

EUROBODALLA SHIRE COUNCIL

PUBLIC FORUM

Ordinary Meeting of Council on 21 November 2023

Please refer to the minutes of the [Council Meeting](#) for outcomes of the agenda items.

Name	Subject/Comments	Presentation Provided	Hybrid
Bernie O'Neil, A Better Eurobodalla	GMR23/032 Sculpture for Clyde - Event Funding Request	Yes	In person
David MacLachlan	GMR23/032 Sculpture for Clyde - Event Funding Request	No	In person
Renee Carver	PSR23/041 Planning proposal to reclassify community land to operational land- amendment 19	Yes	In person
Greg Moore	PSR23/041 Planning proposal to reclassify community land to operational land- amendment 19	No	In person
Dale Inabinet	PSR23/041 Planning proposal to reclassify community land to operational land- amendment 19	Yes	In person
William Inabinet	PSR23/041 Planning proposal to reclassify community land to operational land- amendment 19	Yes	In person
Brett Norton	PSR23/041 Planning proposal to reclassify community land to operational land- amendment 19	Yes	In person
Tim Pakis	PSR23/041 Planning proposal to reclassify community land to operational land- amendment 19	No	In person
Paul May	PSR23/041 Planning proposal to reclassify community land to operational land- amendment 19	Yes	In person
Andrew Bain	PSR23/041 Planning proposal to reclassify community land to operational land- amendment 19	No	In person
Brett Stevenson, A Better Eurobodalla	PSR23/041 Planning proposal to reclassify community land to operational land- amendment 19	Yes	In person
Belinda Bain	PSR23/042 Congo Road North	Yes	Council Staff presenting on behalf of.
Norm Shepherd	PSR23/042 Congo Road North	Yes	In person
Deborah Stevenson	PSR23/042 Congo Road North	Yes	In person
Kathryn Maxwell, SHASA	CAR23/017 Heat Havens	Yes	In person

A Better Eurobodalla (ABE) presentation to ESC Public Forum on GMR23/032 SCULPTURE FOR CLYDE - EVENT FUNDING REQUEST

Good afternoon and thank you for the opportunity to address Council. I am presenting as Co-Convenor of A Better Eurobodalla (ABE), a community forum dedicated to having open and inclusive government in our region. ABE has previously addressed Council on transparency and open communication, key principles of good governance.

Some context for the decision that is recommended to councillors today. Recently we residents and ratepayers of Eurobodalla have consistently and convincingly been told that money is tight in the management of our shire. We believe you. Expenditure is being curtailed across a range of areas.

An example as highlighted in a recent letter to the Moruya Mail by Susan Murphy, the president of the Moruya and District Historical Society. I quote:

'In 2022-23 total annual funding for the three historical societies in the shire (Batemans Bay, Moruya and Narooma) declined from a total of \$4500 in the preceding years to \$3000 per annum, or only \$1000 for each society. In the case of Moruya, we pay around \$2500 in rates each year. So the MDHS is paying the Council \$1500 per annum so that we can provide this valuable community resource. This is an embarrassing lack of support for the preservation of this community's local history.'

There are other examples.

Another fundamental consideration for the expenditure of scarce public moneys is open competition. We have all lived through the 'whiteboard' scandals of governments at federal and state levels in recent years. That is when decisions are made which ignore or override the reasonable competitive processes that are based on transparency and meeting the policy objectives of the relevant organisation.

Another piece of relevant history comes from the Council meeting of 28 February 2023. At that meeting earlier in this calendar year, Council agreed *'THAT Council provide Sculpture for Clyde with the agreed \$8,000 Tourism Destination Event funding and contribute an additional \$12,000'*.

At that meeting four councillors, Councillors Hatcher, Grace, Shutz and Dannock declared a non-significant, non-pecuniary interest in *Sculpture for Clyde – Hallmark Event Funding* and stated that they did not believe their interest would preclude them from voting on the matter. All four of these councillors stating that a donation was received from the event organiser for their teams in the 2021 local government election.

At that meeting the agenda paper for:

PSR23/008 SCULPTURE FOR CLYDE - HALLMARK EVENT FUNDING stated:

'Hallmark event funding has historically been granted to two well established events in the Eurobodalla, with over ten years of development, growth, and ability to demonstrate their capability to meet the key attributes. The Sculpture for Clyde event has not been held on the Batemans Bay waterfront since 2017, making it difficult to assess the event against the key attributes.'

A budget was provided to Councillors on 20 February 2023 indicating that Council funding would be part of the income to support the relocation of the event to the Shire. The organisers were clear that additional council resources would not be required to support the event.'

Council has been approached by many event organisations over the past 12 months to increase its support. This has been for both commercial events as well as not-for-profit organisations. For example, Council will recall a request by the Narooma Oyster Festival for additional support based on the unprecedented growth of that event, coupled with the dramatic increase in running costs.'

So, the \$20,000 granted in February 2023 was *'part of the income to support the relocation of the event to the Shire'*. Based on the publicly available material, it is not at all clear what the \$20,000 currently under consideration will be used for.

To better understand Sculpture for Clyde I went to their website and contacted them direct. While the website gives no information about the structure or constitution of the organisation direct advice has given me the not-for-profit structure and committee names. No financial details beyond the value of prizes are available on the website. What it does tell me is that the major partners listed are: Batemans Bay Lodge, Bridge Plaza Village Centre, Climate Control, McPherson Park Lawyers, L J

Hooker Batemans Bay, the NSW Government and Eurobodalla Shire Council. Plus 16 listed local businesses as major sponsors.

The website and local publicity indicate that the value of the prize money for 2024 is \$112,000 with the acquisitive prize set at \$100,000.

From today's Agenda paper:

'The event will benefit from Council's Rapid Response Team, which will be deployed for the 2024 event.'

and

'Financial assistance to Sculpture for Clyde 2024 event has not been included in Council's published 2023-24 budget. Funds will be sourced from within the existing events operational budget. Providing funding for the event will include a \$20,000 financial contribution as well as a waiver of venue fees of \$8,074.00.'

So, we have a proposed \$20,000 grant, waived venue hire of over \$8000 and uncosted support in kind. In addition, my understanding is that Council will meet whatever the associated costs for installing the acquisitive prize-winning sculpture might be.

Meanwhile the community grants offered to not for profit organisations for youth, seniors, healthy communities and NAIDOC week by Council are limited to \$500.

Councillors there is another way to consider governance, and that is the pub test. Here we have an organisation that has established relationships with several councillors coming to Council for financial and in-kind assistance with no transparent competitive process.

By contrast, the established Hallmark events supported by Council had to apply through a formal expression of interest process within a Council established timeframe. They report on their \$20,000 per year as a condition of their grants. Additionally, unlike Sculpture for Clyde, these events do not rely solely on Localis data (all I could find for reporting) but survey attendees and participants on experience and home location and provide reports based on these data.

If the argument for supporting this proposal is that Narooma and Moruya have Hallmark events and therefore Batemans Bay deserves one, then run a competitive process.

Meanwhile Sculpture for Clyde is offering prize money of more than \$100,000. An extraordinary amount for an art prize in our regional community. Just maybe the prize money could be set at \$80,000 thereby negating the need for Eurobodalla ratepayers to subsidise this event when we are in a recognised period of financial stress.

The recommendation being put to councillors today is not supported by a rigorous and transparent decision-making process. If there are funds available to support art and cultural activities that draw visitors to Eurobodalla and its businesses, Council should run transparent, competitive processes. That way the community, that funds Council activities, will be confident that the best possible decisions are being made.

Bernie O'Neil
Co-Convenor
A Better Eurobodalla
21 November 2023

FOR VERBAL AND WRITTEN PRESENTATION TO COUNCILLORS OF
EUROBODALLA ON 21 NOVEMBER 2023
FROM CLYDE VIEW HOLIDAY PARK

A public hearing was held in May, and I believe Garret Barry Planning Services P/L has some errors regarding important statements and assumptions in his assessment date 13 August 2023 regarding Parcel 4, Clyde View Holiday Parks (CV) purchase request. These assumptions are:

- 1) Our request which was originally sought back in 2018 (Refer to Attachment A) is ONLY for Lot 2, DP570760 and is not part of lot 4 DP572585. The park does not own or represent this other land which is a privately owned strata arrangement called Taldumande Park and not a tourism business.
- 2) The CV requested land purchase is only 851m² and not 1152m². CV has been clustered with the private individuals of Taldumande. Also, we were the only commercial property at the public hearing and Councils consultant made no mention of this clustering impact on us.
- 3) Our aim is to modify, not develop the land to meet planning and accessible tourism needs which we identified in 2016 as a very under-serviced market. Given this year is the '*Year of Accessible Tourism*' we know that Council is also keen to support this demographic according to many pages within the draft Tourism Destination Action Plan.
- 4) The final issue is also important. For many decades Clyde View Caravan Park owned the entire parcel of land now owned by Council which we are seeking a small portion back. Prior to that the larger parcel of Batehaven was owned by J. Corrigan including all land to the high-water mark. Consequently, this foreshore land was never gifted to Council contrary to the reports. Public use ownership was acquired by forcible resumption that can be confirmed by Scheeney the owner from which land was taken and former owner. (Refer to Attachment B)
- 5) The land is not of Public benefit and has never been, as its side boundaries are a creek and a large open drain. (Refer to Attachment C)

As a result of the 5 issues, there is a misrepresentation of CV's needs and ultimately the aims of CVHP that are very different from people's interests which only benefit them. Our submission for minor land reclamation has much broader commercial interests that benefit the local tourism economy of the shire.

When deciding to accept or reject the recommendation, I would urge Counsellors reaffirm Councils original decision in 2019 to sell the requested land to Clyde View. Because of this Clyde View made greater investment into consultants, demographic research and accessibility constraint considerations. *Councils minute: CCS19/030 RECLASSIFICATION AND SALE OF PART LOT 2 DP 570760 AND PART LOT 4 DP 572585* (Refer to Attachment D)

To restate,

- a. CV is not seeking to develop the site simply trying to deal with planning setbacks to be compliant.
- b. We understand the setback is 3 metres and/or 12 metres from the foreshore which it was when Clyde View Caravan Park first owned the land. Either way, this would still leave Council with about 17 metres from the high-water mark of public land.
- c. The purchase is not to put new villas on but to enable current cabins to be modified including installing ramps to enable people with accessibility issues to use the cabins. There is next to no family accommodation for children with accessible issues, in Batemans Bay and surrounds. Also, CV was the first and to our knowledge is still, the only one offering free year-round beach wheelchairs in the region, showing genuine commitment to accessibility needs.
- d. Council's current and former Tourism destination management plans, support the development of accessible products especially given this year is the *Year of Accessible Tourism*. This is also confirmed in the Council report that supported the purchase to proceed back in 2019. We identified in 2016 that accessible tourism was and remains extremely unsupported other than the wonderful all-inclusive Corrigan play park next door.
- e. Clyde View had an independent valuer (Opteon) assess a purchase price for the 851 square metres that could go back against Council's debt (Refer to Attachment E)
- f. The initial request went to Council in June 2018 and we have been in limbo since not being able to modify the villas.

