



AGENDA

Ordinary Meeting of Council

18 June 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 18 JUNE 2024

COMMENCING AT 12.30PM

AGENDA

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

- | | |
|--|-----------------|
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| 2. ACKNOWLEDGEMENT OF COUNTRY | |
| 3. APOLOGIES
Nil | |
| 4. CONFIRMATION OF MINUTES OF PREVIOUS MEETING
4.1 Ordinary Meeting held on 21 May 2024 | |
| 5. DECLARATIONS OF INTEREST OF MATTERS ON THE AGENDA
(Declarations also to be made prior to discussions on each item) | |
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Nil | |
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WARWICK WINN
GENERAL MANAGER

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NOM24/004 FINANCIAL STEWARDSHIP

S012-T00026

Responsible Officer: Anthony Mayne - Councillor

Attachments: Nil

Councillor Anthony Mayne has given notice that at the Ordinary Meeting of Council on Tuesday 18 June 2024, he will move the following motion.

MOTION

THAT Council acknowledge the financial stewardship and challenging work underway to return the organisation to financial sustainability.

BACKGROUND

In 2022-23 Council was forecasting a \$4 million deficit. On closer examination that amount was nearer \$14 million. At that time there was no Finance Director or even a finance directorate at Council.

The Bay Pavilions was forecast to cost Council \$384K per year to run, but closer examination shows that will be nearer to \$5 million per year. A KPMG review of the facility confirmed these disappointing figures.

Similarly, the independent report commissioned to look at the Mogo Trails mountain bike park has shown annual costs to Council are at least double those anticipated.

As we move forward, we need a solutions-focused approach. Concentrating on the rear-view mirror will not address our current challenges. However, we do need to learn the lessons to ensure we have in place the necessary financial governance and transparency to manage our trajectory. I acknowledge the work of staff and of my fellow Councillors in addressing the financial legacies that are now being addressed.

We already know the southern dam will run over budget in the millions. Our capital works carry forwards are still too high, not to mention the significant line of credit being used for day-to-day operations.

These matters have been documented, verified, and explained to us councillors and, pleasingly, to the community in a transparent, easy to understand way. I acknowledge and thank Council staff for the community briefing sessions explaining our financial reality to residents.

It is important that we recognise that these budgetary failings are taken seriously and that there is a need to change our ways.

I acknowledge the work of the General Manager and the Finance Director, a position that has only existed in the past twelve months, that we now have this information in front of us and a plan to fix it. Council staff have managed to reduce that projected \$14M deficit to \$8M for 2024-25. This is commendable and I congratulate the staff for their diligence, but obviously we can't stop there.

As Council is about endorse the draft 2024-25 operational plan and budget, I believe it important these challenges are openly, honestly and transparently ventilated in the Council Chamber for the benefit of the community.

Council commends the analysis undertaken so far by the Finance Director and General Manager and acknowledges the Financial Strategy. Council also notes further work will be needed to

NOM24/004 FINANCIAL STEWARDSHIP

**S012-
T00026**

maintain a balance between service to the community and living within our means and that open engagement and communication with our community will be foundational in our approach.

GENERAL MANAGER'S RESPONSE

Council's Finance Strategy, adopted in December 2023, aims to support and guide our approach toward financial sustainability.

Successful community briefings, held this year and last, show that ratepayers are engaged with Council's financial challenges and the solutions we are posing. We also know there is little appetite in the community for radical service reductions or massive rate rises.

With that in mind, we have been careful to identify savings only where there will be little impact on the services we deliver. To achieve this, we've reprioritised our capital works programs and modified some services, as outlined in our 10 May media release, on the website, and the recent public meetings.

These are all prudent, careful adjustments to our work program that will help save money with minimal impact on services for the community. They will be monitored carefully and reviewed annually.

We will also continue to provide timely, honest updates to the community as we work through this enormous challenge.

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**QON24/001 DALMENY LAND RELEASE AREA MASTER PLAN AND DEVELOPMENT
CONTROL PLANS**

S012-T00024; S017-T00033

Responsible Officer: Alison Worthington - Councillor

Attachments: Nil

The following questions on notice were received from Councillor Worthington:

Question 1

Councillors were briefed on the draft master plan in the 28 November Councillor briefings. When and why was the decision made to NOT bring the draft master plan before councillors to resolve to place it on public exhibition?

Response

Councillors will know this project has been underway since the middle of 2021. The first community drop-in session, which attracted considerable interest, was in July 2021. The core issue was the land sale and a community workshop on the masterplan in December 2021. The landowners have continually raised concerns about the delays and length of the project. This year, there has been no progress on the project and no progress on the development control plan details, even using external consultants. The developer and landholders are understandably unhappy with the progress and can finish studies and detail work for the council consultant to review.

Councillors were provided with an update in November 2023 (Councillor briefing). External consultants have drafted a masterplan and completed most technical studies. The masterplan is not ready for public exhibition as further work is required and drafting a development control plan (DCP) provisions is in the early stages. There has not been a decision not to bring the draft masterplan before the Council. Any draft masterplan will need to go to Council for a decision on the public exhibition of the masterplan.

Question 2

Residents became aware on 18 May that Eurobodalla Shire Council have altered the approach to finalising the Dalmeny Land Release Area Master Plan and DCP.

Councillors were informed, through a mention in the Council Meeting on 21 May and in a Councillor Bulletin from 24 May 2024, that a decision was made in consultation with landowners for them to lead the project.

The Councillor Bulletin from 24 May 2024 that:

‘what has been decided after feedback from some of the landowners is that they (the 3 landowners) will be the lead for the project so that the master plan/DCP can be finalised, and the landowners can move towards lodging development applications.’

Could minuted records of that decision and/or correspondence between the stakeholders involved in that decision be made available to councillors?

Response

Councillors were informed, through a mention in the Council meeting on 21 May 2024 and in a Councillor Bulletin from 24th May 2024, that staff in consultation with landowners recognised the opportunity for them to enable the project to move forward. The council consultant will still

**QON24/001 DALMENY LAND RELEASE AREA MASTER PLAN AND
DEVELOPMENT CONTROL PLANS**

**S012-T00024;
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review and guide the landholder documentation and provide independent advice to the relevant Council staff. The matter will be presented to a Council meeting when the complex issues behind the master planning and development control drafting reach a workable resolution.

The Councillor Bulletin from 24 May 2024 that:

'what has been decided after feedback from some of the landowners is that they (the 3 landowners) will be the lead for the project so that the master plan/DCP can be finalised, and the landowners can move towards lodging development applications.'

There are no minute records of the decision to allow the landowners to enable the project to move forward. The Acting Divisional Manager of Strategy and Planning consulted internally on the division's workload, including a decision to allow the landowners to lead the project. Discussions with the landowners followed the decisions. These discussions were informal meetings and phone calls.

The result is that:

- The project is underway, and the work done to date will be the underlying research used by landowners to progress the masterplan and develop a draft DCP.*
- The landowners may review the draft masterplan and develop a new version.*
- Only Council has the authority to endorse, change, reject or publicly exhibit the draft masterplan and DCP amendments.*
- Following the exhibition, only Council has the authority to adopt any masterplan/ DCP amendments. The DCP must also resolve some statutory requirements set out in the ELEP 2012.*

Question 3

If this information cannot be provided, please explain on what grounds?

Response

See above

Question 4

Council resolved in 2021 that some proceeds of the land sale of lot 2 would be allocated to the master planning process. What are the tangible outcomes of the money spent so far?

Response

The process has many tangible outcomes, including a draft masterplan and associated technical studies. The technical work includes transport and traffic, bushfire, ecological, stormwater, and preliminary water /sewer servicing plans. The outline of the DCP is complete and money is left over for a review of the documentation to be reported to Council when the draft is finalised.

**QON24/001 DALMENY LAND RELEASE AREA MASTER PLAN AND
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Question 5

What, if any, work remains outstanding before the draft master plan can be placed on public exhibition and how will that be resourced?

Response

The work necessary to finalise the draft masterplan and associated documentation includes the following:

- *Refinement of the masterplan and the developable/undevelopable areas of the land release area.*
- *Finalisation of the DCP amendment clauses*
- *finalisation of the clause 6.2 ELEP provisions.*

RECOMMENDATION

THAT the responses to the questions regarding Dalmeny Land Release Area Master Plan and Development Control Plans raised by Councillor Worthington be received and noted.

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**GMR24/005 2024-25 DETERMINATION OF THE LOCAL GOVERNMENT
REMUNERATION TRIBUNAL**

S012-T00010

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

Pursuant to section 241 of the *NSW Local Government Act 1993* (NSW) (LGA) the Local Government Remuneration Tribunal (Tribunal) is required to make an annual determination by 1 May of each year on the fees payable to mayors and councillors, which has now occurred.

The level of fees paid is determined by the category that a council fits within. In 2023 the Tribunal undertook a review of the categories which resulted in Eurobodalla moving into a higher existing category named 'Regional Centre'.

In its determination, the Tribunal has awarded a 3.75% increase to mayors and councillors in each category effective 1 July 2024. The Tribunal noted the submission of Local Government NSW and individual member councils, which informed its view as to the quantum of this year's increase.

RECOMMENDATION

THAT Council make a determination that the maximum 2024-25 annual Councillor and Mayoral Fees be set in accordance with Council's classification as a Regional Centre.

BACKGROUND

The Local Government Remuneration Tribunal is constituted under the *NSW Local Government Act 1993* and is responsible for categorising councils, county councils and mayoral offices to determine the maximum and minimum fees to be paid to councillors, members of county councils and mayors in each category.

Section 239 of the LGA requires the Tribunal to determine the categories of councils and mayoral offices at least once every 3 years. A review of categories was last carried out by the Tribunal in 2023. The Tribunal will next consider the model, criteria for each group, and the allocation of councils in the 2026 review.

In its 2024 determination, the Tribunal has acknowledged the issues raised in submissions about the remuneration received by mayors and councillors, including a lack of diversity in representation, the changing nature of work required to be undertaken and changed community expectations. The Tribunal has suggested there would be merit in a comprehensive review of the framework for mayor and councillor remuneration. This will be considered as part of the Government's examination of the broader issues facing local government.

**GMR24/005 2024-25 DETERMINATION OF THE LOCAL GOVERNMENT
REMUNERATION TRIBUNAL**

S012-T00010

The Tribunal's 2024 Annual Determination can be viewed at:

[LGRT-2024-Annual-Determination-29-April-2024.pdf \(nsw.gov.au\)](https://www.nsw.gov.au/legislation/other-legislation/pdf/LGRT-2024-Annual-Determination-29-April-2024.pdf)

CONSIDERATIONS

Categorisation of Councils

The Local Government Remuneration Tribunal is required under section 239 of the *Local Government Act 1993* to determine the categories of councils and mayoral offices at least once every three years. The Tribunal undertook a review of the categories as part of its 2023 determination. Eurobodalla was categorised in 2023 as a Regional Centre.

Fees for Councillors and the Mayor

Under the provisions of the LGA, councils are required to fix and pay an annual fee based on the Tribunal's determination. A council cannot fix a fee higher than the maximum amount determined by the Tribunal and must pay at least the minimum fee. The level of fees paid will depend on the category that the council is in.

The Tribunal is required to have regard to the same policies on increases in remuneration as the Industrial Relations Commission is required to give effect to under the *Industrial Relations Act 1996*, relating to the conditions of employment of public sector employees.

The Tribunal has reviewed the key economic indicators, including the Consumer Price Index and Wage Price Index, and finds that the full increase of 3.75% available to it is warranted.

The 2024-25 fees for a council classified as a Regional Centre are shown below. For comparative purposes, Council's previous classification is also shown.

	Councillor Annual Fee		Mayoral Annual Fee	
	Minimum	Maximum	Minimum	Maximum
Regional Centre 2023-24	\$14,810	\$26,070	\$30,820	\$64,390
Regional Centre 2024-25	\$15,370	\$27,050	\$31,980	\$66,800

**GMR24/005 2024-25 DETERMINATION OF THE LOCAL GOVERNMENT
REMUNERATION TRIBUNAL**

S012-T00010

Financial

Council's resolution in this matter on 27 June 2023 was as follows:

23/62 MOTION Councillor Schutz/Councillor Diskon

THAT Council:

1. Note that under the Tribunal's determination for 2023-24 fees, Council has been re-categorised as a 'Regional Centre' from a 'Regional Rural' classification and the maximum annual Councillor fee is \$26,070 and additional Mayoral fee is \$64,390 within this category.
2. Make a determination that the maximum 2023-24 annual Councillor and Mayoral Fees be set in accordance with Council's classification.

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

Division

For the Motion: Crs T Dannock, P Diskon, D Grace, T Harrison, M Hatcher, A Schutz and A Worthington.

Against the Motion: Cr A Mayne.

It is common practice for councillors and the mayor to be paid at the maximum fee within the assigned category.

Council's 2024-25 budget can accommodate the increase and current allocation for the councillor and mayor's fee is \$245,502. A September budget variation of \$64,748 will be required if Council adopt the increase to the maximum as prescribed by the Tribunal.

If Council does not fix a fee, Council must pay the minimum fee determined by the Tribunal in the relevant category.

CONCLUSION

The Local Government Remuneration Tribunal has determined an increase to the mayoral and councillor fees of 3.75% for the 2024-25 financial year, with effect from 1 July 2024.

Under the provisions of the *Local Government Act 1993*, councils are required to fix and pay an annual fee based on the Tribunal's determination. Eurobodalla Shire Council is classified as a Regional Centre council. It is common practice for councillors and the mayor to be paid at the maximum fee within the assigned category.

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GMR24/006 SOUTHERN REGION PLANNING PANEL - COUNCIL NOMINEES

**S017-
T00002**

Responsible Officer: Warwick Winn - General Manager

Attachments: Nil

Outcome: 5 Our engaged community with progressive leadership

Focus Area: 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

Regional Planning Panels were introduced in NSW on 1 July 2009 to strengthen decision making for regionally significant development and certain other planning functions under the *Environment Planning and Assessment Act 1979 (EP&A Act)*.

Eurobodalla is part of the Southern Region Planning Panel.

Each panel consists of five members, with three of the members, including the chair, appointed by the Minister (State members) and two members nominated by the relevant council (council members).

At least one council member must have expertise in one or more in the following areas: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism.

Council's former Director Planning and Sustainability Services, was one of Council's representatives on the Southern Region Planning Panel; a replacement for this position now needs to be appointed. Councillor Amber Schutz is currently the council member on the Panel.

Council is seeking to appoint the Divisional Manager Strategic Planning as one of Council's two representatives on the Panel. The appointment will run from 18 June to 30 September 2024 due to the local government elections. After the elections, Council will need to reconsider its representatives on the Southern Region Planning Panel.

RECOMMENDATION

THAT Council:

1. Endorse Council's Divisional Manager Strategic Planning as one of the two Council members on the Southern Region Planning Panel from 18 June 2024 to 30 September 2024.
2. Forward the nomination and any supporting information to the NSW Government Planning Panels Secretariat.

BACKGROUND

Regional Planning Panels determine regionally significant development applications (DAs) and undertake rezoning reviews of planning proposals. Additional roles can include:

- Determining Crown DAs
- Determining modification applications for regionally significant development

GMR24/006 SOUTHERN REGION PLANNING PANEL - COUNCIL NOMINEES

**S017-
T00002**

- Determining DA reviews
- Advising the Minister or the Planning Secretary as to planning or development matters relating to the part of the State for which it is constituted if requested to do so by the Minister or the Planning Secretary.

Regional Planning Panels are independent bodies representing the Crown and are not subject to the direction of the Minister, except on matters relating to Planning Panel procedures or where the Minister issues a formal direction under the *EP&A Act*.

CONSIDERATIONS

The Planning Panels' Operational Procedures set out that the Panels have two council members appointed by each council. At least one council member must have expertise in one or more of the following areas: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, or tourism.

The operational procedures also recommend that councils have regard to any conflict of duties by nominating a person if they are in any way responsible or involved in the assessment of matters to be determined by the Panel.

The appointment of Council's Divisional Manager Strategic Planning as one of Council's two members to this Panel is considered appropriate, as the position has expertise in planning but is also not directly responsible for the assessment of development applications. It is noted there may be a conflict if a planning proposal is considered by the Panel, however the majority of matters that go before the Panel are related to development applications.

The procedure also recommends there are a minimum of four alternates, however this can be addressed after the Council elections. It is considered satisfactory to resolve the vacancy given the short period of time involved.

Policy

The Sydney District and Regional Planning Panels' Operational Procedures are the Planning Panels' charter and have been developed to explain the objectives, powers, and authorities of the Planning Panels. They also detail the means of operating the Planning Panels and clarify the roles of various parties in the work of the Planning Panels.

The procedures should be read in conjunction with the Planning Panels Code of Conduct which explains the standard of conduct expected of Planning Panel members.

These procedures will be kept under review and may be amended periodically.

The procedures can be found at: [Sydney District and Regional Planning Panels Operational Procedures – September 2022 \(nsw.gov.au\)](https://www.nsw.gov.au/sydney-district-and-regional-planning-panels-operational-procedures-september-2022)

CONCLUSION

It is proposed to endorse Council's Divisional Manager Strategic Planning as one of Council's two representatives on the Southern Region Planning Panel.

The appointment will run from 18 June to 30 September 2024 due to the local government elections. After the elections, Council will need to reconsider its representatives on the Southern Region Planning Panel.

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PSR24/011 DA0629/23 - DEMOLITION OF EXISTING AND CONSTRUCTION OF COMMERCIAL PREMISES, SHOP TOP HOUSING AND CAR PARKING - 9-19 GRAHAM STREET, NAROOMA DA0629/23

Responsible Officer: Gary Bruce - Acting Director Planning & Environment
Attachments: 1. Under Separate Cover - Conditions of consent
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

Applicant: Kasparek Architects
Land: 9, 11-13, 15 and 19 Graham Street NAROOMA, Lot 637 DP 752155, Lot 632 DP 752155, Lot 635 DP 752155, Lot 636 DP 752155, Lot 1 DP 1223791
Area: 3594m²
Setbacks: Front – complies
Side (1.5m) - complies
Rear (3m) – (performance criteria) – complies
Height 13.97m (11.5m height limit)
Zone: E1 Local Centre
Current Use: Commercial
Proposed Use: Shop top housing
Description: Demolition of existing and construction of commercial premises and shop top housing (36 units x 2 bedroom dwellings)
Cost of Development \$25,694,000
Permitted in Zone: Yes
DA Registered: 09 June 2023
Reason to Council: Clause 4.6 Variation to Height of Buildings
Recommendation: Approval subject to conditions

EXECUTIVE SUMMARY

The purpose of this report is to seek Council's determination of Development Application (DA) 0629/23 for demolition of existing and construction of commercial premises and shop top housing (36 units x 2 bedroom dwellings).

The DA seeks a variation from the *Eurobodalla Local Environmental Plan 2012* (LEP) Clause 4.3 Height of Buildings. The Eurobodalla LEP defines the maximum building height of the subject

PSR24/011 DA0629/23 - DEMOLITION OF EXISTING AND CONSTRUCTION OF COMMERCIAL PREMISES, SHOP TOP HOUSING AND CAR PARKING - 9-19 GRAHAM STREET, NAROOMA DA0629/23

site as 11.5m, taken from natural ground level. The proposal seeks a variation of 2.47m or 21.5% for the highest portion of the building.

The Eurobodalla LEP Clause 4.6 Exceptions to Development Standards and the *Department of Planning Circulars PS08-003 and PS 08-014* requires that all developments with a variation greater than 10% to the development standards, must be determined by Council.

The proposal has considered the requirements of the *Environmental Planning and Assessment Act 1979* (the EPA Act), relevant State Environmental Planning Policies (SEPPs), *Eurobodalla Local Environmental Plan 2012* (LEP), and the Narooma Township Development Control Plan (DCP).

The DA was exhibited on two occasions in accordance with the Community Engagement Framework and Participation Plan. During the exhibition periods, four submissions in total were received. The matters raised in the submissions have been considered and would not prevent the development from proceeding.

This report recommends approval of the DA subject to conditions.

RECOMMENDATION

THAT Development Application 0629/23 for the demolition of existing and construction of commercial premises and shop top housing (36 units x 2 bedroom dwellings) at 9-19 Graham Street Narooma be approved subject to the conditions provided in the attachment.

