



# **AGENDA**

**Ordinary Meeting of Council**

**8 December 2015**



**ORDINARY MEETING OF COUNCIL  
TO BE HELD IN THE COUNCIL CHAMBERS, MORUYA**

**ON TUESDAY 8 DECEMBER 2015**

**COMMENCING AT 10.00AM**

**AGENDA**

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

<b>1.</b>	<b>WELCOME, ACKNOWLEDGEMENT OF COUNTRY &amp; EVACUATION MESSAGE</b>	
<b>2.</b>	<b>APOLOGIES</b>	
	Nil	
<b>3.</b>	<b>PUBLIC FORUM (AGENDA ITEMS ONLY)</b>	
<b>4.</b>	<b>CONFIRMATION OF MINUTES OF PREVIOUS MEETING</b>	
4.1	Ordinary Meeting held on 24 November 2015	
<b>5.</b>	<b>DECLARATIONS OF INTEREST OF MATTERS ON THE AGENDA</b>	
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	Nil	
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	Nil	
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CON15/022	Property Matter <i>Item CON15/022 is confidential in accordance with s10(A)(2)(c) of the Local Government Act because it contains information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business and discussion of the matter in an open meeting would be, on balance, contrary to the public interest.</i>	

**DR CATHERINE DALE**  
**GENERAL MANAGER**

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**NOM15/011      SOCIOECONOMIC CHARACTERISTICS OF EUROBODALLA**

E00.4623

Responsible Officer: Neil Burnside - Councillor

Attachments:          Nil

Councillor Neil Burnside has given notice that at the Ordinary Meeting of Council on 8 December 2015, he will move the following motion.

**MOTION**

THAT Council:

1. Place on record the results of the *Dropping off the Edge 2015*, noting that no Eurobodalla postcodes are in the top 40 most disadvantaged postcodes in NSW.
2. Note that Eurobodalla is just below the SEIFA national and NSW average in terms of socio-economic disadvantage, with pockets of disadvantage and pockets of advantage within Eurobodalla.

**BACKGROUND**

Council was recently briefed on the nature and location of socioeconomic disadvantage in Eurobodalla. Analysis included Australian Bureau of Statistics (ABS) Socio-Economic Index for Areas (SEIFA) data and results from *Dropping off the Edge 2015*. Both provide valuable information regarding Eurobodalla's socioeconomic character, at both a whole of community, postcode and local area (a couple of streets) level.

The ABS SEIFA score for Eurobodalla is 955.8. This score is just below the NSW and Australian average of 1000.

While Eurobodalla as a whole is close to average, there are pockets of disadvantage with scores well below the average, including Mogo, parts of Moruya and Batemans Bay, Bodalla and Wallaga Lake. There are also pockets of real socioeconomic advantage well above the 1000 average, including Long Beach, Rosedale, Broulee, Mossy Point and Potato Point.

How does this result compare with the *Dropping off the Edge 2015* report?

The results from *Dropping off the Edge 2015* reinforce the evidence from SEIFA that overall Eurobodalla is just below the state average, with small pockets of disadvantage within the shire.

*The Dropping off the Edge 2015* report assesses all postcodes in Australia against a consistent set of criteria that is national in focus. It does not consider local issues or local government activities as research criteria. Data sources include health, education, ABS (Census and other surveys), social welfare (Centrelink) and crime statistics.

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**NOM15/011 SOCIOECONOMIC CHARACTERISTICS OF EUROBODALLA**

**E00.4623**

There is no direct link between SEIFA and *Dropping off the Edge 2015* and Eurobodalla's ratepayer base. The survey group may only partially overlap. For example, 38% of ratepayers are non-resident, with their usual place of residence for Census purposes elsewhere. For the majority of these ratepayer, their Eurobodalla residence is a second, or third property. In addition, both SEIFA and *Dropping off the Edge 2015* assess the whole community, not just ratepayers.

The *Dropping off the Edge 2015* criteria is outlined in the following table:

Access	Housing Stress	Family Income	Overall education	Post school qualifications	Psychiatric admissions
Unskilled workers	Unengaged young adults	School readiness	Disability support	Long term unemployment	
Rent assistance	Unemployment	Year 3 literacy	Year 3 reading	Year 9 numeracy	
year 9 reading	Criminal convictions	Juvenile offending	Domestic violence	Prison admissions	

*Dropping off the Edge 2015* assesses the above criteria by postcode, including 2536, 2537, 2545 and 2546.

No Eurobodalla postcodes are listed in the top 40 most disadvantaged postcodes in NSW. To put the report into perspective, the top 37 postcodes (5%) account for 49.5% of the most disadvantaged positions in NSW.

Areas within Eurobodalla are identified on a *Dropping off the Edge 2015* map as being with the most disadvantaged quartile when assessing mean scores. Essentially researchers took the mean score for every postcode and divided it into 4 broad quarters. The principle reason for Eurobodalla being included in the most disadvantaged quartile on the *Dropping off the Edge 2015* map is the high number of low skilled workers, disengaged young people and prison admissions in one postcode (2545).

The SIEFA data and *Dropping off the Edge 2015* rely on analysis of key data at a national level. Neither data source considers local issues or local government activities as criteria to be assessed, or provides evidence or links between sea level rise (or any other Council policy) and disadvantage.

SEIFA and *Dropping off the Edge 2015* provide valuable information and findings for use by government agencies, including Council, to put energy into targeted, worthwhile programs to improve opportunities, employment and wellbeing for people and communities who really need it.

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**NOM15/011 SOCIOECONOMIC CHARACTERISTICS OF EUROBODALLA**

**E00.4623**

This would be a far more positive outcome and more constructive than selecting only the pieces of information that suit, misappropriating results to support an unrelated issue, or trading on the disadvantage experienced by some members of the community for political gain.

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**GMR15/038 MEETING DATES 2016**

**E04.8769**

Responsible Officer: Dr Catherine Dale - General Manager

Attachments: Nil

Focus Area: Collaborative Communities

Delivery Program Link: C1.1 Conduct the business of Council in an inclusive, responsive and transparent manner

Operational Plan Link: C1.1.1 Support the councillors in meeting their statutory obligations and roles as community representatives

**EXECUTIVE SUMMARY**

This report provides a schedule of proposed Council meeting dates for the 2016 calendar year and seeks Council's endorsement of the schedule.

**RECOMMENDATION**

THAT Council:

1. Endorse the following dates as the meeting schedule for Council meetings for the 2016 as follows:
  - a) 9 February 2016
  - b) 23 February 2016
  - c) 8 March 2016
  - d) 22 March 2016
  - e) 12 April 2016
  - f) 26 April 2016
  - g) 10 May 2016
  - h) 24 May 2016
  - i) 14 June 2016
  - j) 28 June 2016
  - k) 26 July 2016
  - l) 9 August 2016
  - m) 23 August 2016
  - n) 11 October 2016
  - o) 25 October 2016
  - p) 8 November 2016
  - q) 22 November 2016
  - r) 13 December 2016



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**GMR15/038 MEETING DATES 2016**

**E04.8769**

2. Not that the schedule may be amended at any time, as required.

**BACKGROUND**

Under Section 365 of the Local Government Act, Council is required to meet at least 10 times per year, each time in a different month.

Council's Code of Meeting Practice allows for Council meeting to be held on the second and fourth Tuesday of the month, excluding January.

A schedule of meetings for 2016 has been developed taking into account the 2016 local government elections and may be amended at any time if Council resolves to alter the meeting day.

**CONSIDERATIONS**

The proposed schedule has taken into account a July mid-year recess, the 2016 Local Government Elections and the Christmas Break in December.

The proposed schedule has followed normal procedure for the majority of the year.

