



# Mackay Park Plan of Management 2019

*Eurobodalla Shire Council recognises Aboriginal people as the original inhabitants and custodians of all the land and water in the Eurobodalla and respects their enduring cultural and spiritual connection to it.*

**Mackay Park Plan of Management v1.0**

Adopted by Eurobodalla Shire Council on 11 June 2019

Prepared by Navigate Planning and Eurobodalla Shire Council

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## 1. EXECUTIVE SUMMARY

Mackay Park Batemans Bay is a Crown Reserve that has been used for many decades for a range of public recreation purposes.

Council has been developing Mackay Park as a major events precinct in recent years and is now planning a new Regional Aquatic, Arts and Leisure Centre to replace the ageing Batemans Bay Swimming Pool.

As Crown Land, a Plan of Management (POM) was not required for the land until the NSW *Crown Lands Management Act 2016* came into force in July 2018.

This first POM for Mackay Park includes the following:

- a description of Mackay Park, its current uses, its natural environment, its history and current planning
- the issues raised in preliminary consultation with user groups
- a plan for the ongoing management of Mackay Park, including how Mackay Park will be categorised under the NSW *Local Government Act 1993*, objectives and options for future management and development, and the authority for the potential future issuing of leases or licences over parts of Mackay Park for certain activities
- a Management Action Plan
- the legislative and policy framework that governs use and development of Mackay Park.

Under the NSW *Crown Lands Management Act 2016* and the NSW *Local Government Act 1993*, Mackay Park is community land, with an initial category of 'park'. On 1 March 2019, a delegate of the NSW Minister for Lands and Forestry, granted consent to Council's application to alter the categorisation of Mackay Park from 'park' to 'general community use'. Despite the change in category, no change is proposed in the POM to the existing and proposed primary uses of Mackay Park, being for a range of public recreation purposes and events and a Regional Aquatic, Arts and Leisure Centre.

Under the Commonwealth *Native Title Act 1993*, for a Native Title claim to be successful, Native Title claimants must prove a connection to the land and that Native Title has not been extinguished.

In accordance with the *Native Title Act* and the NSW *Crown Lands Management Act 2016*, Council's Native Title Manager provided written advice on 13 May 2019 that no objections were received from the Native Title Service Corporation about activities and actions proposed in this POM.

This POM applies to that part of the Mackay Park reserve that is currently used for recreation and associated purposes. The southern-most part of the reserve that consists of a narrow strip of wetland adjoining the Princes Highway will be included in a separate generic Natural Areas and Undeveloped Reserves POM.

This POM outlines the future development outcomes for Mackay Park:

- Mackay Park will continue to have a mix of sporting, recreational, cultural and social activities
- Mackay Park will continue to be used for large and small events and the amenities and function centre will continue to be available for functions and other activities
- Mackay Park will continue to be available as an alternative venue for a range of sporting activities and be open to the general public for passive recreation when not in use for scheduled sports and events
- Three (3) months prior to the agreed closure of the Batemans Bay swimming pool, Council will advise the current pool contract manager that the existing contract for management of

Council's three swimming pools at Batemans Bay, Moruya and Narooma will be amended to delete all references to the Batemans Bay swimming pool

- The Batemans Bay swimming pool will be demolished and replaced with a Regional Aquatic, Arts and Leisure Centre
- During the detailed design of the Regional Aquatic, Arts and Leisure Centre, Council will work with the operator of the Batemans Bay Mini Golf facility to determine the future for this facility
- In any redevelopment of Mackay Park or the adjoining former bowling club site, the availability of overflow car parking for the Batemans Bay town centre will be considered, should this be determined to be appropriate
- Electric vehicle charging stations will be considered for installation at Mackay Park
- Council will continue to undertake environmental works along the fringes of Mackay Park as part of implementing the Batemans Bay and Clyde River Estuary Management Plan (2005)
- Council will continue to undertake general improvements to landscaping at Mackay Park to improve the visual amenity as well as providing shade in appropriate locations
- Council integrate public art and other installations, including information boards and other facilities to tell the story of Mackay Park and Batemans Bay.

These outcomes for Mackay Park are consistent with Eurobodalla Shire Council's corporate objectives and the community's objectives, as outlined in the Eurobodalla Community Strategic Plan and the Council's Delivery Plan 2017-21.

This POM authorises Council to continue to enter into temporary or long-term licences with operators of commercial events at Mackay Park. It authorises Council to investigate and enter into the most appropriate management arrangements for the Regional Aquatic, Arts and Leisure Centre. It also authorises Council to enter into negotiations regarding the existing, and where appropriate, new leases and licences with community or commercial operators for one or all of the components of the new centre (subject to the outcomes of the detailed design process and following a tender process) and for the Batemans Bay Mini Golf, electric vehicle charging stations and other activities that are consistent with the *Local Government Act 1993*.

The following Action Plan has been developed to meet the objectives for management of Mackay Park and to facilitate the identified future development outcomes.

## Mackay Park Action Plan

Issues		Actions	
<b>A</b>	Maintain and grow the primary uses of Mackay Park: <ul style="list-style-type: none"> <li>• Rugby League</li> <li>• Events</li> <li>• Aquatic Arts and Culture.</li> </ul>	Subject to the findings and recommendations of a Mackay Park Master Plan, Council may assess, prioritise and seek external funds for the following assets:	
		<b>A1</b>	Development of the Regional Aquatic, Arts and Leisure Centre.
		<b>A2</b>	Upgraded flood lighting.
		<b>A3</b>	External portable tiered seating and bench seats.
		<b>A4</b>	Permanent line marking of underground services.
		<b>A5</b>	Additional power and water outlets.
		<b>A6</b>	Upgrade of amenities in the amenities and function centre.
		<b>A7</b>	Install a synthetic cricket wicket, subject to demonstrated demand
<b>B</b>	Manage competing interests (as an alternative venue for other sports) and manage congestion at peak periods.	<b>B1</b>	Council will maintain a booking system to ensure activities are undertaken at appropriate times to avoid conflict.
		<b>B2</b>	Council will ensure that event organisers comply with Council's Events Policy and Guidelines.
<b>C</b>	Define roles and responsibilities with user groups.	<b>C1</b>	Council will ensure that the future management arrangements for all or designated components of the Regional Aquatic, Arts and Leisure Centre clearly define and outline the roles and responsibilities of the management entity(s) appointed by Council.
<b>D</b>	Maintain and increase public access and use of Mackay Park.	<b>D1</b>	Council will increase public awareness of opportunities for public access and use of Mackay Park.
		<b>D2</b>	Council will ensure the design and management of the Regional Aquatic, Arts and Leisure Centre is consistent with the objectives of this Plan of Management.
		<b>D3</b>	Council will undertake a review of waste disposal facilities at Mackay Park to ensure adequate services are provided for events and other activities.
<b>E</b>	Improve vehicular and pedestrian access to Mackay Park and providing sufficient car parking, including long-vehicle parking.	<b>E1</b>	Council will take into consideration vehicular and pedestrian access to Mackay Park and car parking, including for long-vehicles.
<b>F</b>	Integrate existing facilities with Regional Aquatic, Arts and Leisure Centre.	<b>F1</b>	Council will ensure the design of the Regional Aquatic, Arts and Leisure Centre provides opportunities for integration with existing facilities at Mackay Park, other than the existing swimming pool, with potential future development of the former bowling club site and with the Batemans Bay Town Centre.
<b>G</b>	Promote energy and water efficiency in all development and use of Mackay Park.	<b>G1</b>	The design of the Regional Aquatic, Arts and Leisure Centre will consider the most effective and best value energy and water efficient systems and plant.
		<b>G2</b>	Incorporate practices and systems to reduce, reuse and recycle.

Issues		Actions	
<b>H</b>	Integrates public art and signage within Mackay Park.	<b>H1</b>	Council will ensure the design of the Regional Aquatic, Arts and Leisure Centre integrates public art and signage that is sensitive to the location of Mackay Park, its history and its use as an important public open space asset.
		<b>H2</b>	Council will review existing corporate sponsorship signage at Mackay Park.
		<b>H3</b>	Council will install signage as appropriate.
<b>I</b>	Improve the visual presentation of Mackay Park from other public spaces, and improve visual and physical connections with the surrounding wetlands, while protecting environmental values.	<b>I1</b>	Council will ensure the design of the Regional Aquatic, Arts and Leisure Centre has a strong visual presence when viewed from all vantage points, including from the new Batemans Bay bridge, the Princes Highway and Beach Road, and from within Mackay Park.
		<b>I2</b>	Council will investigate opportunities for increasing public access to and awareness of the adjoining wetlands.
		<b>I3</b>	Council will continue to implement weed and pest control management programs on and adjoining Mackay Park as required and as funding is available.
		<b>I4</b>	Council will encourage the planting of native drought-resistant plants.
<b>J</b>	Manage flooding and adapting to climate change.	<b>J1</b>	Council will ensure that any new development at Mackay Park takes into account the potential impacts of flooding and climate change and is designed appropriately having regard to the safety of users.
<b>K</b>	Manage disruption during construction of Regional Aquatic, Arts and Leisure Centre.	<b>K1</b>	Council will ensure plans are in place to minimise disruption to users of Mackay Park and the general public during construction of the Regional Aquatic, Arts and Leisure Centre.
<b>L</b>	Manage public safety in the event of an emergency or disaster.	<b>L1</b>	Council will ensure relevant emergency management plans are in place and regularly updated and tested.
<b>M</b>	Leases and licences are issued for specific uses.	<b>M1</b>	<p>Council will ensure appropriate management systems (in house, leases, licences or other arrangements) are in place to facilitate, where required and appropriate, activities and uses at Mackay Park, including but not limited to:</p> <ul style="list-style-type: none"> <li>• Commercial events</li> <li>• Aquatic centre</li> <li>• Café and retail space</li> <li>• Front entrance and foyer space</li> <li>• Auditorium</li> <li>• Gallery and exhibition space</li> <li>• Wet and dry arts workspaces</li> <li>• Rehearsal/dance studio</li> <li>• Meeting rooms</li> <li>• Kitchen and storage facilities</li> <li>• Outdoor public plaza and leisure space</li> <li>• Health and fitness facilities</li> <li>• Wellness and health rooms</li> <li>• Occasional child care facilities</li> <li>• Electric vehicle charging stations</li> <li>• Mini golf (potentially, but subject to final determination of future requirements).</li> </ul>



Issues		Actions	
N	Clarify the boundaries of Mackay Park.	N1	Council will, in consultation with the Crown, undertake a full survey of Mackay Park and implement an agreed process to amend the boundaries of the Mackay Park Reserve, including the preparation of a new Deposited Plan or Plans and the appointment of a land owner/manager in accordance with Crown Land requirements.
		N2	Through the survey process, Council will rectify any encroachments onto the former Batemans Bay bowling club site and any encroachments into Mackay Park from the former Batemans Bay bowling club site, such as through boundary adjustments, easements or rights of way.
		N3	Council to include the following lots at the southern extent of Mackay Park in a generic Natural Areas and Undeveloped Reserves Plan of Management: <ul style="list-style-type: none"> <li>• Lot 1 DP118964</li> <li>• Lot 7036 DP1020368</li> <li>• Lot 7038 DP1054706</li> <li>• Lot 2 DP624610</li> <li>• Lot 5 DP633943</li> <li>• Lot 7012 DP1020708.</li> </ul>

## 2. INTRODUCTION

### 2.1 What is a Plan of Management?

Council is required under the *Local Government Act 1993* to prepare POMs for its community land (reserves). The *Crown Lands Management Act 2016*, which came into force on 1 July 2018, authorises Councils to manage certain dedicated or reserved Crown Land as if it were public land under the *Local Government Act 1993*. As a result, a POM is now required for Crown Land for which Council is the appointed land manager.

A POM outlines how the land can be used, developed and managed, how leases and licences or other interests are granted on community land and determines the scale and intensity of current and future use and development on the land.

As a planning tool, it provides objectives for the management of the land in the short and long term. This gives both Council and the community objectives to work towards in achieving desirable outcomes for the management of the land. A POM can be used to identify projects that could be achieved through community working groups as well as providing supporting documentation when applying for grants.

Community consultation is an important process in the development of Plans of Management. Community input provides detailed local knowledge that adds value to the plan. In this way, issues that are of importance to the local community were considered in the preparation of this POM.

### 2.2 What land is covered under this Plan of Management?

This POM applies to that part of Mackay Park, Batemans Bay that is Crown Reserve 580022 for which Eurobodalla Shire Council has been appointed the land manager.

The following lots are covered by this POM and shown within the black outline in Figure 1.

- Lots 30, 31, 259 DP 755902
- Lots 1 and 2 DP 1049123.

It should be noted that the current boundaries of Lots 30, 31 and 259 DP 755902 do not cover the whole of Mackay Park as it is currently used. It appears that this may be due to a poor translation of the original mapping of the land to the current Deposited Plan. This is supported by the boundaries of the more recently surveyed Lots 1 and 2 DP 1049123. In any case, the areas not within the subject lots are not currently part of the Mackay Park Reserve and need to be included. This POM recommends a survey of the land to clarify the boundaries and, in consultation with the Crown, a process to add the land to the reserve will be undertaken.