BACKGROUND

The proposal was initially lodged to include 36 units above car parking that included a mix of stacked car parking and car stackers, on-street loading areas and car parking at Burrawang Lane.

The building design and proposal have been amended during the assessment process to delete proposed car stackers and amend the built form to address potential impacts on adjoining development.

The site contains existing commercial buildings and vegetation which is proposed to be removed. The site is located to the area known as “the flats” of Narooma. The site runs parallel to the Princes Highway and is in an area with a mix of commercial and residential uses.

Policy

The application has been assessed in accordance with the provisions of the *Environmental Planning and Assessment Act, 1979* and the following relevant legislation, planning instruments and policies.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The proposed development is supported by a BASIX Certificate. The plans and conditions reference the BASIX commitments which will be installed during construction. The proposed development is compliant with the SEPP.

State Environmental Planning Policy 65 (Design Quality of Residential Apartment Development) and Apartment Design Guide (ADG)

PSR24/011 DA0629/23 - DEMOLITION OF EXISTING AND CONSTRUCTION OF COMMERCIAL PREMISES, SHOP TOP HOUSING AND CAR PARKING - 9-19 GRAHAM STREET, NAROOMA DA0629/23

The development is generally compliant with the provisions in the NSW Government's Apartment Design Guide and the outcomes sought under SEPP 65.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 – Vegetation in non-rural areas

The land is not mapped on the Biodiversity Values Map. The land is zoned E1 Local Centre. There is minimal vegetation on the site including native vegetation, but the vegetation removal does not exceed the applicable threshold of 2500m². As such, a Biodiversity Development Assessment Report is not required for this development.

State Environmental Planning Policy (Resilience & Hazards) 2021

Chapter 2 – Coastal management

The land is not located in the coastal wetlands, littoral rainforest, or proximity areas.

The land is located part within a coastal use area and wholly within a coastal environment area as defined by the *Coastal Environment Area Map* and *Coastal Use Area Map*.

The proposed development is not located near the foreshore or beach area and would not result in overshadowing of the beach on the summer solstice. It is considered the development can be managed to minimise potential impacts.

Chapter 4 – Remediation of land

Given the historic uses of the site, a preliminary and detailed investigation report was submitted with the application. The report considered the potential impacts of previous uses on the site and the development at hand. The report concluded that the site is suitable for uses permissible under the current land uses subject to recommendations including a hazardous material assessment and an unexpected finds protocol.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2 – Part 2.3 - Division 5 – Electricity transmission or distribution

The proposed development was referred to Essential Energy for consideration. Conditions of consent are included in attachment A.

Chapter 2 – Part 2.3 – Division 17 – subdivision 2 – Development in or adjacent to road corridors and road reservations

The proposed development is not subject to Clause 2.119 as Graham Street is not a classified road. Consideration was also given to the proximity of the highway and impact from noise and vibration. These matters were addressed as part of the assessment process.

Eurobodalla Local Environmental Plan 2012 (ELEP)

Clauses 2.1 Land Use Zones

The site is zoned E2 Local Centre. The objectives of the E1 zone are as follows:

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*
- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*

PSR24/011 DA0629/23 - DEMOLITION OF EXISTING AND CONSTRUCTION OF COMMERCIAL PREMISES, SHOP TOP HOUSING AND CAR PARKING - 9-19 GRAHAM STREET, NAROOMA DA0629/23

- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To ensure that development retains a scale and character consistent with the local area.*
- *To ensure that development does not adversely affect the adjoining residential amenity.*

The proposed development is defined as a mixed-use development, shop top housing and commercial premises, which are all permitted in the E1 Local Centre zone with development consent. The objectives of the E1 zone are met through the provision of the residential housing units and the commercial premises that will contribute to a vibrant and active local centre. This style of development is consistent with the current and future desired character of the area.

The proposed development is compliant with the provisions of the ELEP and seeks to rely on Clause 4.6 to support a variation to Clause 4.3, the height of buildings development standard.

Clause 4.3 Height of buildings

Pursuant to Clause 4.3, the maximum height of buildings is 11.5m. The proposed development seeks to construct a building height of 13.97m, when measured from the natural ground level. The natural ground levels across the site are relatively even. The variation to the building height occurs over the whole building, and specifically relates to the proposed roof pitch.

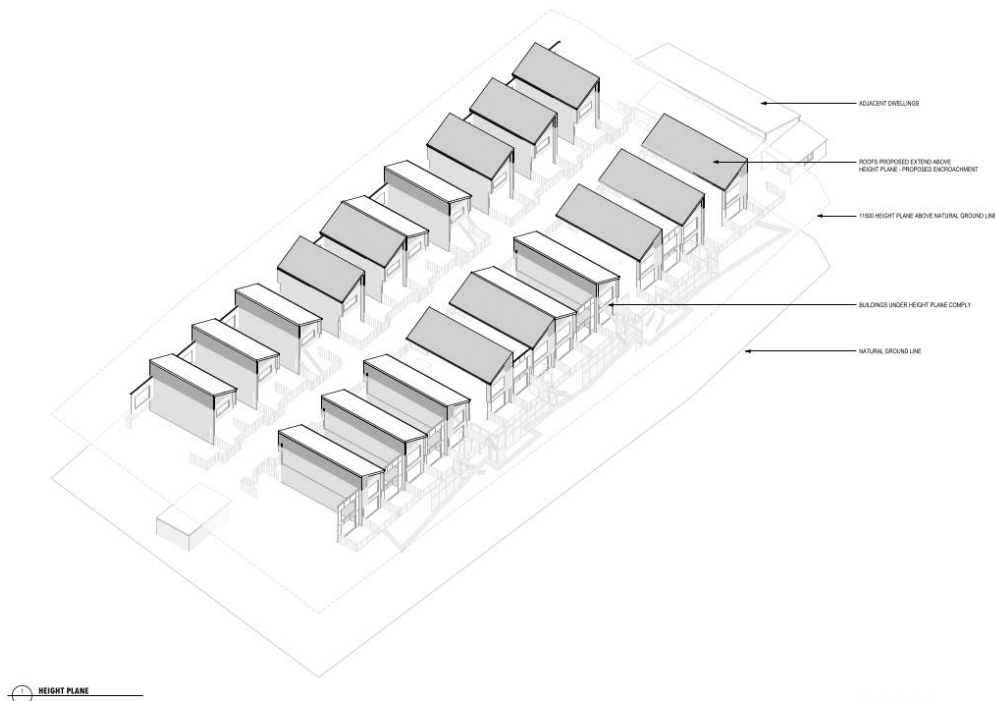
The proposed development is consistent with the objectives of this clause which are:

- To ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality.
- To minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.

Clause 4.6 – Exceptions to development standards

The proposed development requests a variation to the Clause 4.3 height of buildings development standard.

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The above images depict the extent of the proposed height variation. The parts of the roof which are visible, highlighted in yellow and etched in darker ink in image 1, exceed the 11.5m height of buildings maximum limit.

The proposed development seeks a variation to the roof height proposed and seeks a maximum 21.5% variation to the 11.5m height of buildings standard. The proposed maximum height variation is 2.49m higher than the 11.5m development standard at the highest point.

Clause 4.6 of the ELP is intended to provide flexibility to a consent authority to approve a proposal which exceeds a development standard; in this case - building height.

The NSW Land and Environment Court in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC118 and *Four2Five Pty LTD v Ashfield Council* [2015] NSWLEC 90 listed five matters to consider when assessing whether compliance of a development standard was unreasonable or unnecessary, as established in *Wehbe v Pittwater Council* (2007) NSWLEC 827.

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This includes five tests that can be used as a basis to answer the question in relation to a particular application, noting that all five methods may not be needed to demonstrate compliance.

Test 1: Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: *Wehbe v Pittwater Council* at [42] and [43].

Comment: The proposed development does not conflict with the intent of Clause 4.3 which is to ensure that buildings are compatible with the character of the area (height, bulk, and scale) of the existing and desired future character of the locality and minimise visual impacts, view loss, loss of privacy and loss of solar access to existing development. The proposed development achieves this outcome. It has been designed to provide design interest. The perceived height at Graham Street is more of a three-storey building, and is considered to be compatible with the adjoining land uses. The development standard is unnecessary as there are limited impacts on adjoining properties.

Test 2: The underlying object or purpose of the standard is not relevant to the development and compliance is unnecessary: *Wehbe v Pittwater Council* at [45].

Comment: The underlying objective of the building height control is relevant to the development.

Test 3: The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable: *Wehbe v Pittwater Council* at [46].

Comment: The underlying objective of the building height standard is to manage the scale and type of development in relation to built form in the context of existing and developing future character. It also seeks to minimise the potential adverse impacts of the development on the amenity of residential areas.

The character of the surrounding area is described as containing a mix of low to medium density residential and commercial land uses.

The area of Narooma is likely to see more redevelopment in residential apartments and shop top housing developments which may invigorate the redevelopment of commercial areas to provide a mix of built form and increasing density. The proposed development is compatible with the height and scale of surrounding built form. The aspect of the building that exceeds the building height is the roof form which has been designed to create architectural and visual interest.

Test 4: The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable: *Wehbe v Pittwater Council* at [47]

Comment: It is not considered that the development standard has been virtually abandoned or destroyed by the Council's own actions. Council has granted height variations, but these are based on providing more residential accommodation in strategically aligned positions. The location within the local centre is supported as it will generate activity and vibrancy, and there is limited impact on adjoining properties is why the variation can be supported.

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Test 5: The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone: *Wehbe v Pittwater Council* at [48]

Comment: The site is zoned local centre (E1). Compliance with this test is not being sought. It is therefore considered that compliance with the standard (building height) is unnecessary. The variation can therefore be supported.

Clause 5.21 – Flood Planning

This land has been identified as having potential future exposure to flooding associated with sea level rise. This advice is based on the Wagonga Inlet Kianga and Dalmeny Flood Study report (February 2016) and reflects the best information available at the time. Flood related development controls apply.

The proposal has been considered in the context of flood affect, flood hazard and evacuation and management in the event of flooding. Effective management of flood risk to the community requires a flexible merit- based approach to decision-making, including an understanding of flood behaviour and change. ESC’s Wagonga Inlet, Kianga and Dalmeny Flood Study (2016) identifies the site lies at the fringe of the flood area.

The subject development has been designed to provide habitable floor levels for residential dwellings above the flood planning level (FPL). In this instance the identified flood planning level (residential) is RL2.94m AHD. The first-floor residential habitable level (i.e. residential floor level) is proposed at FFL 6.75m AHD. The commercial tenancies are proposed above the required commercial FPL of finished floor level RL2.74m AHD.

The flood planning objectives are considered to be achieved through implementation of conditions, through construction of a development within a flood fringe area that has considered the potential impacts of flooding as required by the objectives and requirements of this clause, and the preparation of a flood management and evacuation plan.

Narooma Township Development Control Plan (DCP)

The proposed development is generally consistent with the provisions of the DCP, however the proposal sought a variation to a number of DCP controls.

The variations relate to the extent of landscaped area and roof form controls. The proposal is considered to satisfy the performance criteria of the DCP and the Apartment Design Guide (ADG). The rood form is supported due to the lack of a consistent building form and the landscaped area is a result of the development including a commercial component, i.e. the ADG is designed for residential flat buildings and not shop top housing.

Environmental

Ecological

The proposed development includes tree removal. The site is not mapped as containing areas of native vegetation and replacement tree planting and landscaping is proposed as part of the development.

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Cultural/Heritage

The lot is not within a heritage conservation area nor is it identified on Council mapping as being a heritage site. There are no known Aboriginal sites or Aboriginal places within 50m of the site.

Character – Built Form

The site is located within the 'flat' area of Narooma township adjacent to the Princes highway that contains a business use area and a mix of historic uses ranging from residential dwellings to mixed commercial/industrial (manufacturing) uses. The applicant proposes a 'saw-tooth' design roof form, that while inconsistent with the 'traditional' pitched roof forms that are outlined in the Narooma DCP for the Narooma township, is consistent with the mixed built form evident in the immediate locality of this site. The 'character' and context of the development has been considered in relation to the site and immediate surrounds including development uses and characteristics of built form in the vicinity of the site and visibility and visual impacts on the scenic context and character of the coast of this area of Narooma.

Character and compatibility are considered in the context of the site and surrounds when assessing a proposal. The 'character' of an area includes consideration of how a place 'looks and feels' and what makes one neighbourhood distinctive from another (Planning Circular PS 21-026). It is important to understand that this includes consideration of a range of factors including how character is created by built and natural elements and that respecting existing character does not mean that new development cannot occur.


Applicants submitted perspective/colours and finishes schedule:

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STREET PERSPECTIVE

PROPOSED COLOUR SCHEME

<p>FACE BRICKWORK (FB) ALUTRA, URBAN ONE RANGE "SILVER" OR SIMILAR</p> 	<p>ALUMINUM PERGOLAS (PGL) POWDERCOAT ALUMINUM COLOUR "MONUMENT" OR SIMILAR</p> <p>R 50 G 51 B 50</p> <p>Monument</p>	<p>OPAQUE GLASS BALUSTRADE (GB) TINTED GLASS WITH DARK GREY TINTED COLOUR CONCEALED FRAME FACE FINISH TO SLAB/POW. SEM CONCEALED</p> <p>Right style</p>
<p>VERTICAL WALL CLADDING (MC) COLORBOND SPANDEK OR SIMILAR POWDERCOAT FINISH R COLORBOND "SABALTY" OR SIMILAR</p> <p>R 109 G 108 B 110</p> <p>Desalt</p>	<p>ALUMINUM WINDOWS & SLIDING DOOR FRAMES (AWD) POWDERCOAT ALUMINUM COLOUR "MONUMENT" OR SIMILAR</p> <p>R 50 G 51 B 50</p> <p>Monument</p>	<p>METAL ROOF SHEETING (MRS) BLUESCOPE STEEL COLORBOND COLOUR COLORBOND "SABALTY" OR SIMILAR</p> <p>R 109 G 108 B 110</p> <p>Desalt</p>
<p>AWNING FASCIA & FEATURE BATTEN BLADES (FB8) POWDERCOAT "CORTEN" LOOKALIKE</p> <p>R 132 G 76 B 51</p>	<p>COLORBOND GARAGE DOORS (CGD) POWDERCOAT METAL COLOUR "MONUMENT" OR SIMILAR</p> <p>R 50 G 51 B 50</p> <p>Monument</p>	<p>COLORBOND FASCIA, CAPPING AND GUTTERING (GPG) BLUESCOPE STEEL COLORBOND COLOUR "MONUMENT" OR SIMILAR</p> <p>R 50 G 51 B 50</p> <p>Monument</p>
<p>WALL CLADDING 2 (LWC) HARDED MATRIX CLADDING EXPRESSED JOINTS PAINT FINISH DULUX "MANCOURN"</p> <p>R 222 G 222 B 222</p>	<p>PAINTED PRECAST CONCRETE (PF) STRUCTURAL CONCRETE PANELS WITH PAINT FINISH OVER DULUX "MANCOURN DOUBLE" OR SIMILAR</p> <p>R 256 G 256 B 256</p> <p>DOWNPIPES TO MATCH WALL COLOUR / FINISH</p>	<p>FEATURE BLADE WALL, FASCIA AND SOFFIT (FW) BLUESCOPE STEEL COLORBOND COLOUR "MONUMENT" OR SIMILAR</p> <p>R 50 G 51 B 50</p> <p>Monument</p>

The proposed built form has referenced existing roof forms within the vicinity of the site. Views from the coast and surrounding development is limited by the relatively flat topography at the site location, separation from surrounding development by streets and built form. Character and context of development is considered on a merit-based basis for each development and the associated location. The site is located behind and to the west of the 'Flat Main Street' area identified as B2 land in Narooma DCP (now zoned E1 Local Centre, an equivalent land use).

This area is identified as a commercial, retail and tourist focus for this area. The proposal is not inconsistent with the overall aims of the DCP in relation to style and visual amenity which include 'To facilitate the development of buildings that display a coastal style of architecture that complements the cultural, environmental and landscape values of the Narooma Township'. It is acknowledged that the State Planning Policy (Housing) 2021 - Apartment Design Guide also applies to the development in relation to build form in addition to local character-built form requirements.

This area of Narooma has traditionally contained a mix of land uses, resulting in a mix of built form and is not located within an area that displays traditional coastal built form. The height of the development is proposed to be varied as discussed in section 4.6 of the ELEP section of this report.

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In this instance, the site is bounded by commercial/industrial development and two street frontages with potential impacts limited to the immediate site and locality. The proposal is considered compatible with the changing character of Narooma.

Consultation

The DA was publicly exhibited on two occasions in accordance with the Community Engagement Framework and Participation Plan.

During these exhibition periods, four submissions in total were received. The matters raised in the submissions have been considered and would not prevent the recommendation for approval. See table below.

Submission	Assessment
<i>Traffic / traffic flows</i>	The application was referred to TfNSW and considered by the local traffic committee and Council engineers. The application has been amended to provide for onsite car parking that caters for the proposed uses.
<i>Parking provision Parking proposed to busy lane way</i>	The original proposal included car parking proposed with direct access from Burrawang Lane. The proposal has subsequently been amended to delete car parking and access from Burrawang Lane with all access provided from Graham St.
<i>Time frames for submissions</i>	The application was notified on two occasions and meets legislative requirements for minimum time periods for notification for the subject development.
<i>No objection to housing or 3 stories No need for additional shops/create empty shops</i>	The proposed ground floor commercial/retail use is a permitted land use in the zone. The lease of shops/retail uses is not a planning matter for consideration under the EP&A Act.
<i>Flooding impacts</i>	Flooding has been considered in relation to the context of the development including residential and commercial uses and car parking requirements. Conditions of consent have been imposed in relation to flood mitigation and management including construction materials and flood evacuation management.
<i>Height limit variations</i>	The proposal has been considered in relation to requirements for height of building variations. The proposal is considered to meet legislative requirements for variations to building heights which are allowable in the context of the proposal, site and surrounds.
<i>Loading arrangements</i>	The proposal was amended during the assessment process to include loading/unloading on site (in lieu of on-street loading

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Submission	Assessment
	areas originally proposed). Conditions of consent have been imposed in relation to loading/unloading and management.
<i>Is affordable housing proposed</i>	The proposal does not include a provision for affordable housing as defined under planning legislation. The proposal involves 36 x 2 bedroom dwellings and there is no current requirement for the applicant to provide affordable housing.

CONCLUSION

This report seeks Council’s determination of an application for demolition of existing and construction of commercial premises and shop top housing (36 units x 2 bedroom dwellings).

The application seeks to vary the building height for the site by up to 21.5% and due to the requirements of the NSW Department of Planning and Environment, any variation above 10% must be reported to Council for determination. The variation is recommended for support for the following reasons:

- Strict compliance with Clause 4.3 would not allow construction of a residential development in a built form that is consistent with the immediate built form character of the locality i.e. mixed industrial commercial land uses mixed with older residential areas incorporating a saw-tooth roof style.
- The variation involves pitched roof sections i.e. approximately 50% of the overall proposed roof structure across the building design i.e. these are provided as an aesthetic and the remainder of the roof form sits below the building height.
- The development will not result in significant visual impacts, view loss, privacy impacts or solar access to neighboring properties.

The application has been assessed in accordance with the *Environmental Planning and Assessment Act 1979* and found to be appropriate for the site. The assessment has concluded that there is minimal impact on adjoining properties or the locality and can be supported.

The development application has been exhibited in accordance with Council’s Community Engagement Framework and Participation Plan, and four objections to the development have been received. The matter raised have been addressed during the assessment and are largely resolved.

The application is put to Council for determination, with a recommendation for approval.

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PSR24/012 DA0361/24 - VARIATION GREATER THAN 10% - 221 BEACH ROAD, DENHAMS BEACH DA0361/24

Responsible Officer: Gary Bruce - Acting Director Planning & Environment
Attachments: 1. Under Separate Cover - Conditions of consent
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

Applicant: CCR & JM Butcher
Land: 221 Beach Road, Denhams Beach; Lot B DP25499
Area: 834.5m²
Setbacks: N/A
Height: 12.125m (8.5m height limit)
Zone: R2 Low Density Residential
Current Use: Dwelling House
Proposed Use: Dwelling House
Description: Demolition of existing dwelling house and construction of a new dwelling house
Permitted in Zone: Yes
DA Registered: 7 February 2024
Reason to F&S: >10% Variation to Height of Buildings Development Standard
Recommendation: Approved, subject to conditions

EXECUTIVE SUMMARY

The purpose of this report is to seek Council's determination of Development Application (DA) DA0361/24 for the demolition of the existing dwelling house and garage, and the construction of a new multi-storey dwelling house at 221 Beach Road, Denhams Beach.