It is recommended that Council's mid-year recess coincide with school holidays. Accordingly, no briefings will be scheduled on 5 July 2016.

The 2016 Local Government Elections are scheduled for 10 September 2016. As per clause 393B of the Local Government (General) Regulations, Council will assume caretaker period four weeks prior to the scheduled election. During caretaker period Council will continue to meet however, the following functions must not be exercised:

- a) *entering a contract or undertaking involving the expenditure or receipt by the council of an amount equal to or greater than \$150,000 or 1% of the council's revenue from rates in the preceding financial year (whichever is the larger),*
- b) *determining a controversial development application, except where:*
  - (i) *a failure to make such a determination would give rise to a deemed refusal under section 82 of the Environmental Planning and Assessment Act 1979, or*
  - (ii) *such a deemed refusal arose before the commencement of the caretaker period,*
- c) *the appointment or reappointment of a person as the council's general manager (or the removal of a person from that position), other than:*
  - (i) *an appointment of a person to act as general manager under section 336 (1) of the Act, or*
  - (ii) *a temporary appointment of a person as general manager under section 351 (1) of the Act.*

To allow time for the election and induction of the new Council there will be no meeting scheduled in September 2016.

**GMR15/038 MEETING DATES 2016**

**E04.8769**

<b>Date</b>	<b>Meeting Type</b>	<b>Comments</b>
<b>FEBRUARY</b>		
9 February 2016	Council Meeting	
23 February 2016	Council Meeting	
<b>MARCH</b>		
8 March 2016	Council Meeting	
22 March 2016	Council Meeting	
<b>APRIL</b>		
12 April 2016	Council Meeting	
26 April 2016	Council Meeting	
<b>MAY</b>		
10 May 2016	Council Meeting	
24 May 2016	Council Meeting	
<b>JUNE</b>		
14 June 2016	Council Meeting	
28 June 2016	Council Meeting	
<b>JULY</b>		
<b>12 July 2016</b>	<b>No Meeting</b>	<b>Mid-year recess</b>
26 July 2016	Council Meeting	
<b>AUGUST</b>		
9 August 2016	Council Meeting	
23 August 2016	Council Meeting	
<b>SEPTEMBER</b>		
<b>No meetings due to 2016 Local Government Elections</b>		
<b>OCTOBER</b>		
11 October 2016	Council Meeting	
25 October 2016	Council Meeting	
<b>NOVEMBER</b>		
8 November 2016	Council Meeting	
22 November 2016	Council Meeting	
<b>DECEMBER</b>		
13 December 2015	Council Meeting	

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**GMR15/038 MEETING DATES 2016**

**E04.8769**

**Policy**

Adoption of the schedule is in accordance with Section 2.1 (1) of Council's Code of Meeting Practice.

**Financial**

Adoption of the recommendations outlined in this report will have no financial implications on the adopted budget.

**Community Engagement**

We will inform the community through providing information on Council's website; Living in Eurobodalla resident's newsletter and advertising on Council's noticeboard page in two local newspapers.

**CONCLUSION**

The proposed schedule of Council meetings for 2016 has been prepared to take into account a July mid-year recess and the 2016 Local Government election which is scheduled for 10 September 2016 and the Christmas Break in December.

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**GMR15/039 AUSTRALIAN COASTAL COUNCILS CONFERENCE - ROCKINGHAM, E91.3255  
WESTERN AUSTRALIA - 4 - 6 MAY 2016**

Responsible Officer: Dr Catherine Dale - General Manager  
Attachments: Nil  
Strategic Objective: Collaborative Communities  
Delivery Plan Link: C1.1 Conduct the business of Council in an inclusive, responsive and transparent manner  
Operational Plan Link: C1.1.1 Support the councillors in meeting their statutory obligations and roles as community representatives

**EXECUTIVE SUMMARY**

The Australian Coastal Councils Association in conjunction with City of Rockingham Council are hosting the Australian Coastal Councils Conference from Wednesday 4 May to Friday 6 May 2016.

Conference topics will include Coastal Populations, Strategies to Minimise Shark Attacks, Economic Development Strategies, Launch of a new Climate Risk Management Tool, Coastal Issues and Challenges, 2016 Campaign for the Coast and Presentation of the 2015 Australian Coastal Awards.

**RECOMMENDATION**

THAT Council determine whether it wishes to be represented at the Australian Coastal Councils Conference 2016 to be held on 4 – 6 May 2016 in Rockingham, Western Australia and if it so determines;

1. Council nominate a representative to attend the Conference;
2. Council representative be reimbursed out of pocket expenses in accordance with the Councillors' Expenses and Facilities Policy.

**BACKGROUND**

The Australian Coastal Councils Conference is the national event where representatives of coastal local government areas come together to consider the issues they share which are of concern to their community.

**CONSIDERATIONS**

**Policy**

Council's policy provides that attendance at seminars and conferences will normally be limited to two representatives. The principle of having one Councillor and an appropriate staff member attend is considered as "*best practice*".

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<b>GMR15/039</b>	<b>AUSTRALIAN COASTAL COUNCILS CONFERENCE - ROCKINGHAM, WESTERN AUSTRALIA - 4 - 6 MAY 2016</b>	<b>E91.3255</b>
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**Environmental**

The agenda will cover planning for demographic change and environment issues impacting on coastal areas which will be of relevance to the Eurobodalla Shire.

**Economic Development Employment Potential**

Eurobodalla's economy is reliant on a tourism industry that is predominately centered on coastal activity. It is expected that delegates will gain useful insights and information that will assist Council plan for the challenges and opportunities ahead for the tourism industry. Delegates will also be able to consider how planning for the future of coastal zones can be incorporated into ensuring that the wider economy in Eurobodalla becomes more resilient and where the sustainable pathways are for future business development.

**Financial**

Registration for Super Early Bird is \$990 and includes attendance at all conference sessions.

Council will reimburse or pay registration fees, accommodation, meals, parking, telephone and travel expenses associated with attendance to the Conference plus any other reasonable and directly related out of pocket expenses.

**CONCLUSION**

Councillors attending training, seminars and conferences are to provide a brief report to Council on the outcome and issues following the conference.

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**GMR15/040    MEMORANDUM OF UNDERSTANDING BETWEEN EUROBODALLA SHIRE COUNCIL AND BEGA VALLEY SHIRE COUNCIL    E12.6443**

Responsible Officer:    Dr Catherine Dale - General Manager

Attachments:            1. Memorandum of Understanding

Focus Area:             Support Services

Delivery Program Link: SS1.2 Maintain a sound governance framework within which Council operates

Operational Plan Link: SS1.2.3 Coordinate Council's governance projects and procedures

### **EXECUTIVE SUMMARY**

The Memorandum of Understanding (MoU) sets out the objectives and management arrangements of the partnership between Eurobodalla Shire Council and Bega Valley Shire Council.

The intention of this MoU is to strengthen the current partnership by implementing a more formal level of cooperation between the two Councils. This strategic partnership will achieve cooperative arrangements and establish a framework to deliver greater efficiencies and progress strategies for both Councils and the communities they represent.

It should be noted that both Councils have been determined Fit for the Future by IPART and will continue as independent organisations supporting and servicing their communities.

During the Fit for the Future process, both Eurobodalla Shire Council and Bega Valley Shire Council identified the importance of being an active participant in the establishment of a joint organisation, as a key strategy to achieving long term financial sustainability. While the model and boundaries of the South East Joint Organisations are yet to be finalised by the NSW Government, there is an opportunity to work collaboratively now.

This MoU recognises the importance of the continued development of strong, resilient, unique communities in the far south coast region. The MoU outlines how both Eurobodalla and Bega Valley Shire Councils can continue to operate and serve their respective communities, whilst working together to achieve improved operational outcomes, improved services and financial results, and improved advocacy.

