



AGENDA

Ordinary Meeting of Council

30 April 2024

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 30 APRIL 2024

COMMENCING AT 12.30PM

AGENDA

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

- 1. WELCOME**
- 2. ACKNOWLEDGEMENT OF COUNTRY**
- 3. APOLOGIES**
Nil
- 4. CONFIRMATION OF MINUTES OF PREVIOUS MEETING**
4.1 Ordinary Meeting held on 16 April 2024
- 5. DECLARATIONS OF INTEREST OF MATTERS ON THE AGENDA**
(Declarations also to be made prior to discussions on each item)
- 6. PUBLIC FORUM**
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- 8. NOTICES OF MOTION**
Nil
- 9. QUESTIONS ON NOTICE FROM COUNCILLORS**
Nil
- 10. PETITIONS**
Nil

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Nil

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WARWICK WINN
GENERAL MANAGER

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MR24/001 EUROBODALLA REGIONAL HOSPITAL

File Ref: S006-T00016

Attachments: Nil

EXECUTIVE SUMMARY

This Mayoral Minute requests Council's support to lobby the NSW Government to ensure the opening of Eurobodalla's new regional hospital at the end of 2025 continues to provide high levels of health care for all Eurobodalla residents.

The NSW Government has been clear that the opening of the new Level 4 regional hospital in Moruya requires the closure of both Moruya and Batemans Bay hospitals.

I want to acknowledge the concerns of the Batemans Bay advocacy group and their supporters calling for the Batemans Bay hospital emergency department to remain open.

While Council has no jurisdiction in health matters, we can lobby to make sure state and federal governments are concentrating their efforts on quality health outcomes for all Eurobodalla residents.

The health of our community is not a political issue, and I would like to see a continued dialogue between all levels of government and community groups to get the best outcome.

Prioritising construction of the Moruya Bypass is essential. This new road and bridge around the Moruya CBD will provide direct access to the hospital, ensuring efficient transport to and from the hospital for residents and emergency services in the north of the shire.

To support better access to urgent medical care, consideration should also be given to opening the Batemans Bay Urgent Care Clinic 24/7. This new clinic established by the Australian Government is currently open Monday-Sunday 8am-6pm. It offers free, immediate treatment for non-life-threatening conditions. Extended opening hours once Batemans Bay Hospital closes, even for an interim period, could support better health outcomes for Eurobodalla residents.

Increasing the number of paramedics in the shire by augmenting our local ambulance services should also be considered.

I seek Council's support of these measures on behalf of Eurobodalla's residents.

RECOMMENDATION

THAT Council:

1. Advocate to the NSW Government to prioritise construction of the Moruya Bypass to provide direct and efficient access to the hospital from the north of the shire.
2. Advocate to the NSW Government for increased ambulance services in the north of the shire to coincide with the opening of the new Eurobodalla Regional Hospital.
3. Advocate to the Australian Government to extend opening hours of the Batemans Bay Urgent Care Clinic to 24/7 to coincide with the opening of the new Eurobodalla Regional Hospital.

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GMR24/002 GRANTS STRATEGY 2024-28

S014-T00005

Responsible Officer: Warwick Winn - General Manager

Attachments: 1. Under Separate Cover - 2024-28 Grants Strategy

Community Goal: 5 Our engaged community with progressive leadership

Community Strategy: 5.2 Proactive, responsive and strategic leadership

Delivery Program Link: 5.2.2 Implement effective governance and long-term planning

Operational Plan Link: 5.2.2.3 Seek grants funds to support identified priority works and services

EXECUTIVE SUMMARY

Council's Grants Strategy 2024-28 outlines the new strategic approach that Council will take to determine the suitability to advocate for, apply for, and administer grant funds.

Recommendations and actions within this Strategy align with Council's Finance Strategy 2024-2028 and its finance-led and delivery-focused approach.

RECOMMENDATION

THAT Council endorse the Grants Strategy 2024-28.

BACKGROUND

The Australian and NSW Government invest a significant amount of grant funding in local government projects and programs on an annual basis. Eurobodalla Council's average annual income from government grants over the last five financial years is more than \$71 million. Without this additional investment, many of our projects and programs, and the subsequent benefits to our community would not be possible.

The grants sector is undergoing significant change. The Australian Government has recently undertaken a review of federal grant programs and has advised that the community can expect changes to how grants are awarded and administered. Similarly, the NSW Government has also advised they are undertaking a review of their grant funding programs, particularly in relation to local government, not-for-profits and community groups.

Council has acknowledged that the way we approach grants must be done differently. To become more financially sustainable, we must become a finance-led and delivery-focused organisation. The Grants Strategy 2024-28 is one of the 12 actions within the Finance Strategy 2024-28 that was adopted by Council in December 2023.

CONSIDERATIONS

Many NSW councils are in financial trouble, with 17 applying for a special rate variation in 2023. Eurobodalla Council did not apply for a special variation in 2023, but - like many councils across the state - Council is facing a serious, ongoing operating deficit in our general fund. The general fund delivers most Council's services to the community, apart from water, sewer and waste.

GMR24/002 GRANTS STRATEGY 2024-28

S014-T00005

Since the start of 2023, staff and councillors have managed to reduce the general fund operating deficit from \$14M to \$11M. This was achieved by reprioritising and staging Council's work plan and by using grant funds to support already programmed works and services.

Council is grateful for the significant amount of Commonwealth and NSW Government investment in our community via grants over recent years. This funding enabled Council and the community to repair, rebuild and recover faster than we would have been able to without it. The time has now come to look carefully at our approach to seeking grant funding.

Recommendations and actions within the attached Grants Strategy 2024-28 align with Council's Finance Strategy 2024-2028 that was adopted in December 2023. Once the 12 prioritised actions within the Grants Strategy have been implemented, outcomes include:

- Enhanced oversight of Council's grant funded projects
- Alignment of Council's grant funded projects with Council's core business and the expectations of our community
- Improved governance for the administration of grant funding
- Reduced risk of seeking funding for projects that are unsuitable, unachievable or that place an ongoing financial burden on Council and ratepayers
- Greater awareness for staff of their obligations and responsibilities when seeking grant funds, no matter the size of the project or funding being sought
- A clearer understanding for the community of Council's current financial position and the impact large grant funded projects can have on the existing operating deficit and resourcing
- The NSW and Commonwealth Governments, our local Members of Parliament and the community are aware of Council's new approach to grant funding.

Policy

Council's Grants Strategy has been developed as a mechanism to enact the underlying principles in Council's recently adopted Finance Strategy and the existing Fiscal Responsibility Policy. An action within the Grants Strategy is for a future review of Council's existing Community Grants Policy. This policy guides Council's approach to the distribution of grants to the community through Section 356 of the *Local Government Act 1993*.

The outcomes of the Grants Strategy are consistent with the aspirations and activities identified in the Community Strategic Plan (Our Eurobodalla 2042) and Delivery Program 2022-26.

Community and Stakeholder Engagement

Information regarding Council's current financial situation, challenges and the development of a Finance Strategy and Grants Strategy is available on Council's website on the Financial forecast page.

Three community information sessions were held in May 2023 and similar sessions were held in April 2024 to keep the community informed of Council's financial position. The community is also reminded of Council's financial situation through media releases and Council's own communication channels.

GMR24/002 GRANTS STRATEGY 2024-28

S014-T00005

During development of the draft Grants Strategy, Council's Grants Manager undertook an extensive internal staff consultation process from December 2023 through to April 2024. This was to ensure that key staff and teams within the organisation that work closely with grant funded projects had the opportunity to provide feedback and commentary on the draft Strategy. The final draft Grants Strategy incorporated much of the invaluable feedback, suggestions, and recommendations from these staff.

CONCLUSION

The Grants Strategy 2024-28 outlines the new strategic approach that Council will take to determine the suitability to advocate for, apply for, and administer grant funds. The Strategy outlines 12 priority actions that align with Council's Finance Strategy 2024-2028 and its finance-led and delivery-focused approach

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GMR24/003 2024 RURAL AND REGIONAL SUMMIT

**S004-T00019;
S012-T00025**

Responsible Officer: Warwick Winn - General Manager

Attachments: Nil

Community Goal: 5 Our engaged community with progressive leadership

Community Strategy: 5.2 Proactive, responsive and strategic leadership

Delivery Program Link: 5.2.2 Implement effective governance and long-term planning

Operational Plan Link: 5.2.2.1 Assist the Council in meeting its statutory obligations and roles

EXECUTIVE SUMMARY

Council has a commitment to continuing professional development for Councillors. Attendance at local government sector conferences provides the individual Councillor with new skills and knowledge on particular issues to ensure they can perform their duties and represent residents to the best of their ability. It provides opportunities for networking and advocacy with councillors from other local government areas.

This report outlines a conference not included in the 2024 conference attendance report resolved by Council in the February 2024 Ordinary Council Meeting.

The conference is the 2024 Rural and Regional Summit on 9 May 2024 in Sydney NSW.

Under the *'Councillor's Professional Development, Expenses and Facilities'* Policy, Councillors are entitled to an annual amount of \$3,500 each per year to attend conferences and seminars. The policy normally limits attendance at each conference to two councillors, and best practice recommends one councillor per conference.

Given the significance of the topics being discussed, including a review of the local government financial model, it is recommended the Mayor attend to represent the shire.

Attendance at the 2024 Rural and Regional Summit was not included in the February 2024 conference attendance resolution, and as per policy, councillor attendance at this conference is subject to a resolution of Council.

RECOMMENDATION

THAT:

1. The Mayor be endorsed to attend the 2024 Rural and Regional Summit to represent the shire.
2. Council determine which Councillor/s, in addition to the Mayor, attend the 2024 Regional and Rural Summit.
3. Council representatives be reimbursed out of pocket expenses in accordance with the *'Councillors' Professional Development, Expenses and Facilities'* Policy.
4. Councillors to provide a written delegates report following the Conference that will be available to the public on Council's website and at the Moruya Administration Offices.