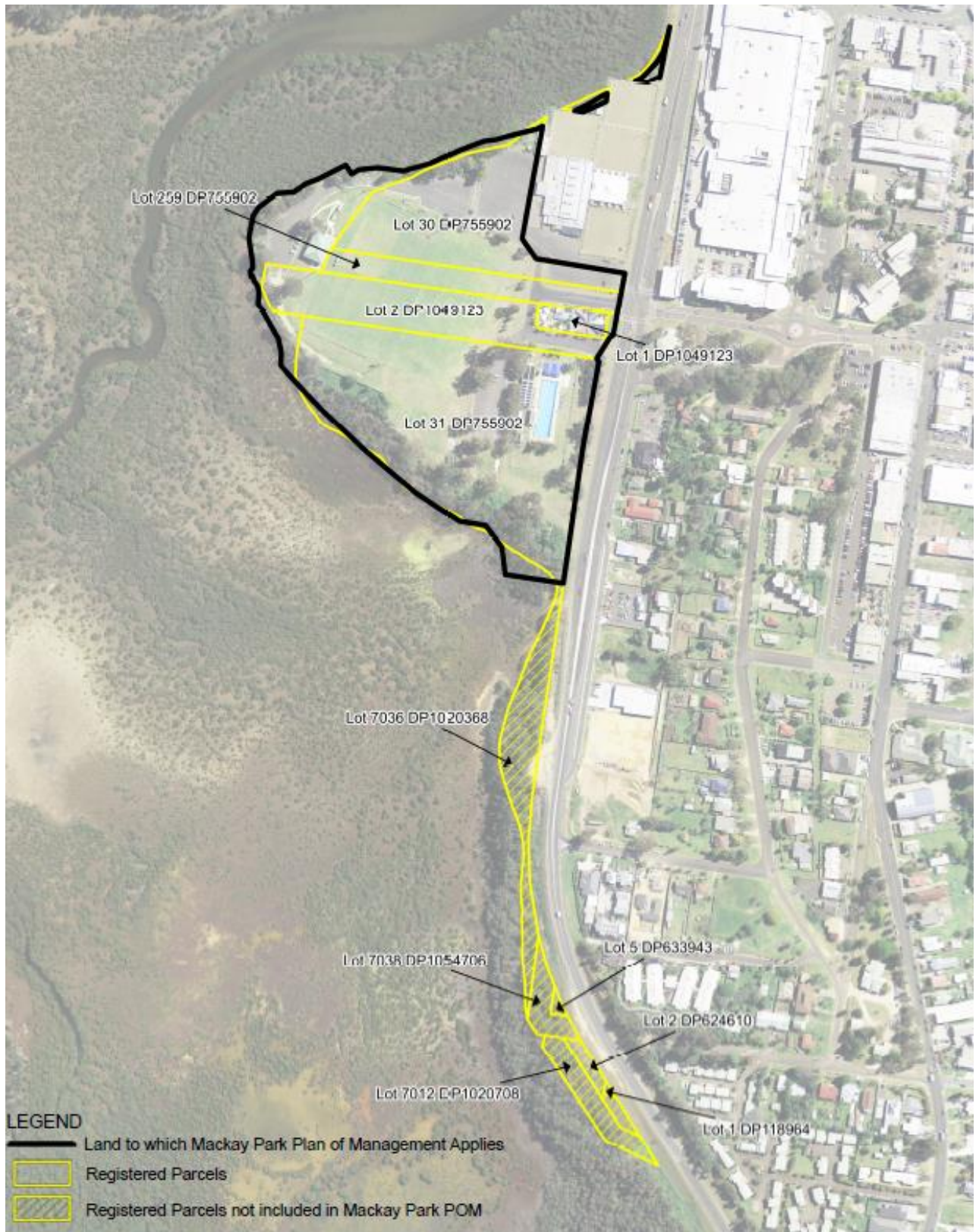
This POM does not apply to the following lots that are part of the Mackay Park Reserve 580022:

- Lot 1 DP118964
- Lot 7036 DP1020368
- Lot 7038 DP1054706
- Lot 2 DP624610
- Lot 5 DP633943
- Lot 7012 DP1020708.

The above lots are natural areas that will not be used for the activities identified in this POM. These lots will be included in a generic Natural Areas and Undeveloped Reserves POM.

This POM does not apply to the land that contains the former Batemans Bay Bowling Club, as this land is freehold land and not Crown Reserve or community land.

Figure 1: Map of Mackay Park Reserve



### 2.3 How is the subject land classified and categorised?

The subject land is classified as community land under the *NSW Local Government Act 1993*. This POM does not require or lead to the reclassification of any part of Mackay Park.

In accordance with Section 3.23 of the *NSW Crown Land Management Act 2016*, Eurobodalla Shire Council as Crown Land Manager, is required to assign a category(s) to Crown reserves classified as community land.

With respect to the interim categorisation of Mackay Park as 'park', written departmental consent was obtained on 14 December 2018 to enable Council to progress to the drafting of a POM for this Crown reserve. Additionally, on 1 March 2019, a delegate of the NSW Minister for Lands and Forestry, granted consent to the alteration of the categorisation to 'general community use'.

The change of category to 'general community use' underpins a range of existing activities including public recreation purposes and events. The category change also supports the inclusion of visitor information services at the site. The results of community consultation and the independent report from a public hearing conducted on 6 February 2019 also supports the change of category.

The core objectives under the Local Government Act 1993 for management of community land categorised as 'general community use' are:

*To promote, encourage and provide for the use of the land, and to provide facilities on the land, to meet the current and future needs of the local community and of the wider public:*

- (a) *in relation to public recreation and the physical, cultural, social and intellectual welfare or development of individual members of the public, and*
- (b) *in relation to purposes for which a lease, licence or other estate may be granted in respect of the land (other than the provision of public utilities and works associated with or ancillary to public utilities).*

The land has not been declared as land containing significant natural features under s.36C of the *Local Government Act 1993*.

### 2.4 Owner of the land

The subject land is a Crown Reserve for which Eurobodalla Shire Council has been appointed the land manager (council manager). A history of land ownership is provided in Section 3.3.

### 2.5 Corporate and community objectives

This POM is consistent with Eurobodalla Shire Council's corporate objectives and the community's objectives, as outlined in the Eurobodalla Community Strategic Plan and the Council's Delivery Plan 2017-21. In particular, the development of the Batemans Bay Mackay Park Precinct is identified as a key project in the Delivery Plan to assist in achieving a vibrant and diverse economy.

### 2.6 Plan development process

The flow chart on the following page (Figure 2) outlines the process undertaken to prepare and exhibit this POM in accordance with legislative requirements.

**Figure 2: POM development process**



### 3. ABOUT MACKAY PARK, BATEMANS BAY

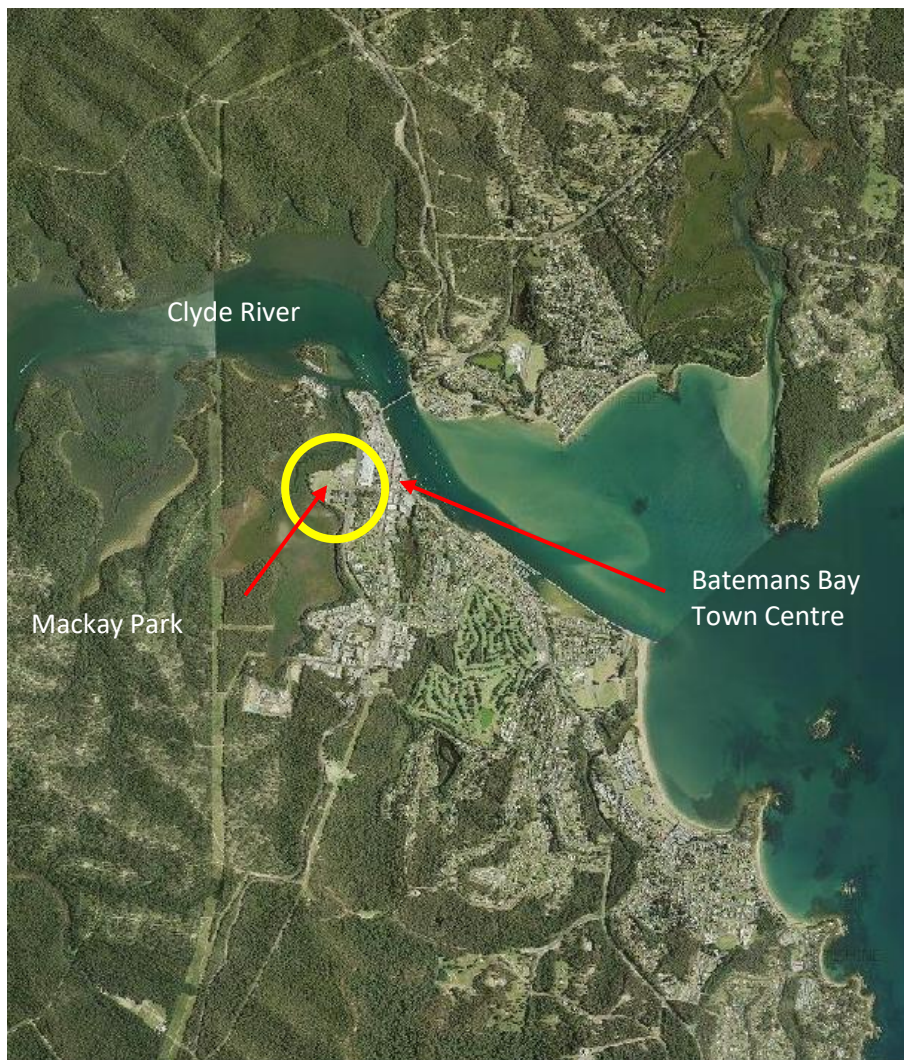
#### 3.1 Site location

Mackay Park is located on Vesper Street (Princes Highway) Batemans Bay and is immediately to the west of the Batemans Bay Town Centre, as shown in Figure 3. Access to Mackay Park is obtained directly from the signalised intersection of the Princes Highway with Beach Road. This central location and excellent vehicular access provides a range of opportunities for Mackay Park to be further developed as a park that could contribute to meeting the recreational, cultural, social and educational needs of the Batemans Bay community.

Batemans Bay is an important regional centre and a popular destination for visitors and locals. As such, there are also opportunities for Mackay Park to enhance the Batemans Bay visitor experience and provide facilities that attract people from the wider region to visit and stay longer in Batemans Bay.

Appropriate development of Mackay Park has the potential to support the economic growth of the Batemans Bay Town Centre and the Eurobodalla.

**Figure 3: Location Map**



### 3.2 Natural environment at the site

Mackay Park is bounded on three sides by the wetlands of McLeods Creek in the Clyde River Estuary. The wetland vegetation of mangroves, salt marshes and Swamp Oak Floodplain Forest are of high conservation value. Saltmarsh and Swamp Oak Floodplain Forest are threatened ecological communities under the NSW *Biodiversity Conservation Act 2016* and mangroves and saltmarsh are protected under the NSW *Fisheries Management Act 1994*.

Other than the above vegetation which is predominantly along the fringes of Mackay Park, there is scattered native vegetation across the site including some mature trees. These trees should be integrated into the design of any new developments where possible. Photos of the natural environment on and near Mackay Park are contained in Figure 5.

Mackay Park, like the rest of the Batemans Bay, is low lying and a recently completed coastal hazard study has found that the majority of the site is projected to be inundated by a 1% storm event within the period to 2100. For future development on the site to exceed the 1% event, floor levels should be at or above 2.74m Australian Height Datum (AHD). To exceed the 5% event for the 2100 planning period, floor levels should be at or above 2.61m AHD. Given existing levels across the site vary from 1m to 5m AHD, as shown in Figure 4, and the finished level of the playing fields from 2.0m to 3.0m, the minimum levels can be easily achieved and flooding impacts mitigated through modest filling of parts of the site and/or raising of floor levels.

**Figure 4: Contour Map of Mackay Park**



Figure 5: Photos of the Natural Environment on and around Mackay Park



Wetlands looking south-west



Wetlands and Swamp Oak forest looking south



Patch of Swamp Oak Floodplain Forest in the south-eastern corner



Remnant vegetation along Princes Highway



Mangroves along the northern boundary



Remnant vegetation near the amenities and function centre



The bush fire prone portion of Mackay Park is shown as the hatched area in the *Bush Fire Prone Land Map*, (Figure 6). Development of bush fire prone land must address the requirements of the NSW Government's *Planning for Bush Fire Protection 2006*.

A revised Bush Fire Prone Land Map was being prepared by Council in consultation with the NSW Rural Fire Service at the time of writing this POM. Some of the site is likely to remain bush fire prone due to application of buffers to nearby bush fire prone vegetation, however, the map has yet to be certified and therefore had no legal status.

**Figure 6: Bush Fire Prone Land Map**



### 3.3 History of the site

#### Introduction

Prior to European settlement of the Batemans Bay area in the early 1800's, the land was, and still is, Yuin country, inhabited by the Dhurga speaking Walbunga people for at least 20,000 years.

Following European settlement, land at Mackay Park was granted as freehold land to Patrick O'Hehir and Thomas Flood in the 1870's. The land remained in freehold private ownership until it was returned to the Crown and dedicated as public reserve. Part of the land was dedicated as Crown reserve in 1918 and the remainder in 1966.

As Crown Reserve, the land has been used for many decades for a range of public recreation purposes, including lawn bowls, tennis, field sports, swimming, mini golf and passive recreation. With the exception of the land that was used for lawn bowls (which does not form part of this POM), it remains Crown land and continues to be used for public recreation purposes including field sports, swimming, mini golf and passive recreation.

Council has been developing Mackay Park as a major events precinct over many years, including through the provision of event related infrastructure. Council is currently planning a new Regional Aquatic, Arts and Leisure Centre at Mackay Park to replace the existing aging Batemans Bay Swimming Pool. The land is also used for car parking associated with recreation activities and events, and as overflow parking for the Batemans Bay Town Centre in peak periods.