- g. The suggestion of a lease is not in Clyde Views best commercial interests. This has current and future ambiguities on development rights etc. This is a roadblock to progressing forward.
- h. The assertion a sale would be unprecedented is at odds with other sales past present and currently being considered in the report being presented. The Vesper Street parcel of land for sale is foreshore or wetlands.
- i. A Freedom of Information request has been put to Council to confirm what the town planner asserts "the precedent it may set" and the past sales of coastal frontage land owned by ESC, but because of time constraints, an outcome was not available to be presented today.

Thank you for your consideration.

Renee Carver – General Manager Clyde View Holiday Park

Address to ESC Council meeting 21 November 2023 – Proposed Reclassification of Public Reserve Lot 84, Village Rd South Durras

Speaking Notes- Dale Inabinet

Mayor, Councillors, Shire residents

- Here I am again pleading with you to reject the Planning Proposal to reclassify the bushland reserve called Lot 84 South Durras for development. I speak mainly from the neighbouring residents' perspective and will give you many reasons which I hope you will consider closely before making your decision.
- Firstly, we are disappointed that again we may have been consulted but DO NOT appear to have been listened to. We have objected, written lengthy submissions and spoken about our concerns and the many issues with this proposal over the last five years. Our concerns have been generally disregarded.
- The final Planning Proposal for our public reserve has not changed and we strongly object to its reclassification to be sold and developed. The South Durras community also stands strong with us, as seen by the many submissions opposing this Proposal the Council received in the consultation process, and the complete support of the Durras Community Association, Durras Landcare Group and Friends of Durras.
- It's not just the principle that a dedicated reserve can be so easily disposed of, but the precedence this sets for the whole Shire where any public space deemed 'surplus to needs' (BUT whose needs?) is open to reclassification and inappropriate medium-density development out of character with its community.
- While the independent Chairperson's report acknowledged the "ultimate clearing of most existing native vegetation clearing" required, the "greater biodiversity values than suggested in the ROSS report", the "inappropriate development" of the land without reticulated services, its use as a pedestrian access, and conceded that "adjoining neighbours had some expectation of privacy as public land", he seems focused on maximising net returns to Council from development. Especially concerning is his assertion that this could be two-story dual occupancies on two dwelling lots, totally out of character with the existing village.
- The Biodiversity Assessment commissioned by Council staff was limited and mainly focused on whether any endangered species were actually living in the Reserve (and indeed confirmed it was an extended habitat for threatened gliders). However, its unique value as a wildlife corridor, with a complete overhead canopy, directly linking the Murramarang National Park through this and the adjacent corridor across Banyandah Street to the freshwater wetlands was overlooked.
- The independent Consultant also acknowledged the current minor maintenance costs for the Council and 'that if the biodiversity is considered significant then retention as currently classified as a natural reserve is appropriate'. We consider the biodiversity value to be significant, especially with the impacts of climate

change and more intense fires. Other recent ecological surveys have shown that the intact population of gliders in the unburnt South Durras area is a crucial refuge for the recolonisation of the National Park, which was suffering an ecological collapse of the glider population.

- We feel privileged to live next to a dedicated Public Reserve in the unique village of South Durras, renowned for its natural surroundings where residents and visitors can live closely with nature. This area of South Durras was planned this way from the beginning, and this proposal is completely against the character of the village.
- The Reserve with its towering magnificent old spotted gums is a magnet for local wildlife – at night it is alive with the sounds of possums, owls and many insects, in the daytime the kangaroos and wallabies graze and laze, and goannas regularly scoot up the trees. South Durras is actually promoted as a nature lovers' paradise with particular emphasis on wildlife viewing opportunities.
- The Durras community and visitors appreciate this, but it seems all the Council planners see is a vacant building block the Council can sell for dual occupancy development. They appear to only value the short-term dollars (probably NOT realised for many years until reticulated services are provided), not the benefits to the wildlife or the local community that elected YOU to represent them. We urge Councillors to keep this land in public hands - the community and wildlife will thank you.
- Looking in more detail at the justifications in the Proposal some are just ridiculous, inconsistent or plain misleading, trying to 'hood-wink' you into approving it. We hope Council members closely read the document before making any decision. I'll give you some examples:
 - How would one house in the small village of South Durras address housing supply and affordability issues? It would probably be built as a second home, by rich Boomers like us! How would a monstrous house (possibly dual occupancy for holiday rentals) on a narrow block enhance the bushland or heritage character of South Durras - this justification (p.33) is ludicrous and NOT supported by any information.
 - The proposal misquotes the biodiversity assessment regarding connectivity saying there are 'better quality wildlife corridors' (p.32). The assessment only says there are 'several passages that provide connectivity', and importantly ignores that the Reserve corridor with its complete canopy continues the other side of Banyandah St to the wetlands.
 - The Proposal continues to rely on a flawed 2018 Recreation and Open Space Study (ROSS) report that dismissed the reserve as having "no conservation or recreation value" without any substantiation. But the Planning Proposal misquotes it saying, 'little value', and High Priority, whereas it was reduced to Medium Priority in the final ROSS. What are we to believe?

- Both the independent consultants' report and the biodiversity assessment say that the potential development of the narrow block would require significant clearing (about 80%) of the existing native vegetation to build. How can the justification rightly say that 'vegetation will be retained, where possible, to protect important environmental assets (p.32)?
- All the South Durras village is now rated as a high fire risk area, so how can it be justified that the block is not considered so (p.33). There is NO mention of the impact of removing the official APZ zoning of the block on the surrounding community. The APZ provides access for fire trucks and an escape route for people and animals. I note the Proposal still says that 'the RFS will be consulted during the public exhibition of the planning proposal' (point 9 p.38). This begs the question were the RFS consulted, and what did they say?
- It seems Council staff have not inspected the block on-site, or they would have seen with their own eyes the stormwater drainage pipe from the easement to Banyandah Rd (NOT on their infrastructure map (p.29). As pointed out previously this would be problematic for building on such a narrow block.
- We note that the timeframe for any reticulated water and sewerage services is now in line with the recent Council review, and the incorrect 2028 date removed. It now sensibly states 'that the land would NOT be SOLD for residential development until such time as a sewer service is provided to the village. However, the justification still contains an inconsistent statement that 'on-site water and sewer is required until reticulated services can be provided' (p.33). Is this a typo or an out-clause?
- The Planning Proposal also:
 - 'cherry-picks' the Eurobodalla Local Strategic Planning Statement 2020-2040 (pt.4 p.33) ignoring provisions directly relevant to the Reserve, including the need for APZ's and strategic bushfire planning at 'the settlement level', 'protecting and rejuvenating wildlife corridors' as well as 'establishing development controls that minimise our impact on threatened species';
 - ignores the Eurobodalla Climate Action Plan 2022-2032 which emphasises protecting our wildlife corridors, noting that, while Eurobodalla is experiencing growth and increasing demand for new housing, "*any new development should avoid important habitat and wildlife corridors*"; and
 - shows inconsistency with the Council's Biodiversity Strategy 2023 priority action to "identify, protect and enhance wildlife corridors". Destroying this narrow natural bushland wildlife corridor with 'wall-to-wall' urban infill will undermine this strategy by destroying the tree canopy critical for endangered gliders and restricting access for native animals to fresh water in the wetlands.
- In conclusion, how would YOU feel if the neighbouring 'dedicated' park you cherished, and thought was always safe from development was threatened? I bet you would object like us. Especially when the ROSS report and Planning

Proposal process has been as flawed as this one. The whole exercise appeared to be designed purely for revenue raising and to avoid public scrutiny and is open to legal challenge. It continues to demonstrate a complete LACK of understanding of (1) the important nature of this wildlife corridor; (2) the implications of climate change for our native fauna; and (3) lessons learnt in the aftermath of the 'Black Summer' bushfires for both the community and our endangered wildlife.

- We implore you to carefully consider our concerns and reject this Proposal for Lot 84 South Durras.

Comments on Council’s Planning Proposal to Reclassify Lot 84, DP 259212, South Durras to enable Residential Development

CONCERNS OVER POSSIBLE MALADMINISTRATION AND POLICY NON-COMPLIANCE

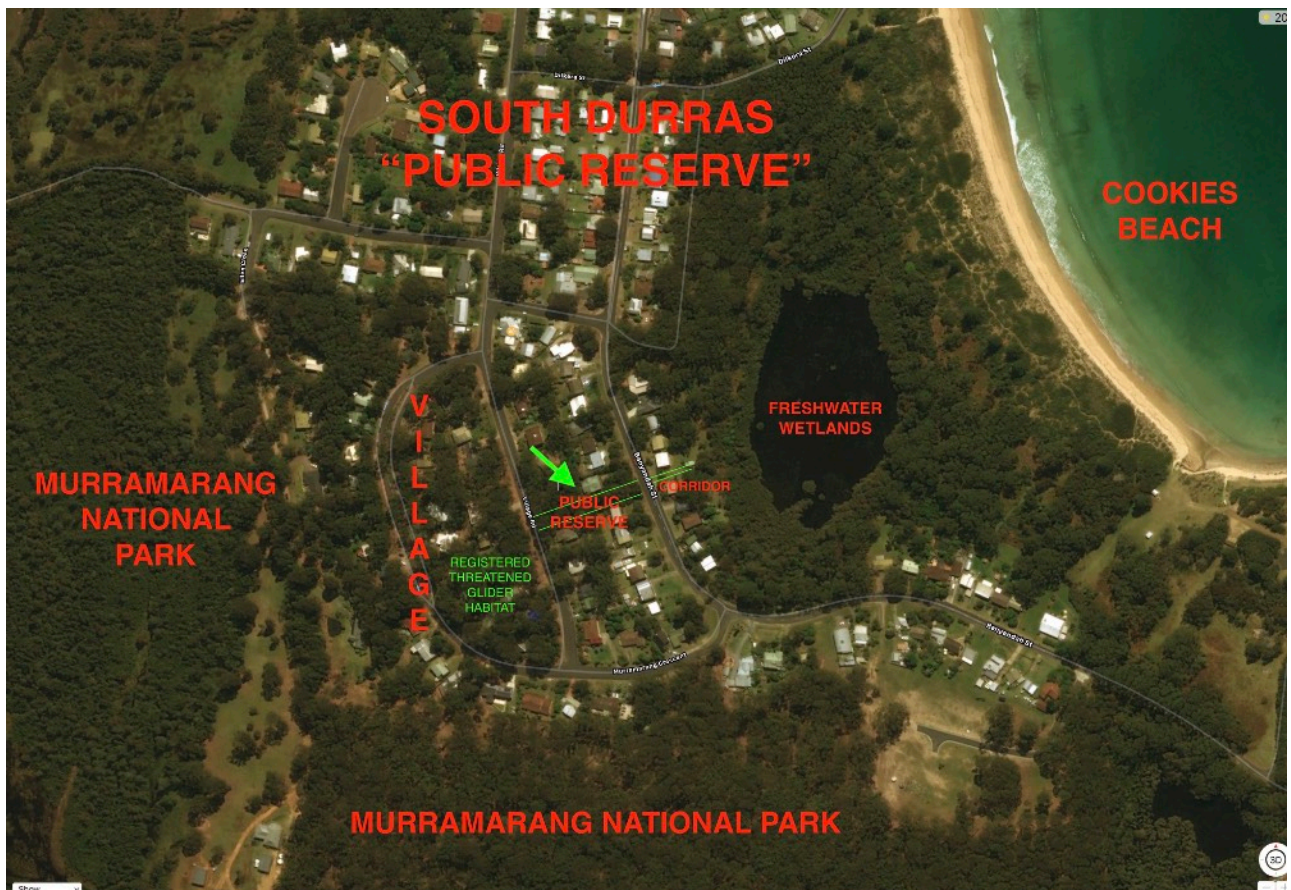


Image 1: Annotated Satellite Photo of South Durras ‘Public Reserve’ Revealing Remnant Forest within the Village & Linkage to Freshwater Wetlands