Key to achieving outcomes will be a commitment to the following objectives:

- Identifying and responding to issues that are of a regional nature i.e. the partnership will offer the opportunity for regional South Coast advocacy, strategic planning and implementation.
- Building a dynamic relationship between our population centres.
- Working within the NSW Government framework for building Joint Organisations of councils.
- Building on current partnership and collaboration arrangements.
- Inter-governmental collaboration.

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**GMR15/040 MEMORANDUM OF UNDERSTANDING BETWEEN EUROBODALLA SHIRE COUNCIL AND BEGA VALLEY SHIRE COUNCIL E12.6443**

In order to develop a meaningful partnership, time and resources need to be dedicated to developing a model that works for both Councils and their communities and ensures key outcomes are achieved.

**RECOMMENDATION**

THAT Council endorse the Memorandum of Understanding between Eurobodalla Shire Council and Bega Valley Shire Council.

**BACKGROUND**

On 25 August 2015, Council resolved its intention to enter into a MoU with Bega Valley Shire Council.

A report was presented at its meeting on 27 October 2015 and it was resolved:

*THAT:*

1. *Council notes the report on the next stage of developing an alliance with Bega Valley Shire Council.*
2. *Council appoints the Mayor, the Deputy Mayor and General Manager and one Councillor, and holds an election to appoint one Councillor, to form a working group with representatives from Bega Valley Shire Council to develop a draft Memorandum of Understanding.*
3. *The draft Memorandum of Understanding be presented to Council on 8 December 2015 for consideration.*

Subsequently, Council elected Councillor Gabi Harding as the additional Councillor on the working group.

On 2 November 2015, Council attended a meeting with Bega Valley Shire Council to further develop the draft MoU. Council was represented by the Mayor Councillor Lindsay Brown, Deputy Mayor Councillor Pollock, Councillor Harding and General Manager, Dr Catherine Dale.

The MoU outlines the approach and framework the Partnership will follow including:

- Identify opportunities for joint initiatives and cooperation focused on long term sustainability, managing community assets and infrastructure, and delivery of community services.
- Focus on delivering services more efficiently in the face of increasing costs, community expectations and other challenges.
- Review and develop opportunities to reduce expenditure and operate more efficiently and effectively.
- Implement projects through effective collaboration and resource sharing to optimise opportunities and improve outcomes for the community.

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**GMR15/040 MEMORANDUM OF UNDERSTANDING BETWEEN EUROBODALLA SHIRE COUNCIL AND BEGA VALLEY SHIRE COUNCIL E12.6443**

- Strengthen strategic collaboration and develop cooperative arrangements in areas such as procurement, policy development, service reviews, regional planning, corporate training, tourism, economic development, benchmarking, advocacy and asset management.
- Stimulate innovation and pursue opportunities for greater efficiencies.
- Examine areas for economic growth (tourism, business development, related infrastructure).

**CONSIDERATIONS**

Eurobodalla Shire Council and Bega Valley Shire Council have successfully collaborated in a number of areas including joint tendering and program delivery, sharing policies and other documentation, regular management meetings and economic planning for key facilities (e.g. Moruya and Merimbula airports).

More recently, the two Councils met to discuss the development assessment and building certification sections. The meeting was arranged with the aim of improving development prelodgment services, following the successful completion of customer satisfaction survey by Eurobodalla Shire Council and a similar survey being proposed by Bega Valley Council. This meeting identified a number of opportunities to share resources and collaborate on matters including; preparation of shared fact sheets and web content aimed at improving customer service, reviewing and standardising development conditions used by the councils, sharing of building certifiers when dealing with Council projects, independent assessment or peer review of council development applications, training and professional development. Longer term opportunities were also identified to share resources to review and prepare strategic land use plans, development control plans and policies.

The sharing of resources and collaboration on work such as this not only represents efficiencies for the two Councils but also provides opportunities for standardisation of plans, controls and policies which benefits and provides efficiency for the development sector when working in both local government areas.

This MoU will build on the current productive outcomes. The opportunities identified will be further explored, prioritised and resources allocated to achieve mutual benefits.

**Legal**

The MoU is not a legal document although it outlines the partnership's governance structure and source of authority. The parties agree to work together in good faith. The document is a statement of undertaking and is not intended to create a binding or legal obligation on either party.

**Policy**

Council's Fit for the Future proposal establishes clear actions for pursuing opportunities for greater efficiencies as an active and effective members of the South East Joint Organisation.

A report will be presented to Council every six months detailing the outcomes of the Partnership.



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**GMR15/040    MEMORANDUM OF UNDERSTANDING BETWEEN EUROBODALLA    E12.6443**  
**SHIRE COUNCIL AND BEGA VALLEY SHIRE COUNCIL**

**Social Impact**

Research on resource sharing in terms of community services indicate that there can be a number of both financial and non-financial benefits. In some cases the development of a shared service arrangement can deliver improved service quality, stimulate innovation and enhance community outcomes.

**Economic Development Employment Potential**

The MoU will provide an opportunity for joint advocacy for regional projects and facilities for economic growth in the areas of tourism, business development and related infrastructure.

**Financial**

The MoU will provide opportunities for financial savings in terms of improved opportunities, increased efficiency and reduced costs in service delivery through improved procurement practices and increased resource sharing. The MoU has been developed using existing resources.

Discussion with the Member for Bega indicate that there may be an opportunity for facilitation funding from the NSW Government. A joint approach from both Councils can be progressed once Council has formally adopted the MoU.

**CONCLUSION**

One of Council's Fit for the Future actions is to be an active and effective member of the South East Joint Organisation. While the model and boundaries of the South East Joint Organisation have not been finalised, it is timely to develop a partnership via a Memorandum of Understanding to strengthen the current relationships with Bega Valley Shire Council and Eurobodalla Shire Council. The MoU will result in the development of a process that could be utilised once the Joint Model Organisation is finalised.



## Memorandum of Understanding

between

**Eurobodalla Shire Council**

and

**Bega Valley Shire Council**

### 1. Statement of understanding

This Memorandum of Understanding (MoU) is made between the following partner organisations:

- Eurobodalla Shire Council of 89 Vulcan St, Moruya NSW (ESC)
- Bega Valley Shire Council of Zingel Place, Bega NSW (BVSC)

This MoU sets out the objectives and management arrangements of the partnership between ESC and BVSC. It is not a legal document although it outlines the partnership's governance structure and source of authority. The parties agree to work together in good faith.

This document is a statement of understanding and is not intended to create binding or legal obligations on either party.

### 2. Authorisation

The signing of this MoU is not a formal undertaking. It implies that the signatories will strive to reach the objectives stated in the MoU, to the best of their ability.

Organisation	Eurobodalla Shire Council	Organisation	Bega Valley Shire Council
Name		Name	
Title		Title	
Date		Date	



### 3. Rationale/Scope

The intention of this MoU is to strengthen the current partnership between Bega Valley Shire Council and Eurobodalla Shire Council, by implementing a more formal level of cooperation between the two councils. This strategic partnership will achieve cooperative arrangements and establish a framework to deliver greater efficiencies and progress strategies for both Councils and the communities they represent.

It should be noted that both Councils have been determined Fit for the Future by IPART and will continue as independent organisations supporting and servicing their communities.

Eurobodalla Shire Council and Bega Valley Shire Council have successfully collaborated in a number of areas including joint tendering and program delivery, sharing policies and other documentation, regular management meetings and economic planning for key facilities (e.g. Moruya and Merimbula airports). This MoU will build on the current productive outcomes.