## Aboriginal History

An Aboriginal Heritage Due Diligence Assessment was undertaken by NGH Environmental in September 2018 to inform the planning and design of the Regional Aquatic, Arts and Leisure Centre proposed for Mackay Park. Based on a review of other Aboriginal heritage studies and assessments undertaken in the Batemans Bay region, the assessment report found that:

*Aboriginal people have utilised the resources of the South Coast hinterland and adjacent coast for the past 20,000 years (Boot 1996a, 1996b, 2000). Despite evidence for the Pleistocene occupation of the area at Burrill Lake, Bass Point and Wallen Creek, it is recognised that the majority of sites in the region date to within the last 5,000 years (Boot 1996a, 1996b). This however could be representative of a change in sea levels with the majority of the Pleistocene coastline no longer visible. The Pleistocene occupation is generally thought to have been sporadic and low intensity, reflecting the low population at the time. It was not until the mid-Holocene when sea levels reached their present level that we begin to see an increase in Aboriginal occupation of the region reflected in the archaeological record. (p.7)*

The assessment report included the following statement about the potential for Mackay Park to contain Aboriginal artefacts:

*The project area is bordered to the west and south by McLeods Creek and its associated estuarine swamp flats and marshlands. McLeods Creek is a tributary of the Clyde River which is 700 m north of the project area. As such the project area is within 200 m of water, a landscape feature noted to generally have a high potential to contain Aboriginal sites.*

*Based on previous studies, archaeological sites within the Batemans Bay region generally occur as shell middens, surface artefact scatters and isolated artefacts on relatively elevated landforms along the margins of the Clyde River and its tributaries. The prevalence of open context artefact sites (artefacts scatters and isolated finds) and shell midden sites in the areas adjacent to the Clyde River at Batemans Bay indicate that these areas were natural resource focus points that were extensively exploited by Aboriginal people. The desktop and landscape assessment therefore indicate that there are landscapes present, as defined by OEH and other archaeological survey results, that have the potential to contain Aboriginal sites. (p.10)*

A visual inspection of Mackay Park was carried out on 4 September 2018, with the following results:

*A single isolated find (AHIMS #58-4-1379/ Mackay Park IF 1) was identified within the project area.*

*While no other surface evidence of Aboriginal objects was identified during the visual inspection of the project area a portion of the Mackay playing fields, specifically the natural subsurface sand layer under the fill deposit, was identified to have low to moderate archaeological potential. This sand layer would require subsurface testing to establish the archaeological potential and extent of any sites within the deposit if it was to be disturbed by the project. The archaeological potential of the Mackay Park playing fields is restricted to the natural subsurface deposit which is expected to be at least 20cm below the current ground surface.*

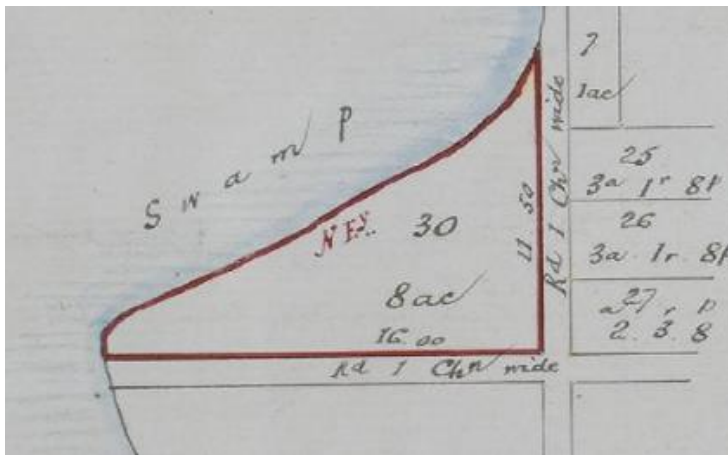
*Additionally, the natural banks of the estuarine swamp flats and marshlands landscape boarding the site have been noted to have some potential for shell midden material to occur.*

*The remaining area within the project area was deemed to be highly disturbed and to have negligible potential to contain Aboriginal objects. (p.1)*

**European History**

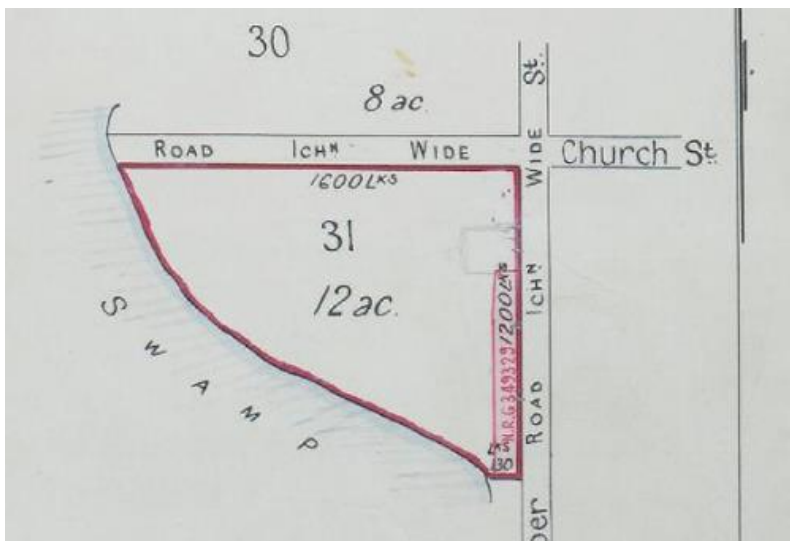
**Lot 30 DP 755902** – Lot 30, as shown in Figure 7, was granted to Patrick O’Hehir in 1876. The land was subsequently held in various ownership until 1916 when it was transferred to Duncan James Mackay, then to the Crown in 1917 and dedicated as Crown Reserve for public recreation in 1918. Eurobodalla Shire Council was granted care, control and management of the public reserve in 1950. It appears that the land was vacant (with no improvements [dwellings or other buildings] erected) prior to the dedication of the land to the Crown. It appears as though there may be an encroachment of shed buildings associated with the former Batemans Bay Bowling Club onto Lot 30 that will need to be confirmed by survey. Further, the internal access road to the parking area north of the ovals encroaches into the site of the former bowling club.

**Figure 7: Plan of Lot 30 DP 755902**



**Lot 31 DP 755902** – Lot 31, as shown in Figure 8, was granted to Thomas Flood in 1874. The land was subsequently held in various ownership until 1916 when it was transferred to Duncan James Mackay, then to William Wilshire in 1921, and through other private owners, before being granted to the Crown in 1966 and dedicated as a Crown Reserve for public recreation, with the exception of the area in pink which was dedicated to the Commissioner for Main Roads. It is understood that a dwelling and outbuildings were located on this site prior to the dedication of the land to the Crown. These buildings were demolished prior to the construction of the Batemans Bay Swimming Pool, which opened in December 1966.

**Figure 8: Plan of Lot 31 DP 755902**





### Amended site plan

Based on the resurveyed Lots in DP 1049123, an amended site map has been prepared by Council for Mackay Park, as shown in Figure 11. Further detailed survey will need to be undertaken and Crown Land approval gained to confirm the actual boundaries of Mackay Park.

Figure 11: Amended site plan



Figure 12: Early oblique aerial photograph, circa 1960

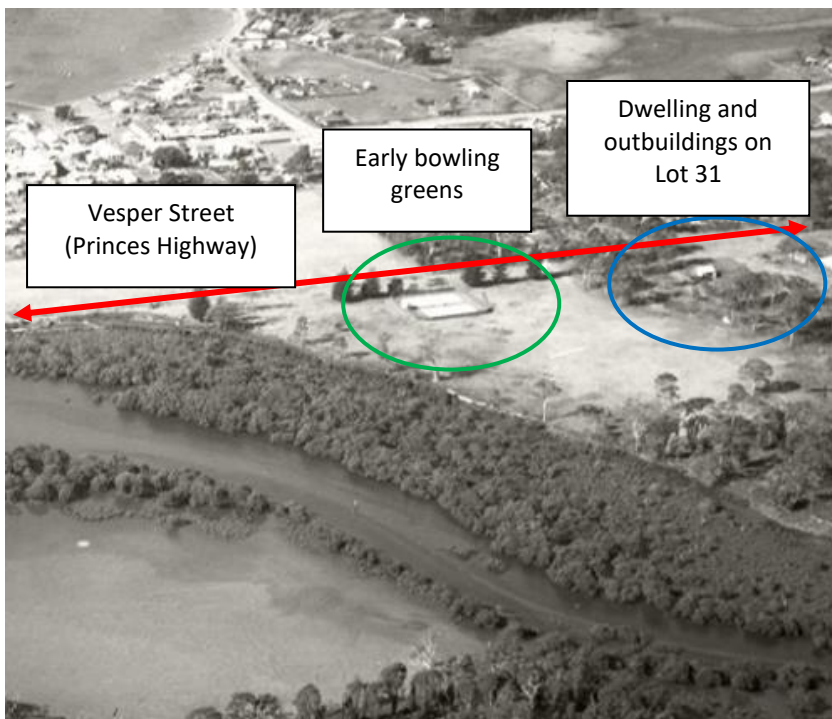
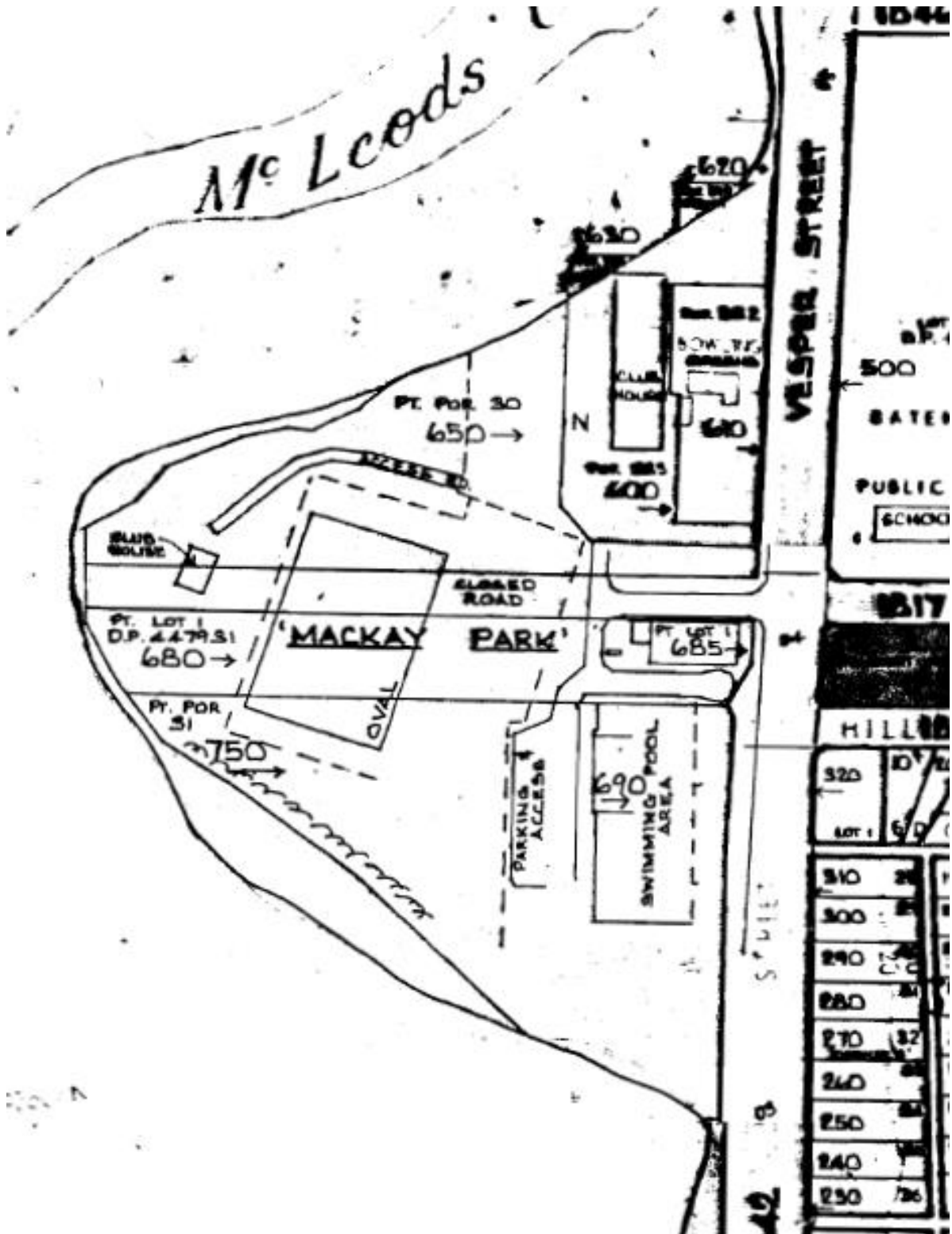


Figure 13: Plan of Mackay Park area, circa 1990



### 3.4 Existing uses

Mackay Park is currently used for a range of public recreation and sporting activities, including rugby league and touch football on the ovals and swimming in the public pool. The ovals have also been used from time to time for cricket and athletics. The amenities and function centre is used for private and community functions. User groups reserve the ovals and facilities through Council's Booking Office.

The swimming pool is used on a fee for entry arrangement. Car parking to support these activities and for overflow parking for the Batemans Bay Town Centre is also provided at Mackay Park.

A small part of the site (Lot 1 DP 1049123) is currently leased to a private company for a mini golf facility.

The ovals are also used for commercial events, such as the Red Hot Sumer Tour music event and for trade shows such as the Caravan and Camping Show. These activities are authorised through development consent and a license issued to the operator. For major events, the grassed areas around the swimming pool and ovals are used for event related car parking.

### 3.5 Existing condition of the site and its buildings

The Mackay Park playing fields are in very good condition with resurfacing works and an extension to fit two full-sized fields completed in 2017. All grassed areas and landscaping are maintained on a fortnightly basis from Spring through to Autumn.

The amenities and function centre was constructed in 1992-93 with the consent of the former Land Board Office and the Minister for Natural Resources as the land owner. The building was assessed in June 2018 and found to be in fair condition with a remaining lifespan of 41 years. While replacement of the building is a long-term plan, improvements to the toilets and change rooms may be warranted in the short to medium term.

Viewing mounds that were constructed in the early 1990's are in good condition. The northern viewing mound includes a wheelchair accessible ramp from ground level to the first floor of the amenities and function centre. The scoreboard at the eastern end of the southern viewing mound is relatively old but in good condition.

External portable tiered seating to the north of the amenities and function centre and on the eastern side of the playing fields are very old and in moderate condition. They will need to be replaced in the short to medium term. Some of the old timber benches around the playing fields are also in poor to moderate condition and should be replaced.

In 2014, a site inspection audit of the condition of the Batemans Bay Swimming Pool found that certain components of the pool complex were in poor condition and certain works were recommended. These works have been completed and the swimming pool is now considered to be in reasonable condition. However, the pool and supporting infrastructure is ageing and there remains some concerns about the structural stability of the pool. To make way for the development of the Regional Aquatic, Arts and Leisure Centre, the existing pool will be demolished in 2020.

Car parking areas are in good condition with good sealing and line marking. Fencing on and around the site is in very good condition. A bore installed in 2003 is in good condition.

In 2017, a survey of flood lighting at Mackay Park found that the majority of light fittings on the main field are in a poor condition and should be replaced. New lights and fittings should aim to bring field lighting up to compliance for amateur club competition and to reduce power consumption. The smaller playing field currently complies with training level lighting requirements.

Photos of assets on Mackay Park are contained in Figure 14.