FOREWORD

For some time now, the Eurobodalla Shire Council has been actively involved in rezoning certain public lands for financial gain. This has raised questions within our community and the media about the integrity of these endeavours. In the case of reclassifying Lot 84 DP 259212, South Durras, the handling of this matter has raised concerns about possible maladministration and policy non-compliance. These issues are outlined below and it is requested that the current Council re-evaluate the proposed reclassification in the best interests of the South Durras community, its environment, and its wildlife.

Failure to Recognise the Reserve's Ecological Significance

Over half a century ago, a visionary Council in Eurobodalla recognised the importance of planning a natural wildlife corridor linking the now Murramarang National Park (MNP), a proposed forested Village sub-section, and the South Durras Freshwater Wetlands. This foresight led to the creation of a 'Dedicated Public Reserve' and its adjacent corridor before any development took place (refer Image 2). This was a testament to the area's rich wildlife population and their need for access to freshwater.

The Reserve, located strategically as a key fauna corridor, plays an essential role in supporting local biodiversity. Regrettably, ESC staff have overlooked this function and have not acknowledged the existence of the adjacent corridor or the wetlands in any of their evaluations. These areas are very important for the movement of wildlife and the preservation of the local ecosystem particularly given climate change implications.

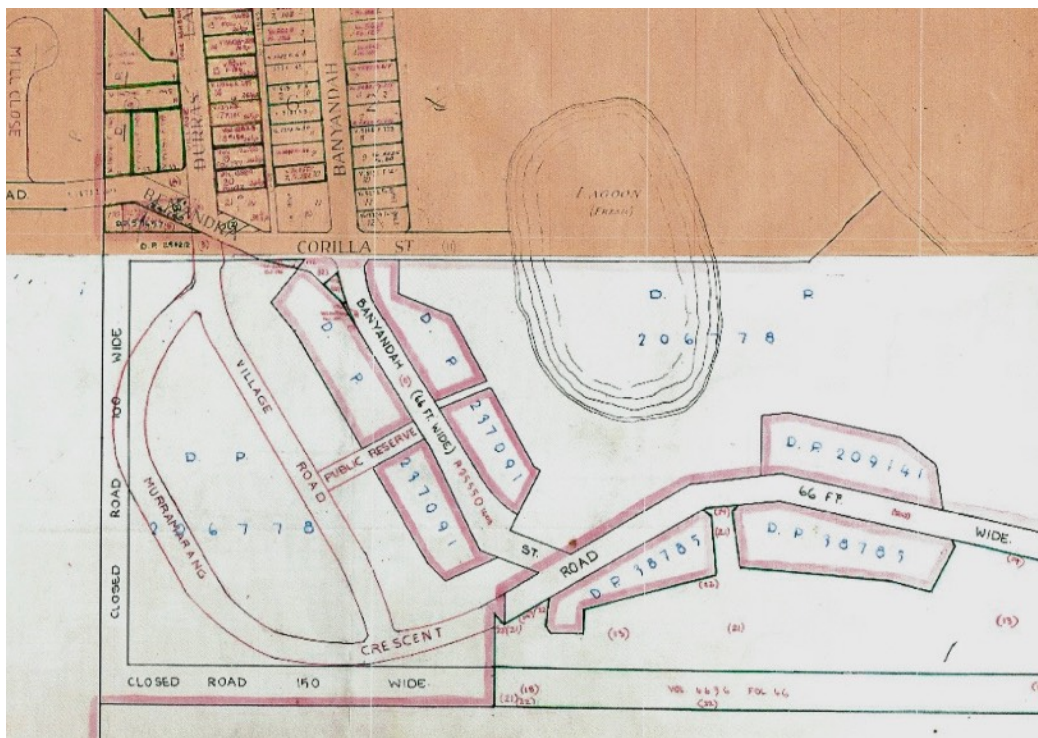


Image 2: Original “Dedicated Public Reserve” Plan as approved in 1968 showing its Strategic Location as a Corridor Linkage to Freshwater Wetlands

Unique Character of South Durras 'Village' Disregarded

The 'Village' sub-division in South Durras retains many of the features of the Murrumbidgee National Park, with mature trees and a diverse native understory of Burrawang Palms (refer Images 1&3). This 'open' natural setting was preserved through collaboration between the developer and Council by implementing carefully planned measures in order to retain as much of the original forest as possible and to facilitate the free movement of the area's abundant wildlife.

The developer designed the 'Village' with residential blocks averaging around 1100m² so that much of the natural forest and understory could be retained despite housing footprints. Council implemented strict tree preservation policies, a 'no boundary fence' policy, and specific requirements related to protecting threatened species' habitats. New landowners also made efforts to preserve these features from both an environmental and quality of life perspective.



Image 3: In the Reserve looking across Village Road to Registered Threatened Glider Habitat

The 'Village' offers a unique opportunity for observing the local wildlife, which is prolific, readily observable, and accustomed to human interaction. This is a crucial aspect for tourism in the area, as South Durras is promoted as a nature lover's paradise with particular emphasis on native wildlife viewing opportunities (see Attachment 3, p13).

The Council has misrepresented the character and heritage of South Durras 'Village' by suggesting that the proposed urban infill in two very narrow residential blocks would *"enhance the character of South Durras"*. To the contrary, such a development is incompatible with the Village's open forested layout and both independent consultants have confirmed that virtually all the Reserve's vegetation would need to be removed.

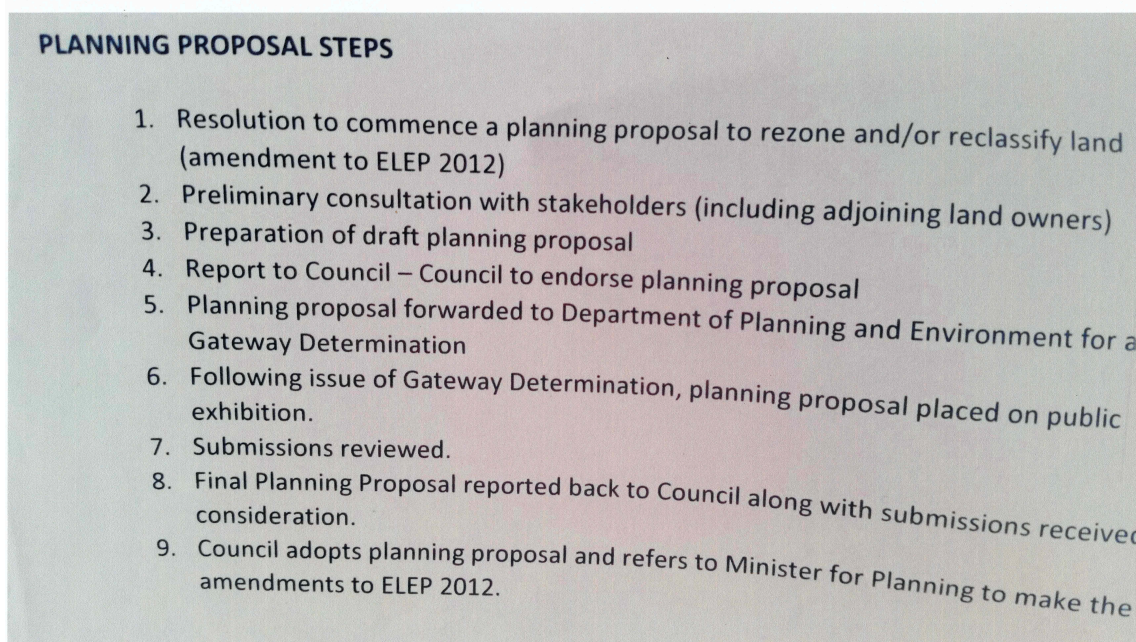
Flawed Recommendations in ROSS Report

The 2018 ROSS Report dismissed Lot 84 in South Durras as having '**no recreation or conservation value**' without providing any analysis or substantiation to justify this statement. Council's original identification of the Reserve as 'surplus to use' reportedly occurred following a minimal "drive-by" assessment in 2012 without further evaluation.

The adjoining landowners only found out about the reclassification via *'The Beagle'* shortly before Council's consideration of the ROSS Report on 27 February 2018, and had to get special permission to make a late presentation under very limited time constraints. Their input highlighting the Reserve's value as a Dedicated Public Reserve / Wildlife Corridor / Extended Habitat for Threatened Species / Asset Protection Zone / and Public Walkway was disregarded by the Council.

Failure to Follow Proper 'Due Process'

In advancing the ROSS Report, ESC staff failed to follow '**Due Process**' in the official 'Planning Proposal Steps' (refer Image 4) whereby 'Step 2. Preliminary consultation with stakeholders (including adjoining land owners)' was never implemented. This oversight has the potential to invalidate the reclassification exercise and can undermine public trust in the Council and its decision-making processes.



**Image 4: Official Planning Proposal Steps
(Source: ESC Staff Member 27/2/2018)**

In addition, the failure to consult key experts within the Council, including those with a background in planning history, bushfire management, and climate change, raises concerns. It has been reported that ESC's environmental staff opposed the reclassification on conservation grounds, but their advice in light of the proposal's progress was also ignored. Directly following the 2018 Council meeting, land owners were given the impression that they would be allowed to present a detailed submission prior to its further progression but this failed to eventuate.