During the Fit for the Future process, both Eurobodalla Shire Council and Bega Valley Shire Council identified the importance of being an active participant in the establishment of a joint organisation, as a key strategy to achieving long term financial sustainability. While the model and boundaries of the South East Joint Organisations are yet to be finalised by the NSW Government, there is an opportunity to work collaboratively now.

### 4. Preamble

This MoU recognises the importance of the continued development of strong, resilient, unique communities in the far south coast region. The MoU outlines how both Eurobodalla and Bega Valley Shire Councils can continue to operate and serve their respective communities, whilst working together to achieve improved operational outcomes, improved services and financial results, and improved advocacy.

Key to achieving outcomes will be a commitment to the following objectives:

- Identifying and responding to issues that are of a regional nature i.e. the partnership will offer opportunity for regional South Coast advocacy, strategic planning and implementation.
- Building a dynamic relationship between our population centres.
- Working within the NSW Government framework for building Joint Organisations of councils.
- Building on current partnership and collaboration arrangements.
- Inter-governmental collaboration.

In order to develop a meaningful partnership, time needs to be dedicated to developing a model that works for both Councils and their communities and ensures key outcomes are achieved.



## 5. Goals and objectives

The Partnership will assist and contribute to the:

- delivery of enhanced and value for money community services
- planning for long term community and transport infrastructure
- advocating on significant community issues
- planning for a more sustainable future.

## 6. Approach and Operational Framework

The Partnership will:

- Identify opportunities for joint initiatives and cooperation focused on long term sustainability, managing community assets and infrastructure, and delivery of community services.
- Focus on delivering services more efficiently in the face of increasing costs, community expectations and other challenges.
- Review and develop opportunities to reduce expenditure and operate more efficiently and effectively.
- Implement projects through effective collaboration and resource sharing to optimise opportunities and improve outcomes for the community.
- Strengthen strategic collaboration and develop cooperative arrangements in areas such as procurement, policy development, service reviews, regional planning, corporate training, tourism, economic development, benchmarking, advocacy and asset management.
- Stimulate innovation and pursue opportunities for greater efficiencies.
- Examine areas for economic growth (tourism, business development, related infrastructure).

## 7. Roles and Responsibilities

Each council is responsible for ensuring resource allocation to agreed projects.

The Partnership group is accountable for:

- fostering collaboration
- successful delivery of agreed projects
- maintaining at all times the focus of the Partnership on the agreed scope, outcomes and benefits
- monitoring and managing the factors outside the Partnership's control that are critical to its success.



The membership of the Partnership will commit to:

- attending scheduled Partnership meetings
- championing the Partnership
- sharing relevant communications and information between the Partnership
- making timely decisions and taking action so as to not hold up agreed projects
- notifying members of the Partnership, as soon as practical, if any matter arises which may be deemed to affect the development of the Partnership.

Members of the Partnership agree:

- that each member will be provided with complete, accurate and meaningful information in a timely manner
- to be given reasonable time to make key decisions
- to be informed of potential risks and issues that could impact on an agreed project, as they arise
- to open and honest discussions
- to ongoing 'health checks' to verify the overall status and 'health' of the Partnership
- to jointly seek external funding opportunities where appropriate.

## 8. Decision making, Governance structure and reporting

- a. Decision making – all oversight and direction setting will sit with the Councils of the two Shires. Senior staff from both organisations will scope a preliminary map of potential projects and develop a mechanism to prioritise these for reporting to the Councils. All non-operational projects will be reported to the Councils for formal resolution. All projects to be implemented will be developed as a schedule attached to this MoU.
- b. Communication – regular communiques on projects underway, progress and outcomes will be jointly issued by the two Councils through reports to Council
- c. Reporting – a formal report on all activity will be presented to each Council by the respective General Manager on a six monthly basis.
- d. Dealing with unresolved issues – any issues where formal agreement cannot be reached will be presented to Council noting the areas of unique focus or priority for each Council. It is acknowledged that there will be issues of both and operational and non-operational nature that it will not be practicable to progress through this process.
- e. Operational matters - Issues of an operational nature will be progressed and managed by officers under the current structure of delegated authority.





The membership of the Operational Partnership will be:

- Executive Leadership Team at Eurobodalla Shire Council and other staff as determined.
- Leadership and Executive Group at Bega Valley Shire Council and other staff as determined.

## 9. Meetings

### Council to Council meetings

- In the initial stages of the MoU items relating to key non-operational matters will be workshopped with the Councillor representatives of both Councils prior to the Operational Teams commencing working on the matters.
- Emerging issues will be workshopped with Councillor representatives of both Councils and individually by both Councils prior to referral to the Operational Team for consideration.

### Operational Team meetings

- All meetings will be chaired by the General Manager on a rotating basis.
- Decisions will be made by consensus.
- Meeting agendas and minutes will be provided by the General Manager who is chairing the meeting. They will:
  - prepare agendas and supporting papers
  - prepare meeting notes and information.
- Meetings will be held as determined, with location of meetings on a rotating basis.
- If required, subgroup meetings will be arranged outside of these times at a time convenient to subgroup members.

## 10. Review and evaluation

The General Managers will provide a report to Council detailing the outcomes of the Partnership every six months.

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**GMR15/041 INDEPEDENT AUDIT COMMITTEE REVIEW OF HUNTFEST REPORT**

**E12.6277**

Responsible Officer: Dr Catherine Dale - General Manager

Attachments: 1. Under Separate Cover - Independent Review of the Report 'Huntfest Review July 2015'

Focus Area: Support Services

Delivery Program Link: SS1.2 Maintain a sound governance framework within which Council operates

Operational Plan Link: SS1.2.2 Ensure transparency in council dealings

**EXECUTIVE SUMMARY**

At its meeting on 28 July 2015, Council resolved:

*THAT:*

- 1. Council receive and note the report titled 'Huntfest Review July 2015'.*
- 2. Council indicate additional comments or clarifications to the report titled 'Huntfest Review July 2015'.*
- 3. Once finalised, the report titled Huntfest Review July 2015' be provided to the Independent Audit Committee members for consideration and report back to Council noting that any additional information requested by the Audit Committee members will be made available.*
- 4. The NSW Police be invited to briefing Council on the risk management processes undertaken with regard to the operations of Huntfest.*

In accordance with Council's resolution, the Independent members of the Audit Committee have undertaken a review of the report titled 'Huntfest Review July 2015'.

During the course of the investigation, the Independent members found that:

1. For each Huntfest event in 2013, 2014 and 2015 Council did follow due process and specified variations were sought and approval/consent provided and that 'the proposed activities sought to be permitted at Huntfest (2014) were legal and did not breach any Council policy'.
2. The report titled 'Huntfest Review July 2015' incorporated information that provided a very clear and compelling evidentiary trail that shows that due process and procedures have been undertaken by Council, including obtaining and relying on legal advice, in an appropriate manner for both of the requirements by Council (Development Application and the Licence).

Recommendations from the Independent members include:

1. Set the highest standards of transparency of independence and integrity for all future Eurobodalla Shire Council independent reviews.
2. Future independent reviews be issued with clear Terms of Reference.
3. Independent Reviewers to make a suitable declaration.

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**GMR15/041 INDEPEDENT AUDIT COMMITTEE REVIEW OF HUNTFEST REPORT E12.6277**

4. For future events, particular where they are based on/or compared with interstate international events that they might foreseeably be viewed as trying to gradually grow into and therefore render consideration against this potential to set clearer ground rules for commencement.

**RECOMMENDATION**

THAT Council:

1. Receive and note the report prepared by the Independent Audit Committee members dated 19 October 2015.
2. Endorse the recommendations as outlined on Page 18 of the report prepared by the Independent Audit Committee members dated 19 October 2015.