### 3.6 Existing management approach

Mackay Park is currently managed by Eurobodalla Shire Council and booked through Council's Booking Office. A former Mackay Park Management Committee was dissolved by Council resolution on 22 December 2009 with the support of the primary user, the Batemans Bay Rugby League and Sports Club (BBRLSC). The existing Batemans Bay Swimming Pool is managed by Community Aquatics, trading locally as Eurobodalla Aquatics, under a contract with Eurobodalla Shire Council.

Lot 1 DP 1049123 is currently leased to a private company for a mini golf facility.

### 3.7 Environmental management

Eurobodalla Shire Council has been progressively implementing weed control work in the buffer between Mackay Park and McLeods Creek as a part of Council's Estuary Program. A recent grant from the Office of Environment and Heritage will ensure that this work continues until 2021. It is anticipated that this will continue to be a weed control site with future grant funds. Council also conducts rabbit control programs at Mackay Park within resources.

Batemans Bay Local Aboriginal Land Council (BBLALC) and South East Local Land Services undertake weed control work on BBLALC land on the western boundary of McLeods Creek.

### 3.8 Current planning for Mackay Park

Eurobodalla Shire Council has commenced the detailed planning for a Regional Aquatic, Arts and Leisure Centre to be constructed on the site of the existing Batemans Bay Swimming Pool and the current site of the mini golf facility at Mackay Park.

A detailed design process was underway at the time of preparation of this POM. Further discussion on the planning for this facility is included in section 6 of this POM.

Council has also resolved to commence planning for redevelopment of the site of the former Batemans Bay Bowling Club. While planning for that site is not included in this POM, it is important that planning for future development considers this POM to ensure that the whole precinct is planned in a coordinated and consistent manner.



**Figure 14: Photos of Mackay Park, 2018**



Mackay Park oval with amenities and function centre



Views of Mackay Park ovals from entrance road



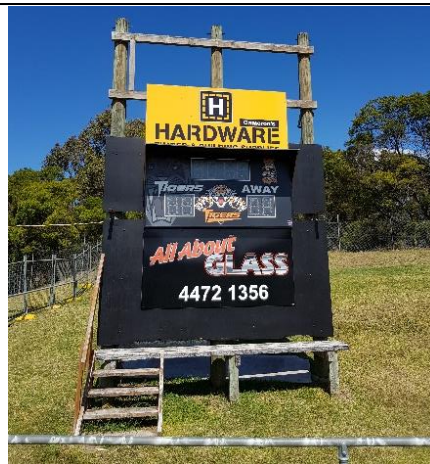
Mackay Park amenities and function centre



External portable tiered seating and signage



View of oval from southern viewing mound showing irrigation in operation



Scoreboard



Perimeter fencing and view to wetlands



Batemans Bay Swimming Pool

## 4. COMMUNITY AND STAKEHOLDER CONSULTATION

### 4.1 Community engagement principles

Consultation with key stakeholders and the local community on a draft POM for Mackay Park was undertaken in a manner consistent with Eurobodalla Shire Council's Community Engagement Framework. The following principles applied to the consultation activities:

- Be open and inclusive
- Generate mutual trust and respect and be accountable
- Early engagement and provision of clear information
- Provide considered and positive feedback
- Value and acknowledge the skills and resources of community members.

Using these principles, the following consultation activities have been undertaken:

- Acknowledgement and consideration of information from previous and preliminary consultation activities
- An extended initial public exhibition period
- Publication of a Frequently Asked Questions document along with the draft POM on Council's website
- Direct contact with key user groups and Council's Advisory Committees
- Distribution of feedback forms to key user groups and Advisory Committees
- Hosting a meeting of key user groups and Advisory Committees
- Hosting a public information session about the draft POM in Batemans Bay
- Conducting an independently chaired public hearing at Mackay Park in relation to the proposed change of category.

Issues raised during the initial exhibition period were considered by Council and amendments were made to the POM where appropriate. With the consent of the NSW Minister for Lands and Forestry, a revised POM was placed on public exhibition for public review and receipt of submissions between 27 March and 8 May 2019.

Community engagement on the draft POM complies with the requirements of the NSW *Local Government Act 1993* and the NSW *Crown Lands Management Act 2016*. A summary of community consultation is provided in the following sections 4.2 to 4.6. This input helped to develop the Objectives for Management (Section 5.4) and the Management Action Plan (Section 6).

### 4.2 Preliminary consultation with user groups

Council staff have undertaken preliminary consultation with the following user groups to provide input into the development of the POM. Extensive community consultations have also been undertaken with regard to the planning of the Regional Aquatic, Arts and Leisure Centre at Mackay Park.

The issues raised in these consultations are outlined below.

#### Batemans Bay Tigers Rugby League Club (Senior and Junior)

Rugby League is undertaken at Mackay Park from January through to September. The main issue raised by the clubs relates to the condition and layout of the amenities and function centre. The toilets are over 30 years old and there is a lack of female friendly change options. There are also reported management issues regarding the cost of lighting, the cleanliness of the facility and impacts on the playing fields from general community use and events.

### Euro-Coast Athletics Club

The Euro-Coast Athletic Club entered into a Memorandum of Understanding with Eurobodalla Shire Council to use Mackay Park for their 2018-19 season while a more permanent location is resolved. The 2018-19 season ran from September to March. The biggest issue for the club is lack of storage space for large items, such as high jump mats. Should Mackay Park become the permanent home for the club, they would like to install a permanent in an appropriate location.

Ultimately the club would like to operate all year round at a permanent facility with a synthetic 400m track, a long jump pit and a throwing cage.

### Batemans Bay Cricket Club

The Batemans Bay Cricket Club has historically used Mackay Park as an overflow/back-up oval, and for semi-finals and finals where a correctly sized field is mandatory. The ovals regularly used for cricket at Surfside and Hanging Rock are undersized. Mackay Park is also used when the grounds at Surfside and Hanging Rock are booked for other sporting or community activities or when improvements to the other grounds are undertaken during the summer cricket season.

Issues raised by the Cricket Club in relation to Mackay Park include the following:

- Lack of replacement of concrete cricket pitch following field re-surfacing works
- Grass not cut short enough for cricket matches.

### Batemans Bay Touch Football

Touch football competitions were previously undertaken at Mackay Park, however they were relocated to Surfside ovals during the implementation of the field upgrades to the Mackay Park ovals. The club has indicated to Council that they would like to relocate back to Mackay Park in the future should the opportunity arise. The touch football season runs from October to March and games are played on Wednesday nights.

### Batemans Bay Swimming Club

A number of meetings have been held with the swimming club with regards to the development of a Regional Aquatic, Arts and Leisure Centre at Mackay Park. Issues raised by the club during the concept design stage for the new facility included pool length and the need for storage space and club facilities, will be taken into account in the detailed design stage with further consultation with the club and the broader community at that time.

### Mini Golf Operator

Council has kept the licensee regularly updated on progress of the Regional Aquatic Arts and Leisure Centre development.

### Swimming Pool Contractor

Council has kept the contractor regularly updated on progress of the Regional Aquatic Arts and Leisure Centre development and this is continuing. At least three (3) months prior to the agreed closure of the Batemans Bay swimming pool, Council will advise the current pool contract manager that the existing contract for management of Council's three swimming pools at Batemans Bay, Moruya and Narooma will be amended to delete all references to the Batemans Bay Swimming Pool.

### 4.3 Preliminary consultation on events management

Mackay Park is used for a range of minor and major events throughout the year. The amenities and function centre is used for a range of activities such as training, weekly exercise classes, weddings and other functions. The venue is reserved for these activities through Council's booking office.

Mackay Park is also identified as a priority venue for major events, such as the Red Hot Summer Tour and has previously been used for major events such as the Caravan and Camping Show, Circuses and Carols by Candlelight.

Discussions with Council's bookings and events management staff have raised the following issues with regard to the ongoing and potentially increased use of Mackay Park as an events venue:

- Permanent marking of underground services
- Additional power and water outlets separate to mains supplies, including more 15amp, 32 amp and 3 phase power around the fields to allow various set up options
- Improvements to toilets and change rooms
- The need to consider the impacts that events can have on regular users, including the time that some major events need for setting up and decommissioning the event.

In addition to the above, a review of waste disposal facilities at Mackay Park should be undertaken to ensure adequate services are provided for events and other activities at Mackay Park.

### 4.4 Consultation on the Regional Aquatic, Arts and Leisure Centre

Council has undertaken a range of community engagement activities over many years to gain an understanding of community needs and wants in relation to aquatic and arts facilities in Batemans Bay. The consistent messages from the community in all of the community engagement activities, were the need for an indoor year-round aquatic centre and new purpose-built performance and arts spaces in Batemans Bay. The feedback from the community from previous and ongoing community engagement activities will be considered in the detailed design phase for the Regional Aquatic, Arts and Leisure Centre at Mackay Park.

### 4.5 Consultation on the draft Plan of Management

A draft POM was initially placed on public exhibition for review and comment by user groups, the general community, government agencies and other key stakeholders listed below. The initial public exhibition dates were 27 November 2018 to 12 February 2019.

- the Mackay Park Sunset Committee
- Mackay Park user groups
- Council's Advisory Committees (Youth, Aboriginal, Disability, Sports Forum and Public Art)
- local indigenous groups
- local business groups
- relevant government agencies
- the general community.

#### Public Exhibition Events

The following public exhibition events were held to provide information about the draft POM and to seek community input:

- Members of key user groups and Council advisory committees were invited to a meeting to discuss the draft POM. The meeting was held at the Batemans Bay Community Centre on 21 January 2019
- A drop-in information stall was held at the Village Centre in Batemans Bay on 6 February 2019, providing all members of the community an opportunity to ask questions about the draft POM
- A public hearing was held on 6 February in relation to the proposed category change from “park” to “general community use”. More discussion on the public hearing is provided below.

#### Feedback From for Key User and Advisory Groups

Members of key user groups and Council Advisory Committees were provided with an opportunity to submit comments on the draft POM through a feedback questionnaire. Eighteen questionnaires were submitted to Council from a wide range of user groups and advisory committees.

Of the eighteen forms submitted, sixteen (89%) supported the change in category from ‘park’ to ‘general community use’.

Issues raised in comments on the Questionnaires included the following:

- *The only thing I would like to see is a 10-20 year plan for other sports who use Mackay Park to whether it is upgraded to cater for big athletic events or a transition plan to an Athletics specific venue in Batemans Bay*
- *Maximise use of renewable energy for all park uses. The aquatic and arts centres in particular should be carbon neutral in operation*
- *Prepare a physical plan to adapt to sea level rise*
- *Install a 355 committee of key stakeholders and users to ensure that there is continued open and transparent review and assessment of the precinct*
- *Incorporate tourism centre*
- *The art works section only has 'opportunities' for art works. The art works themselves should be integrated and part of the whole design theme*
- *"Integrate existing facilities with Regional Aquatic, Arts and Leisure Centre" - needs clarity with regard to the existing Mini Golf facility*
- *Ensure that the operational needs of user groups that will be using the Aquatic centre are taken under advisement by the ESC as Management for the Mackay Park.*

Where appropriate, amendments were made to the draft POM to address the issues raised.

#### Community Submissions

Members of the community were invited to make written submissions to Council on the draft POM and two submissions were received.

The first submission proposed relocating the sports fields to the Princes Highway frontage and locating the Regional Aquatic, Arts and Leisure Centre in the western part of Mackay Park. The submission writer was informed why this was not an option.

The second submission primarily sought more detail on the activities undertaken by Council to ensure legislative compliance with community engagement and the decision making around the development of concept designs for the Regional Aquatics, Arts and Leisure Centre.

## Public Hearing

Members of the community were invited to attend an independently chaired public hearing on the proposed re-categorisation of Mackay Park from 'park' to 'general community use'. Nine community members attended and two registered to present verbal submissions. In response to the two submissions made to the public hearing, the independent chairperson's report states that:

*"The main concern in both submissions centred on mechanisms to ensure any private provider of services to the Reserve was bound to allow general community access. While such concern is reasonable and the principle of public access to the Reserve very important, I feel there are enough checks and balances to address this concern."*

The independent chairperson's report concludes that the *"re-categorisation of Mackay Park to 'general community use' appears supportable"*.

### 4.6.1 Consultation on the revised draft Plan of Management

After Ministerial consent was given to do so, a revised draft POM was placed on public exhibition between 27 March and 24 April 2019 with submissions from user groups and the general community received until 8 May 2019.

One submission was received from the Batemans Bay Cricket Club with the club requesting the installation of a cricket wicket on Mackay Park to replace the one removed during field remediation works in 2017-18.

In support of this submission, Action A7 was added to the Management Action Plan. Council will liaise with the Batemans Bay Cricket Club to determine levels of demand for a cricket pitch at Mackay Park and the siting of a pitch if warranted.

## 5. MANAGEMENT OF MACKAY PARK

### Introduction

The purpose of this section of the POM is to outline the role that Mackay Park plays as an open space asset in Batemans Bay, to set objectives for management of Mackay Park and to establish future development outcomes consistent with those objectives.

#### 5.1 The role of Mackay Park

Mackay Park is and will continue to play a significant role in providing recreational, cultural and social opportunities for the Batemans Bay community and the wider region. The availability of a large area of open space immediately adjoining the Batemans Bay Town Centre presents enormous opportunities for community activities associated with the economic development of the town to be undertaken at Mackay Park. This potential will be significantly enhanced through improved physical and visual links from the town centre to Mackay Park.

The primary activities currently undertaken on Mackay Park are rugby league, swimming and events. Other sporting activities, including touch football, cricket and athletics have from time to time used Mackay Park as an alternative venue when needed. Mackay Park is also used as overflow car parking for the Batemans Bay town centre in busy holiday periods. A small portion of the site is currently leased for a mini golf facility.

Mackay Park will continue to have a mix of sporting, recreational, cultural and social activities. The main activities currently undertaken at Mackay Park will continue and rugby league will remain the principal sporting activity from January to September. The use of the ovals from September to April for a range of community and commercial events will be prioritised.

Swimming activities will be enhanced while arts, cultural and other leisure activities will be introduced as primary activities at Mackay Park through the development of the Regional Aquatic, Arts and Leisure Centre. The inclusion of visitor information services in this development provides opportunities for the exploration of a range of educational opportunities across Mackay Park, including local Aboriginal cultural heritage and European settlement and environmental heritage.