False and Misleading Statements in Planning Proposal 19

Planning Proposal 19, which was submitted to the Department of Planning and Environment, contains many anomalies, false claims, and misleading information. For instance, it:

- contends that a vacant residential-sized block 200m away has better recreation value than the Reserve's forested walkway (with likely wildlife encounters) but omits that its sole attraction, playground equipment, was completely removed, and the community shop directly opposite closed down - this forms the basis of the Proposal's justification for deeming the Reserve to be "surplus to community needs";
- disregards the needs of senior citizens who comprise the bulk of Village residents (65yrs +) and use the Reserve's more gentle walkway for safety and health reasons as it avoids the steep section of both adjacent roads and dangerous traffic.
- fails to reveal existing council stormwater infrastructure that would impose building easements on any future development in Lot 84 (refer Attachment 1, p11);
- falsely states that "*vegetation would be retained where possible*", while independent consultants and proposed building envelopes (refer Attachment 2, p12) confirm that nearly all the existing native vegetation would have to be removed;
- claims that development would '*enhance the character of South Durras*', but the narrow blocks being half the size of existing blocks would result in wall-to-wall urban infill diametrically opposed to the Village's forested landscape (Image 1, p1);
- dismisses the need for an APZ on the false basis that '*the area is not considered a high fire risk area*' which directly contradicts RFS's official classification;
- includes an escape clause to expedite the early sale of the land with '*on-site water and sewerage*' despite repeatedly claiming that the actual timing would coincide with the introduction of reticulated services; and

In summary, Planning Proposal 19's justification for reclassification rests on the ROSS Report's false premise of 'no recreation or conservation value' and a subjective interpretation of what constitutes 'surplus'.

No Qualification of "Surplus to Community Needs"

Planning Proposal 19 repeatedly asserts that the Reserve is "*Surplus to Community Needs*" without providing a clear definition or any qualification. This claim is purely subjective and contradicts the strong opposition of the broader South Durras Community and its various organisations, including Adjoining Land Owners; 'Village' Residents; Durras Community Association; Friends of Durras Conservation Group; Durras Landcare Group; and the South Durras Branch of the Rural Fire Service.



Image 5: Residents expressing their "Community Needs"

The media has strongly condemned Council for applying this uncorroborated argument across a wide range of proposed reclassifications. Under the Office of Local Government, "*Councillors are expected to represent the views of the community while making decisions in their interests*" but clearly this has not been adhered to when the entire South Durras Community is opposed to the reclassification. Lot 84 was gifted as a 'Dedicated Public Reserve' for the community and, as such, should remain in perpetuity for future generations as originally intended.

Efficacy of the Public Hearing on 4 May 2023

The above Public Hearing, received extensive input from adjoining landowners, South Durras residents, community organisations, and scientists opposing the reclassification of Lot 84. The Independent Chairperson noted the '*high biodiversity values*' established in these submissions, including evidence from an environmental scientist and an international biodiversity expert.

At the end of the meeting the Chairperson indicated that his report would be finalised and delivered to Council within 3 to 4 weeks. However, the report took many months longer than this, but did concede that the Reserve had "*greater biodiversity values than suggested in the ROSS*" and that the proposed development "*will result in the ultimate clearing of most existing native vegetation*". Disturbingly the report stated that Council staff were already seeking a biodiversity assessment in line with his recommendations before their actual release and this raises concerns about possible collaboration given the protracted delay.

The report also appeared to go well beyond its brief by suggesting that dual occupancies up to 2 stories high on each narrow lot could be permitted in order to maximise net financial returns. This goes completely against the character and heritage of South Durras where there are no such developments. It may be a coincidence, but it should be noted that the consultant has a record of recommending dual occupancies to Council.

Issues with the Biodiversity Study

The Biodiversity Consultant's study covered the implications arising from the potential clearing of the Reserve's native forest but was limited purely to Lot 84. The consultant was neither briefed on the Reserve's role as part of a strategically planned 'corridor linkage' (refer Image 2, p2) nor had access to reports by environmental scientists and evidence provided by adjoining landowners. As a result there was no reference to the adjacent corridor across Banyandah Street or the Freshwater Wetlands in the study.

The Consultant's focus was primarily on threatened species in the immediate area, the Yellow-bellied and Greater Gliders. While it was recognised that the Reserve was part of their extended habitat, the report concluded that the Village area opposite could sustain them if the Reserve's habitat was removed. However no reference was made to 3 post 'Black Summer' ecological surveys showing an ecological collapse of these gliders in the Murramarang National Park but a strong and intact population in South Durras, making it a crucial refuge for the recolonisation of the Park. Following the fires, ESC also conducted a threatened glider spotlighting session for the public in South Durras and reconfirmed this healthy status.

The Consultant examined the concept of post-fire refuges and concluded that the site could only provide minimal assistance. This critically overlooked the Reserve's direct linkage (via an existing wildlife trail and the only complete overhead canopy) to the centre of the wetlands. This freshwater habitat provides an irrefutable safety refuge for wildlife escaping bushfires particularly as they will be driven from the MNP and Village in this direction (as confirmed by projected wind directions in BOM's Bush Fire Scenario for SE Australia). It also overlooked the fact that the adjoining residents had successfully provided water and feed stations for distressed native fauna during the 2017/2019 drought and in the aftermath of the 'Black Summer' bushfires.

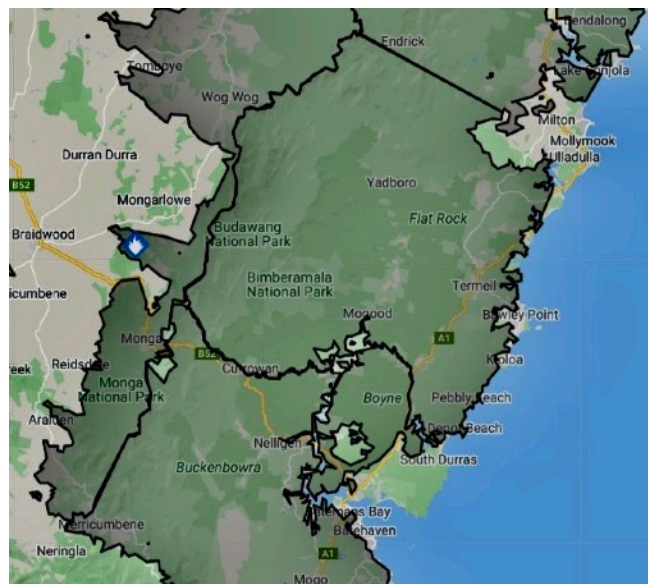


Image 6: Pristine environs of South Durras post Black Summer bushfires

The study was conducted in winter, limiting its assessment of fauna movement in the Reserve. The Consultant acknowledged that not all fauna species using the site could be recorded due to their mobility and unpredictable movement throughout their habitat. Unfortunately the study lacked details on parameters, duration, timing, and scientific measures used to reach conclusions. The report appeared to follow a set pro forma approach but failed to address the Reserve's important function as a 'corridor linkage' to the wetlands particularly in times of heat stress and bushfires.

Non-Compliance with Climate Change Policies

The Council's decision to reclassify the Reserve disregards the implications of climate change, such as increased heatwaves, prolonged droughts, and more frequent and intense bushfires. In Australia, temperature records are being exceeded on an increasingly regular basis and, in these circumstances, access to freshwater is critical. As the Reserve is part of a strategically planned and complete wildlife corridor from the Murramarang National Park to the centre of the Freshwater Wetlands, it meets definitions outlined in both Commonwealth and State legislation.

Under the recently adopted **Eurobodalla Climate Action Plan 2022-2032** emphasis has been given to managing heat stress impacts on biodiversity and, in particular, to protect our natural ecosystems and wildlife corridors. It further notes that, while Eurobodalla is experiencing growth and increasing demand for new housing, *“any new development should avoid important habitat and wildlife corridors”*. The need to identify, protect and enhance important wildlife corridors is also highlighted as a key priority of ESC's planned and highly publicised **Biodiversity Strategy 2023**.

Unfortunately, the proposed reclassification disregards all these policies. Councillors now have an opportunity to implement their stated objectives in managing heat stress impacts on biodiversity and protecting natural ecosystems and wildlife corridors.

Non-Compliance with Strategic Planning Policies

Council's actions are at odds with the **Eurobodalla Local Strategic Planning Statement 2020-2040**, which sets out a 20-year vision for land use planning in the Shire and contains a range of provisions directly relevant to the Reserve, namely:

- It acknowledges that each settlement has its *‘own unique character and identity’* and that every step should be taken to *‘enhance the distinctive character and heritage of towns, villages and hamlets’*;
- In the aftermath of the ‘Black Summer’ bushfires, it recognises the need to ensure that APZ's directly reflect the specific requirements of the area and stresses that *‘this is best achieved through strategic bushfire planning at the settlement level’*; and
- It makes specific reference to *‘protecting and rejuvenating wildlife corridors’* as well as *‘managing important habitat and establishing development controls that minimise our impact on threatened species’* which is particularly relevant.

All these aspects have been individually addressed in previous submissions from the Community and will be severely compromised should Council proceed with its reclassification plans.

Inadequate Assessment of Bushfire Safety

During the devastating 2019/20 bushfires, approximately 80% of the Eurobodalla region, including most of the Murramarang National Park, was engulfed by the fires (see Image 6, p7). South Durras received three emergency evacuation notices during this period but survived due to the relentless efforts of the local Rural Fire Service (RFS).

It is concerning that the Reserve's role in bushfire management was evaluated by ESC staff without consulting their representative on the Eurobodalla Bush Fire Management Committee or the highly experienced and decorated Captain of South Durras RFS. The Reserve has historically served as a 'Council Hand Cleared Break' for many decades and, in 2016, it was reviewed and rezoned as an 'Asset Protection Zone' (APZ), with the full endorsement of the community. This rezoning aligns with the current council policy ensuring that APZs reflect strategic bushfire planning at the settlement level.



Image 7: Embers from North Durras firestorm (5/12/19) jumped across lake to South Durras

All of South Durras is officially classified by the RFS as a **'high-risk fire area'** due to its close proximity to the adjoining Murramarang National Park. However Council staff falsely claimed in their planning proposal that the area *"is not considered a high fire risk area, being approximately 160m from the nearest hazard,"* ie the MNP. Based on this assertion, they determined that the APZ was unnecessary without seeking expert input particularly from our local RFS Branch.

Staff did not appear to be aware of ESC's submission to the NSW Bushfire Inquiry which recognised that *"one of the primary reasons for the loss of dwellings is ember attack"*, an issue that can occur well ahead of the advancing fire front. Close to home, embers from the Currowan Bushfire (refer Image 7), carried nearly a kilometre over Durras Lake into South Durras but was quickly and successfully contained by our local RFS. Consequently, the implied safety distance of 160m from the Park would not mitigate the risk of bushfires or ember attacks. To the contrary, it reinforces the critical function of the APZ in a sub-division that retains a substantial portion of its original bushland setting (refer Image 1, p1).

Bushfire safety is of significant concern to the community given the aftermath of the 'Black Summer' bushfires and the expected recurrence of more intense fires over an extended period. The Reserve's APZ will help mitigate the risks bushfires pose for property and importantly it also serves as a potential escape route, not only for Village residents, but also for the abundant native wildlife in the area.