The DA seeks a variation to the *Eurobodalla Local Environmental Plan 2012* (ELEP) Clause 4.3 Height of Buildings. The ELEP defines the maximum height of buildings as 8.5m, measured from existing ground level. The proposal seeks a variation of 3.625m or 42.6% for the highest portion of the structure.

The *Guide to Varying Development Standards, November 2023* requires that all developments with a variation greater than 10% be determined by the elected Council.

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DENHAMS BEACH**

The proposed development has been assessed against the requirements of the *Environmental Planning and Assessment Act 1979* (EPA Act), relevant State Environmental Planning Policies (SEPPs), *Eurobodalla Local Environmental Plan 2012* (ELEP), the Residential Zones Development Control Plan (DCP) and is considered compliant with the requirements.

The DA was notified in line with the Community Engagement Framework and Participation Plan. During the notification, no submissions were received.

RECOMMENDATION

THAT Development Application DA0361/24 for the demolition of the existing dwelling house and garage, and the construction of a new dwelling house at 221 Beach Road, Denhams Beach, be approved subject to the conditions provided in the attachment to this report.

BACKGROUND

Council has received a development application for the demolition of the existing dwelling house and garage, and the construction of a new dwelling house. This application follows a previously approved (May 2022) development application DA0024/22 for alterations and additions to the existing dwelling house. This application proposed a variation to the height of buildings development standard however this variation was less than 10%. The variation resulted from the existing development and ridgeline being greater than the 8.5m development standard.

Subsequent to consent being granted, the applicant engaged ACT Geotechnical Engineers to investigate the existing building and the slope stability. The investigation found that the footings of the existing dwelling were unsuitable in their current state.

Based on the above, the landowners opted to demolish the existing dwelling and proposed the construction of a new dwelling designed to withstand the site constraints.

Policy

The proposed development has been assessed against the requirements of the *Environmental Planning and Assessment Act 1979* (EPA Act), relevant State Environmental Planning Policies (SEPPs), *Eurobodalla Local Environmental Plan 2012* (ELEP), the Residential Zones Development Control Plan (DCP) and is considered compliant with the requirements.

State Environmental Planning Policy (Hazards and Resilience) 2021 – Chapter 2 – Coastal Management

The SEPP aims to manage development in the coastal zone, protect environmental assets of the coast, establish a framework and guide land use planning decision making.

The proposed development site is not in a mapped coastal wetlands or littoral rainforest area, or within the proximity area to coastal wetland or littoral rainforest area. The site is also not identified within any coastal vulnerability area.

The land is identified as being within the coastal environment area. The proposed development will not result in any biophysical, hydrological and ecological impacts; any impact to coastal environmental values and natural coastline processes; adversely impact the water quality of the marine estate; impact marine vegetation; impact native vegetation and faunae and their habitats; remove any existing public open space access to and along the foreshore including

**PSR24/012 DA0361/24 - VARIATION GREATER THAN 10% - 221 BEACH ROAD, DA0361/24
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persons with a disability; impact on aboriginal cultural heritage; or impact on the use of the surf zone.

The development is considered acceptable as it seeks to replace an existing dwelling and has been designed to utilise existing retaining walls both along adjoining boundaries and within the site. The site does not currently provide public access to the foreshore and is unlikely to increase the risk of erosion.

The proposed development is consistent with the coastal management plan and program applying to the land.

State Environmental Planning Policy (Planning Systems) 2021 – Chapter 2 – State and Regional Development

The proposed development has been assessed against the definition of Coastal Protection Works. As coastal protection works are considered Regionally Significant development and require determination by the Regional Planning Panel.

The applicant provided commentary in relation to the coastal protection works. The response concluded that *the DA does not propose activities or works to reduce the impact of coastal hazards. The DA is simply for the purpose of a dwelling. Any foundation or piers proposed as part of the construction of the new dwelling is sought to improve the ability to provide stable building foundations for the dwelling. The works are not for the purpose of reducing the impact of coastal cliff or slope instability.*

Based on this assessment it is considered that the proposed development is not coastal protection works.

Eurobodalla Local Environmental Plan 2012 (ELEP)

Clause 2.3 - Zone objectives and Land Use table

The land is zoned R2 Low Density Residential development. A dwelling house is permitted with development consent in the zone. The proposed development is consistent with the objectives of the zone, providing low density residential accommodation.

Clause 4.3 – Height of Buildings

The proposed development seeks a variation to the applicable 8.5m height of buildings development standard. The proposed height of the building is 12.125m which is a variation of 42.6% variation to the 8.5m development standard. Extent of variation is 3.625m.

Clause 4.6 – Exceptions to Development Standards

The proposed development requests a variation to the clause 4.3 height of buildings development standard. The variation is contained to the eastern side of the building where the slope of the land significantly increases.

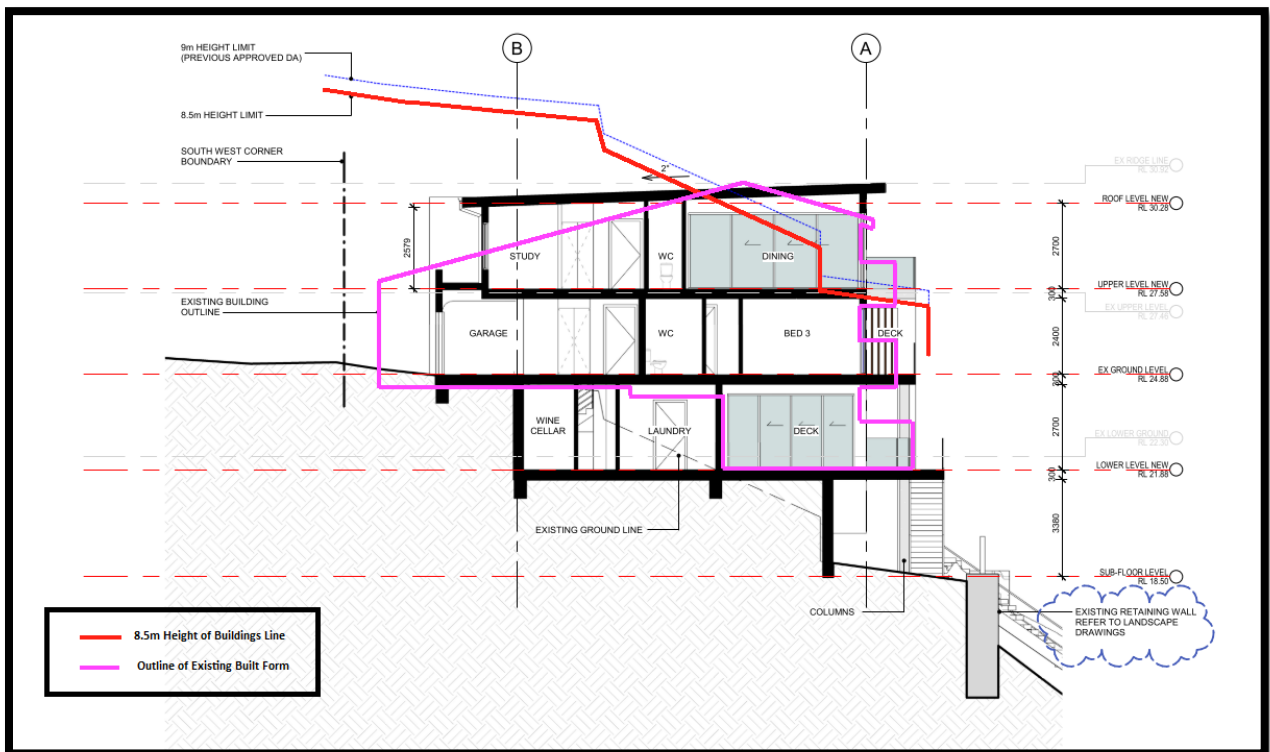
This assessment has been completed in accordance with the *Guide to Varying Development Standards*, prepared by the Department of Planning and Environment dated November 2023 (Guide). The Guide sets out key considerations in the assessment of variations. Please refer to part (3) below.

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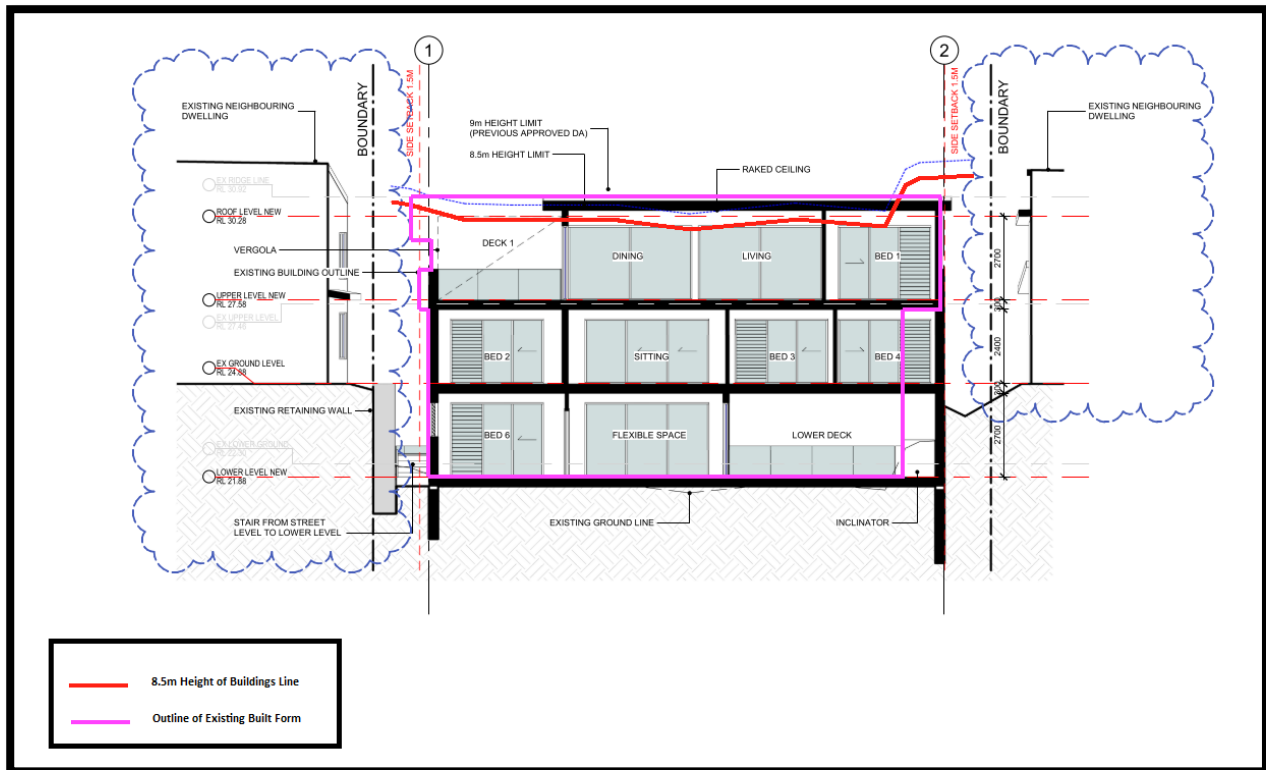
The elevations clearly show that the proposed development contains a variation to a portion of the eastern elevation of the built form. The existing approved upper ridgeline is RL30.92. The proposed development maintains and does not propose any increase to the building height above the existing maximum height of RL30.92.

The existing dwelling was also subject of a height variation which permitted the building to exceed the 9m height limit. The building was approved at a height of 12m. The reason for the variation was due to the slope of the land.

The images below depict the existing built form and the proposed built form. The red line depicts the 8.5m development standard. The pink line represents the outline of the existing dwelling. As can be viewed from the image, the existing dwelling exceeds the 8.5m for a significant portion of the existing upper level of the dwelling on the eastern elevation. The increase in the extent of variation is limited to the most eastern portion of the roofline.



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As can be viewed by the above images, the extent of height variation is minimal compared to that of the existing development.

Guide to Varying Development Standards – NSW Department of Planning and Environment 2023

Is the planning control being varied a development standard?

Section 1.4 of the *EPA Act 1979* identifies the items that are to be considered as development standards. Height of building is defined as a development standard.

What are the objectives of the standard? (Clause 4.3)

The proposed development seeks to construct a new dwelling to replace the existing dwelling on the land.

The built form contains some minor differences to roof form. The proposed development involves maintaining the existing maximum height (ridgeline), however the new proposal extends the roof line and therefore has a greater variation.

The proposed development is consistent with the height, bulk and scale of the existing development and streetscape. The main difference in the built form relates to the style of construction. The existing dwelling is constructed from a lightweight material and consists of pole footings. The proposed development relies on solid materials to ensure it can withstand the geotechnical issues of the land.

The proposed development results in an increased front setback and a more aesthetic visual presence to the street. There are minimal impacts because of the height variation when assessed from the street. The proposed development is consistent with the objective.

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The proposed development does not result in any visual impact, disruption of views, loss of privacy or loss of solar access. The proposed development maintains the side boundary setbacks. As a result of this, there is no change to the views or solar access.

The proposed development will require the installation of a privacy screen on the northern elevation. This is only required to meet current DCP requirements. A condition of consent is imposed.

The narrow width and the orientation of the land coupled with the existing development being constructed above the 8.5m height limit means that the built form in this location presents a solid wall which does not permit view sharing.

The existing built form does not allow for views. There are minimal solar access issues and there are some privacy issues. The height variation does not further exacerbate these issues. The proposed development is consistent with the objectives of the development standard. The variation does not result in any additional adverse implications on the adjoining development.

Does the written request demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances (Wehbe test)?

Test 1: Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. *Wehbe v Pittwater Council* at [42] and [43].

The proposed development does not conflict with the intent of Clause 4.3 which is to ensure that buildings are compatible with the character of the area (height, bulk and scale) of the existing and desired future character of the locality and minimise visual impacts, view loss, loss of privacy and loss of solar access to existing development.

The proposed development achieves this outcome and has been designed to limit the extent of the proposed building height variation to the area at the rear of the building where the land slopes away from the street. The additional height does not impact on the character at the street frontage and in the public domain. The proposed development retains the existing two-storey element fronting Beach Road.

Test 2: The underlying object or purpose of the standard is not relevant to the development and compliance is unnecessary. *Wehbe v Pittwater Council* at [45].

Comment: The underlying objective of the development standard is relevant to the development.

Test 3: The underlying object or purposed would be defeated or thwarted if compliance was required and therefore compliance is unreasonable. *Wehbe v Pittwater Council* at [46].

The underlying objective of the building height standard is to manage the scale and type of development in relation to the built form in the context to the existing and developing future character. It also seeks to minimise the potential adverse impacts of the development on the amenity of residential areas.

The character of the existing area is best described as a variety of low-density residential developments consisting predominantly of one and two-storey developments. The area

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contains two-storey development on the eastern side of Beach Road and single storey development on the western side of Beach Road.

The variation to the development standard is limited to an area of the building at the rear of the built form which is not visible from the street. In this case it is considered that strict compliance with clause 4.3 is considered unreasonable.

Test 4: The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable. *Wehbe v Pittwater Council* at [47].

It is not considered that the development standard has been virtually abandoned or destroyed by Council's own actions. Height variations are typically less than 10%, assessed on site specific merit basis in accordance with the legislation. The applicant nominates that there have been five variations to development standards in the last five years, all having less than 10% variation.

However, there have been an unknown number of development applications on sloping sites that have been approved in that five years which are compliant with the development standard.

It is considered that the development standard has not been abandoned or destroyed because of the five approved applications, one of which was the alterations and additions to the existing dwelling house on the land.

Test 5: The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone. *Wehbe v Pittwater Council* at [48].

The site is zoned low density residential (R2). The development standard applying to the land was applied where the existing approved development was granted a variation to the 9m height limit appropriate at the time of consent of the original dwelling house. The proposed variation maintains the existing ridgeline of the development and does not exceed the existing upper ridgeline.

The variation results from the location of the ridgeline being moved further to the east, which coincides with the steeper part of the land.

It is therefore considered unreasonable to require the redevelopment to reduce the height to comply with the current height of buildings standard when the original development had been subject to an increased height of 12m. As the development does not seek to further increase this height, it is considered that the proposed development can be supported.

The proposed development is compatible with the height and scale of surrounding built form. The majority of developments were constructed when the height limit applying to the land was 9m.

Based on the *Wehbe* test, outlined above, the proposed variation is justified on the basis that the existing development exceeds the height limit and it would be unreasonable for Council to require the applicant to redesign to achieve compliance with the 8.5m development standard.

**PSR24/012 DA0361/24 - VARIATION GREATER THAN 10% - 221 BEACH ROAD, DA0361/24
DENHAMS BEACH**

The written statement demonstrates that compliance with the standard is unreasonable and that there are sufficient grounds for the contravention of the standard.

Does the written request demonstrate sufficient environmental planning grounds to justify the variation to the development standard being proposed?

The applicant has provided site specific environmental planning grounds which include:

- *The proposed variation to the height control will not generate any unacceptable adverse environmental impacts in respect of overshadowing, view loss or privacy impacts.*
- *Notwithstanding the proposed height variation, the proposal continues to satisfy the objectives of the maximum height of buildings control applying to the land.*
- *The proposed dwelling will appear lower than the neighbouring dwellings at 219 and 223 Beach Road from the street, and height exceedance from Sunshine Cove Beach will be imperceptible with the proposed dwelling of a similar design and style the neighbouring dwellings.*
- *The proposed dwelling has the same height as the existing approved dwelling under DA0024/22 as modified by MDA0101/23, with no additional or new environmental impacts caused by the development – or specifically the exceedance of the height control.*
- *The proposed variation will not result in a development which is out of character with that envisioned for the local area.*

The environmental planning grounds listed above are suitable to justify the variation.

What are the environmental planning grounds being argued? Are the environmental planning grounds particular to the relevant aspect of the proposed development?

The environmental planning grounds argued above are consistent with the variation to the development standard. The proposed development does not result in any adverse environmental impacts. The following environmental planning grounds could have been used for the purposes of justifying the development:

- the proposed built form, even with the height variation is lower than the adjoining developments on either side of the land
- the variation to the development standard results from the topography
- the variation to the development standard is relying on the existing ground levels excavated for the existing dwelling
- the proposed development does not seek to extend the dwelling footprint beyond the existing footprint and
- the proposed development is being undertaken to ensure that future landslip occurrences are minimised, thus improving the public benefit.

(4) The applicant has provided a written justification to the variation of the development standard.

**PSR24/012 DA0361/24 - VARIATION GREATER THAN 10% - 221 BEACH ROAD, DA0361/24
DENHAMMS BEACH**

4.2.2 Cumulative Impacts

The Guide in 4.2.2 requires Cumulative Impacts to be considered. The proposed development is unlikely to result in any adverse cumulative impacts. The proposed development is unique in that it proposes demolition of an existing dwelling house and maintains the maximum height and the existing footprint of that existing development.

Residential Zones Development Control Plan

2.2 Setbacks A2.4 – Garage Door Facing the street less than 5.5m

The proposed development involves the construction of the double garage with the door facing the street. The proposal presents a variation to the acceptable solution, which requires 5.5m. The front boundary is angled. The closest point of the garage door is 2.9m and it increases to 3.3m. The topography and the slope of the land make it difficult to increase the setback to comply with the setback requirement.

The proposed development contains a larger setback than what is presently on the site. The difference between the existing development and the proposed development, is that the garage door is now proposed to be parallel to the front boundary. The garage door blends into the new development and is not considered a significant feature of the building.

2.2 Setbacks – A3 – Side Boundary Setback

The proposed development seeks a variation to the acceptable solution which requires development with a wall height of greater than 7.5m to have a setback of 2m.

The proposed development seeks to construct walls with a height greater than 7.5m. The proposed development involves a minor part of the building only.

In both side elevations, the variation relates to a solid wall that forms part of a balustrade. The proposed development does not result in an overbearing perception of bulk on the adjoining properties or result in any significant shadow impact.

It is considered that the proposed development is compliant with the DCP.