Greater opportunities for informal recreation will be explored. This potentially includes greater access both physically and visually to the adjoining wetlands and the environmental and educational opportunities that provides. The future of mini golf at Mackay Park will be determined through the detailed design phase of the Regional Aquatic, Arts and Leisure Centre proposal.

Subject to availability, capacity and a demonstrated need, Mackay Park may continue to be an alternative venue for other sporting activities such as athletics, touch football and cricket.

The area surrounding the ex-Batemans Bay Bowling Club site is used for parking for activities within Mackay Park including sports and events. Mackay Park and the supporting central business district also currently make use of this site for parking, including long vehicle parking. This is used daily with significantly higher demand during the peak periods. For the peak summer periods, this area is signposted for use as overflow parking to minimise traffic congestion in the town centre and to meet parking demand.

Any future proposal for the development of the ex-Batemans Bay Bowling Club site should recognise the current and growing use of the surrounding areas. This will be important to the success of the Regional Aquatic, Arts and Leisure Centre, Mackay Park sports and events, any proposed private and the vibrancy of the central business district.

The car parking proposed for the Regional Aquatic, Arts and Leisure Centre will be quarantined from use as overflow parking to ensure that parking needs of the centre's customers can be met.

## 5.2 Categorisation of Mackay Park

In line with Section 3.23 of the *Crown Lands Management Act 2016*, Mackay Park, as community land, was initially categorised on 14 December 2018 as a 'park' under Section 36 of the *Local Government Act 1993*.

While this category most accurately reflected the original purpose for the dedication of the land, Eurobodalla Shire Council as the Crown Land Manager proposed via the draft Mackay Park POM, that the land be re-categorised as 'general community use'.

The proposed uses of the land as outlined in Section 6.5 of this plan will meet the core objectives for land categorized as 'general community use'.

Notwithstanding the new category, the intent of this POM is to ensure that the existing and planned primary uses of Mackay Park, being for a range of public recreation purposes and events and a Regional Aquatic, Arts and Leisure Centre, continue and are enhanced. Some additional uses are also envisaged by this POM, but only where they are ancillary and complementary to the primary uses.

It is considered that the category of 'general community use' best reflects the existing and planned uses of Mackay Park and provides maximum flexibility for design options. While the 'park' category fits a range of sporting and recreation activities at Mackay Park, it was considered that the 'general community use' category was a better fit for the remainder of Mackay Park. This is supported by legal advice that the 'general community use' category underpins a range of existing and proposed activities including public recreation purposes, events, a Visitor Information Centre and a Regional Aquatic, Arts and Leisure Centre.

The core objectives in the *NSW Local Government Act 1993* for land categorized as 'general community use' are:

*to promote, encourage and provide for the use of the land, and to provide facilities on the land, to meet the current and future needs of the local community and of the wider public:*

- (a) in relation to public recreation and the physical, cultural, social and intellectual welfare or development of individual members of the public, and*
- (b) in relation to purposes for which a lease, license or other estate may be granted in respect of the land (other than the provision of public utilities and works associated with or ancillary to public utilities).*

The NSW Department of Industry Guideline for categorisation of Crown Land identifies the following purposes, amongst others, as being appropriate for the category 'general community use':

- Access, including access to water
- Community and sporting club facilities
- Community centre, youth centre and other community purposes
- Parking
- Public buildings
- Tourist facilities and services and tourist information centre.

All of the existing and potential future uses of Mackay Park outlined in this POM will meet the core objectives for 'general community use' as outlined above.

## 5.3 Plan of Management administration and management

Eurobodalla Shire Council will be responsible for administering, implementing and reviewing this POM as the Crown Land Manager for Mackay Park. Specific actions to be undertaken by Council in the implementation of this Plan are contained in the Mackay Park Management Action Plan provided in Section 6.



## 5.4 Objectives for management of Mackay Park

The objectives for future management of Mackay Park are:

- (a) to promote, encourage and provide for the use of the land, and to provide facilities on the land, to meet the current and future needs of the local community and of the wider public:
  - i. in relation to public recreation and the physical, cultural, social and intellectual welfare or development of individual members of the public, and
  - ii. in relation to purposes for which a lease, license or other estate may be granted in respect of the land (other than the provision of public utilities and works associated with or ancillary to public utilities)
- (b) to enhance the role Mackay Park plays as a significant open space asset adjacent to the regional centre of Batemans Bay and as a central hub for visitor information services and education about Batemans Bay and Eurobodalla
- (c) to ensure that Mackay Park is well connected to the Batemans Bay Town Centre and is understood by the community to be an integral component of the town
- (d) to explore how existing sport and recreation facilities, other than the existing swimming pool, can be improved to integrate with new development at Mackay Park, the adjoining former Batemans Bay Bowling Club site and with the Batemans Bay town centre
- (e) to explore opportunities to enhance Mackay Park as a regional event centre to attract appropriate major sporting, commercial and community events
- (f) to explore opportunities to physically and visually connect Mackay Park to the wetlands of McLeods Creek while continuing to improve the environmental values of the wetlands and other important native vegetation with high conservation values on the fringes of Mackay Park
- (g) to ensure new development at Mackay Park reflects and is sympathetic to its surroundings and location as a northern gateway to Eurobodalla and an important public space at the edge of the Batemans Bay Town Centre
- (h) to ensure new development at Mackay Park is undertaken in a manner that considers the impacts to existing facilities and activities and to the environment
- (i) to ensure new development at Mackay Park takes into consideration public safety and provides appropriate access, facilities and services to protect life and assets in the event of an emergency or disaster
- (j) to balance competing interests for the use of Mackay Park
- (k) to facilitate the appropriate use of leases and licences for the operation and management of certain facilities at Mackay Park
- (l) to provide certainty for future development and potential leases and licences
- (m) to maintain the land and its facilities to agreed service standards
- (n) to design and operate the Regional Aquatic, Arts and Leisure Centre to maximise Council's return on investment and effectively manage the annual operating costs.

## 5.5 Future development outcomes for Mackay Park

### 5.5.1 Development outcomes for Sporting and Recreation Activities

As noted above, Mackay Park will continue to have a mix of sporting, recreational, cultural and social activities. Rugby league will continue to be the primary sport activity undertaken on the playing fields. To facilitate the growth of rugby league, the ovals at Mackay Park will be maintained by Council in consultation with the local rugby league clubs.

Subject to the findings and recommendations of a future Mackay Park Master Plan, Council may assess, prioritise and seek external funds for a range of assets at Mackay Park, including amenities, flood lighting, spectator seating, permanent line-marking of underground services and additional power and water outlets. In the long-term, new amenities will be needed. Existing corporate sponsorship signage around the playing fields will be reviewed in line with legislation.

Mackay Park will continue to be available as an alternative venue for a range of sporting activities and be open to the general public for passive recreation when not in use for scheduled sports and events.

#### *Permissibility of Sporting and Recreation Activities*

The use and development of Mackay Park for sport and recreation activities fall under the definitions of 'recreation areas' or 'recreation facilities (outdoor)' under *Eurobodalla Local Environmental Plan 2012* and is permissible with consent in the RE1 Public Recreation Zone and RE2 Private Recreation Zones.

A wide range of infrastructure developments for sport and recreation activities on parks and public reserves are permitted without consent or are exempt development under *State Environmental Planning Policy (Infrastructure) 2007*, including:

- uses permitted in a POM
- recreation areas and recreation facilities (outdoor), but not including grandstands
- lighting
- amenities for people using the reserve, including toilets and change rooms
- food preparation and related facilities for people using the reserve
- construction or maintenance of:
  - walking tracks, raised walking paths (including boardwalks), ramps, stairways or gates
  - bicycle-related storage facilities, including bicycle racks and other bicycle parking facilities (except for bicycle paths)
  - handrail barriers or vehicle barriers
  - ticketing machines or park entry booths
  - viewing platforms with an area not exceeding 100m<sup>2</sup>
  - sporting facilities, including goal posts, sight screens and fences, if the visual impact of the development on surrounding land uses is minimal
  - play equipment if adequate safety measures (including soft landing surfaces) are provided and, in the case of the construction of such equipment, so long as the equipment is situated at least 1.2m away from any fence
  - seats, picnic tables, barbecues, bins (including frames and screening), shelters or shade structures
- routine maintenance of playing fields and other infrastructure, including landscaping
- routine maintenance of roads that provide access to or within those playing fields, including landscaping.

### **5.5.2 Development outcomes for community and commercial events**

Mackay Park will also continue to be used for large and small events and the amenities building will continue to be available for functions and other activities. Mackay Park will be available for general public recreation when not in use for sporting activities or events.

To facilitate growth in the use of Mackay Park as an events venue, the following upgrades may be undertaken in the short to medium term, subject to funding:

- permanent marking of underground services
- additional power and water outlets separate to mains supplies, including more 15amp, 32 amp and 3 phase power around the fields to allow various set up options
- Improvements to amenities such as toilets and change rooms.

In addition to the above, a review of waste disposal facilities at Mackay Park should be undertaken to ensure adequate facilities are in place at Mackay Park.

#### *Permissibility of Community and Commercial Events*

Clause 65 of *State Environmental Planning Policy (Infrastructure) 2007* provides for development for the purpose of implementing a POM for Crown land managed by a council to be permitted without consent.

In addition, Division 1 of Part 2 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* provides for a range of activities to be exempt including:

- temporary event signs
- community notice and public information signs
- tents, marquees or booths for community events
- stage or platforms for community events.

For these activities to be exempt development, they must meet the criteria set out in the relevant State Environmental Planning Policy (SEPP).

### **5.5.3 Development outcomes for aquatic, arts and leisure activities**

The Batemans Bay Swimming Pool will be demolished and replaced with a Regional Aquatic, Arts and Leisure Centre.

A regional centre will be designed to offer facilities for locals and visitors of all ages and abilities.

The ultimate components and layout of the facility will be determined through the detailed design and community consultation phase.

The aquatic facility of the centre will likely include the following components:

- an indoor heated lap swimming pool
- a warm water program pool for a wide range of aqua therapy and fitness classes, with spa and access ramps
- purpose-built learn to swim indoor heated pool
- toddlers and leisure pool
- a water play splash pad with interactive water features
- waterslides and tower
- a gymnasium, fitness program rooms and/or wellness areas.

The arts, cultural and community facility will likely include the following components:

- an auditorium for performance and conferences

- gallery and exhibition space
- wet and dry arts workspaces
- soundproofed rehearsal/dance studio
- industry standard audio visual equipment
- back of house facilities including loading bay
- multipurpose breakout rooms
- kitchen and storage facilities
- café and retail space
- visitor information services
- public plaza and leisure spaces.

The location and size of the facility, including car parking areas will impact on existing facilities at Mackay Park, such as the existing pool and the mini golf facility. It may also impact on the size and/or layout of the existing ovals. All stakeholders and other interested parties will need to be consulted before a final design is endorsed by Council.

#### *Permissibility of Aquatic, Arts and Leisure Activities*

The Regional Aquatic, Arts and Leisure Centre is defined as a 'community centre' under the *Eurobodalla Local Environmental Plan 2012* and is permissible with consent in the RE1 Public Recreation Zone and RE2 Private Recreation Zones on which the facility is proposed to be located. The use is considered to be a regionally significant development, meeting the criteria of 'Council related development over \$5m' under *State Environmental Planning Policy (State and Regional Development) 2011*. A development application for the Regional Aquatic, Arts and Leisure Centre will be determined by the Joint Regional Planning Panel.

#### **5.5.4 Development outcomes for other activities and developments**

During the detailed design of the Regional Aquatic, Arts and Leisure Centre, Council will work with the operator of Batemans Bay Mini Golf to determine the future of this facility. A mini golf facility is defined as 'recreation facility (outdoor)' and is permissible with consent in the RE1 Public Recreation and RE2 Private Recreation zones under *Eurobodalla Local Environmental Plan 2012*.

In any redevelopment of Mackay Park or the adjoining former Batemans Bay Bowling Club site, the availability of overflow car parking for the Batemans Bay Town Centre will be considered.

Electric vehicle charging stations will be considered for installation at Mackay Park. Car parking that is ancillary to a permissible use (including space for electric vehicle charging) is permissible under *Eurobodalla Local Environmental Plan 2012*. Single-storey car parks are also permissible without consent on a public reserve under *State Environmental Planning Policy (Infrastructure) 2007*.

Council will continue to undertake environmental works along the fringes of Mackay Park as part of implementing the Batemans Bay and Clyde River Estuary Management Plan. These works are undertaken in the E2 or W1 zones, in which 'environmental protection works' are permitted without consent under *Eurobodalla Local Environmental Plan 2012*. Environmental management works are also permitted without consent on parks and public reserves under *State Environmental Planning Policy (Infrastructure) 2007*.

Council will continue to undertake general improvements to landscaping at Mackay Park to improve the visual amenity and for shade in appropriate locations. Landscaping is permitted without consent on parks and public reserves under *State Environmental Planning Policy (Infrastructure) 2007*.

Council will investigate as part of the planning and design phase of the Regional Aquatic, Arts and Leisure Centre project, ways to improve vehicular and pedestrian access to and from Mackay Park. This could include consideration of a boardwalk along part or all of the boundary of the site with the

adjoining wetlands. Roads, pedestrian pathways, cycle ways, viewing platforms and pedestrian bridges are permissible without consent on a public reserve under *State Environmental Planning Policy (Infrastructure) 2007*.

Council will investigate opportunities for the inclusion of public art and other installations such as information facilities to tell the story of Mackay Park and Batemans Bay. Sculptures and artworks are exempt development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. Information boards and other information facilities are permitted without consent on public reserves under *State Environmental Planning Policy (Infrastructure) 2007*.

## 5.6 Leases, licences and other estates

### 5.6.1 Components of the Regional Aquatic, Arts and Leisure Centre

This POM authorises Council to investigate and enter into the most appropriate management arrangement for the Regional Aquatic, Arts and Leisure Centre based on an assessment of:

- the proposed management model's capacity to demonstrate current and future community benefit
- the proposed management model's capacity to respond to the facility's:
  - long term asset maintenance requirements,
  - appropriate staffing structures and associated considerations
- the most favourable financial performance that can be achieved by Council that can be obtained from time to time when considering the operational management arrangements of the centre in its entirety or by segregation of the respective components within the facility.