CONCLUSION

ESC's justification for the reclassification of Lot 84 DP 259212 is based on a false premise that the Reserve has '*no recreation or conservation value*' and a purely subjective claim that it is '*Surplus to Community Needs*'. When viewed in conjunction with numerous discrepancies in Planning Proposal 19, along with failures in following 'due process' and non-compliance with climate change, strategic planning, and bushfire safety policies, concerns need to be raised about the validity of Council's decision-making process.

The community strongly opposes the reclassification, given the Reserve's crucial role as part of a wider wildlife corridor that links the Murramarang National Park / the 'Village' sub-section of South Durras / and the South Durras Freshwater Wetlands. The land in question was gifted as a 'Dedicated Public Reserve' for the community and, as such, should remain in perpetuity for future generations as originally intended.

The handling of this matter has raised suspicions of possible maladministration, and the current Council should re-evaluate the proposed reclassification in the best interests of the South Durras community, its environment, and its wildlife.

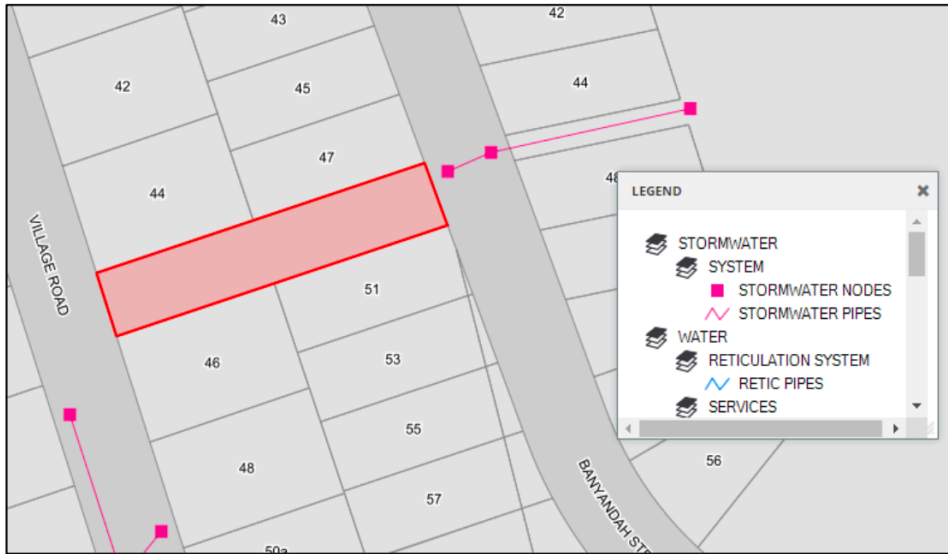
Author: William Inabinet

Date: 17 November 2023

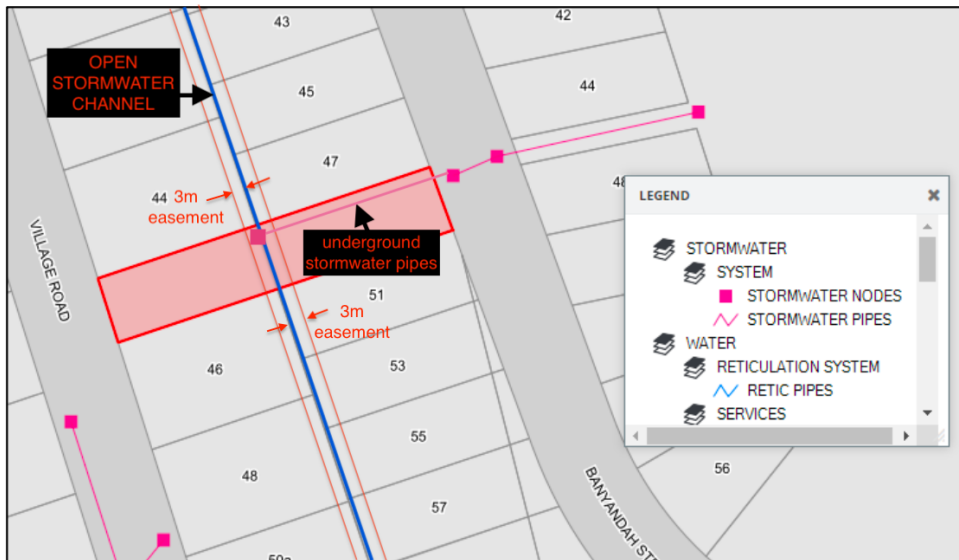
ATTACHMENT 1

PLANNING PROPOSAL 19's FALSE PRESENTATION OF INFRASTRUCTURE

CLAIMED INFRASTRUCTURE

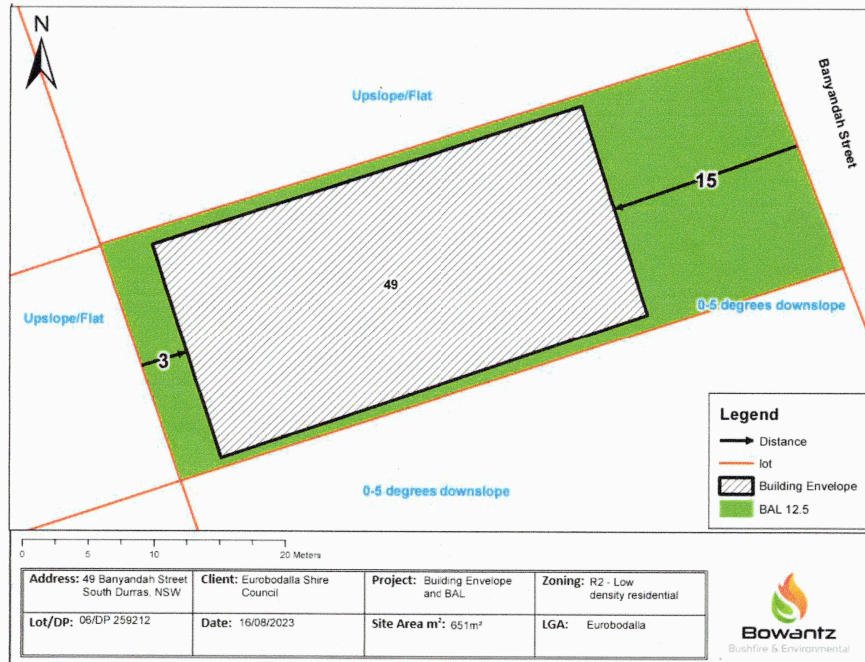
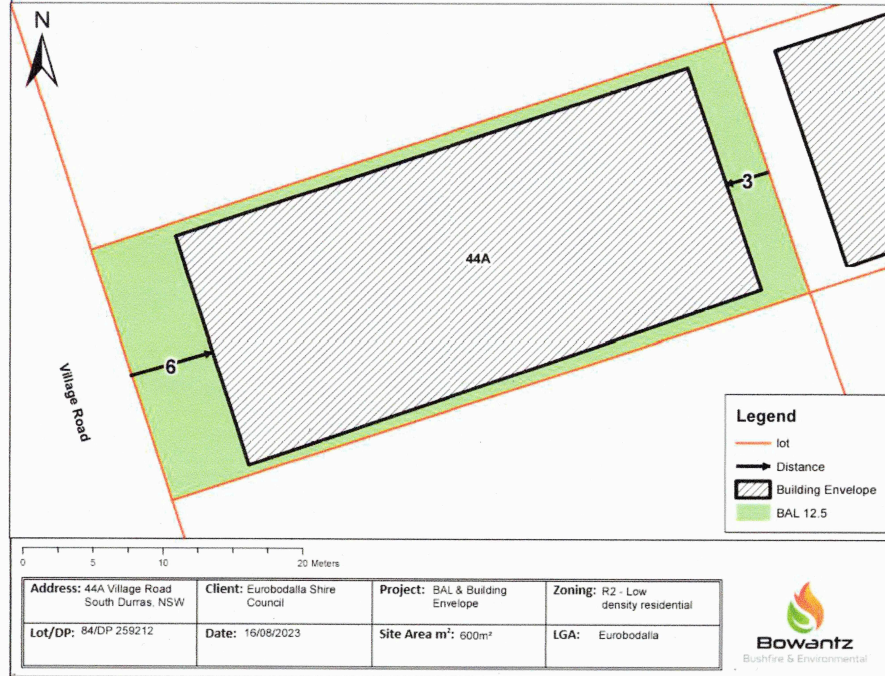


EXISTING INFRASTRUCTURE



NB: Stormwater Pipes in Reserve continue across road & Adjacent Corridor

ATTACHMENT 2 COUNCIL'S COMMISSIONED BUILDING ENVELOPES



NB: Council Building Envelopes facilitate extensive Urban Infill & also permit additional vegetation clearing in green zones

ATTACHMENT 3

PHOTOS PRESENTED TO PUBLIC HEARING ILLUSTRATING RESERVE'S WILDLIFE



Image 8: In the Reserve - Shortly before the Public Hearing 4 May 2023 (NB Goanna is 1.8m long)



Image 9: In the Reserve - On the morning of the Public Hearing 4 May 2023 (NB Red Necked Wallabies also in Reserve at same time)

PUBLIC FORUM ADDRESS – TUES 21/11/23

Mr Mayor and Councillors

We, the Friends of Pretty Point, urge you to save the Reserve at 35-37 Illabunda Drive, Malua Bay, also known as Lot 1110 DP236653 and Our Reserve.

Along with many others in the community, we have been advocating for over five years to stop the reclassification and rezoning of this land that is precious to our local neighbourhood and consistent with the values and aspirations of this Council, including the ROSS report and the commitments made by you our elected representatives.

This land was gifted and dedicated to Council in the 1960s and has been passionately defended several times since then. It is integral to the fabric of our neighbourhood and has influenced people's decisions to live here given its peaceful ambience and amenity.

One of the most troubling aspects of this proposal are the comments such as '*minor impact*', that Council will '*offset*' the loss of the Reserve by investment outside our local area, and that Our Reserve is '*surplus to need*'.

The only justification Council has provided is that a sale would provide 'additional funds to reduce Council's financial liabilities'.

Any sale of this block of land will raise an insignificant amount of revenue.

Had this block been rezoned and sold in 1995 it would have raised \$120,000 an insignificant amount of money and in no way would compensate for the loss of this beautiful open space. And the same will apply should this property be rezoned today.

The report of the public hearing of 4 May 2023 by Garret Barry states that:

- **Local community objection to the sale of our local reserve is quite strong.**

500 plus voices signed a petition, a third of the local community, and there have been many submissions objecting to this proposal since 2019.

- He states, **There is a small active coastal reserve area to the east but it is small and constrained by services. That natural constraints make further expansion of this coastal reserve challenging for active recreation.**

It's a pump station covered in manholes and unsuitable for anything other than access to the beach.