2.3 Garages, Carports and Sheds – A1 – Garage forward of front façade of building

The acceptable solution requires the garage to be less than 1.2m forward of the main building line of the dwelling. The proposed garage sits forward of the front elevation of the dwelling. The garage wall sits 1.8m forward of the brick entrance wall.

The low set nature of the garage wall means that the front elevation of the building is not dominated by the garage. It is considered that the proposed development is consistent with the performance criteria. The proposed development is compatible with the streetscape and will not result in any adverse impacts.

**PSR24/012 DA0361/24 - VARIATION GREATER THAN 10% - 221 BEACH ROAD, DA0361/24
DENHAMS BEACH**

Coastal Management Plan

Eurobodalla Coastal Hazard Code

The land is located in the coastal zone. The Coastal Hazard Code does not apply to the land as the land is not mapped on the coastal vulnerability map. In addition, part 4 of the Code excludes coastal cliff or slope instability from the operation of the Code.

Parking and Access Code

The Parking and Access Code requires all vehicles on Beach Road to enter and exit the site in a forward direction. The existing development achieves this.

The proposed development seeks to construct a double garage facing the street. The garage setback does not allow for forward exit.

It is considered that the proposed development will not result in any adverse impact as this part of Beach Road is no longer a classified road and the volume of traffic utilising this road has significantly decreased since the opening of the George Bass Drive extension and Glenella Road.

The land contains adequate site distance to allow for safe reversing onto Beach Road. As the development proposes a single dwelling house, it is considered acceptable to allow for reversing onto Beach Road.

Environmental

Ecological

The development is unlikely to result in any significant environmental or ecological impact to the surrounding landscape. The land has been zoned for residential purposes and adjoins residential areas to the north and south. No works are proposed to the cliff face. The proposed development does not result in any detrimental impact to biodiversity or significant environmental features in the locality.

Coastal Environment

The land has been assessed by Geotechnical Engineers who have determined that the land is suitable for redevelopment. It is considered that the proposed development is unlikely to result in any adverse impacts to the coastal environment.

Cultural / Heritage

The proposed development is supported by an Aboriginal Heritage Information Management System (AHIMS) desktop search which has determined there are no aboriginal sites previously recorded within 50m of the site.

The land is not listed as a heritage item, in a conservation area or in the vicinity of an item or conservation area.

Consultation

The proposed development was notified in accordance with Council's Community Engagement Framework and Community Participation Plan. Notification was undertaken between 15 March and 3 April 2024. No submissions were received.

**PSR24/012 DA0361/24 - VARIATION GREATER THAN 10% - 221 BEACH ROAD, DA0361/24
DENHAMS BEACH**

CONCLUSION

This report seeks Council's determination of an application for the construction of a two and three storey dwelling house located at 221 Beach Road, Denhams Beach.

The application seeks to vary the building height for the site by 42.6% and due to the requirements of the NSW Department of Planning and Environment, any variation greater than 10% must be determined by the elected Council.

The application has been assessed in accordance with the *Environmental Planning and Assessment Act 1979* and found to be appropriate for the site. The assessment has concluded that there is minimal impact on adjoining properties or the locality and can be supported.

The application is put to the Council with a recommendation for approval.

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**PSR24/013 PLANNING PROPOSAL 23 - AMENDMENT OF ZONE BOUNDARY TO
PERMIT BROU WASTE MANAGEMENT FACILITY EXPANSION**

**S031-
T00017**

Responsible Officer: Gary Bruce - Acting Director Planning & Environment

Attachments: 1. Under Separate Cover - Brou Waste Management Facility - Planning Proposal

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

Community Strategy: 1.1 Move together for a sustainable future

Delivery Program Link: 1.1.3 Facilitate waste management services guided by the strategy and asset management plan

Operational Plan Link: 1.1.3.1 Build, renew, operate and maintain waste landfill sites and transfer stations

EXECUTIVE SUMMARY

The report presents a draft Planning Proposal to amend the Eurobodalla Local Environmental Plan 2012 (LEP) to expand the Brou Waste Management Facility (WMF) located at Lot 1 DP 1205476, Princes Highway Bodalla.

The proposed amendment involves rezoning approximately 5.54 hectares of land adjacent to the existing Brou Waste Management Facility.

- 3.75 hectares to be rezoned from RU3 Forestry zone to SP2 Infrastructure.
- 1.15 hectares to be rezoned from RU3 Forestry to C2 Environmental Conservation.
- 0.64 hectares to be rezoned from RU3 Forestry to SP2 Infrastructure.

The proposed amendments to the LEP are for the following reasons.

- To permit the expansion of the waste management facility as it is a prohibited use in the RU3 Forestry zone.
- To protect a pocket of the critically endangered ecological community of River-Flat Eucalypt on Coastal Floodplains.
- To address a mapping anomaly where the existing approved waste management facility is operating on land zoned RU3 Forestry. Details are in Attachment 1.

The report seeks Council's endorsement of the draft Planning Proposal.

RECOMMENDATION

THAT:

1. Council endorses the draft Planning Proposal 23 for submission to the Department of Planning, Housing and Infrastructure for a Gateway Determination.
2. upon receipt of the Gateway Determination, the draft Planning Proposal be placed on public exhibition.
3. a further report to be presented to Council following the public consultation period.

**PSR24/013 PLANNING PROPOSAL 23 - AMENDMENT OF ZONE BOUNDARY TO
PERMIT BROU WASTE MANAGEMENT FACILITY EXPANSION**

**S031-
T00017**

BACKGROUND

The Brou Waste Management facility commenced operation in 1979 and occupies approximately 8.5ha within a larger 42.82ha parcel of land (Lot 1 DP 1205476). The land was initially leased from NSW Forestry Commission/State Forests under a permissive occupancy until Council purchased it in 2016. The Brou WMF provides resource recovery, recycling and landfill facilities for households, businesses, and builders in the south of the shire.

Following the 2019-20 bushfires, residents disposed of more than 70,000 tonnes of bushfire waste material from the Eurobodalla, Shoalhaven and Bega Valley local government areas at Council's Waste Management Facilities between Surf Beach and Brou.

Council successfully obtained several grants from the NSW Environmental Protection Authority to assist in rebuilding waste management capacity and future disaster resilience, including assistance with the planning phase of the Brou WMF expansion. The project's planning phase requires the rezoning of land via a Planning Proposal, followed by preparation of an EIS and submission of a development application under Part 4 of the Environmental Planning and Assessment Act 1979.

The proposed facility expansion will include the development of additional landfill cells and relocating and renewing existing site infrastructure. The expansion is required to continue operating the waste management facility at the site in the longer term.

The remaining landfill space within the existing footprint of the waste management facility will be exhausted within five years if the expansion does not occur.

CONSIDERATIONS

Legal

The draft Planning Proposal complies with the Department of Planning, Housing and Infrastructure's guidelines for preparing planning proposals.

Policy

The Planning Proposal aligns with the NSW Strategic Planning framework and Ministerial Directions. NSW is transitioning to a circular economy under the NSW Waste and Sustainable Materials Strategy 2041. Waste and recycling infrastructure is required to increase the resources recovered in NSW and keep materials within the circular economy. 35% of waste is disposed of in landfills, while landfill remains the least preferred fate for materials under the NSW Strategy. Providing safe, environmentally responsible, and economical waste management is a core business for local government in NSW, and landfill remains an essential infrastructure to achieve these objectives.

The 2019-20 bushfire cleanup highlighted the essential role that waste facilities play in providing community resilience following natural disasters. The Planning Proposal aligns closely with the NSW Disaster Waste Sub Plan September 2023's objectives, ensuring sufficient resource recovery and landfill capacity to respond to the appropriate and timely management of disaster waste whilst maintaining regular waste services.

**PSR24/013 PLANNING PROPOSAL 23 - AMENDMENT OF ZONE BOUNDARY TO
PERMIT BROU WASTE MANAGEMENT FACILITY EXPANSION**

**S031-
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Environmental

The proposed expansion area has biodiversity values outlined in the Umwelt report (Umwelt, 2024). Council will avoid, mitigate, and offset biodiversity impacts on the site as far as practicable. However, little opportunity exists to prevent biodiversity impacts within the footprint of the waste facility expansion. A mitigation and offset strategy is being considered, including payment of biodiversity offset credits.

Aboriginal Cultural Heritage Assessment has been conducted at the site. The assessment report concluded that the works would unlikely impact Aboriginal artefacts or cultural heritage values and recommended that the proposed activity proceed with caution.

Geotechnical investigations indicate groundwater exists at depths between 12.5 and 9.5m on the site. Engineering design to meet the EPA's Environmental Guidelines Solid Waste Landfills, 2016 will prevent surface and groundwater contamination.

As the subject site is bushfire prone, the Planning Proposal will be referred to the NSW Rural Fire Service for comment after Gateway Determination. An accredited bushfire planning consultant will prepare a bushfire assessment as part of the future EIS.

Asset

The Planning Proposal is a prerequisite for the expansion of the Brou Waste Management Facility. The expansion will enable the continued use of the site as a landfill facility. Landfill capacity is a valuable asset providing significant and tangible community benefits.

Social Impact

The planning proposal is unlikely to have any significant social impact. The converse of not proceeding with the planning proposal is the potential for a significant social impact.

Economic Development Employment Potential

The Brou Waste Management Facility is a fundamental economic infrastructure that provides residents and businesses with relatively low-cost landfill, recycling and resource recovery services close to the population centre of Narooma and nearby Southern coastal villages.

The economic consequences of non-renewal of landfill capacity at the site are significant and estimated to be around \$3M/annum. The financial cost is directly related to additional transport requirements that will inevitably result from diverting domestic, commercial and building waste to an alternative facility. The nearest alternative facility is the Surf Beach Waste Management Facility, an additional haul distance of approximately 60km from the Brou Waste Management Facility.

Financial

Funding for the Planning Proposal and subsequent EIS is through a resilience and recovery grant from the NSW EPA to recognise the loss of landfill capacity following the 2019-20 bushfires.

Community and Stakeholder Engagement

After receiving the Gateway Determination, Council will run a public consultation process on the draft Planning Proposal. The Gateway Determination will identify the community and agency consultation requirements.

**PSR24/013 PLANNING PROPOSAL 23 - AMENDMENT OF ZONE BOUNDARY TO
PERMIT BROU WASTE MANAGEMENT FACILITY EXPANSION**

**S031-
T00017**

CONCLUSION

The draft Planning Proposal to amend the Eurobodalla Local Environmental Plan 2012 (LEP) for the expansion of the Brou Waste Management Facility is provided to Council for endorsement and submission to the Department of Planning, Housing and Infrastructure for a Gateway determination.

The draft Planning Proposal has been prepared following the Department of Planning, Housing and Infrastructure's Guidelines and aims to ensure the Brou Waste Management Facility retains landfill capacity in the long term.

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PSR24/014 DRAFT VERGE GARDEN GUIDELINES

S010-T00015

Responsible Officer: Gary Bruce - Acting Director Planning & Environment

Attachments: 1. Under Separate Cover - Verge Garden Guidelines

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

Community Strategy: 1.3 Respond to our changing climate and natural hazards

Delivery Program Link: 1.3.1 Improve Eurobodalla's resilience to the effects of man-made climate change through the implementation of the Climate Action Plan

Operational Plan Link: 1.3.1.1 Design and implement programs for plantings, and or, artificial shading of strategic urban streetscapes, council carparks and playgrounds

EXECUTIVE SUMMARY

Draft Verge Garden Guidelines have been developed which will allow residents to plant in their verge area according to set conditions without further approvals required from Council.

The draft guidelines have been developed with input from all sections of Council to reduce risk, maintain road safety and line of sight, and protect infrastructure services.

It is proposed to publicly exhibit the draft Verge Garden Guidelines for comment and report back to Council for adoption after consideration of any submissions.

RECOMMENDATION

THAT:

1. Council endorses the Draft Verge Guidelines.
2. The draft guidelines be placed on public exhibition for a period of not less than 28 days.
3. A report be prepared to Council after the public exhibition for consideration of the submissions and adoption of the guidelines as exhibited or amended.

BACKGROUND

Many Council's already have Verge Garden Guidelines or similar mechanisms to allow residents to plant in the verge (nature strip).

There is currently no advice on Council's website to give residents information on what they can or cannot do in the verge space. Council currently only provides consent to a resident to plant in the verge if they make contact. The consent is provided via a letter which states that a maximum of two shrubs can be planted in a straight line at least 2.5 metres back from the kerb.

As there is no information on Council's website, many residents plant out their verge without any guidance as to what is appropriate. This can lead to unsafe and unsuitable gardens. Council resources are spent dealing with complaints about verge gardens and liaising with residents to mitigate them.

There is agreement across Council's directorates that some rules are needed to guide allowable activities in the verge garden space and ensure consistency across Council and what the public

PSR24/014 DRAFT VERGE GARDEN GUIDELINES

S010-T00015

are advised. There was also agreement that this policy would not address street trees and so the draft guidelines do not permit shrubs/trees over 2 metres high.

In 2020 Council's Planning team received funding from the Stronger Country Communities Fund for the Green Streets Eurobodalla project. The main objective of this project was to work with the community to identify private properties for pilot verge gardens. It was anticipated that this project would enable the development of a draft verge garden guideline.

A working group was established with staff from Infrastructure Services (Assets, Maintenance, Sewer and Water, Technical Services, Parks and Gardens), Environmental Services (NRM, Compliance), Governance/Risk, Strategy and Place.

An expression of interest process was undertaken to find streets to pilot the verge plantings. Sixty-five responses were received from individuals and streets of residents wanting to take part in the pilot program. Originally three streets were chosen for the pilot but due to interruptions from COVID only one street trial eventuated in Hedley Way, Broulee.

Guidelines were drafted reflecting the outcomes of the trial. These draft guidelines have considered.

- road safety and line of sight requirements,
- proximity to services (e.g. sewer, stormwater, underground power, NBN, fire hydrants and postal services),
- plant heights and root structures,
- maintenance requirements,
- compliance, risk and insurance.

The guidelines incorporate various garden design requirements that consider the verge format.

CONSIDERATIONS

The identified advantages of having guidelines for verge gardens include:

- Council will have consistent advice for residents wanting to plant in their road verge.
- Verge Garden Guidelines will allow residents to plant in their streets, according to agreed conditions, without further approvals or resourcing from Council.
- Greener streets provide many benefits including reduced heat impacts, improved street amenity, social opportunities with neighbours, stormwater reduction.

Some of the risks associated with the draft guidelines include:

- The policy may increase the potential for vegetation to encroach on footpaths. The guidelines will include maintenance expectations and compliance processes to encourage maintenance to the required standards.
- Potential changes to workloads. It is unknown if there will be an increase in workload for asset inspectors/ compliance staff. A review will be scheduled for twelve (12) months after introduction of the program to assess the actual impacts on workloads.

PSR24/014 DRAFT VERGE GARDEN GUIDELINES

S010-T00015

Prior to a resident commencing the installation of their verge garden, they will be encouraged to complete a self-assessment check list. If residents require additional support or assistance with plant species selection, staff from the Natural Resource Management team will undertake a site visit to give property-specific advice. This service will be an extension of the existing Bush Friendly Garden Program.

The final endorsed guidelines will be published on Council's website in a similar style to the existing [Common questions about backyard burning | Eurobodalla Council \(nsw.gov.au\)](https://www.eurobodalla.nsw.gov.au/common-questions-about-backyard-burning).

Legal

The guidelines clearly outline what and where a resident is permitted to plant in the road verge. This will provide clarity for residents and a consistent response from Council.

Policy

The aim of the guidelines is to ensure consistency of approach for staff in providing advice to the public and to provide clear guidelines to residents about what they can do.

Environmental

Verge gardens provide many benefits including reduced heat impacts, improved street amenity, social opportunities with neighbours and stormwater reduction.

Asset

The guidelines have been developed to ensure access to infrastructure is maintained and to protect the same infrastructure from inappropriate plantings.

Social Impact

The trial on Hedley Way Broulee showed neighbours worked together to develop plans for their streets, enhancing the social connectedness between neighbours. It is envisaged that working on street verges will continue to connect neighbours.

Economic Development Employment Potential

The program will support local nursery businesses and some residents may choose to contract gardeners for installing their verge garden or ongoing maintenance.

Financial

There is no Council budget attached to this program. Assistance will be provided from the NRM team through existing programs.

Resources and costs will be monitored and a 12 months review undertaken to determine the cost impacts and any required changes to the program.

Community and Stakeholder Engagement

Sixty-five responses were received from residents expressing interest in creating a verge garden when the program was previously advertised. The residents who didn't participate in the pilot program have been awaiting the Verge Garden Guidelines so they can progress their own verge gardens. Additionally numerous calls to Council are consistently received from residents wanting to undertake a verge garden and awaiting the guidelines.

PSR24/014 DRAFT VERGE GARDEN GUIDELINES

S010-T00015

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

CONCLUSION

Draft Verge Garden Guidelines have been developed which will allow residents to plant in their verge area according to set conditions without further approvals required from Council.

The draft guidelines have been developed with input from all sections of council to reduce risk, maintain road safety and line of sight, and protect infrastructure services.

It is proposed to publicly exhibit the draft Verge Garden Guidelines for comment and report back to Council for adoption after consideration of any submissions.

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FCS24/016 ADOPTION OF THE OPERATIONAL PLAN 2024-25, LONG TERM FINANCIAL PLAN 2024-34 AND FEES AND CHARGES 2024-25, INCLUDING THE MAKING OF THE RATES FOR 2024-25 **S004-T00028; S004-T00029**

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

Attachments:

1. Under Separate Cover - Operational Plan 2024-25 incorporating the Delivery Program 2022-26
2. Under Separate Cover - Fees and Charges 2024-25
3. Under Separate Cover - 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: 5.2.2.2 Review and prepare Council's plans and reports under the Integrated Planning and Reporting Framework

EXECUTIVE SUMMARY

The purpose of this report is to recommend adoption of Council's Operational Plan 2024-25, incorporating the Delivery Program 2022-26 and including the budget, Revenue Policy and the making of the general rates, environmental levy, water, sewer, waste, stormwater and liquid trade waste charges as well as the Fees and Charges 2024-25, and the Long Term Financial Plan 2024-34.

Under NSW Integrated Planning and Reporting legislation, councils are required to prepare a Community Strategic Plan, Resourcing Strategy, Delivery Program and annual Operational Plan for each term of council. Council endorsed the Community Strategic Plan – Our Eurobodalla 2042 on 12 April 2022.

The Delivery Program 2022-26 sets out the activities that Council aims to deliver during their term in response to the Community Strategic Plan. The Operational Plan 2024-25 is Council's workplan and shows the actions, key projects, capital works and infrastructure renewals and maintenance that is planned to be delivered in the year ahead, to work towards the Delivery Program 2022-26 and Community Strategic Plan – Our Eurobodalla 2042.

The Long Term Financial Plan 2024-34 has been updated to reflect the current projected financial results and allocation of Council's financial resources for the next ten-year period based on the plan's outcomes.

The Fees and Charges 2024-25 schedules the user charge amounts for the 2024-25 financial year.

The draft Operational Plan 2024-25 incorporating the Delivery Program 2022-26, draft Long Term Financial Plan 2024-34 and draft Fees and Charges 2024-25 were exhibited for 28 days between 1 May and 28 May 2024. Nine submissions were received from the community and considered in the preparation of the final version of the plans. The submissions and proposed responses were provided to all councillors.

Under the Operational Plan 2024-25 Revenue Policy, the general rate income will increase by 5.5% for 2024-25 which is made up of IPART's rate peg amount of 4.5% plus the population growth factor of 1%.

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To meet the statutory requirement for Council to endorse its budget by 30 June 2024, the Operational Plan 2024-25 incorporating the Delivery Program 2022-26 and including the budget, capital works program, statement of Revenue Policy, Fees and Charges for 2024-25, and the Long Term Financial Plan 2024-34 is recommended to Council for adoption, incorporating amendments since exhibition as outlined in this report.

RECOMMENDATION

THAT:

1. Council make the annual Ordinary Rates and Environmental Special Rate for 2024-25 in accordance with the rate peg set by IPART which is 4.5% plus 1% population growth factor, as contained in the tables in the report.
2. Council make each annual charge for water, sewer, waste, stormwater and liquid trade waste for 2024-25 in accordance with the Revenue Policy and the charges as contained in the tables in the report.
3. Council make each fee and charge for 2024-25 in accordance with the Revenue Policy and Fees and Charges 2024-25 as attached to the report.
4. Council adopt the Operational Plan 2024-25 incorporating the Delivery Program 2022-26 and Long-Term Financial Plan 2024-34 attached to the report as per the statutory requirements with implementation to commence 1 July 2024.
5. Council thank the community members who made a submission and provide them with a response.