As described above, Council may at its discretion (but subject to its procurement policies and legislative requirements, including the NSW *Local Government Act 1993*), also enter into leases or licences with community or commercial operators for purposes which are consistent with core objectives for general community use category of the land and is a purpose listed in section 46(1)(b) of the *Local Government Act 1993*, including but not limited to the following:

- aquatic centre
- café and retail spaces
- front entrance, foyer, outdoor public plaza and leisure spaces
- auditorium
- gallery and exhibition spaces
- wet and dry arts workspaces
- rehearsal/dance studio
- meeting rooms
- kitchen and storage facilities
- health and fitness facilities, wellness and health rooms
- occasional child care facilities.

#### *Events*

This POM authorises Council to enter into temporary or long-term licences with operators of commercial events at Mackay Park.

The purpose of licences for events is consistent with the core objective for the general community use category of the land and is a purpose listed in section 46(1)(b) of the *Local Government Act 1993*, being a public recreation activity or an activity supporting the physical, cultural, social and intellectual welfare or development of persons.

### *Mini golf facility*

This POM authorises Council, as part of a competitive process, to enter into new lease arrangements for mini golf or similar leisure activities, subject to the outcomes of the detailed design of the Regional Aquatic, Arts and Leisure Centre and negotiations with the current operator.

The purpose of a lease for a mini-golf facility is consistent with the core objective for the general community use category of the land and is a purpose listed in section 46(1)(b) of the *Local Government Act 1993*, being a public recreation activity.

### *Electric vehicle charging stations*

This POM authorises Council to enter into licences for the installation and operation of electric vehicle charging stations at Mackay Park.

The purpose of licences for electric vehicle charging stations is consistent with section 46(1)(a) of the *Local Government Act 1993*, which permits licences for public utilities and works associated with or ancillary to public utilities. Electric vehicle charging stations are considered to be works associated with and ancillary to car parking that is provided as part of the primary activities undertaken at Mackay Park.

## 5.7 Approvals for activities on the land

Section 68, Part D of the NSW *Local Government Act 1993* provides for Council to issue approvals on community land for the following kinds of activities:

- 1 *engage in a trade or business*
- 2 *direct or procure a theatrical, musical or other entertainment for the public*
- 3 *construct a temporary enclosure for the purpose of entertainment*
- 4 *for fee or reward, play a musical instrument or sing*
- 5 *set up, operate or use a loudspeaker or sound amplifying device*
- 6 *deliver a public address or hold a religious service or public meeting.*

From time to time, Council may issue approvals for any of the above activities at Mackay Park.

Council will continue to approve a range of private functions, sporting activities and events at Mackay Park in accordance with Council's Sporting and Recreational Facilities Seasonal Hire Policy and Events Policy.

Activities covered in Council's Street Activities Policy, including street stalls, mobile businesses, mobile community services and busking may be approved from time to time at Mackay Park in accordance with that Policy.

Council will comply with all approval and consultation requirements in accordance with the relevant legislation, including those listed in Section 7 of this POM.

### 5.7.1 Control of activities on the land

Existing signage at Mackay Park that prohibits the sale or advertising of motor vehicles or articles from the reserve, will be retained in appropriate locations.

In accordance with the recommendation of the Eurobodalla Recreation and Open Space Strategy, Council will install 'Smoking Prohibited' and 'Dogs Prohibited' notices, where appropriate, as part of 'grouped' signage at sports ground spectator areas in Mackay Park.

Additional controls and signage may be added, as appropriate.

## 5.7.2 Contact in relation to the use or management of the land

The contact at Eurobodalla Shire Council in relation to the use or management of the land is Property Services. This team may be contacted during office hours on 02 4474 1000.

Events related enquiries should be directed to Council's Events Team by phoning 02 4474 1000.

In relation to the hiring of the oval, the amenities and function centre, the contact is the Eurobodalla Shire Council Facilities Booking Officer who may be contacted on 02 4472 3153.

## 6 MACKAY PARK MANAGEMENT ACTION PLAN

Management Issues	Objectives and Performance Targets (what do we want to achieve?)	Means of achievement of objectives (what will be done to achieve objective?)	Manner of assessment of performance (how will success be measured?)
<p>A. Maintain and grow the primary uses of Mackay Park:</p> <ul style="list-style-type: none"> <li>• Rugby League</li> <li>• Events</li> <li>• Aquatic, Arts and Culture.</li> </ul>	<p><b>Objectives</b> (from Section 5.4): <b>(a),(b),(d),(e),(m),(n)</b></p> <p><b>Performance Targets</b></p> <ul style="list-style-type: none"> <li>• Mackay Park continues to be a regular venue for sporting events.</li> <li>• Mackay Park attracts major commercial events.</li> <li>• The Regional Aquatic, Arts and Leisure Centre is developed and well patronised.</li> </ul>	<p>Subject to the findings and recommendations of a Mackay Park Master Plan, Council may assess, prioritise and seek external funds for the following assets.</p> <p><b>A1</b> Development of the Regional Aquatic, Arts and Leisure Centre.</p> <p><b>A2</b> Upgraded flood lighting.</p> <p><b>A3</b> External portable tiered seating and bench seats.</p> <p><b>A4</b> Permanent line marking of underground services.</p> <p><b>A5</b> Additional power and water outlets.</p> <p><b>A6</b> Upgrade the amenities and function centre.</p> <p><b>A7</b> Install a synthetic cricket wicket subject to demonstrated demand.</p>	<ul style="list-style-type: none"> <li>• Increased number of sporting events held at Mackay Park.</li> <li>• Increased number of major events held at Mackay Park.</li> <li>• Number of visitors to Regional Aquatic, Arts and Leisure Centre meets expectations.</li> </ul>
<p>B. Manage competing interests (as an alternative venue for other sports) and manage congestion at peak periods.</p>	<p><b>Objectives</b> (from Section 5.4): <b>(a),(i),(j)</b></p> <p><b>Performance Targets</b></p> <ul style="list-style-type: none"> <li>• Mackay Park is well used throughout the year with minimal use conflicts.</li> <li>• Events comply with Council's Events Policy and Guidelines.</li> <li>• Users of Mackay Park are safely evacuated in the event of an emergency.</li> </ul>	<p><b>B1</b> Council will maintain a booking system to ensure activities are undertaken at appropriate times to avoid conflict.</p> <p><b>B2</b> Council will ensure that event organisers comply with Council's Events Policy and Guidelines.</p>	<ul style="list-style-type: none"> <li>• Reduced number of complaints regarding access and use of Mackay Park.</li> <li>• All evacuation events are completed successfully.</li> </ul>



Management Issues	Objectives and Performance Targets (what do we want to achieve?)	Means of achievement of objectives (what will be done to achieve objective?)	Manner of assessment of performance (how will success be measured?)
C. Define roles and responsibilities with user groups.	<p><b>Objectives</b> (from Section 5.4): <b>(j),(k),(l),(n)</b></p> <p><b>Performance Target</b></p> <ul style="list-style-type: none"> <li>Mackay Park is well managed and user groups have a clear understanding of their roles and responsibilities.</li> </ul>	<p><b>C1</b> Council will ensure that the future management arrangements for all or designated components of the Regional Aquatic, Arts and Leisure Centre clearly define and outline the roles and responsibilities of the management entity(s) appointed by Council.</p>	<ul style="list-style-type: none"> <li>The Regional Aquatic, Arts and Leisure Centre will be successfully managed.</li> </ul>
D. Maintain and increase public access and use of Mackay Park.	<p><b>Objectives</b> (from Section 5.4): <b>(b),(c),(e),(g),(m)</b></p> <p><b>Performance Targets</b></p> <ul style="list-style-type: none"> <li>Mackay Park is increasingly used as a venue for passive recreation by residents and workers of Batemans Bay and the wider region and by visitors to Eurobodalla.</li> <li>With increasing use, adequate services and facilities, such as waste disposal facilities are provided.</li> </ul>	<p><b>D1</b> Council will increase public awareness of opportunities for public access and use of Mackay Park.</p> <p><b>D2</b> Council will ensure the design and management of the Regional Aquatic, Arts and Leisure Centre is consistent with the objectives of this Plan of Management.</p> <p><b>D3</b> Council will undertake a review of waste disposal facilities at Mackay Park to ensure adequate services are provided for events and other activities.</p>	<ul style="list-style-type: none"> <li>Increased number of bookings of Mackay Park ovals and amenities and function centre.</li> <li>Reduced concerns regarding the presentation of Mackay Park.</li> </ul>
E. Improve vehicular and pedestrian access to Mackay Park and provide sufficient car parking, including long-vehicle parking.	<p><b>Objectives</b> (from Section 5.4): <b>(c),(e),(g),(i)</b></p> <p><b>Performance Target</b></p> <ul style="list-style-type: none"> <li>Mackay Park is understood by the community to be an integral part of the Batemans Bay Town Centre and is easily accessible.</li> </ul>	<p><b>E1</b> Council will take into consideration vehicular and pedestrian access to Mackay Park and car parking, including for long-vehicles.</p>	<ul style="list-style-type: none"> <li>Increased level of user satisfaction with ease of access to and parking within Mackay Park (determined through responses to user feedback forms).</li> </ul>

Management Issues	Objectives and Performance Targets (what do we want to achieve?)	Means of achievement of objectives (what will be done to achieve objective?)	Manner of assessment of performance (how will success be measured?)
F. Integrate existing facilities with Regional Aquatic, Arts and Leisure Centre.	<p><b>Objectives</b> (from Section 5.4): <b>(d), (h)</b></p> <p><b>Performance Target</b></p> <ul style="list-style-type: none"> <li>All facilities at Mackay Park are connected, providing flexible opportunities for a variety of uses and activities.</li> </ul>	<p><b>F1</b> Council will ensure the design of the Regional Aquatic, Arts and Leisure Centre provides opportunities for integration with existing facilities at Mackay Park, other than the existing swimming pool, with potential future development of the former Batemans Bay Bowling Club site and with the Batemans Bay Town Centre.</p>	<ul style="list-style-type: none"> <li>Increased level of user satisfaction with the integrated design and use of spaces within Mackay Park (determined through responses to user feedback forms).</li> </ul>
G. Promote energy and water efficiency in all development and use of Mackay Park.	<p><b>Objectives</b> (from Section 5.4): <b>(h),(m),(n)</b></p> <p><b>Performance Target</b></p> <ul style="list-style-type: none"> <li>Maintain or reduce energy, water, and waste consumption.</li> </ul>	<p><b>G1</b> The design of the Regional Aquatic, Arts and Leisure Centre will consider the most effective and best value energy and water efficient systems and plant.</p> <p><b>G2</b> Incorporate practices and systems to reduce, reuse and recycle.</p>	<ul style="list-style-type: none"> <li>Energy and water consumption measured.</li> </ul>
H. Integrate public art and signage within Mackay Park.	<p><b>Objectives</b> (from Section 5.4): <b>(b),(g),(h)</b></p> <p><b>Performance Targets</b></p> <ul style="list-style-type: none"> <li>Mackay Park contains appropriate public art and signage that tell the stories of the place and increase community awareness of our heritage, our environment and our town.</li> <li>Corporate sponsorship signage at Mackay Park is provided in appropriate locations and does not diminish the visual appeal of the place.</li> </ul>	<p><b>H1</b> Council will ensure the design of the Regional Aquatic, Arts and Leisure Centre integrates public art and signage that is sensitive to the location of Mackay Park, its history and its use as an important public open space asset.</p> <p><b>H2</b> Council will review existing corporate sponsorship signage at Mackay Park.</p> <p><b>H3</b> Council will install signage as appropriate.</p>	<ul style="list-style-type: none"> <li>Increased level of user satisfaction with the quality of public art and signage within Mackay Park (determined through responses to user feedback forms).</li> </ul>

Management Issues	Objectives and Performance Targets (what do we want to achieve?)	Means of achievement of objectives (what will be done to achieve objective?)	Manner of assessment of performance (how will success be measured?)
I. Improve the visual presentation of Mackay Park from other public spaces, and improve visual and physical connections with the surrounding wetlands, while protecting environmental values	<p><b>Objectives</b> (from Section 5.4): <b>(b),(c),(f),(g)</b></p> <p><b>Performance Targets</b></p> <ul style="list-style-type: none"> <li>• Mackay Park is an attractive and comfortable place to visit, containing landmark buildings that are visible from important vantage points.</li> <li>• From within Mackay Park, users are connected to their surroundings and can appreciate the natural beauty of the place.</li> <li>• There are fewer weeds and pest on Mackay Park.</li> </ul>	<p><b>I1</b> Council will ensure the design of the Regional Aquatic, Arts and Leisure Centre has a strong visual presence when viewed from all vantage points, including from the new Batemans Bay bridge, the Princes Highway and Beach Road, and from within Mackay Park.</p> <p><b>I2</b> Council will investigate opportunities for increasing public access to and awareness of the adjoining wetlands.</p> <p><b>I3</b> Council will continue to implement weed and pest control management programs on Mackay Park and adjoining public land as required and as funding is available.</p> <p><b>I4</b> Council will encourage the planting of drought-resistant native plants.</p>	<ul style="list-style-type: none"> <li>• Increased level of user satisfaction with the visual presentation and the landscape of Mackay Park and the adjoining wetlands.</li> <li>• Weed control management program successfully implemented.</li> </ul>
J. Manage flooding and adapting to climate change	<p><b>Objectives</b> (from Section 5.4): <b>(b),(h),(i)</b></p> <p><b>Performance Target</b></p> <ul style="list-style-type: none"> <li>• Storm water is managed</li> </ul>	<p><b>J1</b> Council will ensure that any new development at Mackay Park takes into account the potential impacts of flooding and climate change and is designed appropriately having regard to the safety of users.</p>	<ul style="list-style-type: none"> <li>• Development Application Processes occur.</li> </ul>
K. Manage disruption during construction of Regional Aquatic, Arts and Leisure Centre	<p><b>Objectives</b> (from Section 5.4): <b>(h),(i),(j)</b></p> <p><b>Performance Target</b></p> <ul style="list-style-type: none"> <li>• The Regional Aquatic, Arts and Leisure Centre is constructed with minimal disruption to users of Mackay Park.</li> </ul>	<p><b>K1</b> Council will ensure plans are in place to minimise disruption to users of Mackay Park and the general public during construction of the Regional Aquatic, Arts and Leisure Centre.</p>	<ul style="list-style-type: none"> <li>• Construction management program successfully implemented.</li> </ul>

