

EUROBODALLA SHIRE COUNCIL

PUBLIC FORUM

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

Ordinary Meeting of Council on **12 October 2021**

Name	Subject/Comments
Public Forum – 9.30am	
Andrew Bain	PET21/003 Broulee Mossy Point Community Association Petition PSR21/049 Land and road reserve classification - Clarke Street, Broulee
Brett Stevenson, Co-Convenor A Better Eurobodalla (ABE)	GMR21/053 Coopers Island Road Public Gate Permit Public Exhibition PSR21/049 Land and road reserve classification - Clarke Street, Broulee
Tracy Innes	CAR21/020 Bay Pavilions Fees and Charges - post exhibition
Matthew Findlay	CAR21/020 Bay Pavilions Fees and Charges - post exhibition
Jim Bright	CAR21/020 Bay Pavilions Fees and Charges - post exhibition
Not presenting	
Kirranda Pastoral Company	GMR21/053 Coopers Island Road Public Gate Permit Public Exhibition
Deirdre Russack	GMR21/053 Coopers Island Road Public Gate Permit Public Exhibition

PSR21/049 and PET21/003 – Land at the cnr Broulee Road and Clarke St
Andrew Bain – Broulee Mossy Point Community Association

Dear Mayor and fellow Councillors,

Firstly I would like to congratulate the staff on a very complete job compiling the history that has led us to where we are now. The only matter that it did not explain is why, having realized that the November 2003 decision was insufficient to reclassify Lot 89 as Community Land, Council staff did not bring back to Council the actions necessary to complete the reclassification. Our advice is that Council remains bound by the decision of 2003 and should take steps to give effect to it. This agenda item gives Council the opportunity for reclassification with all the legal requirements met.

The Council document is clear that the preferred community position in 2003 was to reclassify all the land as Community Land. This was despite the local community being offered the proceeds from sale to be spent on infrastructure improvements within Broulee. The results of our petition, supported by meetings in Broulee, suggest that this is still the preferred outcome.

The petition put a simple proposition that the Council meet its 2003 commitment to reclassify Lot 89 as Community Land and to meet its commitment of 29 June that the unformed road will become Community Land. Nearly 500 people signed the petition. Covid rules forced us to use digital media for some of the petition but we did not go to one of the web sites that seek nationwide or worldwide results. We merely promoted it to members of the Community Association and relied on them to spread the word around Broulee Mossy Point. This shows up in the results where 61 % were from Broulee Mossy Point, only 15% had an address outside Eurobodalla and many of this 15% were regular visitors or had property in Broulee Mossy Point.

There have been questions about what would the land be used for if it is reclassified as Community Land. Three points stand out:

1. As you drive down Broulee Road your eyes first of all notice the barren nature of the new development. All vegetation has been removed including the roadside planting that Council did many years ago. Eyes then focus on the trees at the end of the development which conveys a message that all that is natural is not lost. This will not change much over the next 20 years. The barren development will become new houses and gleaming roofs but there is no space for significant trees. Lot 89 will stand alone.
2. The land would become a visual welcome to the village of Broulee, but it could become more than that. Broulee has an important history being an early port, the first Post Office and I think the first Court House. There are locals who have written books on the history of Broulee Mossy Point and with some attention to the site this could be recognized on welcoming signage. Maybe a map of important visitor points within Broulee Mossy Point and information about fire protection and the location of safe refuges. This should include retaining all the major trees on Lot 89 and some appropriate and fire safe vegetation on the unformed road.
3. The land will of course remain as a store of value for the community. If it is sold the money will end up in general Council revenue where it will reduce the incentive for savings and productivity change. It is unlikely that any new development will be undertaken that matches what has been lost.

Finally, the cost to maintain the land will be minimal. Landcare will maintain its interest. Currently there is some evidence of dumped garden prunings on Lot 89. Broulee Mossy Point Dunecare had planned a weed removal and cleanup some months ago but this has been prevented by Covid rules. This work is now being scheduled for the near future. We would hope that if there are costs in establishing these arrangements that this cost will be met by the developer of the adjacent land given the enormous value to the developer of a Council provided fire protection area.