BACKGROUND

The *Local Government Act 1993* requires all NSW councils to prepare a suite of Integrated Planning and Reporting documents, comprising a Community Strategic Plan, Resourcing Strategy, Delivery Program and Operational Plan.

The Community Strategic Plan is the highest-level plan 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 long-term aspirations, priorities, and vision for a ten-year plus timeframe. Council's Community Strategic Plan – Our Eurobodalla 2042, was endorsed on 12 April 2022.

The Delivery Program covers a four-year period and details the activities that Council will deliver and the strategies it will implement to respond to the Community Strategic Plan during their term.

The Operational Plan is an annual plan that is developed. It details the actions to be undertaken during the next financial year to work towards the objectives of the Delivery Program and Community Strategic Plan and includes the annual budget, Revenue Policy and fees and charges for the year ahead.

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

**FCS24/016 ADOPTION OF THE OPERATIONAL PLAN 2024-25, LONG TERM
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allocate resources to achieve the vision and goals set out in the Community Strategic Plan and cascading plans. The Resourcing Strategy is a supporting document to the Community Strategic Plan and focuses on finances, assets and people. The Long-Term Financial Plan element of the resourcing strategy is required to be reviewed and updated annually.

At Council's 30 April 2024 meeting, the Draft Operational Plan 2024-25, Draft Long Term Financial Plan 2024-34 and Draft Fees and Charges 2024-25 (the Plans) were endorsed for public exhibition for a period of 28 days. Nine submissions were received from the community during the exhibition period and considered in the preparation of the final version of the plans. Councillors received a copy of the submissions. A summary of the submissions is provided under the community engagement section of this report.

CONSIDERATIONS

The Operational Plan 2024-25 sets out 188 individual projects and activities for Council to undertake for the year ahead.

The Operational Plan 2024-25 and Delivery Program 2022-26 are structured around the five goals in the Community Strategic Plan - Our Eurobodalla 2042:

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

From the five goals, there are 18 supporting strategies that provide guidance to achieve the goals. In response to the CSP strategies, Council developed 65 activities for their Delivery Program 2022-26, and the Operational Plan 2024-25 aligns to these plans. Each service that assists in achieving the outcome is identified along with measures to track and report on progress. Key supporting documents, such as plans and strategies that support the Delivery Program 2022-26, have been included in the services table.

Councils across New South Wales continue to face financial challenges due to increasing costs and policy that limits the ability to increase revenue. This 2024-25 Operational Plan estimates an operating deficit in the General Fund, resulting in an operating deficit for the consolidated Council. The Long Term Financial Plan 2024-34 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

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clearer understanding of the cost of delivering existing services, and identifying efficiencies where efficiencies could be made.

Service modifications identified from the process and incorporated into the Operational Plan 2024-25 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 Council maximises outcomes for the community whilst living within our means.

The workplan contained in the Operational Plan 2024-25 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.

Two actions have been removed from the exhibited plan, being:

1. Finalise an action plan to increase use in community halls – staff have assessed requirements and resourcing for 2024-25 and consider the action is no longer required. The activation of halls will be covered by action 2.2.2.1 as well as other actions supporting place activation, events, creative arts, and recreational venues.
2. Complete upgrade of Brierley’s Boat Ramp – completed May 2024.

The exhibited version of the plan was updated for minor editorial amendments made to phrasing, punctuation and format to improve the quality and clarity of the documents and for pagination considerations.

Updates to the exhibited Fees and Charges 2024-25 and Revenue Policy section of the Operational Plan 2024-25 are considered in the Legal/Financial section of this report.

Legal/Financial

The plans have been prepared in accordance with the *Local Government Act 1993* and guided by the comprehensive tools contained in the Office of Local Government’s Integrated Planning and Reporting Handbook and Integrated Planning and Reporting Guidelines. The Act requires:

- Under Section 405, Council to have an Operational Plan which 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 statement of revenue policy must include the statements and particulars required by the regulations.
- Under Section 535, a Council resolution to make a rate or charge.

The following presents the rates and charges as detailed in the Revenue Policy and Fees and Charges Schedule for making:

General Revenue Increase

The General Rate income will increase by 5.5% which is made up of IPART’s rate peg amount of 4.5% plus the population growth factor of 1% for 2024-25.

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In accordance with Section 494 of the *Local Government Act 1993*, it is recommended that Council makes the following Ordinary Rates for 2024-25:

Ordinary Rate Name	Rate (cents in \$)	Base Charge (\$)	Base Charge as a % of total Ordinary Rate
Residential	0.1154	600.00	49.91
Business	0.5819	600.00	14.33
Farmland	0.0790	600.00	32.59
Business Inactive	0.1154		

Environment Special Rate

In 1996-97, Council introduced an Environmental Levy to provide funds to assist with the preservation and protection of the environment. A separate fund, the Environment Fund, was established for the levy to ensure that monies collected are accounted for separately from other activities of Council.

The Environmental Levy will increase by 5.5% which is made up of IPART's rate peg amount of 4.5% plus the population growth factor of 1% for 2024-25.

In accordance with Section 495 of the *Local Government Act 1993*, it is recommended that Council makes the following Environmental Levy for 2024-25:

Category	Rate (cents in \$)	Base charge (\$)	Base Charge as a % of total Environmental Levy
Environmental Levy	0.004424	23.50	49.71

Interest Charges on Overdue Rates and Charges

The Minister for Local Government has determined the maximum rate of interest that may be charged on overdue rates and charges for 2024-25 will be 10.5%.

In accordance with Section 566(3) of the *Local Government Act 1993*, it is recommended that Council resolves to adopt the maximum interest rate allowed.

Council has a [hardship policy](#) that provides a framework for ratepayers experiencing genuine hardship for assistance with their rates and charges, in accordance with the *Local Government Act 1993* and the *Local Government (General) Regulation 2021*.

Waste Management Charges

Council provides a waste management and collection service to the community. Waste management charges are designed to recover costs from people who benefit from the availability and/or use of Council's waste management services. Waste collection charges will increase by 5.5%.

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In accordance with Sections 496 and 501 of the *Local Government Act 1993*, it is recommended that Council makes the following Waste Management Charges for 2024-25:

Waste Management Charges	Charge (\$)
Domestic waste availability charge	21.90
Domestic waste collection service charge	272.70
+Additional service 240L recycling bin	79.95
+Additional service 240L garden organics bin	79.95
Waste management charge (Section 501)	62.00

Stormwater Charges

In 2006-07, Council introduced a Stormwater Charge on all developed urban properties. A special 'Stormwater Fund' was established as part of the General Fund to record and report the income and expenditure related to this charge.

Stormwater charges will remain the same as 2023-24.

In accordance with Section 496A of the *Local Government Act 1993*, it is recommended that Council makes the following Stormwater Charges for 2024-25:

Stormwater Charge	Charge (\$)
Land categorised as residential	25.00
Residential strata (per lot)	12.50
Land categorised as business	25.00 (for land up to 1,050 square metres) 50.00 (for land 1,051 to 2,100 square metres) 75.00 (for land 2,101 to 3,150 square metres) 100.00 (for land greater than 3,150 square metres) The charge for business strata units is as for business, divided by the number of units, subject to a minimum charge of \$5.00.

Water Charges

Supplying water to the community is one of the major activities of Council. To pay for the provision of this service, Council collects revenue from the people who benefit from the access to and use of the water supply. All consumers are charged a fixed access charge and a water consumption charge. The access and user charges provide an equitable balance between having the infrastructure to meet peak demand periods and the need to maintain an affordable water usage charge for residents living in the Eurobodalla full-time.

The water access charge will increase by 4%. The water consumption charge will increase by 2.5%.

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In accordance with Sections 501, 502 and 552 of the *Local Government Act 1993*, it is recommended that Council makes the following Water Charges for 2024-25:

Water Access	Charge (\$)
Minimum single residential – metered, unmetered, strata unit	390.00
Minimum dual occupancy / secondary dwelling	624.00

Business, Multi Residential (non-strata flats) and Mixed-Use (residential/business)		
Water meter size (mm)	Capacity factor	Charge (\$)
20	1.0	390.00
25	1.6	624.00
32	2.6	1,014.00
40	4.0	1,560.00
50	6.3	2,457.00
65	10.6	4,134.00
80	16.0	6,240.00
100	25.0	9,750.00
Vacant unmetered	1.0	390.00
Mixed-Use 20mm	1.6	624.00

Water Consumption	Usage Charge (\$)
Residential and business	4.10 per kL
A minimum charge of \$10.00 applies to all accounts 0-2 kL	

Sewer Charges

Council is responsible for the sewerage services within the Eurobodalla. To pay for the provision of this service, Council collects revenue from people who benefit from the availability and use of Council's sewerage system.

The sewer access charge will increase by 4.63%. The sewerage usage charge will increase by 4.65%.

In accordance with Sections 501, 502 and 552 of the *Local Government Act 1993*, it is recommended that Council makes the following Sewer Charges for 2024-25:

Sewer Access	Charge (\$)
Residential general service – metered, unmetered, strata unit	1,130.00
Turlinjah general service (85%)	960.50
Dual occupancy / secondary dwelling	1,808.00

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Business, Multi Residential (non-strata flats) and Mixed-Use (residential/business)		
Water meter size (mm)	Capacity factor	Charge (\$)
20	1.0	1,130.00
25	1.6	1,808.00
32	2.6	2,938.00
40	4.0	4,520.00
50	6.3	7,119.00
65	10.6	11,978.00
80	16.0	18,080.00
100	25.0	28,250.00
Vacant unmetered	1.0	1,130.00
Business strata unit	1.0	1,130.00
Mixed-Use 20mm	1.6	1,808.00

Sewerage Usage	Usage Charge (\$)
Business	2.25 per kL

Liquid Trade Waste Charges

Dependent on the type of business listed on the schedule, properties are charged a usage fee discounted by a discharge factor. The liquid trade waste discharge factor is the ratio of the volume of liquid trade waste discharged into the sewerage system divided by the volume of water consumed.

The liquid trade waste annual fee will increase by 4.35%. The liquid trade waste compliant discharge will increase by 2.94%.

In accordance with Sections 501 and 502 of the *Local Government Act 1993*, it is recommended that Council makes the following Liquid Trade Waste Charges for 2024-25:

Liquid trade waste annual fee	120.00
Liquid trade waste annual fee (large discharger)	630.00
Compliant Discharge	1.75/kL
Non-Compliant Discharge (without appropriate treatment)	17.00/kL

Proposed Amendments

The following changes has been made to the exhibited draft Fees and Charges 2024-25:

- Section 603 certificate fee increased from \$95 to \$100. This is a statutory fee set by the Office of Local Government.
- Fees for Moruya Showground lighting (digitally controlled lights) have been included. The lights at this site have recently been commissioned. The fees for this site reflect the pricing at the other sites (per unit) and are not a change to pricing.

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The following change has been made to the exhibited Revenue Policy section of the draft Operational Plan 2024-25 incorporating the Delivery Program 2022-26:

- Interest on rates and charges increased from 9% to 10.5% in line with the Minister's determination received.

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.

Community and Stakeholder Engagement

The Operational Plan 2024-25 aligns to the Delivery Program 2022-26 and provides for the implementation of other specific strategies and plans that Council has adopted following community engagement and input. Some of these include the Eurobodalla Destination Action Plan, Integrated Water Cycle Management Strategy, Youth Action Plan, and a review of Council's policies during 2022.

The Plans were endorsed for public exhibition from 1 May to 28 May 2024. Council continued to engage the community during this period by:

- making the draft plans available for the community to read on Council's website
- informing the community about the public exhibition and inviting the community to have their say through information on Council's website, Council News (Council's monthly email newsletter), and social media
- distributing a media release to local media outlets, Community Associations and Chambers of Commerce
- holding three Community Briefings across the Shire
- considering and acknowledging submissions received

Nine public submissions were received during the exhibition period. Councillors received all submissions. The table below provides a summary of the issues raised in the submissions and Council's proposed response.

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Council will respond to all submitters to thank them for their considered input as well as advising them of the outcome of this report.

Item No.	Items raised	Proposed response
1	<p>Proposed changes to road maintenance programs (four submissions)</p> <p>1.1 Concern regarding the proposed reduction of road maintenance programs - i.e. gravel resheeting/grading and road resealing. Request to reconsider. Lack of care for drainage pits should also be reviewed to ensure water directed away from eroding roads.</p> <p>1.2 Concerns raised include public safety impacts, and increased cost burden in the longer term to rebuild roads, poorer service levels, and the ongoing condition of Araluen Road.</p> <p>1.3 Suggestion cost savings are better identified from the</p>	<ul style="list-style-type: none"> • Maintenance grading is proposed to be reduced from an average of every six months to an average of every nine months on those unsealed roads across the Shire which are on the schedule. Council has no plans to alter or reduce the maintenance inspection schedule for roads, including culvert inspections regarding drainage and budget for pothole repairs. • Rather than automatically grading a road regardless of the condition, for example every six months, it will be graded by default once per year and after an inspection, graded again if required. • Grading will consider the relative condition of the road and will take into consideration factors including the level of traffic, both local and through traffic, and relative risk. • For information, the full length of Araluen Road has been graded four times over the last four years, and the half-length from Moruya to the National Park boundary twice additionally in the last four years. • Council will continue to advocate for Araluen Road to be classified as a Regional Road by the NSW Government so that a higher level of funding can be supplied by the state for its maintenance. • Council acknowledges the importance of maintaining the road network to the best standard that can be achieved within resourcing limits. • Maintenance schedules are affected by weather events which can result in the reprioritisation of works and the type of reactive work (filling potholes) and maintenance work (grading and sealing) done. • Over recent years, Council has advocated to the Australian and NSW Governments for increased funding streams to support local councils in maintaining extensive local road networks, and we are pleased that the Australian Government has committed to doubling the Roads to Recovery funding stream, which will assist Council to maintain our roads to a suitable standard. • Council will consider the efficacy of the modified programs going forward to inform future maintenance schedules.

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	<p>allocation for capital works to the road network or other items as suggested that do not impact public safety such as the library changes.</p>	
<p>2</p>	<p>Bay Pavilions (two direct submissions, referenced in three submissions)</p> <p>2.1 References to the cost of running facility, its budget impost and the need to find savings due to this. How did the facility get into the situation where it is losing \$5M/year?</p> <p>2.2 Council should consider mothballing facility or selling asset to prevent the need to increase rates to support facility, or to eliminate the need to make other savings.</p> <p>2.3 Hope for an innovative solution to legacy cost of facility rather than trying to chip away with business as usual approach.</p>	<ul style="list-style-type: none"> • The Bay Pavilions was opened in June 2022. Since opening, the cost of operating the Bay Pavilions has been significantly higher than the estimated costs reported to Council on multiple occasions between 2016 and 2022. A comprehensive independent review of the project, from inception to delivery, was undertaken by KPMG in 2023 to ascertain how Council arrived at the current situation, with a report being presented to Council on 15 August 2023 meeting. The full KPMG report is available on Council’s website. • The cost of running the Bay Pavilions includes several fixed costs, including depreciation and insurance, which equates to approximately \$2.5m annually. Opportunities to reduce the net cost to Council and the community therefore lies with revenue and variable expenses, particularly in high-cost areas. However, a Bay Pavilions Sustainability Plan, based on findings from the KPMG review, as well as a risk audit and energy audit, has been developed. The aim will be to mitigate costs and risks, where possible, as well as pursue opportunities to increase revenue and maximise community benefits. • In addition, Council has undertaken a budget reset, with cost savings identified and incorporated into the Operational Plan 2024-25, as well as developing a Finance Strategy to improve fiscal outcomes across a range of areas, including the Bay Pavilions. To support this, Council will implement the recommendations of the energy audit to mitigate energy costs, where possible. In addition, Council is working with the contractor, Aligned Leisure, to increase participation and revenue, as well as reduce costs across a range of areas, including modifying opening hours, refining cleaning schedules and implementing a targeted maintenance program. A copy of the Council Report tabled at the Council Meeting 15 August 2024 will be provided. • Closing the facility is not currently under consideration. However it could be a decision a future Council may decide to make.

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<p>3</p>	<p>General fund deficit (two submissions)</p> <p>3.1 General fund deficit -concern draft budget with no special rate variation will become a real budget with a rate variation. Suggests it is time for an outsider to nominate further cuts.</p> <p>3.2 Welcomes commitment not to seek SRV for 2024-25.</p>	<ul style="list-style-type: none"> • Like many councils across the state, Eurobodalla's general fund, the fund that delivers the majority of services to the community (apart from water, sewer and waste) is facing ongoing operational deficits. Since establishing the financial challenges via an independent financial health check, work has been undertaken to reduce the projected deficit from \$14M to \$8.3M for the proposed 2024-25 budget. The proposed 2024-25 budget includes a 5.5% increase in general rates income, the maximum percentage by which Council can increase its general rate income set by the Independent Pricing and Regulatory Tribunal. • Council has adopted the Finance Strategy 2024-28 with 12 actions to define a path to financial sustainability, and this will be supported by a more strategic approach to pursuing grant opportunities as outlined in the Grants Strategy 2024-28 as adopted by Council in April 2024. Work will continue on implementing the actions going forward.
<p>4</p>	<p>4.1 Council should advocate for all grant moneys to be provided to local government as untied funds.</p>	<ul style="list-style-type: none"> • Grant funding is crucial for supporting local government to provide services, community programs, and critical infrastructure. With revenue caps limiting what Councils can raise through rates and fees, financial support from the Australian and NSW Governments is essential for better serving our community. • Council often advocates for improved outcomes through grant funding programs. In April 2024, the Mayor and General Manager formally presented to the NSW Grants Commission to seek changes to the Financial Assistance Grants scheme. On 30 April 2024, Councillors adopted the Grants Strategy 2024-28, outlining a new approach for advocating, applying for, and administering grant funds. Although major changes to the funding model by the Australian and NSW Governments are unlikely soon, Council will continue advocating for the best possible grant opportunities for the community.
<p>5</p>	<p>5.1 Shire economy exists/services on tourist trade. Suggests a population drive to create jobs/growth so more live in shire</p>	<ul style="list-style-type: none"> • Growth and development do not necessarily equal financial sustainability or viability for a Council. NSW Councils operate within a rate capped paradigm. Financial sustainability, amongst many things, requires living within our means, accurate prioritisation of our activities, good metrics on our assets and maintenance programmes and a prudent and honest assessment of the future impacts of new projects.

