The alternative road planned has been very carefully costed and includes provision for compensation for the sand that will not be mined. It will result in significant environmental impacts. My question is that for the value of the sand to be realised, the area is going to be mined anyway, so the environmental and cultural impacts will be similar whether Council puts a road on that land or not.

If the area is going to be mined anyway, it would be better that we had a road on it than not.

I think option 2 is slightly better than option 1 but I don't understand why the phrase "compulsory acquisition" is missing from the proposed options or a variety of other solutions. We need to be looking at the long term impacts of decisions made and to be honest and realistic about the outcomes.

Sincerely

Andrew Scully

70 Berriman Dr Congo

Good morning and thank you for the opportunity to make this presentation regarding agenda item number GMR22/054 regarding Congo Road which is currently closed north of Congo village. My name is Gillianne Tedder, I live on Congo Rd, hence my interest.

I would like to start by acknowledging the traditional custodians of this land - the people of the Yuin Nation. I thank them for their care of this beautiful natural area we call Eurobodalla Shire.

I would also like to take a minute to acknowledge all the new people here in the role of councillor. I know that across our Shire the electorate is really excited about all the fresh new faces and new energy you're bringing to our council. It's not an easy task, so Thank you for taking on this role.

In doing so you are taking on some complex issues that have remained unresolved for decades. Congo Road North is one of those issues.

I'm making this submission on Agenda Item GMR22/054 because it's in the public interest to discuss this issue.

Today I'm asking that you to defer making a decision on this. I'm asking that there be an independent review of all the options available to council to resolve this matter before you take any decisions.

This morning councillors are being asked to decide on one of only two options on an issue that's been going on for decades.

Firstly I believe both options are effectively "do nothing" options. Neither option addresses the serious safety issues that Congo residents now face due to the closure of this road.

Option one proposes the permanent closure of Congo Rd Nth. If adopted it would permanently reduce access into Congo to one road only. This is directly contrary to the recommendations of the Bush Fire Royal Commission and is a serious safety issue.

Having only one road in and one road out obviously increases the danger for residents in the case of an emergency and would be extremely dangerous during bushfire season.

Also, you may be aware there was a tragic drowning on Congo beach 2 summers ago. What happens if an ambulance is urgently needed? It has to travel the long way around via Bingie Rd.

The notion that someone will unlock the gates across Congo Rd Nth to let emergency vehicles thru just sounds laughable.
In fact this was recently tested and the system failed.

It also raises another question: who's going to be responsible for maintaining this emergency access in the long term?

Option One would permanently force all the residents of Congo, all the service providers, all the tradespeople and all the tourists who use the very popular National Parks campground exit via the Bingie Rd intersection off the Princes Highway.

This is already a problematic intersection. Vehicles on the highway are traveling at around 100km phr and joining the highway here can be scary and dangerous.

Early this year there was a fatality at this intersection.

Forcing more traffic to use this intersection is only going to increase the danger. I understand this intersection is the responsibility of NSW Transport.

But if council chooses the option of permanently closing Congo Road North they will be responsible for forcing more traffic to use the Bingi Road intersection.

The closing of Congo Rd Nth is having other detrimental impacts. Some elderly people in Congo hold restricted licenses. They're are not allowed to drive on the highway. The road closure is also having economic impacts. For example, septic pump outs are now costing more for Congo villagers.

Council claims they've consulted with the community on this issue. I'm sorry to say in my opinion there has been zero real community consultation.

Consultation means deliberation, conference *with* a person or persons.

We've haven't had consultation.

We've had decisions made by council staff without input from community and then we receive an official letter *informing* us of that decision.

Often the letter is delivered with the shortest notice allowable: for example Late last year residents got a letter 10 days before council planned to take action on Congo Rd Nth.

10 days notice on an issue that's been on the agenda for decades.

It was only then we got to meet with council staff - and only because we initiated the meeting.

Goodness knows, council knows, these issues are not new and closing one of only 2 access roads into a village is not a minor issue.

Regarding Option Two which proposes a new road might be made right alongside Congo Creek:

Other people will speak more informatively about this option but

Given that Congo Creek is a pristine waterway, an important fish nursery and that it runs through a National Park, and especially given the environmental constraints these days do you really think it represents a genuine option?

This creek is emblematic of the sort biodiversity that is now more important than ever.

As the climate warms we're going to get more flooding and destructive storms. In light of this, we should be moving further away from waterways not building road infrastructure alongside them.