We are sure that if the land becomes Community Land it will enhance Broulee as a village and that it will make a long term contribution to the Shire as a place to live and to visit.

**ABE Public Forum Presentation Regarding GMR21/051 Coopers Island
Road Public Gate Permit & PSR21/049 Land & Road Reserve
Classification – Clarke Street Broulee**

Good morning. Thank you for the opportunity to address Council this morning regarding two items on today's agenda, these being :

GMR21/053 - Application for a public gate permit on Coopers Island Road;

PSR21/049 - Land & Road Reserve Classification – Clarke Street Broulee

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

ABE has applied these principles to both Coopers Island Road and Clarke Street Broulee in our previous presentations to Council, as each have significant implications for the effective management of public assets and implementation of good governance in the Eurobodalla.

I will now outline ABE's recommendations for each of these agenda items.

Public Gate on Cooper's Island Road (GMR21/051)

ABE notes that this issue has been unnecessarily complicated by Council's tardiness in addressing it, which dates back to mid-2019.

ABE's previous presentations to Council focussed on public safety and good governance aspects of this case, and these considerations should remain paramount in Council's deliberations today. Of the 2 options presented to Councillors in the agenda papers, **ABE recommends that Option 1 should be chosen**, i.e. refuse the gate permit application and direct the adjoining owner to fence the road reserve, with \$5,000 of financial support from Council. ABE considers that without fencing along the road reserve, the possibility of stock interactions with public road users cannot be avoided, raising significant public safety and liability concerns.

If Council chooses to go with Option 2 and approve the gate permit, **ABE recommends that this approval be conditioned by requiring the adjoining owner to properly fence the boundary of the road reserve** for the reasons already discussed. This could be accomplished by including this requirement in the conditions of approval for the gate permit, which need to be backed up by rigorous compliance and enforcement measures.

Council should make sure that any decision made today is fully compliant with requirements of the NSW Roads Act, and ensures that the adjoining landowner complies with the requirements for control of stock under relevant NSW legislation. This decision also needs to demonstrate that Council is properly discharging its “duty of care” obligations regarding public safety, which have significant implications for public liability and insurance considerations.

Land & Road Reserve Classification – Clarke Street Broulee (PSR21/049)

ABE welcomes the detailed chronology of the site included in the PSR21/049 agenda paper today, and considers that this compilation provides a good starting point from which to make a sound decision based on publicly available information.

ABE notes the original decision of Councillors in 2003 to classify this parcel of land as community land has never been rescinded, and so should now be finally implemented, bringing this 18 year oversight to a satisfactory conclusion. ABE also notes that Council's Director of Planning issued a press statement on the 29th June indicating that this block was Community Land, and that Council has recently received a substantial petition from the Broulee community urging that this parcel of land be classified as community land. This is included in today's agenda papers under PET21/003.

After reviewing this information, ABE recommends **that Councillors adopt Option 2, to close the road reserve and classify the lot and road reserve as community land**. ABE considers that this would provide the greatest public benefit going forward, and create a significant community asset which could facilitate multiple uses for a variety of community sectors, including Landcare, tourism, Aboriginal and European heritage and public education. It would provide an ideal opportunity for Council to work constructively and in good faith with the Broulee community to achieve a fair outcome which maintains this important piece of community land for future use and enjoyment by everyone.

Conclusion

The decisions regarding Coopers Island Road and Clarke Street Broulee provide opportunities for elected Councillors to prove their commitment to both the community and good public administration via retention and effective management of these precious public assets. ABE therefore urges Councillors to make community well being, public safety and good governance the basis of their deliberations today.

Thank you for your attention.

Brett Stevenson
Co-Convenor
A Better Eurobodalla

Eurobodalla Shire Council
P O Box 99
Vulcan Street
Moruya NSW 2537

Dear Ms Dale

We would like to bring to your attention our concerns in relation to the proposed fees and charges for the Bay Pavilion Fitness Centre that were released to the public earlier this week.

During our meeting with ESC officers and yourself some 12 months ago we were informed that the Fitness Centre was an essential and integral part of the Bay Pavilion to offset the huge costs the aquatic centre was going to generate.