GMR24/003 2024 RURAL AND REGIONAL SUMMIT

**S004-T00019;
S012-T00025**

BACKGROUND

The **2024 Rural & Regional Summit** is held on 9 May 2024 at the State Library in Sydney NSW.

This summit is an opportunity to discuss the pressing challenges facing rural and regional communities. This year's summit agenda includes a review of the financial model for local government, case studies in rural and regional local government sector, a panel discussion on the vision for rural and regional NSW, an update from the NSW Reconstruction Authority and presentations from key NSW Government ministers. This summit will discuss solutions aimed at bolstering the socio-economic landscape of NSW's rural and regional areas. Conference and registration brochures are available through the conference website: [Rural-Regional Summit home - Overview | LGNSW](#)

Given the significance of the topics being discussed, including a review of the local government financial model, it is recommended the Mayor attend to represent the shire.

CONSIDERATIONS

Policy

Under the '*Councillor's Professional Development, Expenses and Facilities*' Policy, Councillors are entitled to an annual amount of \$3,500 each per year to attend conferences and seminars. The policy normally limits attendance at each conference to two councillors, and best practice recommends one councillor per conference.

Attendance at the 2024 Rural and Regional Summit was not included in the February 2024 conference attendance resolution, and as per policy councillor attendance at this conference is subject to a resolution of Council.

Councillors attending training, seminars and conferences are to provide a detailed report to Council on the outcome and issues. Where there are a number of Councillors attending the same conference, a joint report is acceptable.

Financial

Councillors are allocated the annual sum of \$3,500 each per year to attend conferences and/or seminars, as per the '*Councillor Professional Development, Expenses and Facilities*' Policy. Councillors should check their allowance before nominating for this conference.

CONCLUSION

It is considered appropriate that Councillors attend relevant local government sector conferences throughout the year to enable them to be knowledgeable and up-to-date on key issues, ensuring they can perform their duties and represent residents to the best of their ability.

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**PSR24/007 DRAFT VOLUNTARY PLANNING AGREEMENT - 54 HAWDON
STREET, MORUYA AND 34 MURRAY STREET, MORUYA**

**S019-
T00003**

Responsible Officer: Gary Bruce - Acting Director Planning & Environment

Attachments: 1. Voluntary Planning Agreement

Community Goal: 3 Our region of vibrant places and spaces

Community Strategy: 3.1 Balance development between the needs of people, place and productivity

Delivery Program Link: 3.1.2 Provide receptive and responsive development assessment services

Operational Plan Link: 3.1.2.1 Assess and determine development applications

EXECUTIVE SUMMARY

The purpose of this report is to seek a Council resolution to accept the Voluntary Planning Agreement (VPA) with the owners of 54 Hawdon Street (Lot 82 DP 614216) and 34 Murray Street, Moruya (Lot 102 DP 722139).

The VPA is to facilitate the construction of a public road and stormwater infrastructure, allowing the owner of 54 Hawdon Street, Moruya and 34 Murray Street, Moruya to drain stormwater in connection with development applications DA0619/22 and DA0090/24.

The land subject to the proposed VPA is within a block of land contained by Campbell Street, Hawdon Street, Murray Street and Thomas Street, Moruya. The *Eurobodalla Local Environmental Plan 2012* has designated a future road through this land. The part of the proposed road corridor zoned SP2 Infrastructure and identified for acquisition remains in private ownership. The majority of the road corridor is otherwise owned by Council and is operational land under the *Local Government Act 1993*.

The area of land is also part of the South Moruya Infrastructure grant comprising approximately \$11.5 million with grant funding only permitted to be used on public land. Part of this grant has been allocated to this project and would fund the construction of the proposed road and stormwater infrastructure.

The VPA was publicly exhibited for a period for 28 days and no submissions were received during this time. It is therefore recommended that Council resolve to accept the Voluntary Planning Agreement.

RECOMMENDATION

THAT Council ratify the draft Voluntary Planning Agreement between Eurobodalla Shire Council and the landowners of 54 Hawdon Street, Moruya (Lot 82 DP614216) and 34 Murray Street, Moruya (Lot 102 DP 722139) and add to Council's Planning Agreements Register.

BACKGROUND

In September 2022, Council refused development application DA0619/22 lodged by Surf All Day Pty Ltd for the construction of a multi-dwelling housing development at 54 Hawdon Street, Moruya. The application was refused because the site is in an overland flow path and the development proposed to fill the land above the flood planning level and to direct the

**PSR24/007 DRAFT VOLUNTARY PLANNING AGREEMENT - 54 HAWDON
STREET, MORUYA AND 34 MURRAY STREET, MORUYA**

**S019-
T00003**

stormwater and flood waters around the site. This proposal would have increased the depth and flow of floodwaters on adjoining properties.

The applicant appealed the decision to the NSW Land and Environment Court and these proceedings are ongoing. Following conciliation, the applicant has embarked on a process of amending the application to remove a significant extent of fill to ensure the pre-and-post floodwaters remains largely unchanged, develop a stormwater solution and update the flood report to demonstrate minimal impact on adjoining properties.

There are a number of contentions, most notably about stormwater disposal and flood affectation, but also includes some planning contentions. These have been largely resolved except for the legal disposal of stormwater.

In August 2023 the applicant (Surf All Day Pty Ltd) and a co-owner (Penketham Property Pty Ltd) also lodged development application DA0090/24 for the development of multi-dwelling housing at 34 Murray Street, Moruya. The property is within the same block and is downstream of 54 Hawdon Street. This development application also relies on the same stormwater management plan as DA0619/22 and would benefit through the construction of road and stormwater infrastructure. The property (34 Murray Street) would also be required to dedicate to Council land zoned SP2 Infrastructure for the purposes of constructing the road and stormwater infrastructure.

CONSIDERATIONS

The draft VPA is required to permit Surf All Day Pty Ltd and Penketham Property Pty Ltd to dedicate land to Council and in return provide an easement over Council operational land. The VPA would compel the applicant to dedicate the land and require Council to construct the road and stormwater infrastructure by the end of 2025. This is consistent with Council's works program.

Section 7.5 of the *Environmental Planning and Assessment Act 1979* requires that public notice of a draft VPA be made before the agreement is entered into. Public exhibition of the draft VPA was undertaken and during this time, no submissions were received.

Legal

The *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2021* provide guidance on the processes involved in the acceptance of a VPA. These guidelines have been duly followed.

Recent case law has indicated that Council cannot accept land dedication without a VPA being in place. This is addressed in advice from Sparke Helmore dated 11 December 2023. Sparke Helmore have recommended the offer is accepted by Council for several reasons in the context of the current legal proceedings.

Policy

Council has a policy on Voluntary Planning Agreements and the proposal has been developed in conjunction with policy.

**PSR24/007 DRAFT VOLUNTARY PLANNING AGREEMENT - 54 HAWDON
STREET, MORUYA AND 34 MURRAY STREET, MORUYA**

**S019-
T00003**

Environmental

There are no environmental considerations as part of the VPA process. Environmental considerations were assessed with the development application.

Asset

The purpose of the VPA is to facilitate the construction of road and stormwater infrastructure. The funds for the construction of this infrastructure come from the South Moruya Infrastructure grant.

Social Impact

There are no social considerations as part of the VPA process. Social considerations were assessed with the development application and Court appeal.

Economic Development Employment Potential

There are no economic development considerations as part of the VPA process. Economic development considerations were assessed with the development application.

Financial

The purpose of the VPA is to facilitate the construction of road and stormwater infrastructure. The funds for the construction of this infrastructure come from the South Moruya Infrastructure grant.

Community and Stakeholder Engagement

Council placed the draft VPA on public exhibition for a period of not less than 28 days. The draft VPA was on exhibition during March and April 2024. No submission were received during exhibition period.

CONCLUSION

This report seeks Council ratification of the draft Voluntary Planning Agreement between Eurobodalla Shire Council and the landowners of 54 Hawdon Street, Moruya (Lot 82 DP614216) and 34 Murray Street, Moruya (Lot 102 DP 722139) and add to Council's Planning Agreements Register.

The VPA would permit Council to construct much needed public infrastructure, including road and stormwater infrastructure. The VPA would also resolve the contentions around an appeal currently being considered by the NSW Land and Environment Court.

The construction of the road and stormwater infrastructure would also allow other residential zoned land to be developed for housing.



Voluntary Planning Agreement

Surf All Day Pty Ltd

ACN 627 817 181

Penketham Property Pty Ltd

ACN 654 716 426

Eurobodalla Shire Council

ABN 47 504 455 945

Newcastle

Level 7, Sparke Helmore Building, 28 Honeysuckle Drive, Newcastle NSW 2300
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Agreement

Date [insert at execution]

Parties

First party

Name Surf All Day Pty Ltd (**Surf All Day**)
ACN 627 817 181
Contact [REDACTED]
Telephone [REDACTED]
Email [REDACTED]

Second party

Name Penketham Property Pty Ltd (**Penketham**)
ACN 654 716 426
Contact [REDACTED]
Telephone [REDACTED]
Email [REDACTED]

Third Party

Name Eurobodalla Shire Council (**Council**)
ABN 47 504 455 945
Contact Gary Bruce
Telephone [REDACTED]
Email Gary.Bruce@esc.nsw.gov.au

Background

- A. On 14 April 2022, Surf All Day lodged the Hawdon Street DA seeking Development Consent to carry out the Hawdon Street Development.
- B. On 31 August 2023, Penketham and Surf All Day lodged the Murray Street DA seeking Development Consent to carry out the Murray Street Development.
- C. The Council is the consent authority under Part 4 of the Act for the Murray Street DA and the Hawdon Street DA.
- D. Surf All Day and Penketham have made an offer to enter into this agreement in connection with the Hawdon Street DA and the Murray Street DA to make contributions for public purposes if Development Consent is granted.