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**GMR15/042 ORGANISATION SERVICE REVIEW - DEVELOPMENT SERVICES**

**E13.7262**

Responsible Officer: Dr Catherine Dale - General Manager

Attachments: 1. Under Separate Cover - Confidential - Organisation Service Review - Development Services

Focus Area: Collaborative Communities

Delivery Program Link: C2.2 Undertake organisation service review

Operational Plan Link: C2.2.1 Development services review

### **EXECUTIVE SUMMARY**

Council has implemented a service review program to ensure all services deliver 'value for money' to support the strategic direction identified by the community through the Community Strategic Plan (CSP).

Council's development services has been reviewed in accordance with the adopted service review methodology.

Council's development services includes Council's assessment pre-lodgment, development assessment, development engineering and building certification functions that help to facilitate growth and development through a transparent and efficient development application process.

Considering the factual information, data and findings of this review, the following recommendations are available to Council to consider in terms of the future provision of development services.

1. Report to Council the direct impacts to the current level of service once NSW Government reviews are complete.
2. Conduct regular information forums and publish newsletters to inform users of the service.
3. Review Micromex customer satisfaction survey and implement strategies to address areas identified for improvement.
4. In consultation with Council's corporate fees and charges review, review all development fees and charges.
5. In partnership with Bega Valley Shire, investigate resource sharing opportunities.
6. Implement e-lodgment for development applications and certificates.
7. Review all outgoing correspondence for compliance with Council's style guide.

The purpose of this report is to seek endorsement of the development services review report and its recommendations for service delivery moving forward.

### **RECOMMENDATION**

THAT Council endorse the recommendations as per the development service review report.

### **BACKGROUND**

Local Government service delivery has transformed significantly over recent decades. Councils in NSW have moved from the narrower emphases on services to property, towards broader

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**GMR15/042 ORGANISATION SERVICE REVIEW - DEVELOPMENT SERVICES**

**E13.7262**

objectives to promote the social, economic, environmental and cultural wellbeing of the communities of which they are part. Community expectations of local governments have increased, such that they would provide for sporting, cultural and community care facilities. Other levels of government have devolved various functions to local governments, and transferred some of their functions to increased legislative requirements, especially as regard to asset management and strategic planning.

The overall effect is that councils must provide a greater range of services while endeavouring to meet higher standards. At the same time, the costs of providing services and maintaining infrastructure have increased considerably faster than increases in general income. Financial pressures placed on councils have contributed to the increasing complexity of local government service provision.

Council has taken a pro-active approach to these challenges by implementing a service review program. This program will assist Council to review the mix and level of service relevant to our community's needs to align with the strategic direction set by the community in the Community Strategic Plan (CSP).

The review of Council's development services followed the methodology adopted by Council:

1. Scope – identify the purpose and objectives, planning, analysis and identification of risks
2. Conduct – includes research, data collection and analysis, service specifications, communication with stakeholders
3. Consideration – draft report of recommendations to stakeholders for feedback
4. Determination – Executive Leadership Team and Council will be presented with the recommendations

Upon adoption of the recommendations, the remaining steps of the process will be completed:

5. Implementation – a change management plan will be developed and implemented based on the recommendations
6. Review – ongoing measuring and monitoring of the service

**CONSIDERATIONS**

The range of services provided by Local Government is in response to the needs and priorities determined by local communities. However, there are some services which councils are required to provide by legislation. Council's provision of development services, including building certification and assessments, is required by legislation.

The development services division of Council performs the assessment, investigation, certification and enforcement of legislation and regulations for development within the Eurobodalla to ensure the health, safety and quality of living for the community.

Eurobodalla's development services consists of development control and building certification functions. These functions are made up of four teams; the pre-assessment team, development assessment team, development engineering team and building certification team.

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**GMR15/042 ORGANISATION SERVICE REVIEW - DEVELOPMENT SERVICES**

**E13.7262**

Council's pre-assessment and development assessment officers assess development applications to achieve equitable development outcomes that enhance the environment and are in the public interest. The development engineers ensure that all the new infrastructure meets standards and will not create an unnecessary maintenance burden for the community in the future. The building certification function is obliged to administer and control the construction standards and requirements imposed by legislation. This includes issuing approvals and certificates and certifying new building works.

**Development Services Review Findings**

While it is the NSW Government that sets the legislation, it is Council's Development Services' who administer and enforce them in accordance with the *Local Government Act 1993*, *Environment and Assessment Planning Act 1979*, Building Code of Australia (BCA), relevant town planning requirements and local policies to ensure safe building systems and sustainable outcomes are maintained.

The key findings of this review on the development services include:

- There are a number of NSW Government initiated reviews, such as the NSW Planning Reform, the Local Government Act Review and Biodiversity Legislation Review, that will impact and influence the future delivery of Council's development services.
- The advantage of having a pre-lodgement service assists with the quality of development application when lodged. Up-to-date website content also assists with the quality of applications when lodged and thereby the efficiency of subsequent assessment.
- It is important to balance the processing times (efficiency of service) with the quality of outcomes (effectiveness of service). The current performance of Council's development services is positive as demonstrated by the recent independent satisfaction survey by Micromex Research and the Local Development Performance Monitoring (LDPM) report.

The efficiency of the service is evident in the LDPM and the processing time (net average time) for a DA determination. For 2013-14, Eurobodalla's average net time was 23 days, well below the Group 4 average of 35 days.

The effectiveness of the service is evident in the 2015 Micromex survey where overall customer satisfaction of Council's development services is very favourable, with 43 per cent very satisfied and a further 39 per cent satisfied. Also when prompted to suggest improvements to the service, applicants felt no improvements were necessary, confirming the widespread satisfaction with Council's processes.

- The continued improvement in the average number of days for development assessment determination has been a result of a combination of continuous improvements initiatives such as the development assessment vetting process, regular website updates and introducing e-Planning modules.

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**GMR15/042 ORGANISATION SERVICE REVIEW - DEVELOPMENT SERVICES**

**E13.7262**

- One area that the 2015 Micromex survey identified for improvement involved the owner builder category. Whilst they are identified as people who use the service less frequently, they were generally less satisfied with the service. Targeting this user group in future communication tools may assist to improve the understanding of the service and improve satisfaction.
- The cost of the development services is largely influenced on the development activity cycle of the area. Most income received from the service is set either by statutory means or the market. However, some fees are determined by Council through the annual Fees and Charges process, and should be regularly reviewed to ensure they continue to recovery cost of the service.
- The Council website is a vital tool for customers to access information. In Council's development services, providing electronic access to information has many benefits such as providing 24/7 information and service access to applications, freeing up staff, improve the quality of applications and therefore streamlining the assessment process. The recent and current website updates has assisted with this. However, there is further scope to improve the accessibility of the development services such as providing an electronic lodgement (E-lodgement) option. In addition to improving the turnaround time for assessments, E-lodgement has added benefits such as reducing paper and the storage of hard files.
- Council has received positive feedback from the Housing Industry Association (HIA) in regards to the recent developer forums. These forums provide an opportunity for local architects, planners, builders, developers and building certifiers to talk to Council's development services team. HIA have expressed an interest in partnering with Council to allow their members to participate and accrue professional development credentials to assist with their member's ongoing training requirements.

**Legal**

All development applications and/or certificates issued by Council's development services are guided by the *Environmental Planning and Assessment Act 1979* (EP&A Act), the *Environmental Planning and Assessment Regulation 2000* (EP&A Reg.), and a number of State Environmental Planning Policies (SEPPs) and Local Environmental Plans (LEPs).

**Policy**

The Organisation Service Review is a key project in the 2013-17 Delivery Program and 2015-16 Operational Plan.