We are particularly concerned as the indicated pricing structure will undercut all existing locally owned Fitness Business from 40% upwards within the Eurobodalla area. These businesses are independently owned and need to make a profit in order to operate, we alone currently employ 28 casual, part time and full-time staff.

The media release states that it is hard to compare your Health and Fitness centre with others in the community, we would like to state that your business will be an exact reflection of Onelife in particular, we are 1000sq as you are, we are a full-service facility incorporating Group Fitness as you will be. We have been a gym in our current premises for over 35 years and feel we are a very good reflection on what price you need to have to maintain a business and employ people for longevity.

Were you to charge your stated pricing in a private commercial facility you would not make a year of trade before you went bankrupt based on our population and usage of such a facility in our area.

In this respect we draw your attention to *Section 45 of the Competition and Consumer Act 2010*, which prohibits contracts being entered into by a corporation that has the purpose, effect or likely effect of substantially lessening competition in a market, even if that conduct does not meet the stricter definitions of other anti-competitive conduct. It is our respectful submission that if the proposed contract for the fitness centre is to be entered into with a company, that contract would be in breach of Section 45 and would not be in the interests of the community given Council funding will no doubt be required to subsidise the gym facility.

We would urge you to look at the current numerous fitness businesses in the current market and know that in the recent past whenever a third centre opens one closes, this is not a made-up statistic of somewhere else this is what has happened in Batemans Bay over the past 12 years that I have owned the business.

We have had an explosion of new Studios open in our area which is wonderful, particularly in the mindfulness/wellness area of Fitness, your business model has singled them out as well with a casual price of \$12 for yoga, once again cutting these small boutique businesses off at the knees.

We ask you the Councillors of our Shire to put your hand up and say this just isn't right, if your basis for opening a gym was to really offset costs well then does it not make sense. This business should in fact at least cover its costs if not make a profit?

We thank you for taking the time to read and hear our concerns and hope that you can take them into consideration when you are making your decision.

pp_ *Tracy Innes* _____

Tracy Innes
Onelife



pp_ *Mark & Amanda* _____

Amanda Noble & Mark Tobin
Area 61



pp_ *Andrew Allen* _____

Andrew Allen
Anytime Fitness
Batemans Bay



pp_ *Andrew Dowler* _____

Drew Dowler
North Street Studio



pp_ *Shane Halliday* _____

Shane Halliday
Shred Shed

SHRED SHED

pp_ *Claire Lovelace* _____

Claire Lovelace
Soul Tribe.



pp_ *Kate Webber* _____

Kate Webber
Bay Active Pt



Good Morning General Manager, Mayor and Councillors. I'm Matthew Findlay from Eurobodalla Labor. As sayings go, Business is business. If you have a go, you get a go and Competition is healthy. But what's not healthy is Government undercutting, over saturating and wastefully using space and materials to choke local small businesses into the red.

It is well known in the fitness industry of Batemans Bay that when one gym opens, another gets closer to closing its doors. That's been life for private fitness businesses in the Eurobodalla shire, but when Government interfere and Council adds a 656m2 gymnasium to the mix, it raises the question: Why has council chosen to make life even more difficult for Batemans Bay business, especially as they struggle with the aftermath of both the 2020 bushfires and COVID?

We all know fitness is an integral part of life and should be encouraged by all means but when Council decides to take food off the table of small business owners, it defeats the purpose and completely misses the mark of any moral and ethical doing. With the several established local gyms, multiple private personal trainers and the rise of home gym equipment sales due to the pandemic, why was this thought of as a plausible and equitable solution?

I think that it's worth noting that a similar proposal for a gym at the Narooma swimming pool had been developed by this council back in 2009. Understandably, local gym operators were outraged and received the strong support of the local Chamber of Commerce in their fight to save their businesses and livelihoods.

In its representations to the council at that time, the Narooma Chamber made a number of valid points and alternative suggestions. I'll quote some of them to you.