Additionally, Option 2 would require the consent of National Parks and Wildlife and an act of parliament to allow the creation of a new road to link all this together.

Another words this is not an option that's going to get the speedy resolution that Congo residents need.

This is a complicated legacy issue.

I believe we need real community consultation and more information so we can create additional options to help resolve this issue.

I have requested more information about this from Eurobodalla Shire. It hasn't yet been made available.

Gilliane Tedder – Public Forum Presentation – 10 May 2022

In light of this I'm asking you to defer making a decision on this issue and I request that there be an independant review of all the options available to council to resolve this matter.

Thank you.

I make this presentation as a resident of Congo, in response to the agenda item **GMR22/054, CONGO ROAD NORTH.**

The options presented to Councillors for decision today are two extremes at the opposite end of the spectrum: do nothing, or potentially spend millions, over years, to move an existing road that has been in use for decades. It is perplexing why many *other* options (which would provide quicker, and far more cost-effective solutions) have not been presented for consideration today.

The impact of the road closure on the people living in and around Congo has been significant. Despite this, Council has not consulted residents on the two proposed options, nor elicited views on *other* options that could be available.

I received an email from Council at noon on Friday (6 May), advising that this issue was on the agenda today (10 May). I was informed that I had until noon yesterday (Monday, 9 May) to provide an advance copy of any presentations to this forum. One business day's notice. Councillors: do you consider that to be a fair and transparent process?

Those who have been following this issue closely may have also noticed that, since the end of February, there has been a drop off in advocacy. I believe it is important for Council, Councillors, and the public, to understand that this is not due to a drop off in the level of community interest in the issue. There are good reasons for the decline in advocacy, and the relative silence should not be misinterpreted.

This is particularly pertinent given many of you (our Councillors) campaigned on a platform of transparency, and because many of you regularly encourage Eurobodalla residents to be actively engaged in public debate and Council processes.

I also deeply regret that this issue was placed on today's agenda without consultation.

This has meant that we have little option but to respond in this forum. This format is not conducive to finding solutions. It risks highlighting divisions and further entrenching positions.

Nonetheless, I feel compelled to speak up today to highlight to you, our Councillors, that if you decide based on the Agenda Paper before you, you would be doing so based on incomplete information and without due consideration of all the options.

I have many concerns with the Agenda Paper, but in the interest of time will focus my comments on five key points.

1. The legal advice referred to in the Agenda Paper (that the road is *not* a public road) differs from the legal advice cited by Council in November (that it *is* a public road). Who is providing this advice? And can copies of the advice be made available to the public? If this advice is not accurate or comprehensive, viable options may not be being considered. This merits public scrutiny.
2. Several environmental and aboriginal heritage issues are cited in the Agenda Paper as being relevant to assessing the viability of the proposed alternative route. Has Council – as the issuer of the relevant development application - considered if those *same factors* would apply to any future mining operations? And, if so, the impact this may have on any compensation that may be owed?

3. The Agenda Paper makes only passing reference to the Crown Road reserve that traverses the property, noting that “[i]t is envisaged that this Crown Road reserve would be closed to partially offset the acquisition of the new road reserve”. Is Council aware of the current condition and length (not just width) of the Crown Road reserve? Has Council requested Crown Roads to survey the Road reserve?
4. Congo Village is in a bushfire prone zone. A vote for Option One is not actually *not* a vote to do nothing. It is a vote to transform Congo village from a community with two roads in and out, into a community with one road in and one road out. This may be contrary to the Bushfire Royal Commission recommendations, but it also defies common sense; have we not learnt anything from the Black Summer fires?
5. I also find distressing Council’s repeated public references to the small extras distance and short additional travel time (when comparing the northern and southern routes). Several well-known incidents demonstrate the safety concerns held by the community are not baseless; it is not my place to tell those stories. In any event, many who travel the northern route do so at a leisurely pace (in a vehicle, by bike, or on foot), such that it takes *longer*, even if it is the shorter of the two routes. The point is not the distance, or travel time, but the fact the northern route avoids the main highway. The social isolation of this is considerable.

I believe there are other options (not currently before Councillors for consideration) that would allow access to Congo Road North to be restored, quickly, without impinging on the rights of any landowners.

This issue has been on Council’s agenda for decades. There has been a systemic failure by Council to resolve it.

This is a source of frustration, not just for those who live in Congo, but – I suspect – for all involved.

I call on Councillors to defer today’s decision, and to instead use your convening powers, to bring the parties together to find a long-term solution.