Operative part

1 Definitions

In this agreement, unless the context indicates a contrary intention:

Act means the *Environmental Planning and Assessment Act 1979* (NSW);

Address means a party's address set out in the Notices clause of this agreement;

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement;

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person, agency or entity and includes a certifier accredited under the *Building Professionals Act 2005* (NSW);

Business Day means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays;

Claim means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this agreement;

Construction Certificate means a construction certificate as defined under section 6.4 of the Act;

CPI means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics;

Damages means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

Dealing, in relation to the Hawdon Street Land and the Murray Street Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Hawdon Street Land and the Murray Street Land;

Dedication Land means that part of the Murray Street Land that is zoned SP2 Infrastructure under the *Eurobodalla Local Environmental Plan 2012* at the date of this agreement;

Developers means Surf All Day and Penketham;

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

Funding Deed means the Accelerated Infrastructure Fund Funding Deed – Round 3 dated 4 April 2023 between the Crown in right of New South Wales through the Department of Planning and Environment and Eurobodalla Shire Council;

Grant Funding means the funding provided by the Department of Planning and Environment under the Funding Deed;

GST has the same meaning as in the GST Law;

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition of or administration of the GST;

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Hawdon Street DA means development application DA0619/22;

Hawdon Street Development means the development proposed under the Hawdon Street DA described as the Torrens title subdivision lot into two Torrens title lots and the construction of multi dwelling housing on the Hawdon Street Land;

Hawdon Street Land means Lot 82 DP 614216 known as 54 Hawdon Street, Moruya;

Law means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

Modification Application means any application to modify the Development Consent under section 4.55 of the Act;

Murray Street DA means development application DA0090/24;

Murray Street Development means the development proposed under the Murray Street DA being development described as the demolition of an existing dwelling and construction of multi dwelling housing on the Murray Street Land;

Murray Street Land means Lot 102 DP 733139 and known as 34 Murray Street, Moruya;

Proposed Road means the road shown in Road Plan at Annexure A which Council intends to open as a public road under the Roads Act;

Register means the Torrens title register maintained under the *Real Property Act 1900* (NSW);

Stormwater Infrastructure means the stormwater infrastructure shown in the Road Plan at Annexure A.

Regulation means the *Environmental Planning and Assessment Regulation 2021*;

Roads Act means the *Roads Act 1993* (NSW).

2 Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and

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- their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO or managing director)** the president, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;
- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in City or State, Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
- (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (t) **(month)** a reference to a month is a reference to a calendar month; and

- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

3 Planning Agreement under the Act

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 1 of this agreement summarises the requirements for planning agreements under section 7.4 of the Act and the way this agreement addresses those requirements.

4 Application of this agreement

This agreement applies to:

- (a) the Hawdon Street Development and the Murray Street Development; and
- (b) the Hawdon Street Land and the Murray Street Land.

5 Operation of this agreement

This agreement commences on and from the date it is executed by all parties.

6 Contributions to be made under this agreement

6.1 Dedication of Land

- (a) Within six (6) months from the grant of Development Consent for the Hawdon Street DA or the Murray Street DA, whichever occurs later, the Developers must dedicate or cause to be transferred to the Council, at no cost to the Council, the Dedication Land freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land, including but not limited to, municipal rates and charges, water rates and land tax.
- (b) The obligation to dedicate the Dedication Land will be taken to have been satisfied when either a certificate of title or electronic equivalent is issued by NSW Land Registry Services for the whole of the Dedication Land identifying the Council as the registered proprietor of that land without encumbrances or when the Dedication Land is dedicated to Council by operation of the registration of a plan of subdivision in accordance with section 9 of the Roads Act.
- (c) The parties agree and acknowledge that the dedication of the Dedication Land serves the public purpose of opening and providing for public roads under the Roads Act .

7 Opening of public road and creation of drainage easements

- (a) Subject to clause 7(b), the Council will:
 - (i) take all reasonably necessary steps to open the whole or part of the Proposed Road as a public road under the Roads Act as Council sees fit; and
 - (ii) take all reasonably necessary steps to obtain all required Approvals and construct the whole or part of the Proposed Road, including the Stormwater Infrastructure, by December 2026 or later date as agreed between the parties; and

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- (iii) create any necessary easements under either section 88A or section 88B of the *Conveyancing Act 1919* that Council considers are reasonably necessary for the Hawdon Street Land and/or the Murray Street Land to lawfully discharge stormwater via the Stormwater Infrastructure.
- (b) Council is not required to comply with any requirements under clause 7(a)(i) to (iii) unless Council receives payment, or is entitled to receive payment, of the Grant Funding for the Proposed Road under the Funding Deed.
- (c) If clause 7(b) applies, and the Dedication Land has been dedicated or transferred under cl 6.1, the Council must pay compensation for the dedication or transfer of the Dedication Land to the Developers to be determined at the date of dedication or transfer in accordance with s 54(1) of the *Land Acquisition (Just Terms Compensation) Act 1991*.

8 Proposed Road and Stormwater Infrastructure

- (a) The parties acknowledge and agree:
 - (i) The Proposed Road and Stormwater Infrastructure shown in the Road Plan at Annexure A has been prepared by Council as a concept plan.
 - (ii) The concept design for the Stormwater Infrastructure takes into account the stormwater management requirements for the Hawdon Street DA and the Murray Street DA.
 - (iii) The Proposed Road and Stormwater Infrastructure is subject to detailed design and Council may at its sole discretion approve, vary or direct a variation of, the Proposed Road or Stormwater Infrastructure as it considers necessary for the design or construction of the Proposed Road or Stormwater Infrastructure.
 - (iv) The Developers will not oppose or object to the construction of the Proposed Road or Stormwater Infrastructure.

9 Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development

- (a) This agreement does not exclude the application of section 7.11 of the Act to the Hawdon Street Development or the Murray Street Development.
- (b) This agreement does not exclude the application of section 7.12 of the Act to the Hawdon Street Development or the Murray Street Development.
- (c) This agreement does not exclude the application of section 7.24 of the Act to the Hawdon Street Development or the Murray Street Development.
- (d) The benefits under this agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.

10 Registration of this agreement

10.1 Developers' Interest

- (a) Surf All Day represents and warrants to the Council that on the date of this agreement it is the registered proprietor of the Hawdon Street Land.

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- (b) Surf All Day and Penkethem jointly and severally represent and warrant to the Council that on the date of this agreement they are the registered proprietors of the Murray Street Land.

10.2 Registration of this agreement

- (a) The Developers agree to procure the registration of this agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Hawdon Street Land and the Murray Street Land in accordance with section 7.6 of the Act.
- (b) The Developers at their own expense must, promptly after the execution of this agreement, take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Hawdon Street Land and the Murray Street Land registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in the Hawdon Street Land or the Murray Street land,
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant duplicate certificates of title or electronic equivalents,to enable the registration of this agreement in accordance with clause 10.2.
- (c) The Developers, at their own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
 - (i) to procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after this agreement comes into operation, but in any event, no later than 10 Business Days after that date; and
 - (ii) to procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this agreement is lodged for registration.

10.3 Removal from Register

The Council will provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the Hawdon Street Land or the Murray Street Land (or any part of it) provided the Council is satisfied the Developers have duly fulfilled their obligations under this agreement and are not otherwise in default of any of the obligations under this agreement.

10.4 Caveat

- (a) The Developers acknowledge and agree that:
 - (i) when this agreement is executed, the Council will have acquired and the Developers will have granted, an equitable estate and interest in the Hawdon Street Land and the Murray Street Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in the Hawdon Street Land and the

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Murray Street Land in respect of which to lodge a caveat over the Hawdon Street Land and the Murray Street Land notifying that interest; and

- (ii) they will not object to the Council lodging a caveat in the relevant folios of the Register for the Hawdon Street Land and the Murray Street Land nor will they seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (b) The Council must, at the Developers' cost, register a withdrawal of any caveat in respect of the Hawdon Street Land or the Murray Street Land within five Business Days after this agreement is registered in the relevant folios of the Register for the Land in accordance with clause 10.2.

11 Review of this agreement

- (a) This agreement may be reviewed or modified. Any review or modification of this agreement will be conducted in the circumstances and in the manner determined by the parties.
- (b) No modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.
- (c) A party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.

12 Dispute Resolution

12.1 Reference to Dispute

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

12.2 Notice of Dispute

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

- (a) the nature of the dispute,
- (b) the alleged basis of the dispute, and
- (c) the position which the party issuing the Notice of Dispute believes is correct.

12.3 Representatives of Parties to Meet

- (a) The representatives of the parties must promptly (and in any event within five Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting,
 - (ii) agree that further material or expert determination in accordance with clause 12.6 about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or

- (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

12.4 *Further Notice if Not Settled*

If the dispute is not resolved within ten Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (Determination Notice) by mediation under clause 12.5 or by expert determination under clause 12.6.

12.5 *Mediation*

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) the parties must agree to the terms of reference of the mediation within five Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;
- (b) the mediator will be agreed between the parties, or failing agreement within five Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) the mediator appointed pursuant to this clause 12.5 must:
 - (i) Have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) Have no interest or duty which conflicts or may conflict with his, her or their function as a mediator he, she or they being required to fully disclose any such interest or duty before his, her or their appointment;
- (d) the mediator shall be required to undertake to keep confidential all matters coming to his, her or their knowledge by reason of his, her or their appointment and performance of his, her or their duties;
- (e) the parties must within three Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within two Business Days of the resolution);
- (f) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) in relation to costs and expenses:
 - (i) each party will bear its own professional and expert costs incurred in connection with the mediation; and
 - (ii) the costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

12.6 *Expert determination*

If the dispute is not resolved under clause 12.3 or clause 12.5, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) the dispute must be determined by an independent expert in the relevant field:
 - (i) agreed upon and appointed jointly by the parties; and
 - (ii) in the event that no agreement is reached or no appointment is made within five Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) the expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) the determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
 - (i) within five Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
 - (ii) the determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

12.7 *Litigation*

If the dispute is not *finally* resolved in accordance with this clause 12, then either party is at liberty to litigate the dispute.

12.8 *No suspension of contractual obligations*

Subject to any interlocutory order obtained under clause 12.1, the referral to or undertaking of a dispute resolution process under this clause 12 does not suspend the parties' obligations under this agreement.