We wonder, based on the comments of some Councillors, whether they have read our community's submissions or seen the Reserve first hand?

There are no suitable alternatives and to suggest otherwise is to force a good proportion of residents to drive to find what we already have.

It is not for Council to judge, devalue or otherwise determine how we choose to recreate, be it passive or otherwise.

- He states, **Longer term use as a local park may be desirable.**

The grassed area of Our Reserve is used for recreation. The ROSS Report states the community is entitled to this space 400 metres from their homes. It is our gathering place, our village green.

- **There is an equity argument that some neighbours will suffer some loss of view over what they thought would be an ongoing public reserve. Some immediate neighbours will be adversely impacted with respect to views and there will be some loss of amenity for the wider neighbourhood.**

It will be a total loss of view for some in the community and an entire loss of amenity for our neighbourhood

Moreover, Council confirmed in 2005 that Our Reserve “would not be reclassified to operational land, nor will be it sold”

In addition to the equity argument is the consideration that the **ownership** of Our Reserve was transferred to Council pursuant to a **Deed of Agreement** with Malua Bay Pty Ltd in 1966 in exchange for the dedication of Pretty Point as a Public Recreation Area.

We requested a copy of this Deed from Council but Council confirmed that it has been unable to locate it.

Without the Deed of Agreement and the associated map, **how can we or the Council confirm Council’s legal obligations?** As Council did not pay monetary consideration for the land, **there is the possibility that the Deed of Agreement provided obligations on Council to hold the land on trust for a public purpose.**

In the **Submissions Report** responses to selective issues raised are not a true representation of those who live in the area or understand the daily and seasonal life here. We have provided countless examples of how the area is used and in what volumes throughout our submissions over the past 5 years.

The Submissions Report provides assurances that **assessments will be done** at various stages of the process in the Response to Issue 3 – Impact on coastal amenity, character and views.

The Submissions Report is also **incorrect**. I refer Council to our legal advice received from Gadens Lawyers dated 20 November 2023, which is annexed to my Submission which in summary says

- Council cannot provide **any** of the assurances or guarantees it says it will provide, or impose restrictions through assessments of impacts it

claims it will make, at either the development application or subdivision stages,

and

- it **cannot ensure** a reasonable sharing of views or impartially **assess the impact on the character of the area** of any proposed development.

Therefore, Council's best power to control these impacts is by deleting Our Reserve from Council's Planning Proposal and **not amending** the LEP which leaves in place the current planning controls for Our Reserve.

We have written to you all as a Council body and as individuals many times over the past five years.

We remind you all of your electoral assurances that earned our trust. We ask you to stand by what you said.

We are advised that **Council has the power** to vary the Planning Proposal based on any submission or report during community consultation under the *Environmental Planning and Assessment Act 1979*.

So we sincerely ask you to exercise this power by **deleting Our Reserve** from the LEP. We are advised this will not affect the other Items of the Planning Proposal or delay the amendment of the Eurobodalla LEP 2012.

Many options have been suggested for Our Reserve that stay true to its original intended purpose, especially with the Headlands Walk now concluding in this area.

It's not too late to make the right decision.

Do not punish our community and its future generations for a small, purely once off financial gain. And do not diminish what your constituents thought you believed was important.

Be true to your electoral commitments and future vision for an 'unspoilt Eurobodalla' – uphold what half of you said pre-election which according to

the *A Better Eurobodalla website* was we stand for **'retaining our unique and relaxed coastal character, protecting our much loved, unspoilt and precious environment'**

At least uphold what the Mayor himself says on your website...

"We want to make sure we're giving the community what they've asked for, and that is, that we're listening to them."

Greenspace once lost – is lost forever.

**Address to Eurobodalla Shire Council meeting Tuesday 21 November 2023.
A proposal to Reclassify Lot 84 Village Road from Community Land to Operational Land**

Paul May on behalf of the Durras Community Association

Councillors today I am asking you to do what you were elected to do and represent the views of your constituents in one small locality in the Shire and vote down the proposed reclassification of Lot 84 Village Road South Durras, from community land to operational land.

Most affected will be the four adjoining landowners who purchased their properties with the knowledge they had a reserve next door. They now face the prospect of a multi storied dual occupancy development as a neighbour. But it is not just these ratepayers who will be impacted; the whole community suffers the further erosion of the identity and the character of South Durras which has always made it a special place.

I have been around long enough to remember ESC commissioning a typology study of South Durras, the attempt at development control plans for South Durras, writing place statements to describe its character and the use of a NSW Coastal Council assessment tool determining that “ the natural environment dominates the built environment”.

All of this is particularly pertinent to the Village Rd, Murramarang Cres area which was originally developed as the ‘Ellen Estate’ with deliberately designed larger blocks, retention of natural vegetation, no fences and a wildlife corridor.

This proposal contradicts all of that.

It also contradicts policy related to fire threat and safety. In the 1990’s ESC denied a request to subdivide a lot in Murramarang Cres on the grounds that it increased housing density in a fire prone area. RFS rates all of South Durras as ‘fire prone’ and declared the reserve an Asset Protection Zone enhancing access for fire fighting vehicles.

The dismissal of the environmental significance of this reserve is another contradiction. ESC’s own environment department advised against the reclassification, members of the staff are well acquainted with the presence of endangered species in this area and have been involved in spotlighting activities here. The public hearing heard a presentation from Ms Virginia Young, an internationally recognised authority on habitat connectivity but her advice appears to have been ignored and you commissioned your own report which is very narrowly focused and doesn’t look at the big picture. Embarrassingly your recent work on both the Climate Action Plan and the Biodiversity Strategy emphasises the importance of “identifying, protecting and enhancing wildlife corridors”; here is an established one you want to destroy.

Another glaring contradiction is the report’s acknowledgement that without reticulated water and sewer, development on this reclassified block could not proceed, possibly not until 2028. In fact South Durras ratepayers have received a letter from your consultant saying this is unlikely in the foreseeable future. So what is the rush to reclassify if you can’t realise on that action in the foreseeable future?

Surely on the environmental argument alone you should adopt the precautionary principle and wait and see what conditions prevail in the future.

Some of the planning report’s justifications for reclassification are ridiculous. To say that development of Lot 84 would enhance local character and heritage, at the same time acknowledging the necessity to clear 80% of vegetation and “where possible protect important environmental assets”, does not make sense.

And to suggest that the development of Lot 84 will contribute to a solution to the housing shortage and affordability crisis is laughable. At current South Durras real estate prices the likely buyers will be wealthy investors who will build as much as they can on this narrow block and put it on the short term holiday rental market.

In conclusion, we like many others are critical of your public consultation process on issues like this. It is just a 'tick the box exercise' for Council. You call for comment and people put a lot of time and effort into researching and making submissions (you have only to look at the work of Mr and Mrs Inabinet over the past five years) but you don't listen and you certainly don't engage with your correspondents. A number of invitations to meet and discuss onsite have been ignored, yet your reports make inaccurate and unsubstantiated statements to support your case. Little wonder people become cynical about fairness and value in the process of consultation.

Finally we have to ask, why are you doing this? The independent Chair has pointed out that current maintenance costs for Lot 84 are minor – most is done by the neighbours and volunteers in our local Landcare group. The net proceeds from the sale when put up alongside Council's budget will be a paltry sum and in the process you will alienate many of your constituents who think that our community is the big loser.

Councillors, please reject this proposal.

Paul W May

Secretary Durras Community Association

Coordinator South Durras Landcare

**ABE Public Forum Presentation 21st November 2023 Regarding
PSR23/041 - Planning Proposal to reclassify community land to
operational land - LEP amendment 19**

Good afternoon. Thank you for the opportunity to address Council regarding PSR23/041 - **Planning Proposal to reclassify community land to operational land – LEP amendment 19**. This reclassification would be the first step in selling off all or part of 10 parcels of community land, permission for which is also sought in today's agenda papers.

I am presenting as Co-Convenor of A Better Eurobodalla (ABE), a community forum dedicated to having open and inclusive government in our region. ABE expects that before governments, at any level, make decisions that will impact their communities, they will undertake broad and meaningful consultation, listen to and share expert advice, and proceed using a transparent decision-making process so that the community understands who makes decisions, when and why. ABE has applied these principles to this planning proposal.

ABE has previously presented to Council outlining its concerns regarding the alienation of public assets, and this planning proposal is yet another instance of this recurring problem. In addition, some recommendations in this proposal are at odds with the independent expert advice obtained by Council during the planning process, reflecting a further example of poor governance.

The key justification advanced for the proposed reclassification and sell-off is that it is consistent with the recommendations of a 2018 consultant's report - the Recreation and Open Space Strategy (the ROSS). Analysis of this report indicates it does not provide a coherent, accurate or reasoned explanation to support the proposed sell-off. The ROSS is not an adequate or sufficient basis to justify the proposal being considered by Councillors today, as outlined in the following issues.

1) The ROSS has a tarnished history in regard to selling off community land. The initial draft of the ROSS recommended the sell-off of Lot 558, DP 752155 in Narooma. It turned out that this parcel of land was in fact Walker Park Narooma. This sell-off was presented as satisfying the woefully vague goal of "Redistribution of Assets". This proposal was subsequently dropped in response to community anger at this absurd ROSS recommendation.

2) The ROSS provides no explanation or justification for the specific circumstances or factors which justify the sell-off of these public assets. While it provides analysis of trends in recreation, projected population growth and existing resources available in various localities, the ROSS contains no concrete explanation or justification for the proposed sell-off of these parcels of community land. The recommendations simply appear out of thin air, under the rationale of satisfying the woefully vague goal of "redistribution of assets".

3) The ROSS states that these lots “have no recreation or conservation value”. This statement is demonstrably wrong. As an example, both the Durras and Broulee lots have significant conservation values in terms of connectivity, significant natural values and carbon storage, which warranted the environmental investigations outlined in appendices to today’s agenda paper. The Broulee site contains large mature trees of the Sand Bangalay Forest (a NSW-listed endangered ecological community), which provides habitat for the Broulee Yellow Bellied Gliders (which are listed as an endangered species at both the State and Commonwealth levels). Eurobodalla Shire Council even has a specific *Conservation of the Yellow Bellied Glider Policy* which applies to ALL land within the Broulee area, yet this is not mentioned in the ROSS. The ROSS totally ignores these significant environmental values, which have become even more critical in the wake of the Black Summer Bushfires.

4) It is clear that the 2018 ROSS report has been overtaken by subsequent major community disruptions and challenges, including the Black Summer bushfires and the Covid 19 pandemic. The importance of community connections and community assets have been highlighted by both these major events, yet today’s proposal seeks to erode both these critical resources in the Eurobodalla.

5) In the context of today’s significant planning proposal, it is notable that the current 2020 Eurobodalla Local Strategic Planning Statement contains not one mention of the ROSS in its 46 pages - not even as a reference or footnote. Why then is this narrow Recreation and Open Space Strategy now being used as the key basis for such significant planning decisions, which should be based on integrated multi-factorial considerations?