After a specific period (I suggest no more than a few months), if Councillors are unable to help negotiate a solution, I urge you to commission an independent review into all the options available.

And then, with all of the information in hand, you can make an informed decision that takes into account the interests of all affected parties.

Thank you.

Johanna Weaver

Public Forum presentation regarding Agenda Item GMR22/054 Congo Road North 10 May 2022

Good morning. Thank you for the opportunity to address Council this morning regarding Agenda Item GMR22/054 Congo Road North.

I am a biologist with over 20 years experience working in the area of threatened species protection and recovery. The focus of my presentation this morning is the biodiversity aspects of Congo Road North because I believe it is in the public interest for both councillors and the community to understand the environmental context in which decisions about this road have been, and continue to be, made.

The portion of Congo Road North which is the subject of this Agenda Item runs through private land (Lot 197 DP 752151) that supports the Bangalay Sand Forest which was listed as an Endangered Ecological Community (EEC) under the NSW Threatened Species Conservation (TSC) Act 1995 and is now protected under the NSW Biodiversity Conservation (BC) Act 2016. The main tree species is the Bangalay (*Eucalyptus botryoides*) which occurs along this section of Congo Road North and on the adjoining private land, as well as within the neighbouring Eurobodalla National Park.

The Bangalays on this land are large, mature trees that provide habitat for a number hollow-dependent threatened species listed at both the State and National levels including the Powerful Owl, Masked Owl, Barking Owl, Glossy Black Cockatoo, Gang-gang Cockatoo, Squirrel Glider, Brush-tailed Phascogale and the Greater Glider, which have all been recorded locally. The Greater Glider population in the Eurobodalla is particularly significant and is listed as endangered under the TSC Act. It is restricted to a small area between the Moruya River, Coila Lake and the Princes Highway. The Greater Glider is also listed as Vulnerable under the Commonwealth's Environment Protection and Biodiversity Conservation (EPBC) Act 1999.

The Bangalay Sand Forest also provides important foraging resources for a number of other threatened species, some of which are listed as critically endangered and endangered under State and Commonwealth legislation including the Swift Parrot and the Grey-headed Flying-fox, which have been recorded in the local area.

In 1979 Council issued a development consent for sand extraction on the private land through which this section of Congo North Road runs. One of the conditions of this consent was that any tree removal within the area to be mined required permission from Council. Aerial photos of this land from 1979 onwards (attached) show progressive removal of trees as the sand extraction area expanded. In 2017, in response to questions from the community about this tree removal, Council advised in writing that there was no record of any application being lodged with them to remove vegetation associated with the sand mine. I do not know whether Council ever followed this matter up or took any regulatory action.

The ability of Council to take legal action in relation to this past clearing has now lapsed, but any further tree removal within the area to be sand-mined requires Council permission, as per the consent conditions. Given the biodiversity significance of the Bangalay trees that remain on this land and the fact that they are now listed as threatened under State and Commonwealth legislation, means Council cannot give permission for further clearing without carefully considering the current levels of legislative protection afforded this endangered vegetation and undertaking the appropriate level of environmental assessment to justify any decision they make. Further tree removal may be deemed unacceptable on biodiversity grounds, in which case expansion of sand quarry across Congo Road North could not proceed. This would provide Council with the option of acquiring this section of Congo Road North and formalising the existing gravel road, as was originally intended in 1999/2000.

The second option discussed in the report for this Agenda Item is to relocate Congo North Road so that it runs along the northern edge of Lot 197 DP 752151 adjacent to Congo Creek. Environmentally, this is not

an option. There are wetlands in this area which support Swamp Oak Forest and Coastal Saltmarsh listed as EECs under the NSW TSC Act and now protected under the BC Act. They also provide habitat for a number of threatened species listed at the State and National level including the Australasian Bittern, Green and Golden Bell Frog, Giant Burrowing Frog, Pied Oystercatcher, Hooded Plover and the Eastern Curlew, which have been recorded locally. Temperate Coastal Saltmarsh is also listed as Vulnerable and Coastal Swamp Oak Forest as Endangered under the Commonwealth's EPBC Act.

These wetlands are mapped under the NSW Coastal Management State Environmental Planning Policy (SEPP) 2018 as Coastal Wetlands, which restricts the uses to which they can be put. They are also zoned C2 Environmental Conservation under the Eurobodalla Local Environment Plan 2012, which prohibits most types of development. These C2 lands are excluded from the NSW Local Land Services Act 2016 with small sections being identified as Category 2 Sensitive Regulated Land and Protected Riparian Land. This prevents vegetation clearing under the Land Management (Native Vegetation) Code 2018 and further limits the range of activities allowable on these lands.