13 Enforcement

13.1 *Default*

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.

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- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 12 of this agreement.

13.2 *Compulsory Acquisition*

- (a) If the Developers do not dedicate the Dedication Land to Council as required by this agreement, the Council may compulsorily acquire the relevant land, in which case the Developers consent to the Council compulsorily acquiring that land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures in the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (b) Clause 13.2(a) constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (c) Except as otherwise agreed between the Developers and Council, the Developers must ensure the Dedication Land is freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, rights, charges, rates, strata levies and contracts, except as may be permitted by this agreement on the date that the Council will acquire the land in accordance with clause 13.2(a).
- (d) The Developers indemnify and keep indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the relevant land under clause 13.2(a).
- (e) The Developers must pay the Council, promptly on demand, an amount equivalent to all costs, including legal costs, incurred by the Council acquiring the whole or any part of the relevant land under clause 13.2(a).

13.3 *Restriction on the issue of Certificates*

In accordance with section 6.10(2) of the Act a Construction Certificate for any part of the Hawdon Street Development or the Murray Street Development must not be issued until the obligation in this agreement to dedicate the Dedication Land has been satisfied.

13.4 *General Enforcement*

- (a) Without limiting any other remedies available to the parties, this agreement may be enforced by any party in any Court of competent jurisdiction.
- (b) Nothing in this agreement prevents:
 - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and
 - (ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

14 Assignment and Dealings

14.1 Assignment

- (a) A party must not assign or deal with any right under this agreement without the prior written consent of the other parties.
- (b) Any change of ownership or control (as defined in section 50AA of the *Commonwealth Corporations Act 2001*) of a party (excluding the Council) shall be deemed to be an assignment of this agreement for the purposes of this clause.
- (c) Any purported dealing in breach of this clause is of no effect.

14.2 Transfer of Land

- (a) The Developers may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Hawdon Street Land or the Murray Street Land (present or future) or in the Hawdon Street Development or the Murray Steet Development to another person (**Transferee**) unless before they sell, transfer or dispose of that right, title or interest:
 - (i) the Developers satisfy the Council that the proposed Transferee is financially capable of complying with the Landowners obligations under this agreement;
 - (ii) the Developers satisfy the Council that the rights of the Council will not be diminished or fettered in any way;
 - (iii) the Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Developers (or the relevant Developer) under this agreement;
 - (iv) any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine, and
 - (v) the Developers and the Transferee pay the Council's reasonable costs in relation to the assignment.

15 Approvals and consents

Except as otherwise set out in this agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this agreement in that party's absolute discretion and subject to any conditions determined by the party. A party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

16 No fetter

16.1 Discretion

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to the Development Application or any other application for Development Consent (all referred to in this agreement as a '**Discretion**').

16.2 No fetter

No provision of this agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:

- (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,
- (b) in the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect, and
- (c) to endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

17 Notices

17.1 Notices

Any notice given under or in connection with this agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email at the address, or at the address last notified by the intended recipient to the sender after the date of this agreement:
 - (i) to Surf All Day : Level 1, Kamy Saeedi Law Building
1 University Avenue
Canberra ACT 2601
Email: mascitti@kslawyers.com.au
Attention: Michael Mascitti
 - (ii) to Penketham: Level 1, Kamy Saeedi Law Building
1 University Avenue
Canberra ACT 2601
Email: mascitti@kslawyers.com.au
Attention: Michael Mascitti
 - (iii) to Council: PO Box 99 Moruya NSW 2537
Email: Council@esc.gov.au
Attention: General Manager
- (c) is taken to be given or made:
 - (i) in the case of hand delivery, when delivered;
 - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of email:

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- (A) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above;
 - (B) when the Notice enters an information system controlled by the recipient; or
 - (C) when the Notice is first opened or read by the recipient,
whichever occurs first.
- (d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4:00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

18 General

18.1 *Relationship between parties*

- (a) Nothing in this agreement:
 - (i) constitutes a partnership between the parties; or
 - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
 - (i) bind another party; or
 - (ii) contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

18.2 *Time for doing acts*

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5:00 pm on the specified day, it is taken to have been done on the following Business Day.

18.3 *Further assurances*

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

18.4 *Variation*

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

18.5 *Counterparts*

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

18.6 *Legal expenses and stamp duty*

Each party is to bear its own costs in connection with negotiation, preparation, execution, carrying into effect and release and discharge of this agreement.

18.7 *Stamp duty*

The Developers agree to pay any stamp duty assessed on or in relation to this agreement and any instrument or transaction required by or necessary to give effect to this agreement.

18.8 *Entire agreement*

The contents of this agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

18.9 *Representations and warranties*

The parties represent and warrant that they have the power and authority to enter into this agreement and comply with their obligations under the agreement and that entry into this agreement will not result in the breach of any law.

18.10 *Severability*

If a clause or part of a clause of this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this agreement, but the rest of this agreement is not affected.

18.11 *Invalidity*

- (a) A word or provision must be read down if:
 - (i) this agreement is void, voidable, or unenforceable if it is not read down;
 - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 18.11(b) applies.

18.12 *Waiver*

- (a) A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- (b) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or

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breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

18.13 GST

- (a) Words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this agreement, the Developer must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

18.14 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

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Schedule 1 Summary of requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
<p>Planning instrument and/or Development Application – Section 7.4(1)</p> <p>The Landowners have:</p> <p>(a) Sought a change to an environmental planning instrument</p> <p>(b) Made, or propose to make a Development Application</p> <p>(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Description of the land to which the planning Agreement applies – Section 7.4(3)(a)</p>	<p>The Hawdon Street Land and the Murray Street Land as defined in Clause 1</p>
<p>Development to which the Planning Agreement applies – Section 7.4(3)(b)(ii)</p>	<p>Refer to Clause 4 and the definitions of the Hawdon Street Development and the Murray Street Development as defined in Clause 1.</p>
<p>The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(c)</p>	<p>Refer to Clause 6</p>
<p>Applicability of section 7.11 of the Act – Section 7.4(3)(d)</p>	<p>Refer to Clause 9</p>
<p>Applicability of section 7.12 of the Act – Section 7.4(3)(d)</p>	<p>Refer to Clause 9</p>
<p>Applicability of section 7.24 of the Act – Section 7.4(3)(d)</p>	<p>Refer to Clause 9</p>
<p>Mechanism for dispute resolution – Section 7.4(3)(f)</p>	<p>Refer to Clause 12</p>
<p>Enforcement of the Planning Agreement – Section 7.4(3)(g)</p>	<p>Refer to Clause 13</p>
<p>Registration of the Planning Agreement</p>	<p>Refer to Clause 10</p>
<p>No obligation to grant consent or exercise functions – Section 7.4(9)</p>	<p>See clause 16 (no fetter)</p>

PSR24/007 DRAFT VOLUNTARY PLANNING AGREEMENT - 54 HAWDON STREET, MORUYA
AND 34 MURRAY STREET, MORUYA

ATTACHMENT 1 VOLUNTARY PLANNING AGREEMENT

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Executed as an agreement

Executed by Surf All Day Pty ACN 627
817 181 in accordance with section 127 of
the *Corporations Act 2001* (Cth) by:

.....
Signature of Sole Director and Sole
Secretary

.....
Print name of Sole Director and Sole
Secretary

Executed by Penketham Property Pty
Ltd ACN 654 716 426 in accordance with
section 127 of the *Corporations Act 2001*
(Cth) by:

.....
Signature of Sole Director and Sole
Secretary

.....
Print name of Sole Director and Sole
Secretary

PSR24/007 DRAFT VOLUNTARY PLANNING AGREEMENT - 54 HAWDON STREET, MORUYA AND 34 MURRAY STREET, MORUYA

ATTACHMENT 1 VOLUNTARY PLANNING AGREEMENT

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Signed by Warwick Winn as authorised)
representative for Eurobodalla Shire)
Council ABN 47 504 455 945 who)
warrants that they are duly authorised to)
execute this document on behalf of)
Eurobodalla Shire Council in the)
presence of:)
)

.....

Signature of Witness

.....

Signature of Authorised Representative

.....

Print name of Witness

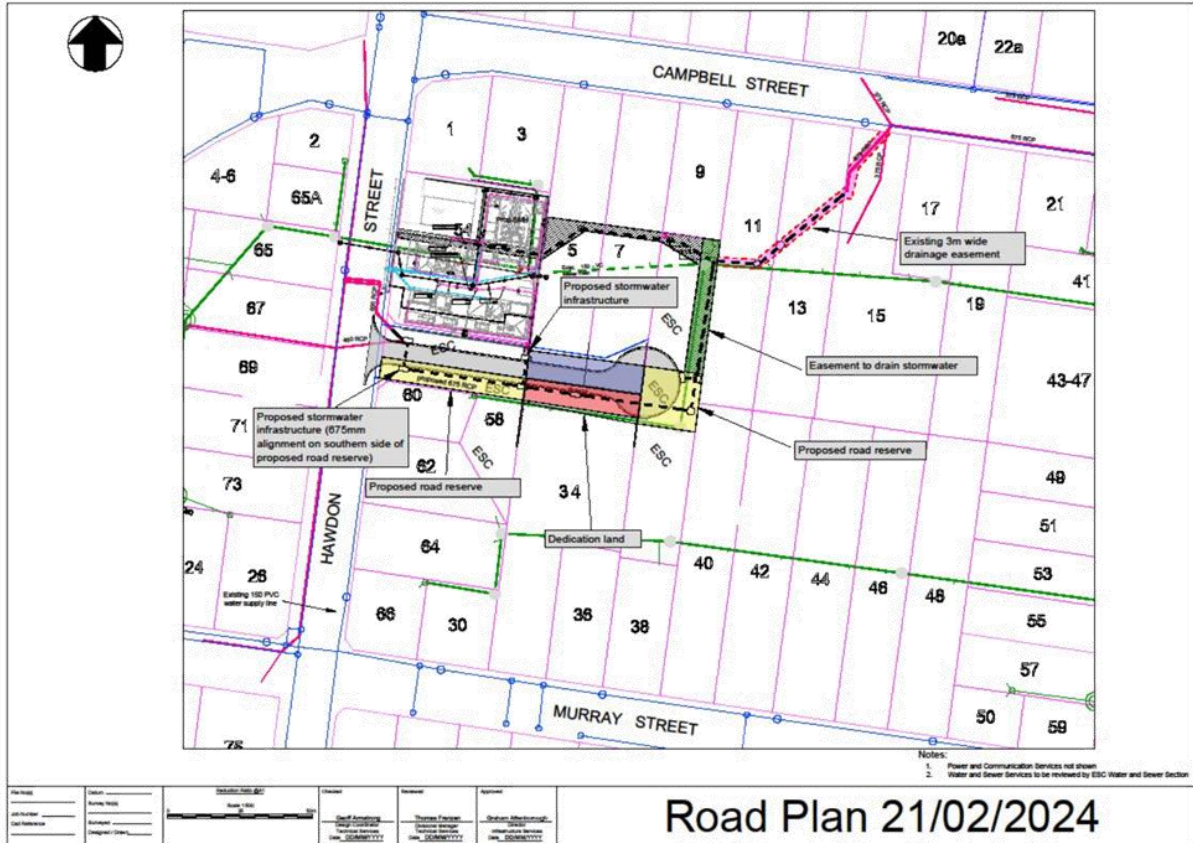
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Address of Witness