"We ask that council seriously considers the economic impact of its proposal"

"We feel it is important that we don't 'double up' on existing facilities and/or fitness programs within a limited demographic. We would suggest tailoring the proposal to include complementary additions to the current 'fitness and health' facilities within the district instead of introducing a very similar concept to that which already exists."

"Whilst we understand the importance of improving the financial results of the swimming pool, we feel there are better options for stimulating visitor numbers at the facility and would be more than happy to meet with you to discuss them."

Thankfully, on that occasion, common sense prevailed and the gym proposal was rejected by the councillors.

With the removal of the well established and much loved Batemans Bay Mini Golf, one of our holiday activities was stripped away from us, leaving visitors of the area with beaches and bush. These are all well and good but how many times can you drag a child up Pigeon House mountain without a struggle.

Myself and Eurobodalla Labor feel that this particular area in the Bay Pav needs to be developed as another holiday/tourism activity. With the area being covered, Council should explore all year round leasing prospects which don't further damage local business and give the wider public an opportunity to utilise the space.

This gym, like The Pav, seems to have been decided too hastily, with no proper regard for the future of locals and business of the area. Labor supports Bay Business. Please rethink the use of space, for the future of our town.

**PUBLIC FORUM PRESENTATION
ESC MEETING – 12 OCTOBER 2021
BAY PAV FEES & CHARGES (CAR21/020)**

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

I'm making this presentation on behalf of the Labor Party's Eurobodalla Local Government Committee. I'm the president of that committee.

During the consultation period, our committee made a submission to you regarding certain commitments that NSW councils have in order to apply the principle of competitive neutrality. This principle is part of Australia's national competition policy that was agreed to by the Commonwealth and all State Governments in the 1990s. This policy covers the activities of our governments at all levels, including the activities of local government bodies such as councils.

In the case of the NSW local government sector, the adoption of this national policy resulted in the issuing of various detailed guidelines and instructions to councils in 1997. The two key documents for NSW councils were (and still are) the 'Pricing & Costing for Council Businesses – *A Guide to Competitive Neutrality*' and 'Guidelines on the Management of Competitive Neutrality Complaints'. Both of those documents were issued to our councils by the (then) Department of Local Government (now OLG) and, as advised on the NSW Treasury website, are still the relevant 'operative' documents for councils in 2021.

The Staff Report relating to this particular agenda item seems to be suggesting, in reply to our submission, that the council's competitive neutrality responsibilities are satisfied simply by producing fees and charges that are comparable with those of its private sector competitors. That is clearly incorrect.

The 'Pricing & Costing' document is long and quite complicated. However, in essence (and in very general terms), what that document requires the council to do is a thorough assessment of the costs associated with the provision of the activity (that is, the Pay gym), to then adjust that resulting cost figure to reflect the range of additional costs that a private sector competitor would incur in the way of taxes, mortgages, etc. and to then set the council fees at a level that would at least cover those costs.

This is the process that, under the national competition policy, is needed to satisfy "*the principle .. that government businesses should operate without net competitive advantages over other businesses as a result of their public ownership*".

There is absolutely no evidence, in the two relevant Staff Reports (or elsewhere), to suggest that any such process (as spelt out in the Pricing & Costing guidelines) has been undertaken by this council. There is also no evidence to suggest that the councillors have been made aware of the existence of these guidelines.

The other serious deficiency in what appears to have occurred is the failure of the council to have brought the attention of the private sector competitors (i) to their right to formally complain to the ESC about any associated issues, (ii) to have their complaint responded to within a specified period and, (iii) if not satisfied with the response, to then take their complaint to OLG. These requirements are spelt out in OLG's 'Guidelines on the Management of Competitive Neutrality'.

These are clearly major failures on the part of the ESC in respect of its responsibilities to the community – particularly given the seriouspotential repercussions for some local business operators.

A final decision on this matter **does not** have to be taken by the councillors at today's meeting. The two key OLG documents should immediately be provided to the local gym owners so that they can consider their rights and respond to the council.

Thank you.