6) Community land is intended to be managed for use by the community for multiple purposes, including environmental protection, recreational, cultural, social and educational activities. The planning proposal under consideration today has failed to consider these multiple beneficial factors when it concludes that these parcels are “surplus to community needs”. The current planning proposal’s reliance on an open space strategy as the justification for this proposed sell-off means that it has failed to adequately consider these additional important dimensions regarding what constitutes the inherent values of “community land” – it ignores a key principle of “integrated planning”.

7) In addition to its reliance on the limited and flawed ROSS report, today’s planning proposal also fails to transparently quantify the financial benefits which will accrue to Council if the proposed sell off proceeds. Given that today’s agenda paper also seeks permission to sell off these community assets without providing any information regarding their sale value, could this place a Council decision taken today in legal jeopardy?

8) It is also noteworthy that today's planning proposal ignores recommendations of the independent planning consultant who chaired the May 2023 Public Hearing into this proposal. The independent consultant recommended that community land at Fauna Avenue, Long Beach and Moir Place Broulee should NOT be sold off. Why should Council use ratepayers monies to hire independent experts to provide advice if it then chooses to ignore their independent expertise?

On the basis of the significant governance, transparency and credibility issues outlined above, ABE urges all Councillors to reject the planning proposal and community asset sell-off outlined in PSR23/041.

Thank you for your attention.

Dr Brett Stevenson
Co-Convenor
A Better Eurobodalla
21/11/2023

Good morning, Mayor, Councillors, Staff and Members of the General Public

My name is Belinda Bain, I am the current president of the Congo Community Association.

You have now received over 200 written submissions, emails and letters from the residents of the Congo community.

You have heard numerous presentations to this chamber, and many of you attended a community consultation meeting in November 2022 with members of the Congo community so you know and understand the views of Congo residents.

I will therefore keep this presentation short and to the point.

The CCA fully supports the recommendation by ESC Staff that you approve the survey plan (No. P-FY-20232074) without alteration and that you lodge this survey plan with the Registrar General as soon as possible so that the Congo Rd north can be reopened as soon as practical.

A vote to accept the survey plan will allow this council to complete its unfinished business from 23 March, 1999 when this chamber passed a motion to formalise the creation of a permanent northern public access route between the village of Congo and Moruya.

We wish to acknowledge and thank Eurobodalla Shire Council staff and councillors for the considerable time and energy they have spent trying to find a workable solution to this historical problem.

We especially wish to acknowledge the work of your communications team who have provided transparent, accurate, and timely communications.

In considering this matter the CCA requests

- 1) The survey plan is lodged without delay with the NSW Land Registry Office so that works may begin immediately to reopen Congo road ahead of what is predicted to be a worse than average bushfire season
- 2) We hereby also request that when reopening the Congo road north you concurrently consider addressing the speed limit of vehicles entering and exiting the village of Congo. Some young children living along the Congo Creek will not even remember a time when traffic passed by their houses. The Congo community population swells enormously during holiday seasons, there are no footpaths or bike paths within the village and the road is the only place for pedestrians to walk and cyclists and skateboarders to ride. Please consider all reasonable steps to slow traffic entering and exiting Congo village via both the southern and northern routes. Cars entering and exiting the village at speed has been a growing problem in our village as our population increases and the popularity of Congo grows. Action is required to reduce the risk of a serious accident, protect public safety, and improve public amenity.
- 3) We hereby also request in road design and construction you also consider issues affecting pedestrian access to the section of the National Park between the village and Lot 197 to enable residents to safely utilise access the National Park by foot and by bike

Thank you for your time.

Eurobodalla Shire Council
Public Forum address – Meeting 21 November 2023
Agenda item PSR23/042

Speaker: Norm Shepherd

Good morning Mayor, Councillors and Council staff

Thank you for the opportunity to present to you on the Congo Road North road boundary proposal.

It is unfortunate that most of the current senior staff and current Councillors (with the exception of Councillor Pollock) have not been involved in this lengthy matter. This lack of historical knowledge and working relationships has been detrimental in achieving continuity of negotiations.

Having said that I wish to address a number of aspects within the report, as I believe Councils report is deficient and omits important information and considerations.

Northern Alignment

As a background for Councillors you should be aware that Council had worked closely with the landowner for a number of years in progressing a **mutually** agreed road alignment to the north of Lot 197. This alignment was chosen as it best met the objectives of both parties at the time. This aspect was mentioned in correspondence provided to Councillors in the past. This northern alignment was progressed to a significant level which included completion of geotechnical drilling, flora and fauna assessment, aboriginal heritage assessment together with road design alignment plans. The northern alignment offered a geometric alignment to Austroads standards which Councils current proposal does not. Council and the landowner were still actively working together towards a northern alignment solution right up to time of the protest in late November 2021 when the landowner withdrew public access rights and closed the road. It is important to note that the landowner was advised by senior Council staff in mid 2021 that it was expected the northern alignment could be finalised and constructed (subject to funding) in around 18 months. That was in early 2021, which meant the northern road could have been expected to be constructed and in use by now if the protest had not occurred.

Councils report does not reflect the extent of cooperative development and progress of the northern alignment option over a long timeframe. It is easy for Council to be so dismissive in their statements but the recommendations of the reports commissioned strongly suggest otherwise and that the northern option was a viable option.

Consultation

Whilst Council has met the statutory obligations for consultation in relation to s18-21 of the Roads Act they have failed miserably in consultation with the landowner since the road was closed in late 2021.

It is noted that this is the same complaint the community raised with the newly elected Councillors back in early 2022 and Council then carried out comprehensive consultation. Unfortunately the consultation model did not provide an appropriate forum for the landowner to contribute.

The real and significant failure in the consultation with the owner was Council's lack of communication to the landowner that they had in fact determined an alternate strategy to the previously agreed northern alignment. The first the landowner knew of Council's new strategy was when the agenda was published for Council's May 2023 meeting. It is not unreasonable to have an expectation that Council would at the very least advise the landowner that a significant change in strategy had occurred and the landowner could have then been more reactive and made a contribution to protect his interests. There is no doubt Council officers have denied the landowner an opportunity to provide an input. I can only imagine if Council acted in this manner to the community what their vocal reaction would have been.

I also note emails sent to the General Manager and Councillors on 14 Jul 2023 offering a meeting to provide information from the landowner's perspective and GM Winn's response of 18 July 2023 indicating that "Councillors have asked that I arrange an appropriate time for you to present to them." We note that GM Winn failed to act on the Councillors' request and that no opportunity to present was forthcoming. Just another example of failed communication in this matter.

Assuming that the process Council has recommended for Congo Road North is progressed through to LRS registration, the Council have not even bothered to consult the landowner regarding servicing the severed land to the north, or about the fact that the road reserve boundary will be located within 1m of what the Council term "the track in use". There are clear safety implications with this fence located in the recognised clear zone adjoining the travel lane, not to mention the real possibility of frequent damage from errant vehicles. Will Council fund the fence repairs given the proximity to the travel lane and likely damage?

Boundary Fencing / Safety

Council has failed to consult regarding the provision of boundary fencing other than to advise "Council does not propose to fence the boundary of the redefined road". **To be clear, Council is the entity proposing to define a road reserve where none previously existed through the middle of the property.** This proposed road happens to be through and adjacent to an existing active quarry with its associated hazards and Council expect the landowner to fence the road reserve?. This scenario does not pass the late Lei Parker pub test. Council are the authority exposing the public to the existing and known risks. Council should be responsible for provision of suitable fencing to ensure the safety of the public **not the landowner.** The landowner has not proposed the public road, the Council has !!.

Council are proposing a boundary within 1m of the travel lane over a long length of the road. This structure falls within the normal clear zone and would need to be protected by some form of safety barrier. This will be a significant additional cost that Council has neglected to mention or include in their report.

Tree Removal

Council has been deliberately misleading in indicating the number of trees to be removed. Council repeatedly mentions 9 trees but the reality is the number will be much more given the location of the proposed northern and southern road boundaries currently pegged in the field.

In fact, the proposed southern road boundary goes directly through 4 (photos attached) of the biggest most mature trees in that area resulting in significantly more trees being removed than the 9 trees repeatedly referenced.

Councillors are reminded that the landowner offered the northern alignment at no cost to Council, and that only 1 boundary was proposed to be fenced which may have ultimately resulted in less trees being removed than Councils current road boundary proposal.

LRS

Councils statement that "The proposed redefinition satisfies the LRS Guidelines" is false. Councils proposal fails on a number of key requirements.

An extract below is from the LRS guidelines for road redefinition...

Deviation from original surveyed position

Where the re-definition of an existing road indicates differences with the original survey, it will be necessary to either:

- dedicate the site of the new road to the public and close the original road or
- redefine in a survey plan of redefinition the position of the road - see ss.18-21 *Roads Act 1993*.

The intention of sections 18-21 *Roads Act 1993* is to relocate public roads or Crown reserved roads if those boundaries have not previously been identified or if the survey marks used to identify those boundaries cannot be located or ascertained. The following principles apply:

- **The road must be constructed and in use** and the new definition must approximate the position of the original road ie the new definition must connect the same sides of the parcel and must not vary in other directions.
- The provisions cannot be used to create new roads or extend existing roads. All new roads must be opened in the usual manner pursuant to Sections 9 & 10 *Roads Act 1993*.
- The position of the existing road must not be able to be determined from the original plans (either due to poor marking or to no road traverse being shown on the original Crown plan). If the original Crown portion plan does define the reserved road by traverse, Sections 18-21 do not apply, and any inconsistency between the definition as set out in the traverse and the road as actually constructed may only be resolved by standard road opening and closure procedures.
- The reserved road must be internal to the parcel. The redefinition of the road must not redefine any exterior boundaries of the parcel or the boundaries of the adjoining parcels.
- The redefined road may be variable width in lieu of, for example 20.115 wide. It is standard practice for the surveyor to adopt the lines of existing occupations to define each side of the redefined road and this inevitably results in the new road definition being **variable width. However the new definition should not significantly reduce the width of the road or encroach onto adjoining occupations.**

Councillors are directed to the highlighted text.

The facts are that the subject road has been closed and not in use since 29th November 2021 when the owner withdrew public access rights. The road closure by the landowner has been well documented in Councils media releases at the time. The owner also installed locked gates and physical barriers in accordance with legal advice received. As it is part of the approved quarry area it has been utilised by the quarry. No public access has occurred, **the road is not in use**!. **Councils proposal does not meet LRS guidelines.**

Council has issued press releases on 2 occasions indicating that there is no status assigned to the section of closed road and that no case for a William V road can be determined. The landowner has also obtained his own specialist advice confirming the same.