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Annexure A Road Plan



Annexure B Draft Explanatory note**Explanatory Note****Exhibition of draft Voluntary Planning Agreement****Lot 82 DP 614216 known as 54 Hawdon Street, Moruya and Lot 102
DP 733139 known as 34 Murray Street, Moruya***Environmental Planning and Assessment Regulation 2021 (clause 205)***Planning Agreement**

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft voluntary Planning Agreement (**the Planning Agreement**) under Section 7.4 of the *Environmental Planning and Assessment Act 1979 (the Act)*.

The Planning Agreement will require the dedication of land in connection with proposed development of land described as Lot 82 DP 614216 known as 54 Hawdon Street, Moruya and Lot 102 DP 733139 known as 34 Murray Street, Moruya.

This Explanatory Note has been prepared jointly between the parties as required by clause 205 of the *Environmental Planning and Assessment Regulation 2021 (the Regulation)*.

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

Parties

Surf All Day Pty Ltd and Penketham Property Pty Ltd (**the Developers**) made an offer to the Council to enter into a voluntary Planning Agreement in connection with development applications DA0619/22 and DA0090/24 relating to 54 Hawdon Street and 34 Murray Street, Moruya, respectively.

Description of subject land

The land to which the Planning Agreement applies is described as Lot 82 DP 614216 known as 54 Hawdon Street, Moruya and Lot 102 DP 733139 known as 34 Murray Street, Moruya (**the Land**).

**Description of the Development Application to which the
Planning Agreement applies**

Development application DA0619/22 seeks development consent for development described as the Torrens title subdivision of the existing lot into two Torrens title lots and the construction of multi dwelling housing at 54 Hawdon Street, Moruya.

Development application DA0090/24 seeks development consent for development described as the demolition of an existing dwelling and construction of multi dwelling housing at 34 Murray Street, Moruya.

**Summary of Objectives, Nature and Effect of the Planning
Agreement****Land**

The Planning Agreement requires dedication of part of Lot 102 DP 733139 known as 34 Murray Street, Moruya which is zoned SP2 Infrastructure under the Eurobodalla Local Environmental Plan 2012.

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Council intends to construct a public road on the land to be dedicated which will include stormwater infrastructure. The provision of the public road and stormwater infrastructure will support the development of surrounding land and provide public infrastructure to meet the needs of current future residential development.

Assessment of the Merits of the Planning Agreement

How the Planning Agreement Promotes the Objects of the Act and the public interest

The draft Planning Agreement promotes the objectives of the *Environmental Planning and Assessment Act 1979* because it:

- promotes the orderly and economic use and development of land; and
- promotes good design and amenity of the built environment,

The draft Planning Agreement promotes the public interest by requiring the dedication of land for the purpose of opening a public road to facilitate the progressive development of adjoining land for residential purposes.

The Planning Purposes served by the Planning Agreement

The land to be dedicated under the Planning Agreement will be used for the purposes of opening and constructing a public road, which will facilitate the orderly development of the surrounding land, contributing to the housing needs of a growing population in the local government area. This purpose is consistent with the adopted planning strategy for the area. The local environmental plan currently zones the proposed dedication land as S2 Infrastructure.

Whether the Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The dedication of the land under the Planning Agreement must occur prior to any Construction Certificate being issued for the Development.

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**FCS24/008 EXHIBITION OF THE DRAFT DELIVERY PROGRAM 2022-26, S004-T00028,
OPERATIONAL PLAN 2024-25 AND LONG-TERM FINANCIAL PLAN S004-T00029
2024-34**

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

Attachments: 1. Under Separate Cover - Draft 2024-25 Operational Plan
2. Under Separate Cover - Draft 2024-25 Fees and Charges
3. Under Separate Cover - Draft Long Term Financial Plan 2024-34

Community Goal: 5 Our engaged community with progressive leadership

Community Strategy: 5.2 Proactive, responsive and strategic leadership

Delivery Program Link: 5.2.2 Implement effective governance and long-term planning

Operational Plan Link: 5.2.2.3 Review and prepare Council's plans and reports under the Integrated Planning and Reporting Framework

EXECUTIVE SUMMARY

Under NSW Integrated Planning and Reporting legislation, councils are required to prepare a Community Strategic Plan, Resourcing Strategy, Delivery Program and Operational Plan.

A draft 2024-25 Operational Plan has been prepared and outlines actions Council will undertake for the year to contribute to achieving the 2022-26 Delivery Program and the community's vision, as adopted in the Community Strategic Plan. The Long-Term Financial Plan (LTFP) is a component of the resourcing strategy Council is required to be prepared under the Integrated Planning and Reporting framework. The LTFP has a ten-year timeframe and is reviewed annually.

This report recommends the draft 2024-25 Operational Plan, the draft 2024-25 Fees and Charges, and the draft 2024-34 Long-Term Financial Plan be placed on public exhibition for not less than 28 days.

Following public exhibition, a further report will be submitted to Council for the consideration of submissions from the community, and adoption of the 2024-25 Operational Plan, 2024-25 Fees and Charges, and the 2024-34 Long-Term Financial Plan.

The workplan contained in the draft 2024-25 Operational Plan represents a return to core business and reflects adjustments to the work program to ensure a more manageable and achievable program, and reflects strategies to set Council towards returning to financial sustainability.

RECOMMENDATION

THAT

1. The draft 2024-25 Operational Plan, the draft 2024-25 Fees and Charges, and the draft 2024-34 Long-Term Financial Plan be placed on public exhibition for a period of not less than 28 days.
2. Following public exhibition, a further report be submitted to Council for the consideration of submissions from the community and adoption of the 2024-25 Operational Plan, 2024-25 Fees and Charges, and the 2024-34 Long-Term Financial Plan.

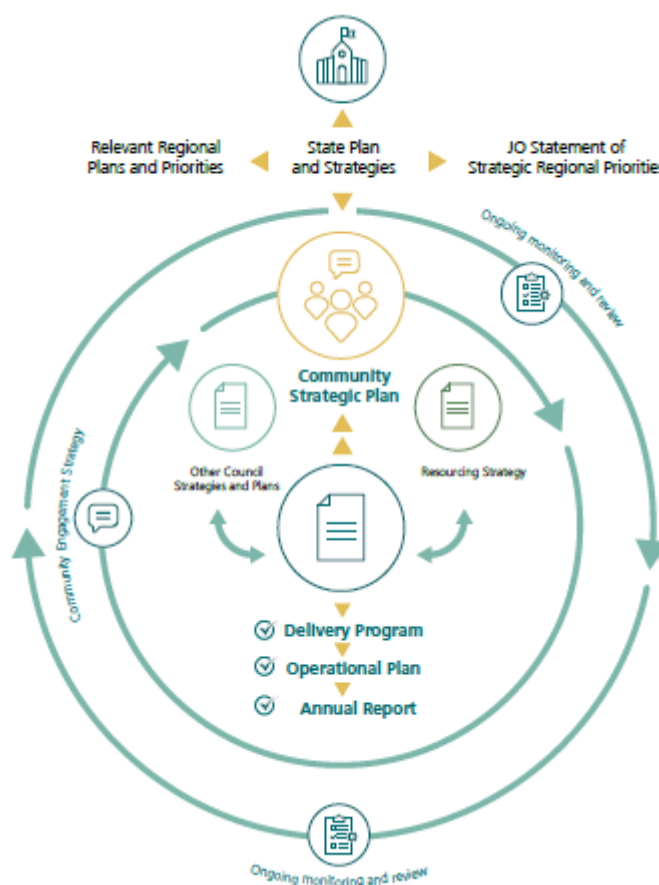
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BACKGROUND

The *Local Government Act 1993* requires all NSW councils to review and adopt key Integrated Plans within 12 months following local government elections. Under NSW Integrated Planning and Reporting legislation, councils are required to prepare a Community Strategic Plan, Resourcing Strategy, Delivery Program and Operational Plan.

The IPR framework is detailed in the figure below:



The Community Strategic Plan is the highest level that Council prepares and is a whole of community plan, reviewed and developed in partnership with the community. It identifies and articulates the community's vision and long-term goals.

The Resourcing Strategy, consisting of the Long-Term Financial Plan, Asset Management Strategy and Plans, and the Workforce Management Strategy, outlines how Council plans to allocate resources to achieve the vision and goals set out in the Community Strategic Plan. This strategy identifies how Council best plan, develop and utilise our resources to enhance performance of our business to deliver better outcomes for our community.

The Resourcing Strategy is a supporting document to the CSP and focuses on those matters that are the responsibility of Council. It focuses specifically on finances, assets and people.