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	to share financial burden instead of cutting services.	Development within the Shire, amongst many things beyond our control, requires a robust and focused Council planning service.
6	6.1 Consider completion of the standard width road shoulders for full length of Cullendulla Drive to facilitate safe access by walkers, joggers and cyclists.	<ul style="list-style-type: none"> • Council has identified the need for further future shoulder widening, subject to funding, along Cullendulla Drive within Council's Northern Area Transport Network Plan. • The Operational Plan 2024-25 includes an action for Council to review the Pathways Strategy, and the community will have an opportunity to provide suggestions and feedback during its public consultation phase.
7	7.1 Consider establishing a pedestrian bridge or causeway across Cullendulla Creek from end of existing Surfside walkway to Longbeach.	<ul style="list-style-type: none"> • Provision of formed pathways is guided by Council's Pathways Strategy. • Under the strategy, Council considered the possibility of providing a footbridge over Cullendulla Creek, however it was noted that the construction of such a footbridge is within the National Park land and across Batemans Bay Marine Park. • While it is a matter for the State Government to fund and build such a footbridge, Council will seek to advocate for it.
8	8.1 Consider installation of solar arrays on Council recreation facilities - to address cost increases and Councils carbon emissions targets.	<ul style="list-style-type: none"> • A review of Council's recreational facilities, halls and amenity buildings has been conducted, to determine where solar panels might be located. This process included a consideration of the capital outlay against energy consumption to establish a return on investment. For some larger facilities, such as the Bay Pavilions and our libraries, consumption is sustained throughout the year, justifying investment in solar panels at this time. However, given the low consumption at some of our smaller facilities and seasonal hire venues, the capital investment is not viable at this time. Council will regularly reassess if/when capital costs reduce.
9	9.1 Consider introducing a charge to acknowledge the use of residential properties for business purposes (i.e. bed and breakfast establishments).	<ul style="list-style-type: none"> • Council can categorise land, for rating purposes, as per the <i>Local Government Act 1993</i> Section 514 into the following categories: <ul style="list-style-type: none"> ○ Residential ○ Business ○ Farmland ○ Mining • Under the Act, Council is permitted to further sub-categorise residential land according to whether it is: rural

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		<p>residential; in a centre of population; or a particular residential area, but not on the basis that it is used for short-term rental accommodation.</p> <ul style="list-style-type: none"> • A review was recently undertaken by the State Government into the adequacy of the short-term rental accommodation (STRA) planning and regulatory framework which includes Revenue Policy settings. This review is still currently under consideration after a discussion paper was publicly exhibited from 15 February to 14 March 2024. • Council is participating in a research program run by the Australian Coastal Councils Association through the University of Sydney on 'STRA Impacts and Policy Responses'. This research report is due at the end of 2024. • Council provided feedback to this discussion paper via a survey. • The University of Sydney submitted a response to the discussion paper on behalf of the Councils participating in the research program.
10	10.1 Consider adopting an ambitious tree canopy target as an outcome of action 1.2.1.2 of draft plan.	<ul style="list-style-type: none"> • This action relates to investigations currently underway regarding canopy cover. This information will be used alongside other data to determine whether targets and priority areas for planting trees are required. • Any policy decisions would need to be considered by Council and placed on public exhibition for comment.
11	11.1 Weeds of national significance need more contracted weed control under actions 1.2.1.5 and 1.2.3.1.	<ul style="list-style-type: none"> • A council budget is provided for the management of high-risk weeds according to the <i>Biosecurity Act 2015</i>.
12	12.1 Continue to celebrate Australia Day, but not on 26 January and consider expanding the First nations people history in	<ul style="list-style-type: none"> • Council intends to host a citizenship ceremony on Australia Day eve (25 January). This is for practical reasons: freeing new citizens to enjoy their Australia Day holiday with family and friends, freeing the Mayor and Councillors to attend other Australia Day activities, and avoiding clashes with other Australia Day events (like Rotary Club's citizen of the year celebrations). A Citizenship Ceremony is Council's only Australia Day event but Council does provide support for local

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	corporate documents.	<p>clubs running other events.</p> <ul style="list-style-type: none"> The current statement included in the plan was developed and endorsed by Council’s Aboriginal Advisory Committee. A similar statement is on a plaque at the entrance to the Council Chambers. In addition, Council is working on actions from the Aboriginal Action Plan, including cultural awareness training and improved engagement and co-design processes, commissioning local Aboriginal artworks for corporate use (e.g. infrastructure, signage, uniforms), and an internal working group concerning intellectual property and copyright to ensure respectful and appropriate engagement. To support traditional language use, we include ‘dhurga corner’ in each edition of Council’s resident newsletter Living in Eurobodalla. These actions are conducted under advice from the Aboriginal Advisory committee, who are also developing a protocols document for working with the Aboriginal community.
13	13.1 Expand the free green waste period under action 2.4.5.2.	<ul style="list-style-type: none"> Council developed the Free Green Waste program 2023-24 to coincide with the Rural Fire Service’s (RFS) annual ‘Get Ready’ weekend, to assist the community in preparing their properties for the upcoming fire season. A two week drop off period encourages residents to take advantage of the program while highlighting the importance of bushfire preparedness. Council’s Waste Strategy is currently under review and its public exhibition and finalisation is proposed as an action item in the Operational Plan 2024-25. This will provide an opportunity to consult with the community as to how they would like bulky and green waste management services delivered, including options such as on-call kerbside pickup, waste vouchers, or changes to existing services. Council will review the delivery of this program once the strategy has been developed.
14	14.1 New subdivisions should always be designed as walkable neighbourhoods.	<ul style="list-style-type: none"> Agreed. Council is seeking to review its suite of planning controls (Development Control Plans) in the short term and one of the identified priorities is subdivision standards. Council's Infrastructure Design Standard (IDS) already requires the provisions of footpaths and shared pathways depending on the hierarchy of the road.
15	15.1 Well designed densification of our	<ul style="list-style-type: none"> Council actively addresses housing challenges through its draft Housing Strategy 2024-2041 which is currently out for

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	<p>urban centres should be encouraged as our population expands, however do not impinge on public open spaces. Mandate proportion of social housing and mix block sites in new development and impose stricter short term rental limits. Per action 3.1.3.1.</p>	<p>exhibition until 10 July 2024.</p> <ul style="list-style-type: none"> Here are some key points related to urban design, densification, open space, social housing and mixed-block sites: <ol style="list-style-type: none"> Housing diversity and affordability - the strategy encourages greater housing diversity and affordability. Town Centre masterplans - the strategy identifies the need to look at the town centres of Batemans Bay, Moruya and Narooma with an aim of increasing densities in the centres. Social housing and mixed-block sites - Although the draft strategy doesn't explicitly mandate a proportion of social housing or mixed-block sites, it does emphasise the need for diverse housing by promoting a mix of housing types, with the aim of increasing affordability.
16	<p>16.1 Council need a proactive strategy for schoolies arriving in the shire and should consider running Council events for this, per action 3.2.4.1.</p>	<ul style="list-style-type: none"> Council-run events for young people are appropriately focussed on local youth and their needs, guided by the Youth Committee. Council staff are aware of schoolies timing and are ready to respond quickly to any schoolies-related issues, such as clean up of public areas.
17	<p>17.1 Congratulations on Coastal Headland Walk, however concern regarding ladder leaving Mosquito Bay rendering dog walking impossible.</p>	<ul style="list-style-type: none"> Council appreciates the positive comment. An alternative route is available to the coffee shop along the headland which provides easier access for those who would prefer to avoid using the stairs, including dog walkers.
18	<p>18.1 Consider additional car park parking at McKenzies Beach as current overflow parking occurs along narrow shoulder on George Bass Drive creating a major risk.</p>	<ul style="list-style-type: none"> The car park at McKenzies Beach has limited capacity at peak times and is highly constrained for any expansion. Therefore, it is not possible to increase the parking area. No Stopping signage has been installed along George Bass Drive to restrict parking on this busy section of road. Council and Police regularly patrol parking at beaches within the Shire including McKenzies Beach for the safety of the community and enforce the No Stopping zones.

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		<ul style="list-style-type: none"> • Beachgoers are always encouraged to swim in patrolled beaches, with the closest at Malua Bay.
19	19.1 Eurobodalla needs a Kayak chute at Batemans Bay (like one at Nelligen) and need river access build at Runnyford Bridge to benefit both tourists and locals.	<ul style="list-style-type: none"> • Noted. Council is currently focussing on renewing and maintaining our existing Marine Assets, guided by the Marine Asset Management Strategy. • Council will be working to develop a new Marine Infrastructure Strategy in the next few years which will provide future direction for improvements, renewals and maintenance of Eurobodalla’s marine facilities.
20	20.1 Landscape at least three roundabouts - Tomakin, Hanging Rock and Glenella Drive/George Bass Drive and consider doing more.	<ul style="list-style-type: none"> • Council is supportive of landscaping of roundabouts provided that sightlines and safety of future ongoing maintenance is considered. For future roundabout designs (Broulee Road/George Bass Drive and Sylvan Street/Kuppa Ave/George Bass Drive) landscaping will be considered and incorporated into the design. • For the existing roundabouts mentioned, Council may consider incorporating low maintenance landscaping that do not impact sightlines. This will be assessed as part of a general review of Parks and Recreation planning and scheduling of existing and new garden beds and landscaping, to be undertaken in the coming year.

CONCLUSION

The draft Operational Plan 2024-25 incorporating the Delivery Program 2022-26, draft Long Term Financial Plan 2024-34 and draft Fees and Charges 2024-25 were exhibited for 28 days between 1 May and 28 May 2024. Nine submissions were received from the community and considered in the preparation of the final version of the plans. The submissions and proposed responses were provided to all Councillors.

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

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FCS24/017 DIVIDEND FROM WATER AND SEWER SURPLUS

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

Attachments: 1. Under Separate Cover - Regulatory and assurance framework for local water utilities

Outcome: 5 Our engaged community with progressive leadership

Focus Area: 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

Under section 409(5) of the *Local Government Act 1993*, a council may pay an annual dividend from its water and sewerage surplus to its general fund. Such dividends may be paid for each business (water and sewerage) at the end of the financial year after meeting specific guidelines. Council in the past has paid such a dividend when available. Consideration is now given to the appropriateness of paying the dividend in future years.

RECOMMENDATION

THAT Council:

1. Has complied with Section 4.2 and 4.3 of the attached *Regulatory and assurance framework for local water utilities* and any direction under s409(6)(b) of the *Local Government Act 1993*.
2. Authorises a dividend payment from the water fund up to \$343,500 to the general fund (surplus from the 2021-22 financial year)
3. Ceases the payment of any dividend from water and sewer surpluses from the 2022-23 financial year.

BACKGROUND

Eurobodalla Shire Council has adopted the principle of 'competitive neutrality' in its water and sewer activities as part of the National Competition Policy. This principle is based on the concept of a 'level playing field' between persons/entities competing in the marketplace, particularly between private and public sector competitors, and that Council should operate without net competitive advantages over the public sector. For Council, this principle of competitive neutrality applies to its declared business activities, which include Water, Sewer, Batemans Bay Beach Resort and Bay Pavilions.

Competitive neutrality for council businesses adds focus to the provision of a transparent system of financial reporting and accountability to the benefit of both the council and the community.

From 1 July 2022, the *Regulatory and assurance framework for local water utilities* (attached) applies to all local water utilities in regional NSW, including Council. This framework includes

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guidelines for council dividend payments for water supply or sewerage services and replaced the previous *Best-Practice Management of Water Supply and Sewerage Guidelines*.

Section 4 of the framework outlines the six criteria to be met to pay a dividend.

Council’s compliance with the criteria is outlined below.

<p>1. Calculate any dividend payment in accordance with the methodology in section 4.3</p>	<p>Dividend from surplus Table 2. Calculation for dividend from surplus</p> <table border="1"> <thead> <tr> <th>No.</th> <th>Item</th> <th>Amount (\$)</th> </tr> </thead> <tbody> <tr> <td>(1)</td> <td>50% of ‘Surplus before Dividends’ (from audited Special Purpose Financial Report – Income Statement of Sewerage Business Activity)</td> <td>0.5*687,000 = \$343,500</td> </tr> <tr> <td>(2)</td> <td>No. of assessments connected to sewerage multiplied by \$30/assessment, less Dividend for TE</td> <td>(\$30*21,808)- 15,000 = \$639,240</td> </tr> <tr> <td rowspan="2">(3)</td> <td>(a) Cumulative ‘Surplus for dividend calculation purposes’ for the 3 years to 30 June of the dividend year⁶. \$2,591,000</td> <td rowspan="2">Cumulative ‘Surplus for dividend calculation purposes’ for the 3 years to the dividend year less cumulative dividends paid for preceding 2 years prior to the dividend year [(a)-(b)] \$2,591,000-\$1,220,758</td> </tr> <tr> <td>(b) Cumulative dividends paid for the preceding 2 years prior to the dividend year. \$1,220,758</td> </tr> <tr> <td>(4)</td> <td>Maximum Dividend from Surplus (least of (1) (2) and (3))</td> <td>\$343,500</td> </tr> </tbody> </table>	No.	Item	Amount (\$)	(1)	50% of ‘Surplus before Dividends’ (from audited Special Purpose Financial Report – Income Statement of Sewerage Business Activity)	0.5*687,000 = \$343,500	(2)	No. of assessments connected to sewerage multiplied by \$30/assessment, less Dividend for TE	(\$30*21,808)- 15,000 = \$639,240	(3)	(a) Cumulative ‘Surplus for dividend calculation purposes’ for the 3 years to 30 June of the dividend year ⁶ . \$2,591,000	Cumulative ‘Surplus for dividend calculation purposes’ for the 3 years to the dividend year less cumulative dividends paid for preceding 2 years prior to the dividend year [(a)-(b)] \$2,591,000-\$1,220,758	(b) Cumulative dividends paid for the preceding 2 years prior to the dividend year. \$1,220,758	(4)	Maximum Dividend from Surplus (least of (1) (2) and (3))	\$343,500
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<p>2. Be able to demonstrate there is a surplus</p>	<p>Council’s audited special purpose financial statements reported an operating surplus of \$916,000 (\$687,000 after tax) for the water fund, and an operating deficit of \$1,161,000 i.e., no surplus for the sewer fund in 2021-22</p>																
<p>3. Demonstrate full cost-recovery pricing and developer charges</p>	<p>Council submits strategic planning information to the Department of Planning and Environment and received notification on the 11 April 2023 that the local water utility (LWU) has demonstrated compliance for the purpose of paying a dividend under section 409 of the Local Government Act 1993. Included in the outcomes to achieve this compliance is the implementation of sound pricing and prudent financial management included in the Integrated Water Cycle Management Strategy.</p>																
<p>4. Have in place effective, evidence-based strategic planning in accordance with section 3 of the regulatory and assurance framework</p>	<p>Council has adopted several strategic documents including an Integrated Water Cycle Management Strategy and Development Service Plans for Water Supply and Sewerage which all feed into Council’s overarching Integrated Planning and Reporting Framework. Council submits this information to the Department of Planning and Environment and received notification on the 11 April 2023 that the local water utility (LWU) has demonstrated compliance for the purposes of paying a dividend under section 409 of the Local Government Act 1993.</p>																

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5. Demonstrate financial reports are a true and accurate reflection of the business	Council received an unqualified audit opinion on the special purpose financial statements for the year ending 30 June 2022.
6. Demonstrate that the overhead reallocation charge is a fair and reasonable cost	An external auditor has reviewed Council’s overhead cost allocation model and concluded that nothing has come to their attention that causes them to believe the overhead methodology for water and sewer businesses has not been prepared in accordance with the guidelines.

CONSIDERATIONS

Council meets these criteria for the dividend from the 2021-22 water surplus to be paid to the general fund.

In considering the appropriateness of continuing to pay a dividend in future years the following factors should be considered:

- Large capital works programs, particularly in water which may increase rate payers’ bills.
- Future affordability and cost of living pressures of the community.
- The concept of cost-plus pricing, where prices are not set for a surplus to result in a dividend payment.

Legal

Section 409 of the *Local Government Act 1993* relates to consolidation of Council’s funds and the requirement for restrictions on cash received for specific purposes. Section 409 (5) relates to the dividend payment for water and sewer.

The *Regulatory and assurance framework for local water utilities* is the regulatory framework which covers local government exercising water supply functions under Division 2 Part 3 Chapter 6 of the *Local Government Act 1993*. The framework ensures that local water utilities manage risk effectively and strategically.

Financial

The payment of the dividend from water surplus for the 2021-22 financial year has been factored into the 2023-24 operational budget. Not paying this dividend to general fund would impact negatively on the projected operating result for 2023-24.

The receipt of the dividend should not be a long-term strategy for the financial sustainability of the general fund, for this reason, the payment of the dividend from surplus for each of the funds has not been included in the 2024-34 ten-year Long-Term Financial Plan.

The maximum dividend paid, on average, represents either 50% of the above surplus or \$30 multiplied by the number of assessments (21,808 and 20,873 for water and sewer respectively, in 2021-22). Historically, the total of the dividends paid to the general fund has been approximately \$1 million annually.

FCS24/017 DIVIDEND FROM WATER AND SEWER SURPLUS

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Previous dividends paid from surplus in the water and sewer funds are tabled below.

Water

Financial Year (of Surplus)	2017/18	2018/19	2019/20	2020/21
Dividend Paid	\$611,900	\$617,710	\$594,548	\$626,210

Sewer

Financial Year (of Surplus)	2017/18	2018/19	2019/20	2020/21
Dividend Paid	\$566,400	\$563,100	\$439,713	\$310,060

CONCLUSION

Following a surplus result in the water fund in the 2021-22 financial year, Council may pay an annual dividend from its water and sewerage surplus to its general fund. Consideration is now given to the appropriateness of paying the dividend in future years.

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**FCS24/018 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 Shire Council Audit Risk and Improvement Committee Terms of Reference
2. Under Separate Cover - Eurobodalla Shire Council Audit Risk and Improvement Committee 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.

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.

In April 2024 Council considered a report regarding re-establishment of the Eurobodalla Audit Risk and Improvement Committee (ARIC) which included public exhibition of the Terms of Reference and Internal Audit Charter, membership, frequency of meetings, and sitting fees.

In the intervening period the current ARIC Committee has met, and the Terms of Reference and Charter have been publicly exhibited. No public submissions were received.

This report presents the Terms of Reference for the Eurobodalla Audit Risk and Improvement Committee, and the Internal Audit Charter, for final endorsement in addition to outlining the next steps in the Committee establishment process.

RECOMMENDATION

THAT:

1. Council adopt the Eurobodalla Audit Risk and Improvement Committee Terms of Reference (2024) which is attached to this report.
2. Council adopt the Eurobodalla Audit Risk and Improvement Committee Internal Audit Charter which is attached to this report.
3. Council receive a further report regarding membership of the Eurobodalla Audit Risk and Improvement Committee post the recruitment process outlined in this report.

**FCS24/018 AUDIT RISK AND IMPROVEMENT COMMITTEE TERMS OF
REFERENCE AND INTERNAL AUDIT CHARTER**

**S004-
T00048**

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.

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.

Public Exhibition Process

On 30 April 2024, Council received a detailed report in relation to the re-establishment of the Audit Risk and Improvement Committee which presented a Terms of Reference and an Audit Charter in keeping with guidance and model documents provided by the NSW government.

FCS24/018 AUDIT RISK AND IMPROVEMENT COMMITTEE TERMS OF REFERENCE AND INTERNAL AUDIT CHARTER

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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 Internal Audit Charter (IAC) provides the framework for the conduct of the internal audit function in the Council.

As a consequence of Council’s April resolution, the Terms of Reference and Internal Audit Charter were placed on public exhibition from 1 May to 28 May 2024. No submissions were received.

The re-establishment process was also discussed at a recent meeting of the Audit Risk and Improvement Committee held on 15 May 2024.

A couple of matters were raised at the ARIC meeting on 15 May 2024 and identified during an internal review process undertaken during the exhibition period, which are outlined hereunder:

a. ARIC Terms of Reference

Item	Response
Page 2, Composition and Tenure. Document indicated Crs Grace and Harrison were non-voting. This is not correct; they hold voting rights on the current committee.	ARIC Terms of Reference amended to reflect membership of four independent members and that the Terms of Reference will be updated to include the names of new members post the recruitment process and councils resolution to appoint members to the newly formed ARIC.
Page 4 Section regarding Councillor members	This section of the model document required reconsideration once Council had determined the membership of the Committee. As council resolved at the April 2024 meeting to have all independent members this section has now been deleted.

b. ARIC Internal Audit Charter

Item	Response
The Internal Audit Charter presented to council at the April Ordinary Meeting used a template document that required localising in relation to a number of matters including titles of staff. The original document referred to the Director of Finance and Corporate Services as the head of internal audit in the absence of finalised arrangements regarding the governance function post the retirement of the former incumbent.	Given the governance arrangements are currently being finalised the referencing in the document has been revised throughout to reference the internal audit function and head of internal audit rather than nominate a position which may then require amendments to the documentation. Once internal arrangements are finalised Council’s delegation register will be updated.

**FCS24/018 AUDIT RISK AND IMPROVEMENT COMMITTEE TERMS OF
REFERENCE AND INTERNAL AUDIT CHARTER**

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Minor Typographical errors.	Have been corrected in the document.
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The Terms of Reference and Audit Charter have been refined to reflect the changes outlined above and are recommended for adoption at this meeting.

Membership

Council's resolution at the April Ordinary meeting regarding membership was as follows:

4. *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:

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

5. *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.*

Membership of the ARIC was discussed at the last meeting of the current ARIC held on 15 May 2024 including the need for transitioning members to sign attestations regarding independence. Once Council has considered this report, Expressions of Interest will be sought for the role of Chair and then subsequently members of the ARIC. The process to be followed will be in keeping the guidelines to ensure independence and eligibility. Once a recommended membership is established the matter will be further reported to council for endorsement.