In Council's 2013-17 Delivery Program and 2015-16 Operational Plan, development services facilitates growth and development through a transparent and efficient development application process.

**Environmental**

This service seeks to guide and facilitate development to achieve sustainable outcomes having regard to social, economic and environmental factors.

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**GMR15/042 ORGANISATION SERVICE REVIEW - DEVELOPMENT SERVICES**

**E13.7262**

**Economic Development Employment Potential**

Development applications translate to a significant input to the overall economy and creates a number of employment opportunities.

**Financial**

Carrying out service reviews ensures Council is efficient and effective in the delivery of services. The reviews provide an opportunity to identify service improvements; service level adjustments; alternative modes of service delivery; improved resource usage; and cost and productivity savings initiatives.

**Community Engagement**

Feedback from the 2010 IRIS Research and 2012 Micromex community surveys and the more recent 2015 Micromex development application customer satisfaction survey were examined to understand how satisfied the community are with Council's development services.

The 2015 Micromex survey found that 82 per cent of development applicants were very satisfied, or satisfied with Council's development service. It also identified Council's results were consistently above the benchmarks.

**CONCLUSION**

The development services review has been completed having regard to the adopted methodology and is presented for Council endorsement

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**PSR15/056 PLANNING PROPOSAL HOUSEKEEPING AND OTHER AMENDMENTS E14.8442**

Responsible Officer: Lindsay Usher - Director, Planning and Sustainability Services

Attachments:

1. Planning Proposal Housekeeping and Other Amendments - Part 1
2. Under Separate Cover - Planning Proposal Housekeeping and Other Amendments - Part 2
3. Under Separate Cover - Planning Proposal Housekeeping and Other Amendments - Part 3
4. Under Separate Cover - Planning Proposal Housekeeping and Other Amendments - Part 4
5. Under Separate Cover - Planning Proposal Housekeeping and Other Amendments - Part 5
6. Under Separate Cover - Planning Proposal Housekeeping and Other Amendments - Part 6
7. Under Separate Cover - Confidential - Submissions Combined
8. Submissions and Responses Summary
9. Report of Public Hearing

Focus Area: Sustainable Communities

Delivery Program Link: S5.2 Maintain, update and communicate planning information and issues

Operational Plan Link: S5.2.1 Review housing, land supply and demographics and communicate change issues

## **EXECUTIVE SUMMARY**

A number of housekeeping and other amendments to the Eurobodalla Local Environmental Plan 2012 (LELP 2012) and the Rural Local Environmental Plan 1987 (RLEP 1987) were endorsed by Council for public exhibition on 10 February 2015. A gateway determination for those amendments was issued by the NSW Department of Planning and Environment on 15 May 2015.

Public exhibition of the proposed amendments was conducted between 24 June and 24 July 2015 and relevant NSW Government agencies were consulted. Twenty five submissions were received, 20 from community members and 5 from NSW Government agencies. As the planning proposal included the reclassification of certain public lands, a public hearing was held with three persons attending.

All submissions received and issues raised have been considered and the outcomes are presented in this report. No changes to the planning proposal are recommended in response to the submissions received. It is recommended that Council adopt the planning proposal and forward it to the Department of Planning and Environment and Parliamentary Counsel to make the plan.

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**PSR15/056 PLANNING PROPOSAL HOUSEKEEPING AND OTHER AMENDMENTS E14.8442**

**RECOMMENDATION**

THAT Council:

1. Adopt the Planning Proposal attached to this report.
2. Resolve to make the amendments to the Eurobodalla Local Environmental Plan 2012 and the Rural Local Environmental Plan 1987.
3. Forward the Planning Proposal to Parliamentary Counsel with a request to draft the amendments and to the NSW Department of Planning and Environment for reporting and monitoring purposes.
4. Notify in writing all those who made submissions of its decision.
5. Notify in writing all relevant property owners of its decision.

**BACKGROUND**

Eurobodalla Local Environmental Plan (LEP) 2012 was notified on 20 July 2012. Since this time there have been six amendments for various reasons. A seventh amendment relating to minor housekeeping matters is currently with the Department of Planning and Environment for notification.

A second set of “housekeeping” amendments were included within this planning proposal endorsed by Council for public exhibition on 10 February 2015. A gateway determination was issued for these amendments and public and agency consultation has taken place. Twenty five submissions were received, including 20 community submissions and five from NSW Government agencies. Following the public exhibition, a public hearing was required to be held into those matters that involved the reclassification of public land. The public hearing was held on 11 September 2015 with three persons in attendance.

Council sought and has received delegation to finalise this planning proposal.

In recent advice from the Department of Planning and Environment, any proposed changes to a planning proposal which has been delegated to Council will require a new gateway determination to be issued and re-exhibition of an amended planning proposal. Alternatively, any changes can be included in a new planning proposal process.

**CONSIDERATIONS**

**Legal**

The Environmental Planning and Assessment Act 1979 outlines the processes that must be followed in order to make an amendment to an environmental planning instrument, such as a Local Environmental Plan. The subject amendments have been prepared in accordance with these requirements.

**Policy**

The Planning Proposal has been prepared in accordance with Department of Planning and Environment Guidelines for preparing planning proposals and local environmental plans.

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**PSR15/056 PLANNING PROPOSAL HOUSEKEEPING AND OTHER AMENDMENTS E14.8442**

**Environmental**

Environmental issues have been considered as part of the planning proposal. All of the subject changes are minor and will have minimal environmental impacts.

**Social Impact**

Social impacts have been considered as part of the planning proposal. All of the subject changes are minor and will have minimal social impacts.

Concerns were raised in submissions relating to the potential social impacts of the proposed amendment to remove the need for development consent for certain commercial activities on public land or waterways. These concerns have been considered and, given applications for leases/licences for the use of public land are required to be notified and any submissions taken into account, there is the opportunity to consider social, environmental and economic impacts of any proposal. Further, Council is currently developing a policy relating to the commercial use of public land which will guide the assessment of any proposal.

**Economic Development Employment Potential**

Economic impacts have been considered as part of the planning proposal. A number of the matters within this planning proposal are aimed at increasing economic development activity in the Eurobodalla Shire and reducing red tape for small business operators.

For example, land on the edges of the main commercial centres in Eurobodalla, at Batemans Bay, Moruya and Narooma, have been identified for additional commercial development. In addition, the proposed removal of the requirement for development consent for small business operators who use public land or waterways (such as surf schools and personal trainers) will reduce establishment costs for those small businesses.

**Community Engagement**

We have consulted with the community by seeking feedback through a 28 day public exhibition where the planning proposal was placed on Council's website, at the Batemans Bay, Moruya and Narooma libraries and Moruya customer service centre. In accordance with the requirements of the Environmental Planning and Assessment Act 1979, a notice was also placed in the local paper to inform the community of the proposed amendments.

There were 22 amendments in this planning proposal, some of which related to a number of individual properties. Submissions from community members related to seven of the proposed amendments, with 10 submissions relating to one amendment, being the proposal to make certain commercial uses of public land and waterways exempt development.

A summary of the submissions and responses to the issues raised is provided below.

**Community Submissions**

1. Submissions to Amendment 1.5/1.8 (Correction of property description for Kyla Park Grazing Lands heritage item) – 1 Submission

*Issues*

Support maintaining heritage listing of the Kyla Park Grazing Lands, however the area proposed to be listed is set aside in Plan of Management No.26 as Foreshore Reserve for environmental



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**PSR15/056 PLANNING PROPOSAL HOUSEKEEPING AND OTHER AMENDMENTS E14.8442**

protection and is no longer part of the grazing lands. The heritage listing should be amended to be for the purpose of environmental protection.