In addition, the land along Congo Creek is part of a riparian corridor. Activities allowable on this land are very limited and are subject to the NSW Water Management Act 2000. Consequently, they may require approval from the NSW Office of Water because of the important environmental functions that riparian corridors play in relation to water quality, flooding, wildlife habitat and connectivity across the landscape. Planning overlays also recognise this land as part of a biodiversity corridor which is important for landscape-scale habitat connectivity because Congo Creek is sufficiently narrow at this point for fauna to cross. Council's own GIS mapping shows that the land contains Acid Sulfate Soils less than a meter below the surface. If disturbed, these soils release sulfuric acid which would enter Congo Creek and impact on the animals and plants living there.

It is clear that the option to relocate Congo Road North along Congo Creek is not feasible, and the notion that compensation should be paid, not only for this land but also for the sand resources below it, in exchange for providing a public road reserve, is misguided. The approval for the current sand mine does not cover the land along Congo Creek, so a new development application would need to be submitted to extend the mine into this area. However, given all of the constraints that apply to this land, it is extremely unlikely that consent would be granted.

Consequently, I urge councillors to vote to defer any decision on the 2 options Council has put forward in this Agenda Item until a range of other more practical options have been explored as part of an independent review undertaken in consultation with the affected community.

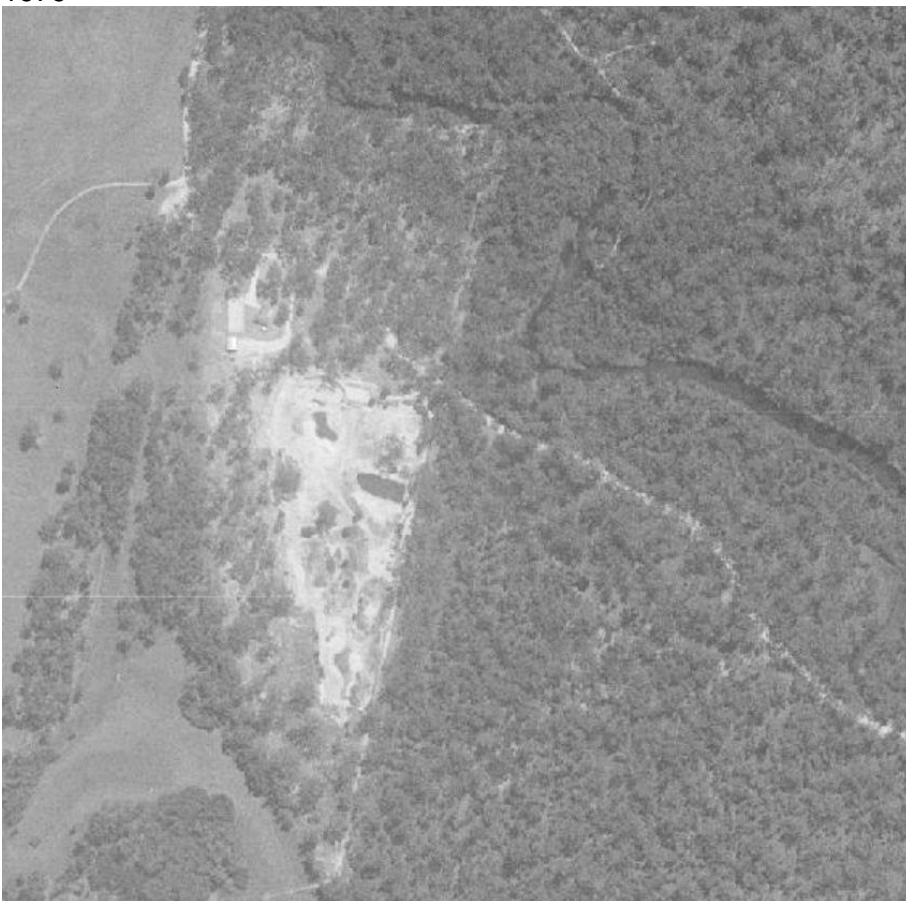
Thank you

Deborah Stevenson

Aerial photos showing the incremental clearing of trees on Lot 197 DP 752151 as the sand mining operation expands



1979



1989



1999

GMR22/054 Congo Road North Impact Statement by Ian and Catherine Taylor of 341 Congo Rd, Congo, 2537.