**FCS24/018 AUDIT RISK AND IMPROVEMENT COMMITTEE TERMS OF
REFERENCE AND INTERNAL AUDIT CHARTER**

**S004-
T00048**

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 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 optimisation of asset utilisation 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 the 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 placed the draft documents on public exhibition for a period of 28 days commencing on 1 May 2024 until 28 May 2024. Copies were available for viewing on Council's website, at the Batemans Bay, Moruya and Narooma libraries and Moruya customer service centre. No public submissions were received.

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 organisational 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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FCS24/019 REQUEST FOR TENDER - 2324-111 PLANT HIRE PANEL

**S004-
T00036**

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

Attachments: 1. Confidential - RFT2324-111 Plant Hire Panel

Community Goal: 5 Our engaged community with progressive leadership

Community Strategy: 5.3 Work together to achieve our collective vision

Delivery Program Link: 5.3.3 Provide effective and professional administration, technical and trade services to support the delivery of services to the community

Operational Plan Link: 5.3.3.2 Undertake procurement that provides best value to the community

EXECUTIVE SUMMARY

Request for Tender (RFT) No. 2324-111 was advertised on 6 February 2024 for the purpose of establishing Council's Plant Hire Panel for the period 1 July 2024 to 30 June 2026 with an option to extend the arrangement for a further 2 x 12 months. The RFT had a large response with 88 tender submissions received. The tenders received have been assessed and are presented to Council for approval to form the Plant Hire Panel.

RECOMMENDATION

THAT Council:

1. Endorse the proposed panel composition Request for Tender No. 2324-111 as set out in the confidential attachment to this report.
2. Approve entering into the Deeds of standing offers with the proposed panellists, subject to the terms specified in the RFT No. 2324-111.

BACKGROUND

Council establishes a Plant Hire Panel every 2 years to maximise competitiveness, reduce hire administration and holistically manage contractor WHS and other risks associated with construction and other Council works activities. The current panel is due to expire on 30 June 2024.

An extension of the panel arrangement for a further 2 x 12 months would serve to reduce the administrative burden for all parties with the opportunity to refresh pricing and add/remove plant from the panel as at the effective date.

Council regularly engages and procures external suppliers to provide plant hire services to support projects across the shire and the works program. It is estimated that Council's annual expenditure on plant hire services is approximately \$5 million.

Request for Tender No. 2324-111 was advertised on 6 February 2024 and closed 5 March 2024. The request for tender had a large response with 88 tender submissions received.

Offers were received from:

52nd Earthworx & Haulage	Greenlands Garden Centre Pty Ltd	Nicol Contracting Pty Ltd
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FCS24/019 REQUEST FOR TENDER - 2324-111 PLANT HIRE PANEL

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A W Dummett Pty Ltd T/As Bermagui Bobcat & Tipper Hire	Hibbo Hire Pty Ltd T/As Hibbos Earthworks Solutions	Ninth Bikar Nominees Pty Ltd T/As Drews Excavations
Alinta Earthworx Pty Ltd	Hite Consulting Pty Ltd T/As Sea to Summit Drilling	Outta Ground Constructions
Allcott Hire Pty Ltd	Arbor Tree Works Pty Ltd T/As Horizon Total Tree Service	PJ & KJ Jeffery T/As PK Excavations
Allison Earthworks and Haulage Pty Ltd	JA & RA Kilburn T/As JK Dirtworks	Precision Plumbing & Gas Fitting Aus Pty Ltd
APF Civil Pty Ltd	Jason Sirl Excavations Pty Ltd	PremiAir Services Pty Ltd
A-Plant Equipment Pty Ltd	JB CL Gauslaa T/As Narooma Excavator Hire	RD Miller Pty Ltd T/As RD Miller Specialised Earthworks
Aqua-Assets Pty Limited	Jennings Civil Group Pty Ltd	R.E.D Civil (Rodney David Duncombe T/As R.E.D Civil)
Armpell Civil Pty Ltd	JLN Contractors Pty Ltd	Reid Family Contracting Pty Ltd T/As Eurocoast Water
BCJ Excavations and Earthmoving	Bergalia Wholesalers Pty Ltd T/As JTD's Tilt Tray Hire	RJ & JE Shepherd Pty Ltd T/As Shepherd Quarries
Benex Group Pty Ltd	Kelton Rentals Pty Ltd	RMX Drilling Pty Ltd
Brooks Hire Service Pty Ltd	Kerin Kay Transport Pty Ltd	Roadworx Surfacing Pty Ltd
BME Diggers (BS and ML Ellis)	Kerry Reid	Rollers Pty Ltd
CCH South Coast Pty Ltd	Kofi Earthworx Pty Ltd	Shepherd Earthmoving Pty Ltd
Coates Hire Operations Pty Ltd T/As Coates	BKR Building Kitchen Renovations T/As BKR Contracting	M.A Ziegler & SJ Ziegler T/As SJ & MA Ziegler
Conplant Pty Ltd	The Trustee for LC & SJ Smith Family Trust T/As Eurobodalla Tree Services Pty Ltd	Smithies Excavations & Concreting Pty Ltd
Constable's Earthmoving	Louis Geraets Pty Ltd	South Coast Contracting & Hire Pty Ltd
Datasource Pty Ltd T/As Custom Hire	L & T Jervis Bay Tippers Pty Ltd	Southern Civil Group (Zenith Services Group Pty Ltd T/As Southern Civil Group)
Cutting Edge Plant	Mac Haulage Pty Ltd	Stabilco Pty Ltd
D & A Excavations and Haulage Pty Ltd	Moons Earthworks Pty Ltd	Stuart Brown T/As Stuart Brown Timber Supplies

FCS24/019 REQUEST FOR TENDER - 2324-111 PLANT HIRE PANEL

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Denrith Pty Ltd T/As Divalls Earthmoving and Bulk Haulage	Moruya Plumbing Drainage & Civil Pty Ltd	T & E Underground Services Pty Ltd T/As T&E Plant Hire
HMS Inskip Pty Ltd T/As Di Earthworks and Land Clearing	Moruya Tractors (DM and RA Price T/As)	The Handiest Man
Downer EDI Works Pty Ltd	Murra Southern Hire Pty Ltd	The Stabilising Pty Ltd
DWL Holdings Pty Ltd T/As DWI Demolitions and Excavations	N & J Rural Pty Ltd T/As Eurobodalla Weed Control	Tilba Tippers & Tankers Pty Ltd
Emery Excavations Pty Ltd	Narooma Bobcat Contractors Pty Ltd	TJ Concreting & Excavations Pty Ltd
PCR Hall Pty Ltd T/As Eurobodalla Coast Pump Outs	Narooma Cranes Pty Ltd T/As Eurobodalla Cranes	Total Drain Cleaning Services Pty Ltd T/As TDG Environmental
SR & BJ Sweeny Pty Ltd T/As Eurobodalla Water Tankers	RJ STREATER & ML MOTBEY T/As Narooma Water Cartage	Veolia Recycling & Recovery Pty Ltd T/As Veolia
Evolution Earthworks & Civil Pty Ltd	NGB Earthmoving Pty Ltd	Wayne Coppin Earthmoving Pty Ltd
G. Bussa Holdings T/As Moruya Garden and Yard Supplies	NJ and SC Nasser	Welsh's Tipper and Water Hire
Grassit Pty Ltd T/As Recs Group		

RFT No. 2324-111 – Plant Hire Panel, was advertised for the purpose of establishing a pre-qualified list of wet and dry hire civil companies. Establishing a panel for plant hire services will provide the following benefits to Council:

- Allow local and regional service providers to bid for work in the Local Government setting in general.
- remove the need for costly and time-consuming individual quotation and compliance screening processes for every requirement; and
- reduce procurement risk, through the utilisation of the Deed of Standing Offer.

Legal

RFT No. 2324-111 was advertised in accordance *with Local Government (General) Regulation 2021 REG 167 and Local Government Act 1993.*

The tender was advertised on Council’s website and at Council’s Tenderlink web portal www.tenderlink.com/eurobodalla.

Prior to the request for tender closing, a Tender Evaluation Plan (TEP) was approved and distributed amongst the tender evaluation panel. Declarations of confidentiality and interest forms were completed and signed by the tender evaluation committee.

FCS24/019 REQUEST FOR TENDER - 2324-111 PLANT HIRE PANEL

**S004-
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An assessment was carried out by the panel in accordance with the TEP. This report includes a Confidential Attachment which details the preferred tenderer/s and assessment criteria.

Policy

The tendering activity and associated evaluation for which this tender applies has been administered in compliance with:

- Council's Procurement Policy
- Council's Code of Practice – Procurement and tendering
- OLG Tendering Guidelines for NSW Local Government
- *Local Government (General) Regulation 2021* and
- *Section 55 of the Local Government Act 1993*.

Financial

Council uses external hire services to supplement its construction and maintenance capability and provide considerable opportunity for local economic development. In an industry where geographic location is a significant factor in price competitiveness (e.g., cost of equipment and transport), local providers have a natural advantage.

A panel arrangement provides a screening of compliance and cost up front, removing the need for lengthy procurement processes. Services procured against this panel arrangement will be funded by the respective capital or operational projects as they are required.

Community and Stakeholder Engagement

The tender was advertised on Council's website and at Council's Tenderlink web portal www.tenderlink.com/eurobodalla, and all members of Council's previous panel were informed of the new panel advertisement via email.

Prior to the tender release date, an industry briefing was held at the Mechanics Institute, Moruya on 31 January 2024. The briefing had 58 potential suppliers RSVP and 48 attended the event. In addition, several Council staff attended the briefing with representatives from the people and safety, workshop, works, procurement, and fleet departments. Minutes gathered at this event were provided as part of the tender advertisement.

The community will be informed of the tender outcome via Council's contract register found in Council's 'Public Access to Information' web link www.esc.nsw.gov.au/inside-council/council/public-access-to-information.

CONCLUSION

The tender process has been conducted in accordance with mandatory Council and Local Government requirements and the panel composition has been assessed through an extensive evaluation process. Subject to Council resolution, deeds of standing offer will be entered into with the preferred tenderers as detailed within the attachment. The panellists will then be engaged, subject to value for money assessments, and ongoing compliance for each plant hire requirement procured under the panel.

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**FCS24/020 REQUEST FOR TENDER - 2223-143 REPLACEMENT OF MORUYA
AIRPORT FENCE**

**S023-
T00004**

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

Attachments: 1. Confidential - RFT No.2223-143 Replacement of Moruya Airport Fence - Assessment

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

Community Strategy: 4.2 Strengthen linkages through air, road, and marine transport options

Delivery Program Link: 4.2.2 Provide and enhance the Regional Airport, guided by the Airport Master Plan

Operational Plan Link: 4.2.2.1 Operate and maintain the Regional Moruya Airport

EXECUTIVE SUMMARY

This report outlines the tenders received in response to Request for Tender (RFT) No. 2223-143 Replacement of Moruya Airport Fence and provides a recommendation that Council approve the submission of the preferred tendered as identified in the confidential attachment.

RECOMMENDATION

That Council:

1. Endorse the selection of the preferred tenderer listed for RFT No. 2223-143 Replacement of Moruya Airport Fence within the confidential attachment.
2. Accordingly, approve the entering into of a contractual arrangement with the preferred tender, subject to the terms specified in the RFT unless otherwise varied in accordance with this report.
3. Agree that variations may be made in accordance with the relevant provisions of the contract, provided that the total value of variations does not exceed 10% of the approved tender price.

BACKGROUND

Council advertised RFT No. 2223-143 Replacement of Moruya Airport Fence for the replacement of the existing perimeter fence structure at the airport. The existing fence has been in place for over 20 years and is corroded.

RFT No. 2223-143 was advertised on 12 December 2023 with a closing date of 5 January 2024. Offers were received from the following tenderers and assessed in accordance with the Tender Evaluation Plan:

- Coastline Fencing
- Colemans Security Fencing
- Intent Rail
- Olympic Fencing NSW P/L
- RNCO
- Securefence P/L
- Sunset Fencing

**FCS24/020 REQUEST FOR TENDER - 2223-143 REPLACEMENT OF MORUYA
AIRPORT FENCE**

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A summary of each tenderer's scoring against the evaluation criteria is provided in the confidential attachment to this report.

CONSIDERATIONS

Legal

RFT No. 2223-143 was advertised in accordance with clause 167 of the Local Government (General) Regulation 2021 and the Local Government Act 1993.

The tender was advertised on Council's website and at Council's Tenderlink web portal www.tenderlink.com/eurobodalla and local fencing contractors on Council's Trade Services Panel were informed of the advertisement via email in December 2023.

A Tender Evaluation Plan (TEP) was distributed amongst the Tender Evaluation Committee (TEC) prior to the closing date. Declarations of confidentiality and interest forms were completed and signed by the TEC. An assessment was carried out in accordance with the TEP. The offer submitted by the preferred tenderer has been assessed as representing best value for money for Council due to skillset, quality and price of product being delivered by the contractor.

Policy

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

Environmental

An Aboriginal Heritage Impact Permit (AHIP) is required to undertake the works associated with this tender, with the permit process currently underway. An Aboriginal Cultural Heritage Assessment (ACHA) is being undertaken by NGH Consulting, a suitably qualified consultant, to prepare an AHIP variation application for the works.

Subject to obtaining AHIP approval (estimated November 2024), tendered work is expected to commence February 2025. No works will be undertaken until AHIP approval is complete.

Financial

A grant of \$300,000 has been received under the Regional Airports Program - Round 3 Security and Safety upgrade with a Council co-contribution of \$300,000. The funding is being used for Safety and Security upgrades, which also includes airport runway markers and windsock lighting refurbishment as well as the fence replacement.

Community and Stakeholder Engagement

The tender was advertised on Council's website and at Council's Tenderlink web portal www.tenderlink.com/eurobodalla, and local fencing contractors on Council's Trade Services Panel were informed of the advertisement via email in December 2023.

**FCS24/020 REQUEST FOR TENDER - 2223-143 REPLACEMENT OF MORUYA
AIRPORT FENCE**

**S023-
T00004**

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

CONCLUSION

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

The preferred tenderer as identified in the Confidential Attachment is therefore recommended for the awarding of a contract for the Moruya Airport Fence replacement.

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FCS24/021 INVESTMENTS MADE AS AT 31 MAY 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 May 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

Council's investment policy is divided into two categories of risk, credit risk (risk of not being able to redeem funds) and liquidity risk (risk of loss due to the need to redeem funds earlier than the investment term). Council's portfolio is 100% invested in bank deposits, maintaining a low liquidity risk across all credit risk categories.

In April 2024, S&P upgraded the long-term credit rating for the Bank of Queensland and Bendigo bank from BBB+ to A-. The changes are reflected in Table 1.

As at 31 May 2024, the portfolio is compliant with Council's Investment Policy adopted by Council on 9 August 2022 (Minute 22/190). A summary of holdings by risk category is summarised below in Table 1.

FCS24/021 INVESTMENTS MADE AS AT 31 MAY 2024

S011-T00006,S012-T00025

Table 1 – Policy Risk Categories

S&P Long Term Category	S&P Short Term Category	Policy Risk Category	Current Holdings	Maximum Holdings
AAA (Government Guaranteed Deposits)	A-1+	Remote Risk	1.29%	100%
AAA to AA	A-1+	Near Risk Free	62.79%	100%
A	A-1 to A-2	Near Risk Free	35.92%	40%
BBB+	A-2	Some Limited Risk	0.00%	30%

Financial

Investment holdings summary

Table 2 provides a summary of cash and investment balances as at 31 May 2024. Fossil fuel free refers to institutions that have no exposure or no longer directly finance projects in the fossil fuel industry but still have some exposure from historical funding.

Table 2 – Investment holdings by category

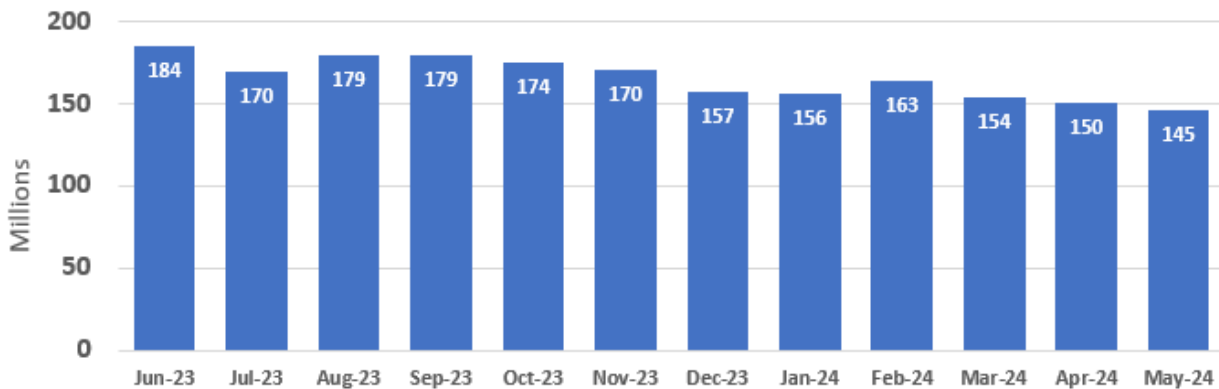
Category	(\$)	% of Portfolio
At Call Deposit	7,784,733	5.73%
Term Deposits – Government Guaranteed	1,750,000	1.29%
Term Deposits – Fossil Fuel Free Institutions	42,000,000	30.93%
Term Deposits	84,270,000	62.05%
Total Investments	135,804,733	
Cash at Bank (Operating Account)	9,491,384	
Total Cash and Investments	145,296,117	

FCS24/021 INVESTMENTS MADE AS AT 31 MAY 2024

S011-T00006,S012-T00025

Cash and investments decreased by \$5m in May 2024, primarily due to expenditure on Water and Sewer infrastructure projects and normal variations in timing of cash flows. Graph 1 displays Council’s cash and investments balances over a 12-month period.

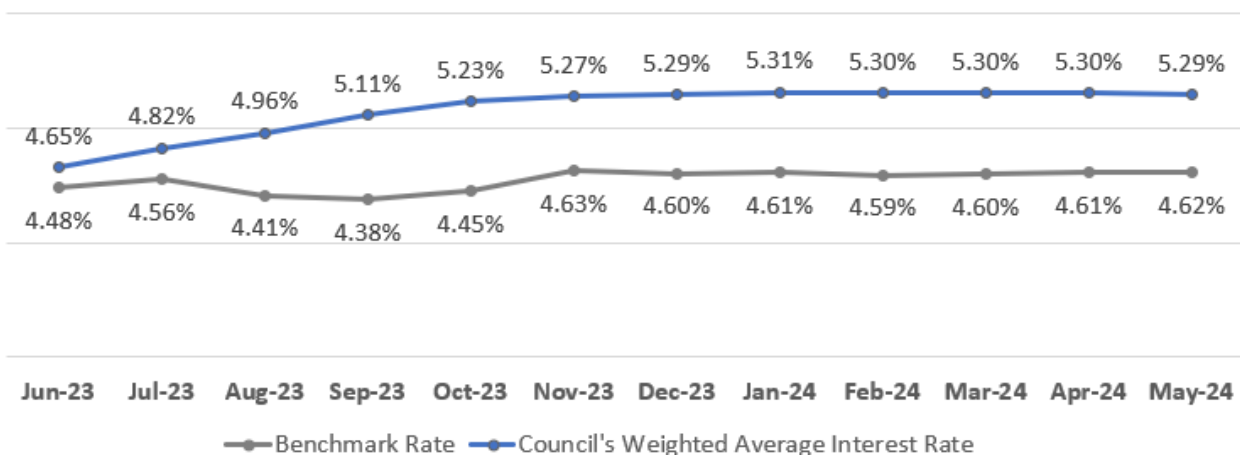
Graph 1 – Total Cash and Investment Balances (12 months)



Performance

The weighted average monthly return on Council’s investments for May 2024 is 5.29%, surpassing the Council policy benchmark of 4.62%, calculated using the bank bill swap rate (BBSW) plus 0.25%. Graph 2 compares Council’s weighted average return to the benchmark rate over a 12-month period.