*Response*

The subject areas is included within the RLEP 1987 heritage listing as part of the broader grazing lands, however a recent subdivision has changed the boundaries of the area to be used for continued grazing. Heritage listing is a recognition of the historic use of land. It does not enable or require historic uses to continue on the land. The continued recognition of the original area of the grazing lands is appropriate notwithstanding a portion of the land is now designated for environmental protection purposes.

2. Submissions to Amendment 8 (Rezoning of land to B5 Business Development at Kings Highway, North Batemans Bay) – 3 Submissions

*Issues*

- Impacts from noise, traffic and environmental pollution. Impact on quality of life and property values.
- The land is not a good location for business and the proposal is not based on community demand or consultation. The proposal is counter to key local and State Government plans and no justification is provided for the rezoning. The land should remain in zone R5.
- Further removal of bushland will be devastating. The green corridor along the Kings Highway provides a stunning gateway to Batemans Bay.
- Significant infrastructure upgrade by Council is required to provide access and manage stormwater.
- Insufficient notification of proposal.
- The existing Schedule 1 use for vehicle sales and repair was not known to residents and there was no consultation about this.

Responses

There are two sites the subject of this amendment. One of the sites has been developed as a service station. The other has development consent for a vehicle sales or hire premises and vehicle repair station. The development was commenced, but has not been completed. Given the existence of an operational consent on the land, the approved use was included in Schedule 1 of LEP 2012.

Regardless of this planning proposal, the site can be developed for the approved use, being vehicle sales or hire premises and vehicle repair station. This planning proposal applies the correct zoning for that use.

Rezoning to B5 enables alternative business opportunities to be considered for the land. Any future development application would need to consider the potential impacts of development on nearby residences and the environment and conditions could be imposed to mitigate any impacts. The proposal has the potential to generate local employment and business development opportunities.

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**PSR15/056 PLANNING PROPOSAL HOUSEKEEPING AND OTHER AMENDMENTS E14.8442**

A vegetated riparian corridor exists along the Kings Highway frontage of the larger of the two properties. In assessing any future development application for the site, consideration will need to be given to the treatment of the riparian corridor, including potential development setbacks, along with the potential retention of some of the other existing vegetation on the land.

Should any infrastructure upgrades be required as a result of a proposed development, the proponent would be required to undertake or contribute to undertaking those upgrades.

The planning proposal was notified by letter to the postal address of adjoining land owners as per usual practice.

**3. Submissions to Amendment 10 (Additional permitted uses on land at Old Princes Highway, Batemans Bay) – 1 Submission**

*Issues*

Concerned about increased traffic and impact on entering and leaving property on Old Princes Highway.

*Response*

Land along the Old Princes Highway is already being used for a range of commercial developments, including doctors, dentists, various offices, a funeral home and a motel. The proposed amendment ensures those and other commercial uses are permissible with consent under LEP 2012. Any future development application would need to consider the potential impacts of development on nearby residences and the road network and conditions could be imposed to mitigate any impacts. It is noted that some improvements to the local road network have recently been undertaken by Council.

**4. Submission to Amendment 11(ii) (Additional permitted uses on land at Campbell Street, Narooma) – 1 Submission**

*Issues*

While we prefer our land to be designated/zoned 'School of Arts', we understand this is not possible under current planning regulations. No objection to the additional permitted uses proposed.

*Response*

Noted.

**5. Submission to Amendment 13 (Commercial use of public land and waterways) – 10 Submissions**

*Issues*

- Exempt development is limited to very low impact development and some commercial activities may not be low impact.
- Merely gaining a licence or permit does not delve into social impact.
- Opportunities are not available for community input in the lease/license/permit process.

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**PSR15/056 PLANNING PROPOSAL HOUSEKEEPING AND OTHER AMENDMENTS E14.8442**

- No justification for changes except to cut red tape. Council policy should be more transparent not less.
- The proposal is not consistent with the CSP or the Rural LEP.
- Council should not have autocratic power over public lands and waterways.
- The term "commercial use" is too vague.
- There is no current duplication of approval processes, but two complementary and necessary processes.
- The proposal would enable Huntfest type activities without community input or development consent.
- Our waterways should not be overrun by jet skis. Our ovals and cycleways should not be turned into free amenities for small businesses to profit from.

*Responses*

The intention is for low-impact activities only to be exempt development on public land and waterways, as evidenced by the proposed conditions included in the planning proposal. The planning proposal identified the purpose of the amendment is for the following kinds of businesses:

- Surf schools
- Personal trainers
- Coffee vans
- Tourism businesses and
- Water sports and training activities.

The planning proposal will reduce unnecessary regulations and costs for these kinds of small business operators.

Under sections 47 and 47A of the Local Government Act 2003, Council is required to publicly notify a proposal that requires a lease or licence to be granted over public land. Persons can make submissions and Council is required to consider those submissions prior to granting a lease or licence.

Council is currently developing a policy relating to the commercial use of public land which will facilitate the consideration of social, economic and environmental matters in the processing of licence applications.

The proposal relates to the operation of businesses that will be conducted on public land or in waterways. These businesses may be specifically defined in Local Environmental Plan 2012 or may fall within the general definition of "business premises". The proposal does not relate to the holding of events, such as Huntfest, on public land as these types of activities are not defined as "business premises" (the definition of business premises requires the business to be conducted on a regular basis), nor are they elsewhere specifically defined as a land use under the LEP. Rather they are considered to be temporary uses of land.

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**PSR15/056 PLANNING PROPOSAL HOUSEKEEPING AND OTHER AMENDMENTS E14.8442**

Therefore, the proposal does not change the regulatory requirements relating to the holding of events. Under clause 65 of State Environmental Planning Policy (Infrastructure) 2007, development that is consistent with a Plan of Management for the subject land does not require development consent. If a Plan of Management provides for the holding of events, development consent is not required. If a Plan of Management does not provide for the holding of events, development consent would be required under clause 2.8 of Eurobodalla Local Environmental Plan 2012, for the temporary use of land.

The proposal does not relate to the private use of public land or waterways, such as the use of jet skis, though it would apply to the operation of a jet ski training or tourist business, should one be proposed.

**6. Submission to Amendment 18 (Reclassification of land at 1 Evans Street, Moruya) – 3 Submissions**

*Issues*

- Support the amendment.
- No objection to proposal. Request the proposal be amended to provide legal access to adjoining land as well.

*Responses*

Noted. Whilst no objection is raised to the suggestion, advice from the NSW Department of Planning and Environment is that such a change would require a new gateway determination and re-exhibition of the change, or a new planning proposal process to commence.

**7. Submission to Amendment 21 (Listing of heritage item at 253 Princes Highway, Narooma) – 1 Submission**

*Issues*

Only the building, not the whole lot, is of heritage value. Object to mapping whole lot as having heritage value.

*Responses*

Under the technical requirements for mapping heritage items issued by the NSW Department of Planning and Environment, the whole of a lot in an urban area that contains a heritage item must be mapped. However, the heritage inventory sheet which describes the heritage item, identifies that it is only the dwelling and its streetscape presentation that is of heritage significance. Any development application on the land would have regard to the description of the heritage item in the inventory sheet.

**Agency Submissions**

**1. NSW Rural Fire Service**

No concerns or issues are raised in relation to bush fire.

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**PSR15/056 PLANNING PROPOSAL HOUSEKEEPING AND OTHER AMENDMENTS E14.8442**

2. NSW Roads and Maritime Services

No objection to proposed amendment number 2 in principle, noting that the subject lot was zoned entirely SP2 in error and RMS only intends to acquire the sliver of land at the front of the subject property, not the entire property.

No objection to the other 21 proposed amendments as they are considered unlikely to result in a significant impact on the classified road network.