I, Catherine Taylor am making this submission because it is in the public interest both residents and councillors to be made aware of Ian and my involvement as original land owners of Congo Road.

We, Ian and Catherine Taylor purchased our land in 1986 with the knowledge and expectation that we would always be able to access Congo along Congo Road across the bridge, except in flood times - 5 min drive or 10 minute cycle.

We have lived here since 1987, reared 5 children and now have 12 grandchildren who love coming to stay. The beach is a central part of our lives, along with our friends within the Congo community.

In 1999 Council contacted us to exchange the crown/ cadastral roads that were gazetted on our property for the existing Congo Road which we owned.

My impression at that time was that all land holders that owned land which the Congo Road went through, were approached. In short, I understood that any land holder that didn't wish to comply would be sent a compulsory purchase order by the council.

I remember having discussions with the council about the possibility of us being blocked by other land holders, closer to the Beach. We were verbally assured that this was not a possibility; all interested parties were keen to get the Congo Road hill tarred and our ownership of this land was preventing this upgrade. In good faith we exchanged our land and were compensated by council for the

increased area of land we owned above the crown reserve, which we traded.

I feel quite traumatised and unjustly violated as it appears to us that we have been treated very differently to other landholders.

When we first owned the land we had access to town and Congo Beach via Pedro Point and Congo Rd North . Both routes are now blocked, NSW Parks have installed a locked gate at the Pedro point route which is also impassable due to extremely dangerous road conditions. Congo Road North is also inaccessible “for the foreseeable future”.

What is the ESC’s plan to provide our alternative safe fire escape options?

My husband is in the local fire brigade and these road closures and dangerous road conditions reduce the ability of Local Bush Fire Brigades to safely respond to action fire mitigation strategies. We may be trapped, can't go west, can't access the beach and can't go East. Fires start quickly. I am glad it is “La Nina” weather patterns while we work out a solution. If this was 2019 I would be given no option other than to move house in order to feel safe.

We are concerned about increased cost to access our community economically, socially and psychologically.

Our lifestyle has been significantly affected by the ‘road closure’ in the following ways.

Impact on Ian and Catherine:

- I need to swim/surf in the ocean daily for health reasons. As I have scoliosis this recreational option is accessible and means that I am fully mobile and not in a wheelchair. My spinal surgeon was amazed when he did an MRI of my spine how amazed I was walking let alone fully mobile. Now my direct access to Congo Beach is closed impacts on my ability to access this as a regular recreational option.
- I am 63 years old and my aged care plan was to be able to ride a power scooter to my favourite beach. I have to rethink my aged care solutions.
- I also regularly walk my daughter's dog and Congo is the closest dog beach. Now I have to travel for over 25 minutes to access an off leash dog beach.
- My close friends are in Congo. I am old fashioned and like to see my friends face to face. I feel isolated and left out as social opportunities have to be organised. It is too difficult for friends to visit on the way to town. I am feeling an increased risk of social isolation.
- Increase the cost of fuel to access our local beach.
- Anger and frustration that we appear to have been treated differently to the other residents. Why were we given different opinions? We made the mistake of not getting agreements such as
 - Permanent direct access to Congo Community except in flood times

- Verbal threat of a compulsory purchase order if we didn't agree to the transfer of land.
- Ian is 78 in February and he has to have a yearly health check each year to maintain his licence. I am concerned that at some time in the future he may be given a restricted licence which will in essence prevent him from seeing his friends in Congo as he won't be allowed to drive along the highway. He will have to rely on me to drive him there. If he drove he would place himself at increased risk of a fatality, either his own or someone else.
- Ian is concerned that his friends from Congo are ageing and they are also at increased risk of being killed on the Bingi Rd/Princess Highway intersection.
- Loss of land value at being unable to access our local beach.

I request that there be an independent review to identify and assess all available options. In this way ESC would be in a better position to resolve the Congo Road Access issue using high quality consultation and conflict resolution processes.

I request that Council negotiate with National Parks to grade North Congo Road, as a minimum, so it can be used as a fire exit and fire mitigation access without potholes. Our arrangement with the Rural Fire Service is they access this road through our property to provide fire control support. Potholes increase the fire danger to life to the RFS volunteers, South Heads and Congo communities.

Signed Ian Taylor and Catherine Taylor 09.05.2022