Graph 2 – Investment performance over 12 months



CONCLUSION

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

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FCS24/022 RATES SUBSIDY GRANT 2024-25

S014-T00018

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

Attachments: 1. Confidential - Rates Subsidy Grant Applications

Community Goal: 5 Our engaged community with progressive leadership

Community Strategy: 5.2 Proactive, responsive and strategic leadership

Delivery Program Link: 5.2.1 Be proactive leaders with a focus on 'community better'

Operational Plan Link: 5.2.1.2 Administer community grants and donations

EXECUTIVE SUMMARY

Council adopted the Community Grants Policy at the Council meeting on 22 November 2022 per Minute Number 22/313. One of the grants that falls under this policy is the Rates Subsidy Grant. This grant offers a partial subsidy of Council rates to registered charities, not for profit sporting, social and cultural organisations providing services or benefits to the community as outlined in the Policy.

Applications for the grant were opened to the public 11 April 2024 and closed on 7 May 2024. Eleven applications were received. The amount of funds applied for is within the budget parameters.

RECOMMENDATION

THAT Council approve the allocation of funds to the Rates Subsidy Grants recipients as outlined in the confidential attachment to this report.

BACKGROUND

This is an annual grant and applications are only accepted during the advertised application window and do not continue into subsequent years. Applicants must re-apply each year and current recipients are advised by letter when the annual application process opens.

Applications open in April each year at which time a media release is issued and details of how to apply and who may be eligible are provided on Council's website.

The grant is structured as follows:

- Council will approve a budget allocation in the Operational Plan for the financial year.
- Public notice of the amount of rates grants will be given in the Operational plan for the year in which the rates are to be subsidised, to satisfy section 610E of the *Local Government Act 1993*.
- Rates subsidy grants can be applied to rented or leased premises where the applicant is responsible for the rates payment.
- Rates subsidy grants will not be available to organisations that have licensed premises, commercial or surplus income, churches or other religious groups.
- The rate subsidy is capped at 50% of the annual rates and charges shown on the rates notice, excluding waste charges.

FCS24/022 RATES SUBSIDY GRANT 2024-25

**S014-
T00018**

Council received 11 applications from the organisations listed below:

Bay Theatre Players Inc	Arts Council of Eurobodalla Inc
Moruya Dist Historical Society Inc	Country Women's Association NSW – Batemans Bay
Central Tilba School of Arts Trust Inc – 3 Bate Street	Narooma Men's Shed Inc
Central Tilba School of Arts Trust Inc – 3a Bate Street	Narooma District Woodcrafters Association Inc
Eurobodalla Access Radio Incorp	Narooma School of Arts & Soldiers War Memorial Hall Incorp
Country Women's Association of NSW – Narooma	

CONSIDERATIONS

The Rates Subsidy Grant offers a partial subsidy of Council rates to registered charities, not for profit sporting, social and cultural organisations providing services or benefits to the community.

Applications were assessed by a panel of three which included reviewing the details of the organisation's contribution to the community together with their status as a registered charity and/or not-for-profit organisation.

Legal

Section 356 of the *Local Government Act 1993* allows Council to grant financial assistance to persons for the purpose of exercising its functions.

Policy

The Rates Subsidy Grant is part of the annual community grants program under Council's Community Grants Policy which outlines the eligibility requirements.

Financial

The estimated budget of \$30,836 is included in the draft 2024-25 Delivery Program and Operational Plan (DPOP) and the total amount requested by all applicants comes within this budget allocation.

As the rates and charges for 2024-25 have not yet been adopted by Council, the recommended grant amounts are estimated based on the proposed rates and charges currently included in the draft 2024-25 DPOP. On adoption, the Rates Subsidy Grants will be finalised.

Community and Stakeholder Engagement

Previous recipients of the Rates Subsidy Grant were advised by letter in March 2024 of the pending application process.

This grant was released to the public through the Smarty Grants program on 11 April 2024 and closed on 7 May 2024. The available grants were advertised through a Council media release and on Council's website.

Applicants will be notified in writing as to the outcome of their application following Council's decision. If approved, the Rates Subsidy Grant will be applied to the applicant's rates and charges levied for 2024-25 and details of the subsidy payment will be shown on their 2024-25 Annual Rates Notice.

FCS24/022 RATES SUBSIDY GRANT 2024-25

**S014-
T00018**

CONCLUSION

Council provides grant funds to a range of organisations for the purpose of providing a community service or undertaking a project of benefit to the community. The budget allows for all applicants to receive a 50% rate subsidy on their annual rates and charges as shown on the rates notice, excluding waste charges.

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IR24/013 EUROBODALLA SOUTHERN STORAGE - DESIGN SERVICES

**S032-
T00008**

Responsible Officer: Graham Attenborough - Director Infrastructure Services

Attachments: 1. Confidential - Eurobodalla Southern Storage - Design Services

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

Community Strategy: 1.4 Work together in the management and use of our valuable resources

Delivery Program Link: 1.4.2 Increase water security through construction of the Southern Water Supply Storage

Operational Plan Link: 1.4.2.1 Continue the construction of the Southern Water Supply Storage/Dam

EXECUTIVE SUMMARY

The Eurobodalla Southern Water Supply Storage (ESWSS) is a priority project to drought proof the Shire's water supply and improve the resilience of Council's water supply.

The Australian Government has committed \$51.2 million through the National Water Grid Fund and the NSW Government has committed \$25.612 million through the Safe and Secure Water Program to the project. Council's contribution, based on the pre-construction estimate of the project was \$25.6 million or 25% of the total project cost (total preconstruction estimated cost approximately \$101.5 million).

The Project is now estimated to cost about \$151 million, not accounting for an increase in biodiversity offsets and as such Council's contribution will increase without further Federal or State Government funding.

Council originally engaged SMEC Australia in July 2016, to undertake the detailed design of the storage and ancillary works (Tuross River Intake Pump Station and power supply upgrade). Construction of the Southern Storage is currently under contract with Haslin constructions.

SMEC Australia were initially engaged through a variation to the original design contract, on a schedule of rates basis, to provide the ongoing design related services relevant to the construction phase of the Southern Storage. Due to geological issues encountered, additional design related services are required to take the project through to completion.

Councillors were provided with an update on the status of the Southern Storage project with a briefing on 9 April 2024.

RECOMMENDATION

THAT Council:

1. Approve the continued engagement of SMEC Australia for the outstanding design related services and the estimated costs as detailed in the confidential attachment, for the Eurobodalla Southern Water Supply Storage, within the following scope:
 - a) Design advice and services during construction

IR24/013 EUROBODALLA SOUTHERN STORAGE - DESIGN SERVICES

**S032-
T00008**

- b) Assurance and certification that construction is in accordance with the design
- c) Advice during commissioning and provision of a construction report.

BACKGROUND

Council engaged SMEC Australia in July 2016, following an open tender process to undertake the detailed design and environmental investigation for the preliminary stages of the Eurobodalla Southern Storage and Ancillary Works (Tuross River Intake Pump Station and Power Supply Upgrade) (Council Minute No. 16/229).

For the construction stages of major infrastructure projects, it is standard practice for the designer to be engaged until construction completion to:

- Modify the design to accommodate changes required due to changes in design assumptions
- Respond to requests for information (RFI's) from the construction contractor to address any discrepancies in the contract documents
- Assess any construction contractor requests to vary the design.

Engaging the original designer for these tasks ensures the design risk is covered by the designers Professional Indemnity Insurance and ensures clarity as to the burden of risk and allocation of responsibility.

The Eurobodalla Southern Storage is a Declared Dam in accordance with Section 4 of the Dams Safety Regulation 2019 and therefore the requirements of both the Regulation and the Dams Safety Act 2015 need to be followed.

Council resolved to award the construction of the Southern Storage on 28 June 2022 (Council meeting agenda item IR22/017). Within the report, it was noted that a cost estimate from SMEC Australia, as the project designer, was being sought for construction phase design services, and that it was intended to engage them as a variation to the initial design at prespecified rates.

Council resolved to continue the engagement of SMEC for outstanding design services associated with the Southern Storage on 17 October 2023 (Council meeting agenda item IR23/021) for the costs which were estimated and detailed in the confidential attachment.

Since this Council resolution, the geological conditions which have been encountered were worse than expected, resulting in additional geotechnical testing, assessment and mapping, redesign of various dam components and additional site supervision by SMEC, for example:

- Open voids within the clay core foundation requiring treatment design
- Ongoing site supervision for clay core foundation seam treatment instruction and verification.

IR24/013 EUROBODALLA SOUTHERN STORAGE - DESIGN SERVICES

**S032-
T00008**

- Ongoing site supervision for grout curtain instruction and verification.
- Redesign of upstream embankment and validation of downstream embankment design due to quality of site quarry material.
- Verification of downstream embankment toe foundation.

Public Works (PWA), who are administering the design contract with SMEC on Council's behalf, have assessed the rates within the original variation proposal from SMEC, for design related services during construction, and concluded that they were based on current market rates. PWA also examines and validates each claim submitted by SMEC, prior to approval by Council.

With the foundation works having been completed and the on-site quarry material having been assessed as suitable for use for the revised dam embankment design, the requirement for permanent onsite supervision by SMEC to undertake the mapping, oversight of treatment and grouting has now ceased.

There is still a requirement for SMEC to provide some off-site design advice, assurance and certification during the building of the embankment and eventual commissioning, plus provision of a construction report and updated design and geotechnical reports.

Given the significant increase in the scope and cost of variations proposed, it is advised that Council consider and endorse all further design works and associated costs, through to completion of the project. The proposed scope of works and estimated cost is detailed in the confidential attachment.

Legal

Section 55 of the *Local Government Act 1993* (the Act) requires a tender to be called for a contract to carry out services for councils valued at over \$250,000 (or another amount as prescribed by the regulations), unless exempt from the requirement pursuant to section 55(3) of the Act. The proposed additional design works go beyond this threshold.

Section 55 (3) (i) of the Act states that a tender is not required for contracts where, because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders.

The Dams Safety Act 2015 and Dams Safety Regulation 2019 require Council to engage a competent person(s) who is subject to a quality management system in accordance with AS/NZS ISO Standard 9001:2016 Quality Management Systems – Requirements for relevant design work and construction and commissioning verification for the Eurobodalla Southern Storage project, and that the dam designer prepare a construction report to certify that the dam has been constructed in accordance with the detailed design.

Policy

Procurement practices are considered in accordance with Council's Procurement Policy, Code of Practice – Procurement, Code of Practice – Tendering, the Local Government Procurement Guidelines, Local Government (General) Regulation 2021 and the Local Government Act 1993.

IR24/013 EUROBODALLA SOUTHERN STORAGE - DESIGN SERVICES

**S032-
T00008**

Financial

Grants of \$25.612 million (ex GST) through the NSW State Government Restart program and \$51.2 million (ex GST) through the National Water Grid Fund have previously been accepted by Council for the Eurobodalla Southern Storage construction.

The pre-construction estimate for the entire project was initially \$102.5 million (ex GST), leaving Council initially only responsible for funding 25% of the total construction costs, including land acquisition and biodiversity offsets.

Due to significant increases in construction costs as a result of COVID-19, bushfires, floods, and the war in the Ukraine, tender prices for the storage construction were higher than previously budgeted, considerably increasing the construction project budget estimate to \$130 million, which included a project management budget for the storage construction of \$5 million. Due to the \$76.8 million in funding already received, the impact on the water fund capital budget is partially mitigated, but will need to be reviewed when the final project cost is known.

CONCLUSION

The tender process for the new Eurobodalla Southern Water Supply Storage original design was conducted in accordance with mandatory Council and legislative requirements and the preferred tenderer was assessed, through an extensive evaluation as representing best value for money.

The scope of the additional design services and their associated costs requires further consideration by Council, in particular Council is asked to grant exemption to the usual tendering requirements based on the extenuating circumstances noted above, and to allow for SMEC's continued engagement in a project to which its design advice is integral.

The additional design related services as attached to this report are deemed to be necessary and justified and fall within the scope of the overarching project.

The ongoing engagement of the designer is required to satisfy dam safety legislative requirements, ensure the design risk is not transferred to Council, and to minimise the risk of project delays and subsequent contractual claims.

This report recommends the engagement of SMEC Australia for design related services, relevant to the construction and certification stage of the project, pursuant to the procedures noted above is recommended to Council.

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IR24/014 LOCAL TRAFFIC COMMITTEE NO.10 FOR 2023-24

S030-T00018

Responsible Officer: Graham Attenborough - Director Infrastructure Services

Attachments: 1. Minutes LTC No. 10
2. Under Separate Cover - Minutes LTC No. 10 - Attachments

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

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

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

Operational Plan Link: 4.1.1.3 Coordinate the Local Traffic Committee

EXECUTIVE SUMMARY

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

Recommendations arising from the Local Traffic Committee meeting No. 10 held 9 May 2024, are as follows:

RECOMMENDATION

THAT Council approves:

1. The following acts for determination from Local Traffic Committee No. 10:

- **2024.RT.031 Signage, No Parking Taxi Excepted, Perry Street, Batemans Bay**, that Council Plan 5490-C-02 detailing No Parking Taxi Excepted signs on Perry Street, Batemans Bay, be approved.
- **2024.RT.032 Signage, No Parking Taxi Excepted, Orient Street, Batemans Bay** that Council Plan 5490 Set K Sheet 01 detailing No Parking, Taxi Excepted sign on Orient Street, Batemans Bay, be approved.
- **2024.RT.033 Signage, No Parking, Taxi Excepted, Clyde Street, Batemans Bay** that Council Plan 5490 Set R Sheet 01 detailing No Parking Taxi Excepted on Clyde Street Batemans Bay, Batehaven, be approved.
- **2024.RT.036 Linemarking, Church Street, Moruya** that Council Plan 5490 Set J Sheet 01 detailing linemarking on Church Street, Moruya, be approved.

2. The following Special Events and Informal Items:

- **2024.SE.016 Narooma Forest Rally 2024**, the submitted traffic management, safety plan and map for event held on the 27 July 2024.
- **2024.SE.017 Moruya Campdraft**. The event was cancelled as of 9 May 2024 due to excess rainy weather.

IR24/014 LOCAL TRAFFIC COMMITTEE NO.10 FOR 2023-24

S030-T00018

BACKGROUND

The Eurobodalla Local Traffic Committee Meeting No 10 for 2023-24 was held on 9 May 2024. The meeting was attended by Councillor Amber Schutz, Andy Gaudiosi (Transport for NSW), Kate McDougall (Traffic Coordinator), Katherine Buttsworth (Road Safety Officer), Senior Sgt Scott Britt (NSW Police), and Sheree Ward (Infrastructure Support Officer).

Notes

One car parking space will be removed at 16 Church Street, Moruya, to allow for adequate line of sight for vehicles entering/exiting the adjacent car park.

Apologies

Karen Shea (representative for Michael Holland MP)

CONCLUSION

The minutes of the Eurobodalla Local Traffic Committee meeting No. 10 for 2023-24 are attached to this report and provide further background for the recommendations.



LOCAL TRAFFIC COMMITTEE REPORTS

Meeting No: 10-23/24		File No E16.0002
Date: Thursday 9 May 2024		Time: 9:30am
Location: Eurobodalla Shire Council – CARS Meeting Room		

OUTSTANDING ITEMS

4.1 Action Sheet – Outstanding Warrants

2023.RT.031.323 –Field Street This area requires construction work before the Warrant can be completed, the construction work is yet to start. RM328861/23

2024.RT.006.327 – Glass House Rocks RM332003/24

2024.rt.008.328 – Perry Street RM332008/24

2024.rt.013.336 – Mosquito Car park RM334901/24

2024.rt.016.337 – Country Club Drive RM335581/24

2024.rt.019.340 – Queen Street RM335600/24

2024.RT.020.341- Hill Street Batemans Bay RM335592/24

2024.rt.024.347 – Orient Street RM336566/24

2024.rt.022.345 – Queen Street RM336545/24

2024.RT.025.348 – Clyde view Road RM336741/24

ROAD TRANSPORT (SAFETY & TRAFFIC MANAGEMENT) ACT ITEMS FOR DETERMINATION

5.1 2024.RT.031 Signage, No Parking Taxi Excepted, Perry Street, Batemans Bay

RECOMMENDATION

That Council Plan 5490-C-02 detailing No Parking Taxi Excepted signs on Perry Street, Batemans Bay, be approved.

BACKGROUND

Council has been contacted by several businesses expressing concerns of their inability to drop off / picked up clients and or products in Batemans Bay CBD. Council's Traffic Coordinator reviewed the parking in the CBD it was noted that a change in the taxi service parking provisions could help in this situation and not diminish taxi business operations. Council contacted the Batemans Bay Taxi Company and discussed the change to the signage at taxi ranks. They expressed concern to losing the ramp in Perry Street at the end of the taxi zone. This concern was addressed by leaving 6.5m of the original taxi rank untouched, and the remainder as No Parking, Taxi Excepted. This allows taxis to park long term at these sites, as before, but also along other vehicles to pick up / drop off at these locations, stopping for 2 minutes only, and not going beyond 3 metres from their vehicle.

CONCLUSION

The change of parking signage will not prevent taxis to stay long term at the noted locations. It will increase the ability for drivers to drop off / pick up at locations around Batemans Bay CBD.



**LOCAL TRAFFIC COMMITTEE
REPORTS**

Meeting No: 10-23/24	File No E16.0002
Date: Thursday 9 May 2024	Time: 9:30am
Location: Eurobodalla Shire Council – CARS Meeting Room	

5.2 2024.RT.032 Signage, No Parking Taxi Excepted, Orient Street, Batemans Bay

RECOMMENDATION

That Council Plan 5490 Set K Sheet 01 detailing No Parking, Taxi Excepted sign on Orient Street, Batemans Bay, be approved.

BACKGROUND

Council has been contacted by several businesses expressing concerns of their inability to drop off / picked up clients and or products in Batemans Bay CBD. Council's Traffic Coordinator reviewed the parking in the CBD it was noted that a change in the taxi service parking provisions could help in this situation and not diminish taxi business operations. Council contacted the Batemans Bay Taxi Company and discussed the change to the signage at taxi ranks. The Taxi rank in Orient Street will be changed to No Parking Taxi Excepted.

CONCLUSION

The change of parking signage will not prevent taxis to stay long term at the noted locations. It will increase the ability for drivers to drop off / pick up at locations around Batemans Bay CBD.

5.3 2024.RT.033 Signage, No Parking, Taxi Excepted, Clyde Street, Batemans Bay

RECOMMENDATION

That Council Plan 5490 Set R Sheet 01 detailing No Parking Taxi Excepted on Clyde Street Batemans Bay, Batehaven, be approved.

BACKGROUND

Council has been contacted by several businesses expressing concerns of their inability to drop off / picked up clients and or products in Batemans Bay CBD. Council's Traffic Coordinator reviewed the parking in the CBD it was noted that a change in the taxi service parking provisions could help in this situation and not diminish taxi business operations. Council contacted the Batemans Bay Taxi Company and discussed the change to the signage at taxi ranks. It was agreed that the No Stopping, Taxi Excepted 5 Minutes in Clyde Street will be changed to No Parking Taxi Excepted.

CONCLUSION

The change of parking signage will not prevent taxis to stay long term at the noted locations. It will increase the ability for drivers to drop off / pick up at locations around Batemans Bay CBD.

5.4 2024.RT.036 Linemarking, Church Street, Moruya

RECOMMENDATION

That Council Plan 5490 Set J Sheet 01 detailing linemarking on Church Street, Moruya, be approved.

BACKGROUND

Council had received numerous requests from community members regarding the lack of site distance of approaching vehicles when exiting the carpark in Church Street Moruya. Council's Traffic Coordinator inspected the site on several occasions. The No Stopping sign is in the process of being moved, and the linemarking will enhance the safety when turning out of the carpark in Church Street Moruya.



**LOCAL TRAFFIC COMMITTEE
REPORTS**

Meeting No: 10-23/24	File No E16.0002
Date: Thursday 9 May 2024	Time: 9:30am
Location: Eurobodalla Shire Council – CARS Meeting Room	

CONCLUSION

The linemarking will support the longer No Stopping zone, allowing cars to exit the carpark with less conflict of oncoming vehicles due to the increased sight distance.

ITEM 6 - INFORMAL ITEMS FOR DISCUSSION

- 6.1 2024.SE.016 Narooma Forest Rally 2024
- 6.2 2024.SE.017 Moruya Campdraft

ITEM 7 - GENERAL BUSINESS

- 7.1 Beach Road TMP
- 7.2 helicopter lift

ITEM 8 - Development Applications

ITEM 9 - NEXT MEETING June 13, 2024

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.