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The Delivery Program details the activities that the Council will deliver over its term and the strategies it will implement in consultation with the community and contained in the Community Strategic Plan.

The Operational Plan details the actions to be undertaken during the next financial year and includes the annual budget and fees and charges for the year ahead.

CONSIDERATIONS

The Eurobodalla Community Strategic Plan was adopted by Council on 12 April 2022 and developed through an engagement process that included a survey, vision boards and ‘workshops in a box’ for the community using Council’s online platform, and workshops for councillors and staff.

The five goals in the Community Strategic Plan are:

1. Our sustainable shire, that celebrates our natural environment and outdoor lifestyles
2. Our community that welcomes, celebrates, and supports everyone
3. Our region of vibrant places and spaces
4. Our connected community through reliable and safe infrastructure networks
5. Our engaged community with progressive leadership

The Community Strategic Plan includes 18 supporting strategies to realise these goals. The four-year Delivery Program outlines Council’s commitment to the community and what it will deliver during its term to achieve the Community Strategic Plan objectives. The 2022-26 Delivery Program was prepared in response to the five Community Strategic Plan goals and 18 supporting strategies with 65 delivery program activities. These 65 delivery program activities remain unchanged in the Delivery Program 2022-26. The draft Operational Plan sets out 190 individual projects and activities for Council to undertake during 2024-25. Each service that assists in achieving these outcomes is identified. Some measures to track and report on progress in achieving each annual activity are also provided.

Councils across New South Wales continue to face financial challenges due to increasing costs and policy that limits the ability to increase revenue. This Council’s draft 2024-25 Operational Plan estimates an operating deficit in the General Fund, resulting in an operating deficit for the consolidated Council. The LTFP projects similar unsustainable trends including general fund operating deficits for the entirety of the plan and consolidated operating deficits until the 2031-32 financial year.

Council endorsed a finance strategy in December 2023 to achieve and maintain financial resilience and minimise the impact of unknown events or factors outside the control of Council. 12 priority actions were identified through this strategy under the themes of financial resilience, prudent asset management and accountability. Some of these actions are underway, including a budget reset process that occurred in late 2023. The budget reset process involved all areas of Council examining operations to gain a clearer understanding of the cost of delivering existing services, and identifying efficiencies where efficiencies could be made.

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Service modifications identified from the process, and included in the proposed 2024-25 operational plan include revised opening hours and service offerings at the Bay Pavilions and Moruya Library and the Basil Sellers Exhibition Centre, a more targeted, prioritised asset renewal and maintenance program, and a modified mowing and street cleaning schedule at low use locations within the shire. These changes will be evaluated during the year to ensure we maximise outcomes for the community whilst living within our means.

The workplan contained in the draft 2024-25 Operational Plan represents a return to core business and reflects adjustments to the work program to ensure a more manageable and achievable program, and reflects strategies to set Council towards returning to financial sustainability.

Legal

Section 404 of the Local Government Act 1993 requires Council to have a Delivery Program to implement the strategies established in its Community Strategic Plan, within the resources available as identified under the Resourcing Strategy.

Section 405 of the Local Government Act 1993 requires Council to adopt an Operational Plan before the beginning of each financial year that details the activities to be engaged in by the Council during the year as part of the Delivery Program. The Operational Plan must include a statement of the Council's revenue policy for the year covered by the Plan. The revenue policy must include the statements and particulars required by legislation. Following 28 days of exhibition, the draft 2024-25 Operational Plan is required to be adopted by 30 June 2024. The draft 2024-25 Fees & Charges and 2024-34 Long Term Financial Plan will also be exhibited in conjunction with the 2024-25 Operational Plan.

The Office of Local Government's Integrated Planning and Reporting Manual and Guidelines are comprehensive tools that have been used in the preparation of the draft 2022-26 Delivery Program and 2024-25 Operational Plan and the 2024-34 Long-Term Financial Plan.

Policy

The Delivery Program and Operational Plan draws on and implements actions contained in adopted Council policy documents.

Asset

The Asset Management Strategy and Plan 2022-32 as required as part of the Resourcing Strategy was adopted by Council on 28 June 2022. The Asset Management Strategy establishes a robust framework and methodology for systematically managing the asset portfolio to guide the planning, construction, maintenance, and operation of infrastructure to provide services to the community.

Financial

Council's operations are separated into three funds for financial purposes. The three funds are the general fund (includes waste and environment activities), the sewer fund and the water fund. Separate rates are raised for general, environment, waste, sewer and water services and

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each fund has a number of different considerations such as general fund rates are subject to rate pegging. Water and sewer funds seek a stable pricing path and any surplus are restricted in these funds. Council’s 30-year Integrated Water Cycle Management Strategy continues to inform the development of the budgets for the Water and Sewer funds.

The key projected financial results for each fund and a consolidated outlook are shown in the table below*.

KEY RESULTS 2024-25 (\$'000)	GENERAL FUND	SEWER FUND	WATER FUND	CONSOLIDATED FUND
Total income (before capital grants and contributions)	98,162	27,006	21,754	146,922
Total expenses	105,225	25,181	19,333	149,739
Net operating result (before capital grants and contributions)	(7,063)	1,824	2,422	(2,817)
Total capital program	50,936	16,967	36,760	104,663
Cash position – increase/(decrease) in unrestricted funds	1,172	3,371	(2,586)	1,957

*Numbers have been rounded up.

An operating deficit (before capital grants and contributions) is forecast for the general fund, whilst Council’s water and sewer funds forecast an operating surplus (before capital grants and contributions)

The Revenue Policy incorporated into the budget and disclosed in this plan outlines the proposed changes for rates, levies and annual charges, pricing policies and proposed borrowings for 2024-25.

Proposed changes include:

- The general rate increases by 5.50%, made up of the rate peg amount of 4.50% plus the population growth factor of 1.00% for 2024-25.
- The environmental levy increases by 5.50%, made up of the rate peg amount of 4.50% plus the population growth factor of 1.00% for 2024-25.
- The waste collection charge increases by 5.50% for the typical household.
- The water access charge increases by 4.00% to \$390 (20mm connection access charge) and the usage charge increases by 2.50% to \$4.10 per kilolitre.
- The sewer access charge increases by 4.63% to \$1,130 (20mm connection access charge), the usage charge increases by 4.65% to \$2.25 per kilolitre and the liquid trade waste usage charge increases by 2.94% to \$1.75 per kilolitre for compliant discharge.

Long-Term Financial Plan

Council’s 10 year Long Term Financial Plan (LTFP) has been updated to include the annual estimates for the 2024-25 financial year and 10 year forward projections based on current market expectations and long term forecasted capital expenditure and funding.

Council is forecasting an overall improvement in the consolidated operating result from a \$2.8 million deficit in the first year to a \$5.9 million surplus in the last year of the plan. For general

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fund however the operating deficit reduces only slightly to a \$6 million deficit in the final year representing an unsustainable trend.

Council is forecasting similar levels of unrestricted cash in the first 5 years of the plan, this presents a challenge for council being the period most susceptible to unknown and external influences that could potentially impact the financial resilience of the Council. Sensitivity analysis included in the LTFP considers some of these influences and their impact on the operating result.

The implementation of Council's finance strategy will be critical in turning around these key indicators of Council's financial health, particularly for the general fund.

Council has modelled an alternate scenario whereby general fund expenditure on renewal of infrastructure assets meets the industry benchmark of 100% of annual depreciation.

Community and Stakeholder Engagement

If the draft 2024-25 Operational Plan, draft 2024-25 Fees and Charges and the 2024-34 Long-Term Financial Plan are endorsed for public exhibition, Council will engage the community from 1 May to 28 May 2024 by:

- Informing the community about the public exhibition and inviting the community to provide feedback on the plans. This will be achieved using Council's own platforms and through local media.
- Making the draft 2024-25 Operational Plan, the draft Fees and Charges and draft 2024-34 Long-Term Financial Plan available for the community to read on Council's website. Requests for hard copies can be made by contacting the Finance and Corporate Services team on 4474 7494, and reference and lending copies will be available at the libraries.
- Conducting community information sessions regarding Council's financial challenges. These will be held in Narooma Tuesday 14 May, Moruya Monday 20 May and Batemans Bay Thursday 23 May. All members of the community are welcome to attend, and community associations will be invited to send representatives.
- All community submissions will be provided to councillors for review prior to any decisions being made about the 2024-25 Operational Plan, the 2024-25 Fees and Charges and the 2024-34 Long-Term Financial Plan.

CONCLUSION

The draft 2024-25 Operational Plan, 2024-25 Fees and Charges and the 2024-34 Long-Term Financial Plan will be publicly exhibited for 28 days. The community will be invited to provide feedback on the draft plans during the exhibition period, and Council will provide community information sessions to explain the plan. At the end of the public exhibition period Council will be provided with all submissions for consideration prior to adoption.

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**FCS24/009 AUDIT RISK AND IMPROVEMENT COMMITTEE TERMS OF
REFERENCE AND INTERNAL AUDIT CHARTER**

**S004-
T00048**

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

Attachments: 1. Under Separate Cover - Eurobodalla ARIC Terms of Reference
2. Under Separate Cover - Eurobodalla ARIC Internal Audit Charter

Community Goal: 5 Our engaged community with progressive leadership

Community Strategy: 5.2 Proactive, responsive and strategic leadership

Delivery Program Link: 5.2.2 Implement effective governance and long-term planning

Operational Plan Link: 5.2.2.1 Assist the Council in meeting its statutory obligations and roles

EXECUTIVE SUMMARY

All Councils and joint organisations are required under the NSW *Local Government Act 1993* to have an Audit Risk and Improvement Committee from 4 June 2022. Councils and Joint Organisations can share audit risk and improvement committees.

The NSW Office of Local Government (OLG) has issued comprehensive Guidelines for Risk Management and Internal Audit for Local Government in NSW to assist councils and joint organisations to implement these requirements.