Management Issues	Objectives and Performance Targets (what do we want to achieve?)	Means of achievement of objectives (what will be done to achieve objective?)	Manner of assessment of performance (how will success be measured?)
L. Manage public safety in the event of an emergency or disaster	<p><b>Objectives</b> (from Section 5.4): <b>(i),(m)</b></p> <p><b>Performance Target</b></p> <ul style="list-style-type: none"> <li>Users of Mackay Park are safely evacuated in the event of an emergency.</li> </ul>	<p><b>L1</b> Council will ensure relevant emergency management plans are in place and regularly updated and tested.</p>	<ul style="list-style-type: none"> <li>All evacuation events are completed successfully.</li> </ul>
M. Leases and licences are issued for specific uses	<p><b>Objectives</b> (from Section 5.4): <b>(e),(k),(i),(j),(k) (l),(n)</b></p> <p><b>Performance Target</b></p> <ul style="list-style-type: none"> <li>Appropriate uses of Mackay Park are undertaken in accordance with relevant legislative requirements.</li> </ul>	<p><b>M1</b> Council will ensure appropriate management systems (in house, leases, licences or other arrangements) are in place to facilitate, where required and appropriate, activities and uses at Mackay Park, including but not limited to:</p> <ul style="list-style-type: none"> <li>- Commercial events</li> <li>- Aquatic centre</li> <li>- Café and retail space</li> <li>- Front entrance and foyer space</li> <li>- Auditorium</li> <li>- Gallery and exhibition space</li> <li>- Wet and dry arts workspaces</li> <li>- Rehearsal/dance studio</li> <li>- Meeting rooms</li> <li>- Kitchen and storage facilities</li> <li>- Outdoor public plaza and leisure space</li> <li>- Health and fitness facilities</li> <li>- Wellness and health rooms</li> <li>- Occasional child care facilities</li> <li>- Electric vehicle charging stations</li> <li>- Mini golf (potentially, but subject to final determination of future requirements)</li> </ul>	<ul style="list-style-type: none"> <li>Legislative requirements are met.</li> </ul>

Management Issues	Objectives and Performance Targets (what do we want to achieve?)	Means of achievement of objectives (what will be done to achieve objective?)	Manner of assessment of performance (how will success be measured?)
<p>N. Clarify the boundaries of Mackay Park</p>	<p><b>Objective</b> (from Section 5.4): <b>(I)</b></p> <p><b>Performance Target</b></p> <ul style="list-style-type: none"> <li>The boundaries of Mackay Park are accurately defined and mapped.</li> </ul>	<p><b>N1</b> Council will, in consultation with the Crown, undertake a full survey of Mackay Park and implement an agreed process to amend the boundaries of the Mackay Park Reserve, including the preparation of a new Deposited Plan or Plans and the appointment of a land owner/manager in accordance with Crown Land requirements.</p> <p><b>N2</b> Through the survey process, Council will rectify any encroachments onto the former Batemans Bay bowling club site and any encroachments into Mackay Park from the former Batemans Bay bowling club site, such as through boundary adjustments, easements or rights of way.</p> <p><b>N3</b> Council to include the following lots at the southern extent of Mackay Park in a generic Natural Areas and Undeveloped Reserves Plan of Management:</p> <ul style="list-style-type: none"> <li>Lot 1 DP118964</li> <li>Lot 7036 DP1020368</li> <li>Lot 7038 DP1054706</li> <li>Lot 2 DP624610</li> <li>Lot 5 DP633943</li> <li>Lot 7012 DP1020708.</li> </ul>	<ul style="list-style-type: none"> <li>Survey of Mackay Park completed, process to amend boundaries of Mackay Park Reserve implemented, new Deposited Plan(s) approved and land owner/manager appointed.</li> <li>Land in the southern part of Mackay Park included in a generic Natural Areas and Undeveloped Reserves Plan of Management.</li> </ul>

## 7. LEGISLATIVE AND POLICY FRAMEWORK

### Introduction

This section presents a summary of Federal, State and local legislation, policies and strategies that are relevant to the use, management and development of Mackay Park. The information provided in this section is true and correct at the time of adoption of this POM.

**As land use policy and legislation is subject to change over time, the reader is advised to observe document version control and relevant legislative reforms.**

### 7.1 Federal legislation

#### 7.1.1 Environment Protection and Biodiversity Conservation Act 1999

Under the *Environment Protection and Biodiversity Conservation Act 1999*, a person must not take an action that has, will have or is likely to have a significant impact on any of the matters of national environmental significance without the approval of the Federal Environment Minister.

#### 7.1.2 Disability Discrimination Act 1992

Mackay Park is generally accessible to all people and is consistent with the objects of the *Disability Discrimination Act*. Any new development at Mackay Park should ensure compliance with the Disability Discrimination Act and ensure accessibility for all.

#### 7.1.3 Native Title Act 1993

Under the *Native Title Act 1993*, for a Native Title claim to be successful, Native Title claimants must prove a connection to the land and that Native Title has not been extinguished.

The *NSW Crown Lands Management Act 2016* requires Council to employ a Native Title Manager to provide written advice to colleagues on how to proceed when they are conducting activities that may impact Native Title. Written advice is also required on the content of new POMs.

While there is a blanket Native Title claim covering the Eurobodalla Shire, Council has received legal advice stating that most of Mackay Park has previously been the subject of freehold grants. This would mean that Native Title has been extinguished on those parcels.

In accordance with the above requirements, Eurobodalla Shire Council has received written advice from a Native Title Manager stating that Council notified Native Title Services Corporation (NTSCORP), the organisation established to assist Traditional Owners with Native Title claims, on 4 April 2019 regarding the Mackay Park Plan of Management and received no response during the 28 day period.

### 7.2 New South Wales (NSW) Legislation

#### 7.2.1 NSW Crown Lands Management Act 2016

The *Crown Land Management Act 2016*, which came into force on 1 July 2018, requires local governments that have been appointed to manage dedicated or reserved Crown lands to manage that land as if it were community land under the *Local Government Act 1993*.

Mackay Park is reserved Crown land for which Eurobodalla Shire Council has been appointed the Council Crown Land Manager. Under the *Crown Land Management Act 2016*, Council Crown Land

Managers have until 30 June 2021 (the initial period) to have a compliant POM in place for all relevant Crown land.

Under the *Crown Land Management Act 2016*, council managers must assign one or more initial categories of community land (under the *Local Government Act 1993*) to each relevant Crown reserve. The Department of Industry has issued an Interim Schedule of Crown reserves to councils providing guidance on which categories most closely resemble the purposes for which each parcel of Crown land has been reserved.

Mackay Park was reserved as Crown land for the purpose of public recreation. Under the Interim Guidelines, Mackay Park was nominated an initial category of 'park' under the *Local Government Act 1993*. Notwithstanding the initial category nomination, this POM has re-categorised the land to 'general community use' with the consent of the NSW Minister for Land and Forestry. Further discussion on this is contained in Sections 4.5 and 6.3 of this Plan.

The *NSW Crown Land Management Act 2016* outlines a process to ensure compliance with the *Native Title Act 1993*. This process includes the appointment of a Native Title Manager, who is required to provide advice in relation to Native Title in certain circumstances, including before a POM is submitted to the relevant NSW Minister for approval.

This POM has been referred to a Native Title Manager for advice in accordance with the legislation. As noted above, Council has received legal advice stating that most of Mackay Park has previously been the subject of freehold grants, meaning that Native Title has been extinguished on those parcels.

### 7.2.2 NSW Local Government Act 1993

Under the *Local Government Act 1993*, POMs must be prepared for all community land. Given the *Crown Land Management Act 2016* now requires certain Crown reserves to be managed as if it were community land under the *Local Government Act 1993*, a POM is now required to be prepared for Mackay Park. The *Local Government Act 1993* outlines the process and content requirements for POMs. This POM has been prepared in accordance with these requirements, and the requirements of the *Crown Land Management Act 2016*.

With the consent of the NSW Minister for Lands and Forestry as the land owner, this POM categorised the Reserve as 'general community use'. The core objectives for management of community land categorised as 'general community use' are:

*to promote, encourage and provide for the use of the land, and to provide facilities on the land, to meet the current and future needs of the local community and of the wider public:*

*(a) in relation to public recreation and the physical, cultural, social and intellectual welfare or development of individual members of the public, and*

*(b) in relation to purposes for which a lease, licence or other estate may be granted in respect of the land (other than the provision of public utilities and works associated with or ancillary to public utilities).*

All of the existing and potential future uses of Mackay Park outlined in this POM will meet the core objectives for 'general community use' as outlined above.

### 7.2.3 NSW Environmental Planning and Assessment Act 1979

The *Environmental Planning and Assessment Act 1979* provides for councils to prepare Local Environmental Plans (LEPs) for land within the council area and for the NSW State Government to prepare regional strategic plans and State Environmental Planning Policies (SEPPs) for certain land within the State.

The relevant LEP, regional strategic plans and SEPPs are addressed below.

The *Environmental Planning and Assessment Act 1979* also outlines the processes relating to development applications for local development, complying development, regionally significant development, State significant development and other categories of development, and for the approval of activities that do not require development consent, such as local and State significant infrastructure. Future development of Mackay Park will need to be consistent with the *Environmental Planning and Assessment Act 1979* and all relevant subordinate planning instruments.

#### 7.2.4 NSW Biodiversity Conservation Act 2016

The *Biodiversity Conservation Act 2016* is part of the NSW Government's legislative and policy framework for conservation and management of vegetation. The Act provides mechanisms for listing of threatened species and ecological communities, the establishment of biodiversity stewardship agreements and other voluntary conservation agreements, biodiversity certification, a biodiversity offsets scheme and a Biodiversity Conservation Fund. The Act also outlines the processes for biodiversity assessments and approvals.

The *Biodiversity Conservation Act 2016* defines biodiversity values, and these are shown as the purple areas the Biodiversity Values Map at Figure 15. Some land along the northern and southern boundaries of Mackay Park that are included in a Coastal Wetland are shown in Figure 15. As a result, any development application under Part 4 of the NSW *Environmental Planning and Assessment Act 1979* that impacts on these areas will trigger application of the Biodiversity Offsets Scheme.

Any impacts to the mapped wetland will require a development application and is designated development unless it is undertaken by a public authority and is identified in a POM for the land under the NSW *Local Government Act 1993* or the NSW *Crown Lands Management Act 2016*.

Mackay Park contains and is bounded by vegetation (saltmarsh and Swamp Oak Floodplain Forest) that are listed as threatened ecological communities under the *Biodiversity Conservation Act 2016*. There are no recovery plans or threat abatement plans for these vegetation communities. Whether or not development consent is required for any development or works at Mackay Park, or if activities are to be assessed under Part 5 of the NSW *Environmental Planning and Assessment Act 1979*, any direct or indirect impacts to these vegetation communities need to be assessed. This, includes any proposed changes to surface water flows, groundwater impacts, risk of spills into the wetlands and sedimentation during any construction.

**Figure 15: Biodiversity Values Map**





### 7.2.5 NSW Fisheries Management Act 1994

Mackay Park contains and is bounded by vegetation (mangroves and saltmarsh) that are protected under the *Fisheries Management Act 1994*. There are no recovery plans or threat abatement plans for these vegetation communities.

For any development that may harm mangroves or sea grasses, a permit from the Minister administering the *Fisheries Management Act 1994* is required. Any development application under Part 4 of the *NSW Environmental Planning and Assessment Act 1979* that also requires a permit from the Minister is determined to be Integrated Development.

### 7.2.6 NSW Marine Estate Management Act 2014

McLeods Creek, as part of the Clyde River Estuary, is included within the Batemans Marine Park as part of the Habitat Protection zone. The Batemans Marine Park Zoning Map and management rules principally deal with recreational and commercial fishing in the Marine Park, however it also identifies that a permit from the relevant Marine Park Authority is required for other activities such as organised events, commercial operations and infrastructure development in the Habitat Protection Zone.

For any development application under Part 4 of the *NSW Environmental Planning and Assessment Act 1979* or activity under Part 5 of that Act, the consent authority must take into consideration the management rules for the marine park and obtain the concurrence of the Minister administering the *Marine Estate Management Act 2014*.

### 7.2.7 NSW Aboriginal Land Rights Act 1983

Under the *NSW Aboriginal Land Rights Act 1993*, the NSW Land Council or Local Land Councils can put forward a Land Rights Claim. If a claim is successful the Crown land becomes the Local Land Council's land. Claims under this Act can only be made successfully if the land:

- is not lawfully used or occupied,
- is not needed, nor likely to be needed, for an essential public purpose, and
- do not comprise lands that are subject of an application for determination of Native Title that has been registered in accordance with the Commonwealth Native Title Act.

There is a blanket Aboriginal Land Rights claim covering the Eurobodalla Shire and a specific claim over parts of Mackay Park.

### 7.2.8 NSW Coastal Management Act 2016

The *Coastal Management Act 2016* provides for land within the coastal zone to be included within one or a number of coastal management areas, being:

- (a) the coastal wetlands and littoral rainforests area,
- (b) the coastal vulnerability area,
- (c) the coastal environment area,
- (d) the coastal use area.

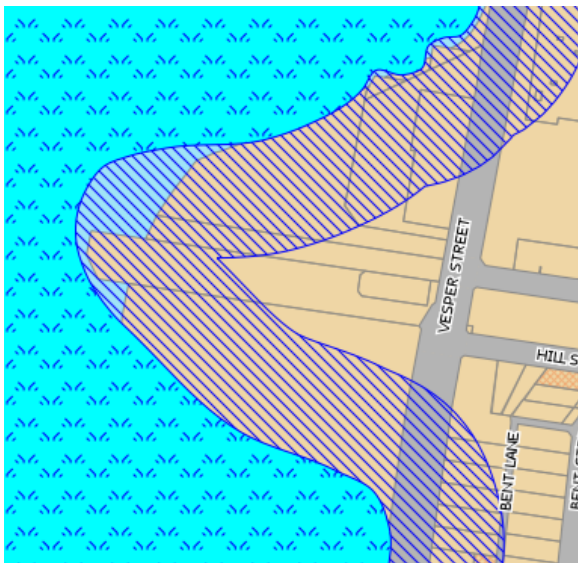
The coastal management areas are to be identified in one or more of the State Environmental Planning Policies (SEPPs) listed below.