Jim Bright
President
Eurobodalla Local Government Committee
Australian Labor Party

We submit that Option 2 should be adopted by Council and not Option 1 because:

1. Option 2 reduces the possibility of cattle entering the highway. Livestock have previously jumped the cattle grid. Since the gate has been erected, there have been no further instances of cattle entering the highway. Furthermore, Council agenda item GMR21/052 requires fencing adjoining the existing cattle grid to be removed and this has now occurred. This means the dual defence of the existing cattle grid is no longer available.
2. If Council orders fencing along either side of Coopers Island Road, it will act as a direct funnel for cattle towards the Highway. This funnels livestock to a point that encourages the herd to follow the road until they reach the end, *en masse* and in a tight spot, which increases the risk of a cattle grid being jumped. While also risking harm and injury to livestock and all road users.
3. We as the owners have already spent considerable resources improving fencing to reduce the risk of cattle entering the highway and sensitive areas. Council, as owner of a public road and where there is a statutory right for adjoining owners to use a public road including for movement of livestock, also has a responsibility to prevent cattle entering the highway.
4. Public access is not prevented or hindered by the gate because a sign is required to be placed on the gate indicating to the public that it is a public gate.
5. When balancing the risk of a car accident on a highway versus the minor inconvenience of having to open and close a gate, preventing the former should be given greater weight.
6. The concerns raised in the submissions are unfounded or not a sufficient reason to refuse the permit. In particular:
 - a. Some of the submissions did not provide reasons and were concerned with other matters.
 - b. Compliance can be managed by Council and is not a reason to refuse the permit.
 - c. If approved the gate is not illegal.
 - d. The suggestion to install a larger grid is dangerous and not acceptable. Risking injury, pain and suffering to animals and damage to vehicles.
 - e. A submission that a farmer should fence along a rural public road ignores cattle behaviour considerations (refer to paragraph 2 above).
7. If Council adopts Option 1 which includes an order to fence the road, this sets a significant precedent for requiring farmers to fence public roads. We note that there is a right of appeal against the order.

8. In regard to the stated disadvantages of Option 2

- a. An unlocked gate with a sign saying “public gate” does not hinder public access.
- b. To address the possibility that the gate may be purposely left open; a stock grid would need to again be installed as dual precaution in conjunction with a gate to prevent cattle movement onto the road. This combination has already proven to be effective.
- c. The inconvenience of opening and closing the gate is minimal and is considered entirely reasonable.

To preserve life, in the interest of all road users, we politely request the gate permit application be approved.

Sincerely

Kirranda Pastoral Co

Good morning councillors and members of the public. Thank you for this opportunity to speak. This issue has had considerable attention so I will keep it short, despite disappointment in the length of time it has taken to resolve an issue that is clearly covered by authority and delegations arising under the *Roads Act 1993*.

Access to Bowns Creek via Coopers Island Road has been a bone of contention since at least June 2018. Coopers Island Road provides access to Bowns Creek and to private farming land and has been a public road since the 1930s. The road provides access for locals and tourists to undertake water-based recreational activities in the Bown Creek, Trunketabella Lake and the Tuross River.

The current owners of the farmland adjacent to Coopers Island Road have placed a gate at the head of the road where it meets the Princes Highway and have expressed interest in buying the public road.

On 15 June 2021, the Council decided not to close or sell Coopers Island Road and allocated some funding to realign the public road and to erect signage.

The Council publicised that a decision on the landholder's application for a gate permit would be made by Tuesday 22 June 2021, and until that time the gate could stay.

As you are all aware, it is now October 2021 and the future of the gate on Coopers Island Road remains undecided/unclear.

There are two options before the Council today. The options boil down to remove the gate or maintain the gate. Both options require the landholder to fence in a manner that excludes their livestock from the public road. It appears that maintaining the gate is nothing more than a face saving exercise for the landholder, and maybe the Council, and a slap in the face for the public who utilise Bowns Creek.

Gates across public roads are exceptions not the rule. The landholders have not demonstrated that their circumstances are any different to any other landholder who has a public road running through their property. My own family has public roads running through its property and we are responsible for keeping our livestock off the roads.

There has been plenty of time since June for the fences along the road, to exclude cattle, to be reinstated. Eurobodalla Labor maintains its support for the removal of the gate on Coopers Island Road.