Amendments have been made to the Local Government (General) Regulation 2021 to require all councils and joint organisations to have a risk management framework and an internal audit function and to prescribe membership requirements for audit risk and improvement committees. Councils and joint organisations are required to comply with these requirements from 1 July 2024 and, commencing with the 2024/25 annual report, to attest to their compliance with the requirements in their annual reports.

This report presents the Terms of Reference for the Eurobodalla Audit Risk and Improvement Committee, and the Internal Audit Charter, based on the model documents provided by the OLG for Council's endorsement.

In terms of membership, this report outlines historical arrangements, recent changes in membership and recommends the revised composition and transition arrangements. This report also addresses remuneration for members of the Eurobodalla Audit Risk and Improvement Committee.

RECOMMENDATION

THAT:

1. Council adopt the Eurobodalla Audit Risk and Improvement Committee Terms of Reference (2024) and place the documents on public exhibition for a period of 28 days.
2. Council adopt the Eurobodalla Audit Risk and Improvement Committee Internal Audit Charter and place the documents on public exhibition for a period of 28 days.
3. That council note and endorse the advice provided by the Eurobodalla Audit Risk and Improvement Committee which outlined their direction in terms of voting membership as follows:

Voting members:

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- An independent Chair (Chair)
 - Dr Tish Richardson, Independent Member
 - Mr Grant Doran, Independent Member
 - An additional Independent Member
4. That Council note the Non-voting membership which is in keeping with the ARIC Guidelines, as follows:
- Mayor
 - General Manager
 - Director Finance and Corporate Services
 - Internal auditor
 - Chief Financial Officer
 - External auditor
5. That council note that the Chair of the Committee recently resigned and that in accordance with the guidelines council will now seek to recruit a Committee Chair in the first instance followed by committee members, in accordance with the recent direction provided by the Audit Risk and Improvement Committee and as outlined at point three.
6. That the outcomes of the recruitment processes be reported to council.
7. That council note that a performance assessment has been carried out in accordance with the Risk Management and Internal Audit Guidelines for local government in NSW.
8. The frequency of Ordinary meetings be quarterly in accordance with the guidelines, noting that if needed an extraordinary meeting may be called.
9. That the sitting fees be as follows:
- (a) Chair \$1500 per meeting.
 - (b) Committee members \$1000 per meeting.
 - (c) Travel at cost, where deemed appropriate.
10. That Council note the requirement under the *Superannuation Guarantee (Administration) Act 1992* to make compulsory superannuation guarantee contributions on behalf of audit, risk and improvement committee chairpersons and independent members where they are remunerated.

BACKGROUND

Eurobodalla Shire Council has previously established an Audit, Risk & Improvement Committee (ARIC) in compliance with section 428A of the NSW *Local Government Act 1993*, the Local Government (General) Regulation 2021 and the NSW Office of Local Government's Guidelines for risk management and internal audit for local government in NSW.

Following a detailed review over a number of years the OLG has now issued guidelines and a comprehensive suite of documents for NSW Councils to utilise.

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These include the following:

- [Local Government \(General\) Amendment \(Audit, Risk, and Improvement Committees\) Regulation 2023](#) (the Regulation).
- [Guidelines for Risk Management and Internal Audit \(updated November 2023\) \(the guidelines\)](#)
- [Internal Audit and Risk management attestation statement for the financial year – template document](#) - Current members be extended (subject to eligibility criteria checks)
- Model terms of reference for audit risk and improvement committees (ToR)
- Example risk management policy
- Model internal audit charter (IAC)
- Attestation and non-compliance statement template

Functions

The role of the ARIC as required under section 428A of the NSW *Local Government Act 1993* is to review and provide independent advice to the Council regarding the following aspects of the Council's operations:

- Compliance
- Risk Management
- Fraud Control
- Financial Management
- Governance
- Implementation of the Strategic Plan, Delivery Program and Strategies
- Service Reviews
- Collection of performance measurement data by the Council.

Eurobodalla ARIC Terms of Reference

The Terms of Reference (ToR) for the ARIC sets out the committee's objectives, authority, composition and tenure, roles and responsibilities, reporting and administrative arrangements. The customized TOR for the Eurobodalla ARIC is recommended for endorsement and are attached to this report.

Eurobodalla ARIC Internal Audit Charter

The Eurobodalla Internal Audit Charter (IAC) provides the framework for the conduct of the internal audit function in the Council. The customised IAC for the Eurobodalla ARIC is recommended for endorsement and are attached to this report.

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Membership

The guidelines provide detailed eligibility criteria (essential and desirable) in relation to the Chair, and members. In summary, the appointment of members to the ARIC is for a term of four years. Reappointments may be made for another four years but the total period of continuous membership on the ARIC cannot exceed eight years in any ten-year period. The arrangement for councillors who are non-voting members is the same, with membership to be resolved by council. It should also be noted that the guidelines (Administrative arrangements) allow for provision of attendance by the Mayor as a non-voting observer.

Council's ARIC until recently comprised both members and non-voting members as follows:

Members:

- Mr Kim Gillis AM, Independent Member (Chair)
- Dr Tish Richardson, Independent Member
- Mr Grant Doran, Independent Member
- Councillor David Grace
- Councillor Tubby Harrison

Non-voting members:

- General Manager
- Internal auditor
- Chief Financial Officer
- External auditor

Recently Council received a resignation from the Chair Mr Grant Doran is currently the Acting Chair. In addition the ARIC has a discussion at the last meeting and agreed that the committee should comprise four independent members.

Notwithstanding the foregoing it should be noted that the Guidelines do provide the ability for council to appoint councillor(s) as non voting ARIC members, against the following criteria (which as core criteria is the same as for independent members):

- an ability to read and understand financial statements and a capacity to understand the ethical requirements of government (including potential conflicts of interest)
- a good understanding of one or more of the following: risk management, performance management, human resources management, internal and external auditing, financial reporting, accounting, management control frameworks, internal financial controls, governance (including planning, reporting and oversight), or business operations
- a capacity to form independent judgements and willingness to constructively challenge/question management practices and information
- a professional, ethical approach to the exercise of their duties and the capacity to devote the necessary time and effort to the responsibilities of a councillor member of an audit, risk and improvement committee, and
- preparedness to undertake any training on the operation of audit, risk and improvement committees recommended by the chairperson based on their assessment of the skills, knowledge and experience of the Councillor member.

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Should council determine that it wishes to appoint one or more councillors as non voting members, then the resolution should reflect this, and councillors(s) be nominated in the resolution.

As part of the housekeeping arrangements post the September 2024 Council election Council will re-establishment councillor membership of committees including the ARIC.

In terms of independent membership changes, the guidelines provide that Council should first appoint a Chair and then subsequent appointments or reappointments may be made.

Eurobodalla Shire Council ARIC members were previously appointed by way of an external process that considered eligibility.

By way of guidance regarding membership and transition, it is generally accepted that existing members continue in their currently appointed roles and term regardless of the legislation's commencement date. However, the assessment for extension or reappointment of an independent member must comply with the guidelines post 1 July 2024, both by way of not exceeding the maximum appointment term (4 years) and that they meet the 'eligibility criteria' (i.e. qualifications/experience).

The only real issue with existing members on 1 July 2024 is if they do not meet the 'independence criteria' laid out in the guidelines.

To satisfy this requirement, Council should note that the recruitment of the current committee members was merit based against the eligibility criteria. In addition, a review of the performance of committee members has been undertaken by the Director of Finance and Corporate Services and the General Manager.

As a consequence the proposed membership of the ARIC is as follows:

- An independent Chair (Chair)
- Dr Tish Richardson, Independent Member
- Mr Grant Doran, Independent Member
- An additional Independent Member

Non-voting members:

- Mayor
- General Manager
- Director Finance and Corporate Services
- Internal auditor
- Chief Financial Officer
- External auditor

Frequency of meetings

The regulation and guidelines provide that ARICs must meet at least quarterly. The chairperson decides the procedure for calling meetings and how the meetings are to be conducted. Meetings may be attended both in person and virtually.

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Fees

The fees that council pays to the chair and independent members of its ARIC are to be agreed between the council and the chair or member and reflect the time, commitment and responsibility involved in serving on the committee. Chairs and members can serve on a committee on a voluntary basis if they choose to.

Council has conducted a review of fees paid by other councils which indicates:

- 1 in the main there is a differential between the fees paid to the Chair, and committee members of around 25-30%.
- 2 Rural and regional council range from around \$530 to \$3000 for the chair and \$320 to \$2100 for committee members.

The ARIC has a prescribed role that is much more defined than was previously the case. It is designed to provide valuable input and feedback that is constructive, objective and informed. This means that ARIC members must be well qualified to meet the eligibility criteria, and will be required to not only attend four meetings per year but also review the documentation provided as part of the business paper which is extensive and covers a broad ambit of council operations. In addition, the Chair has responsibilities over and above committee members in terms of leading the committee and engagement with the Director of Finance and Corporate Strategy on a regular basis in addition to potentially attending a council meeting to report on the activities of ARIC.

It is important that council attracts a membership that can suitably acquit the role(s) when considered against the foregoing and the eligibility criteria, which are detailed and outlined in the guidelines. For these reasons it is considered that remuneration be in keeping with industry standards and responsibilities of the role.

On this basis this report proposes that the fees be struck as follows:

Chair: \$1500 per meeting

Committee Member: \$1000 per meeting.

Travelling allowance

As noted above members may attend meetings both in person and virtually. Rural and regional councils in the main cover travel fees, generally guided by the ATO guidelines and at cost.

Superannuation

Councils are obliged under the *Superannuation Guarantee (Administration) Act 1992* to make compulsory superannuation guarantee contributions on behalf of audit, risk and improvement committee chairs and independent members where they are remunerated.

CONSIDERATIONS

Legal

The operation of the ARIC against the revised regulation, guidelines and customised template documents ensures compliance with relevant legislation and regulations concerning risk

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management, governance, and operational procedures, in addition to ensuring transparency and accountability in council operations.

Policy

The operation of the ARIC includes consideration of relevant council policies and processes.