The LRS guidelines also indicate that any new definition “*should not ... encroach onto existing occupations*”. Councillors are reminded that the landowner enjoys Development Consent over the whole property which includes the area Council has proposed the road redefinition over. Councils road proposal encroaches onto existing occupations that being the lawful use of the land for sand extraction. Additionally, the boundary proposal also encroaches into already partially fenced areas which are deemed an occupation. **Councils proposal does not meet LRS guidelines.**

Given that lodgement of Councils proposed road redefinition plan requires an evidentiary statement or statutory declaration to accompany the plan, how can Councils delegate sign off knowing the proposal does not meet LRS guidelines and is unlikely to be registered in its current form.

Summary

I urge Councillors to seriously consider the information presented above and vote accordingly.

Whilst the communities desire to have a northern access in the immediate term is understandable, the landowner also wants a Congo Road north access, but it must be located along the northern alignment which will be dedicated at no cost. Councillors are urged to read the studies undertaken for the northern road alignment, and note that the studies indicate this alignment option is viable and should not be dismissed as easily as staff have done in this report.

Councillors should consider long term aspects such as providing a road conforming to current standards, and preserving an important regionally recognised sand resource, and act in the best interests of ALL ratepayers.

There is a better option than that currently proposed Thank you

*** Pecuniary interest disclosure from Clr Mayne and Clr Worthington given they were part of the protest group on 29th November 2023 and clearly adopted a stance on the issue ?? **











Public Forum presentation regarding Agenda item PSR23/042 Congo Road North

Good afternoon. Thank you for the opportunity to address Council regarding Agenda Item PSR23/042 Congo Road North.

As a member of the community directly affected by the closure of Congo Road north and an active participant in the campaign to have it re-opened in its current location, I support the survey plan (P-FY20232074) for Congo Road North currently before councillors. It has been a long time coming and I suspect that without the change in senior staff within Council, as well as the councillors themselves, it may never have eventuated.

As a biologist with over 20 years experience working in the area of threatened species protection and recovery however, I am very concerned about the statement in the report before you which says that if the survey plan of Congo Road North is registered, Council will need to remove the 'previously identified 9 trees prior to the public being able to use the road'. The rationale given for this is the risk assessment which was undertaken by Council under the previous Director Infrastructure before the road was closed by the owner of the sand quarry back in 2021.

There are 2 reasons for my concern:

1. The biological significance of the trees to be removed

These trees are all Bangalays which are an essential component of the Bangalay Sand Forest Endangered Ecological Community (EEC) protected under the NSW Biodiversity Conservation Act. They provide habitat for a number hollow-dependent threatened species listed at both the State and National levels, which have all been recorded locally. They also provide important foraging resources for a number of additional endangered and critically endangered species listed under State and Federal legislation which also occur locally. One of these species, the Greater Glider, is particularly significant. It is restricted to a small area between the Moruya River, Coila Lake and the Princes Highway. These animals never leave the tree tops and rely on a continuous tree canopy to move through the area seeking food and shelter. Removal of 9 large trees will undoubtedly restrict their movement and impact on their ability to access the resources they need to survive. Over the years the loss of tree canopy in this area through the actions of the adjoining quarry owner has made the remaining Bangalays along Congo Road North all the more important. It is therefore essential to maximise the retention of trees along this road to maintain the important biological functions they perform and ensure the survival of the threatened species that use them.

2. The flawed risk assessment methodology previously applied by Council to support tree removal

In 2021, when tree removal works were first proposed along this section of road, Council applied the methodology outlined in the Austroads Design Guidelines to generate the risk scores which were then used as the basis for identifying which trees needed to be removed. However, Council did not take into account section 4.4.1 of these guidelines which state that "*Significant trees should be assessed in accordance with jurisdiction guidelines before removal is proposed*" i.e. the test of significance under the NSW Biodiversity Conservation Act. Instead Council undertook a cursory presence/absence observation of hollows to determine which trees could be removed. This does not fulfil the statutory requirements to undertake tree removal works within an Endangered Ecological Community that provides known habitat for threatened species.

The Austroads Guide to Road Design emphasises the need for suitable speed zoning to achieve safety and environmental protection objectives. However, Council did not provide any information about the speed zoning it intended to apply to Congo Road North in their risk assessment. In fact, this risk assessment did not specify the assumed road speed used to generate the calculated risk scores in the risk assessment table, which would have had a huge impact on the risk coefficients generated and subsequently used to justify the tree removal. It is also notable that 2 of the trees earmarked for removal back in 2021 were described as having "low risk" in Council's risk assessment table. This throws into question the objectivity of Council's risk assessment.

This section of Congo Road North does not have a significant crash history, which the Austroads Guidelines indicate should be taken into account in decision making. Consequently, the only basis for tree removal provided by Council previously was an unsubstantiated and unverifiable risk assessment.

Consequently, it is important that Council now undertake an updated and legally-compliant risk assessment prior to any tree removal works on Congo Road North, as promised in the report before you. However, once revised, the key assumptions underlying the risk assessment, as well as the proposed speed zone for this section of road, need to be shared with the affected community, many of whom attended meetings and made submissions on the proposed route of the road. It is particularly important to consult with the community on the proposed speed limit given that this section of road was previously designated as a 40kmph zone. As Council would be aware, the lower the speed limit on a road the less likelihood there is of accidents or fatalities, which is the rationale Council used to limit the speed on roads in the Moruya CBD to 30kmph. A lower speed limit will mean a safer road and that alone may reduce the need to remove trees. It will also have the benefit of reducing accidents involving wildlife given that this section of Congo Road North is a well-known wildlife corridor.

I therefore urge councillors in approving this survey plan to require that Council continue to consult with the affected community in relation to:

- the results of the updated, legally-compliant risk assessment;
- the outcome of any required environmental assessment; and
- the proposed speed limit for Congo Road North.

Through genuine consultation ways may be found to reduce the ecological impacts arising from this project and community faith in Council processes will be further restored.

Thank you

Deborah Stevenson

I am speaking in relation to CAR23/017 Heat Havens

Why we need heat havens

At the outset, it is important to note that the population profile of the Eurobodalla Shire contains above average numbers of both older and socioeconomically disadvantaged people. Heatwaves disproportionately impact older people, children, people with disabilities, those with pre-existing or chronic health conditions, and those with greater [socioeconomic disadvantage](#).

The authoritative 2023 Lancet Countdown report released on Friday 14th November indicated that Heat-related deaths of people older than 65 have increased by 85 percent since the 1990s, according to modelling that incorporates both changing temperatures and demographics. People in this age group, along with babies, are especially vulnerable to health risks like heat stroke. As global temperatures have risen, older people and infants now are exposed to twice the number of heat-wave days annually as they were from 1986 to 2005.

Vital Attributes to operate as a heat haven:

- 1. buildings with air conditioning and Hepa filters** for the more vulnerable to go to escape heat and or smoke. This includes the elderly, people with disabilities, pregnant women, mothers with young babies and children and tourists staying in camping accommodation.

2. buildings where the **power will stay on during power outages** by having **independent power systems** (solar, batteries and back up either gas or petrol generators).
3. internet and communication facilities that work during power blackouts or after damage to mobile phone infrastructure (using Low Earth Orbit satellite connections or similar).

The Australian Energy Management Operator (AEMO) has warned that blackouts are likely this summer due to much hotter temperatures.

SHASA has collaborated with owners of 5 community facilities to upgrade their facilities to include these vital attributes.

Havens Report to Council

Now I will turn my attention to the section in the Heat Report to Council titled “Private and community based provision of heat havens by third parties”. SHASA would like to set the record straight on this section, which is about the havens established by SHASA in community-owned facilities. Council staff did not, I repeat did not, contact SHASA for an update on the Haven Project. As a result the material presented to Councillors today is inaccurate and not up to date.

Operational Plans for the Heat Havens

This section raises concerns about how these havens will operate. SHASA has only recently received grant funding

(from private funds) to produce operational plans for each of the havens. These will be developed in collaboration with the community organisations that own and run these facilities. We aim to complete these plans by early 2024.

The operational plans will include the conditions that will trigger their opening, opening hours, how they will be staffed, what support will be provided, communications strategy and operation of equipment etc. Training will also be provided to volunteers who assist with the running of the havens. SHASA has informed a Council staff member that, once completed, SHASA will provide the Council with copies of the operational plans.

SHASA looks forward to similar operational plans for the 19 “cool space” facilities listed in Table 4 of Council Report, also being made available by Council for public information, in particular, out of hours operations and operations during periods of power disruption.

SHASA has undertaken other measures to enhance the operations of the Heat Havens.

SHASA has recently provided:

- 2 heatwave haven kits (food & toiletries and art materials) to 3 havens.
- stretchers and blankets to 3 havens.

SHASA is currently working with local technology provider The Tec Exec to provide the latest satellite LEO (Low-Earth Orbit) technology - Starlink satellites, which we are calling SkyFi, to deliver fast and reliable internet connections for 3 of the havens in the event of a blackout or

telecommunications disruption.

SHASA is deeply concerned that the final sentence of the section titled “Private and community based provision of heat havens by third parties” implies that SHASA has misused public funds.

When SHASA sought grant funding from governments and philanthropists we made it crystal clear that the upgrades would provide multiple benefits which include:

1. Reduce running costs for these facilities that provide services to the most vulnerable in our community.
2. Improve the day to day functionality of these buildings for a range of community activities.
3. Enable these facilities to provide a place for the most vulnerable members of the community to escape extreme heat.

Who can access the havens?

The statement that one of the facilities Council has contacted will not be open to the general public does not tell the full story. CWA Moruya, CWA Narooma and the Moruya Pre School are not going to be open to the public for personal safety reasons. Older women and young children are highly vulnerable groups and need to be kept safe.

- Moruya Pre-School will be open for parents and children from the 3 Moruya Pre Schools. The CWAs will be open to CWA members and their families.
- Two of the havens will be open to the general community – the Uniting Church Catalina and the Anglican Parish Moruya.

Reference is also made in the section under discussion that these heat havens are not linked with Council's emergency management processes. This is because SHASA has been frozen out of these emergency management processes, despite many attempts by SHASA. It's outrageous to blame community groups for Council actions.

It needs to be understood that havens are alternative, complementary resources in addition to "cool spaces". The havens offer dedicated spaces that are suitable for the more vulnerable members of our community who would probably experience problems in a generic "cool space", and in this context Council needs to heed its own community goal set out at the beginning of this agenda paper, "Our community that welcomes, celebrates and supports everyone".

The havens are quite simply another resource helping to assist the more vulnerable in our community.

In Conclusion

SHASA is a small incorporated, registered charity, which relies on the hard work of highly skilled and dedicated volunteers to undertake practical projects to achieve a more resilient community in the Eurobodalla. This section of the Report is extremely damaging to our key asset, our branding.

SHASA requests that the section be removed.

If the Council is having a problem understanding the concept of heat havens and developing operational plans for its heat havens, SHASA is more than willing to help.