The *Coastal Management Act 2016* also requires councils to prepare coastal management programs for land within the coastal zone including Mackay Park.

## 7.2.9 State Environmental Planning Policy (SEPP) [Coastal Management] 2018

*SEPP [Coastal Management] 2018* provides development controls for coastal management areas. A large part of Mackay Park is identified in the mapping associated with the SEPP as being in the proximity area for coastal wetlands, as shown in Figure 16. Small areas along the northern and southern edges of Mackay Park are also shown within the coastal wetland area. Along with the whole of the Batemans Bay Town Centre, Mackay Park is also shown as being within the coastal environment area and the coastal use area. There is currently no mapping for the coastal vulnerability area, as this mapping will be determined through the coastal management program currently being prepared.

**Figure 16: Coastal Wetland and Proximity Area**



The SEPP states that where a parcel of land is identified as being within more than one coastal management area, the development controls for all of the relevant coastal management areas will apply and be dealt with in the following priority order (highest to lowest) to avoid any conflict: coastal wetlands area, coastal environment area and coastal use area.

In the proximity area for **coastal wetlands**, development consent must not be granted to any development unless the consent authority is satisfied that the proposed development will not significantly impact on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland.

In the **coastal environment area**, development consent must not be granted to development unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
- (b) Aboriginal cultural heritage, practices and places,

In the **coastal use area**, development consent must not be granted to development unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

- (a) Aboriginal cultural heritage, practices and places,
- (b) cultural and built environment heritage.

### 7.2.10 SEPP (Vegetation in Non-Rural Areas) 2017

*SEPP (Vegetation in Non-Rural Areas) 2017* outlines the approval requirements for the removal of vegetation in non-rural areas including this reserve. Native Vegetation removal must be in accordance with the Vegetation SEPP including entering the Biodiversity Offsets Scheme if thresholds are exceeded as described in the Part 7 of the Biodiversity Conservation Regulation.

A Development Control Plan does not apply to the reserve, thus vegetation removal that does not trigger the Biodiversity Offsets Scheme can usually be undertaken without development consent. However, impacts to threatened species habitat (e.g. hollow bearing trees) and threatened ecological communities (e.g. swamp oak floodplain forest) would require a biodiversity conservation licence under Division 3 of the *NSW Biodiversity Conservation Act*.

### 7.2.11 SEPP (Infrastructure) 2007

*SEPP (Infrastructure) 2007* provides for certain infrastructure developments to be exempt development, complying development or development that is permitted with consent. Division 12 of the SEPP applies to parks and other public reserves.

In relation to Mackay Park, the SEPP provides for development for the purposes of implementing an adopted POM by or on behalf of a reserve trust to be carried out without consent. The SEPP also provides for any of the following development to be carried out by or on behalf of a council without consent on a public reserve under the control of or vested in the council:

- roads, pedestrian pathways, cycleways, single storey car parks, ticketing facilities, viewing platforms and pedestrian bridges,
- recreation areas and recreation facilities (outdoor), but not including grandstands,
- visitor information centres, information boards and other information facilities,
- lighting, if light spill and artificial sky glow is minimised in accordance with the Lighting for Roads and Public Spaces Standard,
- landscaping, including landscape structures or features (such as art work) and irrigation systems,
- amenities for people using the reserve, including toilets and change rooms,
- food preparation and related facilities for people using the reserve,
- maintenance depots,
- environmental management works,
- demolition of buildings so long as the footprint of the building covers an area no greater than 250 square metres.

The SEPP provides for the following development to be exempt development, subject to the specific requirements of the SEPP:

- construction or maintenance of:
  - walking tracks, raised walking paths (including boardwalks), ramps, stairways or gates, or
  - bicycle-related storage facilities, including bicycle racks and other bicycle parking facilities (except for bicycle paths), or
  - handrail barriers or vehicle barriers, or
  - ticketing machines or park entry booths, or
  - viewing platforms with an area not exceeding 100m<sup>2</sup>, or
  - sporting facilities, including goal posts, sight screens and fences, if the visual impact of the development on surrounding land uses is minimal, or
  - play equipment if adequate safety measures (including soft landing surfaces) are

- provided and, in the case of the construction of such equipment, so long as the equipment is situated at least 1.2m away from any fence, or
- seats, picnic tables, barbecues, bins (including frames and screening), shelters or shade structures,
- routine maintenance of playing fields and other infrastructure, including landscaping,
- routine maintenance of roads that provide access to or within those playing fields, including landscaping.

#### 7.2.12 SEPP (Exempt and Complying Development Codes) 2008

*State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* identifies certain development that is exempt from requiring development consent or can be approved with a complying development certificate. This SEPP will apply in relation to certain temporary structures and signage for events undertaken at Mackay Park, including:

- Temporary event signs
- Community notice and public information signs
- Tents, marquees or booths for community events
- Stage or platforms for community events.

The SEPP will also apply to the installation of certain sculptures and artworks at Mackay Park.

#### 7.2.13 SEPP (State and Regional Development) 2011

*State Environmental Planning Policy (State and Regional Development) 2011* identifies certain State and regionally significant development that requires the approval of either the Independent Planning Commission or the Joint Regional Planning Panel. In relation to Mackay Park, the proposed Regional Aquatic, Arts and Leisure Centre is considered to be regionally significant development, meeting the criteria of 'council related development over \$5m'. A development application for the Regional Aquatic, Arts and Leisure Centre will be determined by the Joint Regional Planning Panel.

#### 7.2.14 South East and Tablelands Regional Plan

The South East and Tablelands Regional Plan sets the broad strategic directions for the region. Directions 9 and 12 of the Regional Plan are directly relevant to Mackay Park. Directions 14, 16, 17 and 22 are also relevant. Included in the Regional Plan are 'local government narratives'. Included in the Eurobodalla local government narrative is a priority to redevelop the Mackay Park Precinct in Batemans Bay.

**Direction 9** relates to growing tourism in the region and states that *"the variety of experiences can be expanded through the sustainable use of national parks, Crown Lands, agricultural lands and other assets. This can attract people interested in nature and eco-based experiences, agri-tourism, adventure experiences (such as canoeing and mountain biking) or arts and cultural activities such as those offered on the Bundian Way"*. The planned development of a Regional Aquatic, Arts and Leisure Centre at Mackay Park, incorporating a visitor centre, will provide opportunities to improve the way tourists are informed about the facilities, experiences and attractions in the Eurobodalla and the wider region.

**Direction 12** relates to promoting business activities in urban centres and states that *"strategic and local centres will be the focus for more intensive employment uses, public space improvements, and technology and transport connections to Canberra and Sydney. This will encourage investment, housing, job opportunities and services. Strategic and local centres also support tourism. Centres should be places of commercial and retail activity that are attractive for community and recreational activities to encourage visitors"*. Batemans Bay is defined as a strategic centre in the Regional Plan.

Mackay Park is the largest area of public space in or adjoining the town centre and has significant potential to provide for sporting, recreational and cultural opportunities for the community and visitors, to support the economic development of Batemans Bay.

**Direction 14** relates to protecting important environmental assets. Consistent with the aims and requirements of the Coastal Management Act 2016 and State Environmental Planning Policy (Coastal Management) 2018), a key action of the Regional Plan is to “*minimise potential impacts arising from development on areas of high environmental value, including groundwater dependent ecosystems and aquatic habitats, and implement the ‘avoid, minimise and offset’ hierarchy*”. Given the land adjoins significant wetlands, this will be a key consideration in the assessment of any development at Mackay Park.

**Direction 16** relates to protecting the coast and increasing resilience to natural hazards. Two key actions relate to developing, updating or implementing flood studies and floodplain risk management plans, and coastal zone management programs. Eurobodalla Shire Council is currently preparing a Coastal Zone Management Program.

**Direction 17** relates to mitigating and adapting to climate change and states that “*the infrastructure built today must consider the climate projections for the near future and, in some cases, the far future*”. Given the land is low lying, subject to flooding and coastal hazards, this will be a key consideration in the planning and assessment of any development at Mackay Park.

**Direction 22** relates to building socially inclusive and healthy communities and states that “*the design and location of recreation facilities, sporting infrastructure, parks and public buildings should encourage people to be physically active where they work and in their neighbourhoods*”. Two key actions of the Regional Plan in relation to this direction are to “*integrate walking and cycling networks into the design of new communities to encourage physical activity*” and to “*promote energy efficiency in new development proposals*”. The design of new development at Mackay Park will promote physical activity and be energy efficient.

## 7.3 Eurobodalla plans, strategies and studies

### 7.3.1 Eurobodalla Community Strategic Plan

The Eurobodalla Community Strategic Plan outlines the following nine outcomes for the future of Eurobodalla:

1. Strong communities, desirable lifestyle
2. Celebrated creativity, culture and learning
3. Protected and valued natural environment
4. Sustainable living
5. Vibrant and diverse economy
6. Responsible and balanced development
7. Connected and accessible places
8. Collaborative and engaged community
9. Innovative and proactive leadership.

Mackay Park has an important role to play in helping to achieve many of these outcomes. In particular, the development of the Batemans Bay Mackay Park Precinct is identified as a key project in Council’s 2017-21 Delivery Plan to assist in achieving a vibrant and diverse economy.

### 7.3.2 Eurobodalla Local Environmental Plan 2012

The ELEP identifies land uses that are permitted without consent, with consent or prohibited in the relevant zone. Provisions of ELEP that are relevant to Mackay Park include those relating to Acid Sulphate Soils, Biodiversity and Wetlands.

Under the ELEP, Mackay Park is predominantly zoned RE1 Public Recreation and RE2 Private Recreation. Some small areas are zoned E2 Environmental Conservation and W1 Natural Waterways. The adjoining wetland area is zoned W1 Natural Waterways.

### 7.3.3 Eurobodalla Recreation and Open Space Strategy

Mackay Park is identified in the 2018 Recreation and Open Space Strategy as a district level sports park. The following commentary is included in the Strategy with regard to Mackay Park:

*“Mackay Park has received recent upgrades with a quality sporting amenities building overlooking the two fields. The Park is currently fenced, and is often locked by the club using the Park. As it is dedicated as community open space, it is important that the public are able to access the Park when the club is not using the facility for formal activities. Concerns about the public using the playing surface have been raised by the club.*

*At the time of developing this Strategy, planning for the development of the Mackay Park precinct, which includes the Batemans Bay Aquatic Centre, mini golf facility and former bowls facility, is underway. While Mackay Park (sports park) will remain open space, the concept plan for the precinct includes the potential for a combination of a new aquatic and leisure centre, arts and cultural facility, conference and event space, tourism accommodation, residential accommodation, restaurants and cafes, and a gateway visitors centre. It is intended that these outcomes will be achieved via a mix of public and private sector investment.”*

The Strategy contains the following numbered actions with respect to Mackay Park:

- N15 Continue the planning and development process for the provision of an indoor aquatic centre at the Mackay Park precinct that addresses community needs in an affordable manner, taking into consideration independent professional advice as to how best to achieve the desired project outcomes.*
- N16 Ensure the pedestrian gates at Mackay Park, Batemans Bay, remain open to the public when not in use by sporting clubs.*

A number of Eurobodalla-wide recommendations are included in the Recreation and Open Space Strategy that are relevant to Mackay Park and this POM, including:

- E10 Install “Smoking Prohibited” notices as per legislation and as part of ‘grouped’ signage at priority playgrounds and sportsground spectator areas.*
- E18 Ensure the promotion of bushland reserves and waterways provides visitors (and residents) with an understanding of the focus for conservation management, traditional owner requirements, facilities and services offered.*
- E32 Work with community and Council stakeholders to establish a strategy for protecting vulnerable environments adjacent to Council managed open space across the Shire.*
- E33 Ensure that native drought-resistant plant species are used when renewing or developing new garden beds and landscaping where appropriate.*

### 7.3.4 Batemans Bay Town Centre Structure Plan

A Structure Plan for the Batemans Bay Town Centre was adopted by Council in 2008. While Mackay Park was identified as part of the Town Centre, providing open space and recreation facilities, it was not included within any of the precincts in the town. Recommendations in the Structure Plan relating to open space focus mainly on the town foreshore and the Watergardens. The Structure Plan did identify Mackay Park as providing alternative parking for the town centre.

It is noted that the Structure Plan was prepared prior to the planning for a Regional Aquatic, Arts and Leisure Centre at Mackay Park. Accordingly, consideration of traffic and pedestrian movements associated the new centre will be included in the planning and design phase of that project.

### 7.3.5 Batemans Bay Parking Study

The Batemans Bay Parking Study, completed in 2011, analysed the adequacy of parking in the Batemans Bay Town Centre. The study found that, at that time, there was a surplus of parking in the northern part of Batemans Bay Town Centre, but a shortfall in the southern part.

The study was undertaken prior to the planning for a Regional Aquatic, Arts and Leisure Centre at Mackay Park. Therefore, the adequacy of parking in Batemans Bay will need to be further considered as part of the detailed design of the Regional Aquatic, Arts and Leisure Centre. This study will also need to clearly define the needs and potential management and operational issues associated with ensuring the successful operation of the Regional Aquatic, Arts and Leisure Centre and customer parking.

### 7.3.6 Batemans Bay Traffic and Transport Studies

The Batemans Bay Traffic and Transport Study, completed in 2011, analysed the impacts of potential redevelopment in the Batemans Bay Town Centre on traffic, parking, walking, cycling and public transport in the town. The study found that some congestion issues would arise if no modifications of the current road configurations were undertaken. Recommendations of the study included upgrades to Beach Road at the intersection of the Princes Highway and signalling the intersection of Beach Road and Perry Street.

A separate Northern Area of Eurobodalla Shire Traffic Study was undertaken in 2011. A key recommendation of that study was to complete a southern Batemans Bay Bypass to take pressure off Beach Road in Batemans Bay. Much of this work is now completed, however the connection to the Princes Highway is subject to NSW Government design and funding.

These studies were undertaken prior to the planning for a Regional Aquatic, Arts and Leisure Centre at Mackay Park and a new bridge over the Clyde River. The adequacy of traffic and transport in Batemans Bay as it relates to the Regional Aquatic, Arts and Leisure Centre will be considered as part of the detailed design of this project.