Asset

The ARIC has an important role in assisting council with the strategic management of its assets and infrastructure through consideration of strategies and plans in addition to implementation of risk mitigation measures to protect assets from damage or loss, and optimization of asset utilization for long term sustainability.

Economic Development Employment Potential

The ARIC plays a role in the integration of risk management practices to support sustainable economic development.

Financial

The ARIC has an important role in terms of Assessment of financial risks and vulnerabilities within council operations, development of strategies to ensure financial stability and resilience and allocation of resources for risk mitigation and improvement initiatives.

Community and Stakeholder Engagement

Council will place the draft documents on public exhibition for a period of not less than 28 days commencing on 1 May 2024 until 28 May 2024. Copies will be available for viewing on Council's website, at the Batemans Bay, Moruya and Narooma libraries and Moruya customer service centre.

CONCLUSION

The operation of the Audit Risk and Improvement Committee represents a proactive approach by Eurobodalla Shire Council to enhance its risk management practices and promote overall organizational effectiveness. Through collaborative efforts and diligent implementation of strategies, the council can foster resilience, innovation, and prosperity for the Eurobodalla community.

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**FCS24/010 2022-23 AUDIT RISK AND IMPROVEMENT COMMITTEE ANNUAL
REPORT**

**S004-
T00048**

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: 5.3.5 Be an agile organisation that champions continuous improvement and efficiencies

Operational Plan Link: 5.3.5.1 Facilitate the Audit, Risk and Improvement Committee and associated projects

EXECUTIVE SUMMARY

This report is the Audit, Risk and Improvement Committee's (ARIC) Chair annual report for the 2022-23 financial year.

Under the NSW Premier and Cabinet Internal Audit Guidelines it is recommended that, at least annually the ARIC report to Council on its oversight role of the internal audit function.

This report has been endorsed by ARIC, and is now being presented to advise Council on the activities and matters that the ARIC reviewed during 2022-23 financial year.

RECOMMENDATION

THAT the information in the report on 2022-23 Audit Risk and Improvement Committee annual report be received and noted.

BACKGROUND

The *Local Government Act 1993* and the *Local Government (General) Regulations 2021* require NSW councils to have an audit, risk, and improvement committee (ARIC). Since 2008, the ARIC has played a pivotal role in the governance framework, providing Council with independent oversight and monitoring of Council's audit processes, including the internal control activities.

The ARIC is an advisory committee to Council and is directly responsible and accountable to the Council for the exercise of its powers and responsibilities as set out in its Terms of Reference (2021) [TOR-Audit-Committee-Feb-2021.pdf \(nsw.gov.au\)](#).

The ARIC achieves its independence by having a majority of independent members external to Council and its operations.

The committee is comprised of:

Independent Members:

- Kim Gillis (Chair) - Independent Member
- David Anderson – Independent Member
- Grant Doran – Independent Member

Councillors:

- Tubby Harrison - Councillor

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- David Grace – Councillor

The objective of the committee is to provide independent assurance and assistance to council on risk management, control, governance and external accountability responsibilities and provide information to Council for the purpose of improving the performance of its functions.

The Committee must keep under review the following aspects of the Council's operations:

- Compliance
- Risk management
- Fraud control
- Financial management
- Governance
- Implementation of the strategic plan, delivery program and strategies
- Service reviews
- Collection of performance measurement data by the council
- Any other matters prescribed by the regulations.

CONSIDERATIONS

Mr Anderson, one of the independent members, resigned from the committee after five years of dedicated service and expressed his willingness to continue his membership until a suitable replacement was recruited.

The vacancy was advertised during April and May 2023 via the local newspapers and on Council's website. An appointment was not made until after 30 June 2023.

Under ARIC's terms of reference, the committee is required to meet at least four times per year. During 2022-23 financial year, the committee met on four occasions and attended a workshop.

- 12 October 2022
- 23 November 2022
- 15 February 2023
- 24 May 2023
- 24 August 2022 (workshop).

During the previous year, the ARIC undertook an Expression of Interest process for the provision of internal audit and risk management services. Centium was the successful applicant and engaged in June 2022 for the provision of these services. 2022-23 was the first year of internal audit services provided by Centium.

Centium's website [Minimising Organisational Risk | Management Consulting | Centium](#)

The committee considered a range of issues during the 2022-23 financial year including:

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Audit:

- Internal Audit Program – upon completion of the prior program and contractor the workshop in August 2022 established a new internal audit program. Progress of internal audit programs were provided at meetings thereafter.
- Audit of Financial Statements for year ended 30 June 2022.
- Consideration of the Audit Engagement Plan for year ended 30 June 2023.
- Review of investment activity.
- Quarterly Budget Reviews provided.

Risk:

Updated guidelines for risk management and internal audit were provided to the committee, noting they come into effect 1 July 2024.

- An overview of Council's insurance coverage was provided.
- Financial Health check findings.
- Bay Pavilions management updates provided at each meeting to monitor performance and discuss risk management.
- Cyber security update provided, including insurance considerations.

Improvements

- Development of Integrated Planning and Reporting improvements, updates on progress against established plans presented, and considerations and process to establish Operational Plan 2023-24.
- Disaster recovery update provided.
- Consideration of building certification service going forward including industry update and consideration of best service delivery options going forward.
- Submission to IPART for rate pegging methodology.

Future Considerations

The Office of Local Government (OLG) has issued new Risk Management and Internal Audit Guidelines. These Guidelines have been in the pipeline for several years and are issued under section 23 A of the *Local Government Act 1993*.

The Guidelines give statutory force to three crucial elements that will help to strengthen governance in NSW Local Government:

- A fully functional and independent Audit, Risk & Improvement Committee (ARIC) that has oversight over the internal audit function.

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- A robust risk management framework to help Council manage their risks in order to achieve their strategic objectives.
- An independent Internal Audit function.

Councils have until 1 July 2024 to comply with these requirements. Council is working on its transition plan. The guidelines also include annual attestation requirements from ARIC and the General Manager which will be required from 2024-2025.

The ARIC has highlighted that in the past, issues, reports and matters have often been tabled for review after presentation to Council, therefore, negating the opportunity for ARIC to support Council's decision making. The staff recommend that, where possible, the ARIC is consulted so there is an opportunity to provide independent proactive advice rather than reactive commentary.

CONCLUSION

The committee considered a range of issues during the 2023-24 year and considered applications for a replacement member after David Anderson stood down from the committee.

This report was presented to the ARIC prior to being presented to Council.

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FCS24/011 INVESTMENTS MADE AS AT 31 MARCH 2024

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 March 2024, 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.

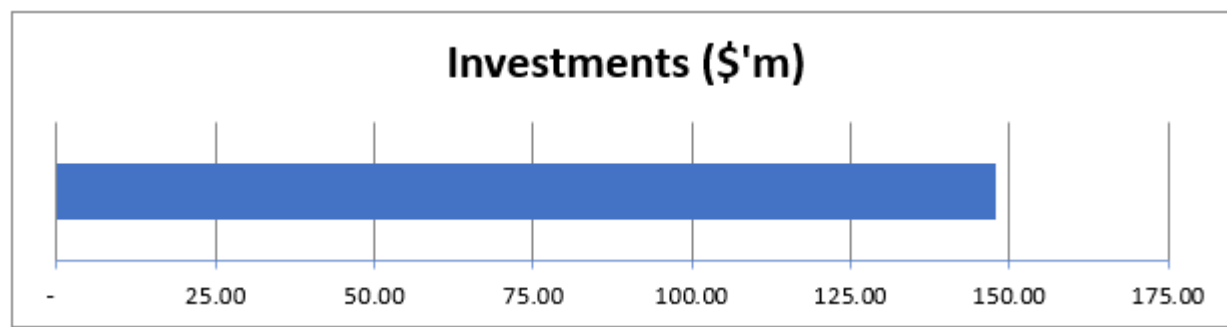
CONSIDERATIONS

Policy

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

Financial

Council investing overall



FCS24/011 INVESTMENTS MADE AS AT 31 MARCH 2024

S011-T00006,S012-T00025

The Council has invested \$147.73 million (100%) in bank deposits. With the exception of \$28.5 million invested in banks rated below A and guaranteed by the AAA-rated government guarantee, the bank deposits are held in banks rated A or higher or in the "some limited risk" category of the policy.

Cash and investments decreased by \$9m in March 2024, primarily due to the payment of quarterly loan instalments and expenditure on Water & Sewer infrastructure projects.

Presently, the 'some limited risk' category is limited to institutions with a BBB+ rating, permitting a maximum of 30% of all investments. Currently, 19.29% of investments are in the BBB+ rating category. The \$1.75 million invested in government guaranteed deposits accounts for 1.18 percent of the portfolio.

Funds invested in institutions that have no direct financing exposure to projects in the fossil fuel sector or no longer finance projects in the fossil fuel sector directly but still have some exposure from historical funding amount to \$51 million (34.52%).

The weighted average monthly return on all investments is 5.30%, surpassing the Council policy benchmark of 4.60% calculated using the bank bill swap rate (BBSW) plus 0.25%.

Summary investment information

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

CATEGORY	(\$)
Operating Account	6,275,770
At call deposit	10,463,317
Term deposits	135,520,000
Term deposits Government guaranteed	1,750,000
	154,009,087
<i>Weighted average interest %:</i>	5.30%
<i>Average 90 day BBSW + 0.25%</i>	4.60%

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.

FCS24/011 INVESTMENTS MADE AS AT 31 MARCH 2024

S011-T00006,S012-T00025

Policy risk	Low liquidity risk %	Total % of investments	Policy risk % (max holdings)
Remote risk	1.18	1.18	100.00
Near risk free	79.53	79.53	100.00
Some limited risk (BBB+)	19.29	19.29	30.00
Grand total	100.00	100.00	

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 2023 is 2.94:1. Council therefore has approximately \$2.94 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.

17. 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.

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?

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	olg@olg.nsw.gov.au	www.olg.nsw.gov.au
NSW Ombudsman	1800 451 524	info@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.