3. Department of Primary Industries (Agriculture)

No issues for NSW DPI (Agriculture) in the proposed amendments.

4. Department of Primary Industries (Fisheries)

No objection to the proposed amendments.

5. Heritage Council of NSW

No objection is raised to the amendments that will correct the property description for heritage items and include two heritage items of local significance, provided they are supported by a robust heritage assessment.

The proposed amendments to zoning, land use and building heights across the council area can be supported only if they do not adversely affect conservation areas, heritage items, their setting and any potential archaeology or relics.

*Response*

Both new proposed heritage items have been the subject of heritage assessments and have been supported by the Eurobodalla Heritage Advisory Committee.

The other proposed amendments will have no adverse impact on any heritage item, conservation area or archaeology.

*Public Hearing*

A public hearing, chaired by an independent consultant, was held on 11 September, with three persons in attendance. The public hearing related to those aspects of the planning proposal that included a reclassification of public land from community land to operational land. A report from the public hearing was submitted, with the consultant making the following recommendations to Council:

1. Moruya Airport (reclassification and rezoning of airport terminal car park area)

Due to the necessary contribution this land will provide in the overall airport masterplan and that there was no objection raised through the exhibition of the planning proposal, it is recommended that the land proceed for reclassification and re-zoning.

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**PSR15/056 PLANNING PROPOSAL HOUSEKEEPING AND OTHER AMENDMENTS E14.8442**

2. 521 George Bass Drive, Malua Bay (site for future sewerage pumping station)  
Due to the greater community benefit provided by the infrastructure upgrade it is recommended that this site continue in the proposal for reclassification. However, it is suggested that Council engineering staff engage with the adjoining land owners, with advice in respect to the on-going development infrastructure and building design as this progresses.
3. Law Lane, Mogo (reclassification for existing Water Treatment Plant)  
Continue with re-classification proposal.
4. 1 Evans Street, Moruya (reclassification for access to adjoining land)  
Noting the benefit to the land owner and that the specific proposal had unqualified support, it is recommended that the reclassification proposal continue.
5. Costin Street, Narooma (reclassification to enable the sale of a land-locked parcel of land to adjoining owners)  
Noting the location and constraints upon the land and that a wider benefit is considered unlikely, it is recommended that the land continue for reclassification.

**CONCLUSION**

The Planning Proposal has been exhibited in accordance with the gateway determination. The majority of matters included in this Planning Proposal received no submissions and, as outlined in the response to submissions received, no changes to the planning proposal are recommended. One suggested change in relation to amendment number 18 will be considered as part of a separate planning proposal process, in line with advice from the Department of Planning and Environment.

The submissions received to amendment number 6 generally relate to the potential development of the land and it is considered that these issues can be adequately addressed through the assessment of future development applications.

The submissions received to amendment number 13 raise concerns with the transparency of decision making should development applications not be required for the use of public land. However, the legislative requirements for issuing licences on public land include community consultation. In any case, the planning proposal relates to small-scale commercial activities only and relates to those kinds of activities that are already being undertaken on public land, such as personal training, surf schools and tourism activities.

No substantive issues were raised in submissions from NSW Government Agencies.



# Planning Proposal

Minor housekeeping and other amendments to ELP 2012 and RLEP 1987

Amendment No. 8

## INTRODUCTION

### Background

Eurobodalla Local Environmental Plan 2012 (ELEP) was notified on 20 July 2012. Since then there have been 6 amendments for various reasons. A 7<sup>th</sup> amendment for minor housekeeping matters is currently in progress.

This planning proposal relates to additional minor housekeeping matters to ELEP 2012 and to the Rural Local Environmental Plan 1987 (RLEP 1987) and other amendments to ELEP 2012 as follows:

- Rezoning or land use proposals in response to land owner requests;
- Review of land uses in certain lands adjoining town centres in accordance with the Employment Lands Strategy;
- Addition of a clause relating to the minimum lot size for certain split zones;
- Rezoning and/or reclassification of public land;
- Addition of new heritage items; and
- Increase in height of building standard for certain land at Batemans Bay.

Should Council resolve to proceed with the draft planning proposal it will be forwarded to the Department of Planning and Environment (DoPE) for gateway determination.

### Delegation of Plan Making Function to Council

Council intends to request an authorization to exercise delegation to all matters addressed in this Planning Proposal. Responses to the relevant matters in the 'Evaluation Criteria for the issuing of Authorisation' are provided in Attachment A of this report.

## PART 1: OBJECTIVES or INTENDED OUTCOMES

The intended outcomes of each proposed amendment are outlined in the table below.

No.	Intended Outcomes
1	To correct property descriptions of heritage items.
2	To correct zoning of land at 11 Princes Highway, Narooma.
3	To correct zoning of land at Crosby Drive, Batehaven.
4	To recognise certain lands that have a dwelling entitlement.
5	To modify the time period for permitted temporary uses of land to be consistent with adjoining Councils.
6	To correct the mapping of lot size and building height for land at Glasshouse Rocks Road, Narooma.
7	To enable expansion of the Mogo Zoo.
8	To recognise existing land use and operational development consents on land at the Kings Highway, North Batemans Bay.
9	To facilitate additional land uses on small lots zoned B5 Business Development in Moruya.



10	To facilitate additional permitted uses on land at Old Princes Highway and Crown Streets, Batemans Bay.
11	To facilitate additional commercial land uses on land adjoining the Moruya and Narooma town centres.
12	To enable a boat building and repair facility with consent on rural land.
13	To make provision for appropriate commercial use of public land and waterways without consent, thereby removing duplication of approval requirements.
14	To enable appropriate subdivision outcomes on land with split zoning.
15	To ensure zoning and land classification at the Moruya Airport matches what is happening on the ground and enables further associated infrastructure.
16	To enable the development of sewer pumping station at Malua Bay.
17	To recognise an existing water treatment plant on land at Mogo and enable further associated infrastructure.
18	To provide legal access to land at Evans Street, Moruya.
19	To enable the sale of a small parcel of land at Costin Street, Narooma that is landlocked and is surplus to recreation and open space requirements.
20	To recognise the heritage value of the Eurobodalla Botanic Gardens Wallace Herbarium.
21	To recognise the heritage value of a dwelling at 253 Princes Highway, Narooma.
22	To increase the maximum height of buildings standard for land at Golf Links Drive, Batemans Bay.

## PART 2: EXPLANATION of PROVISIONS

The following table contains a summary of the amendments proposed to ELEG 2012 / RLEG 1987, with more details provided in the Appendices corresponding to each amendment number.

No.	Amendment applies to	Explanation of provisions	Map changes
1	Map and Schedule 5	Correct the property descriptions in the LEP for lots with heritage items due to subdivision or rectifying an incorrect property description.	See Tables 1.3 and 1.4 in Appendix 1
2	Map	Rezone part of Lot E DP 16091, 11 Princes Highway Narooma from SP2 (Infrastructure) to R2 (Low Density Residential) and change the height of buildings map accordingly. <b>Note:</b> This lot previously had an 8.5m height limit under the Residential Design Code (DCP).	Zoning Map – change part of lot not shown on Land Reservation Acquisition Map from SP2 to R2. Height of buildings map – change same part of lot from no height standard to 1 (8.5m).

3	Map	Rezone Lot 2 DP 1164115, Crosby Drive, Batehaven from R5 (Large Lot Residential) to R2 (Low Density Residential).	Zoning Map – change from R5 to R2.
4	Map	Include the following additional properties on the Dwelling Entitlement Maps to reflect the Council resolution of 20 December 2011: i. Lot 7 DP 716697 and Lots 110 and 167 DP 752137, Beashels Lane, Bergalia (excluding Deferred Matter) ii. Lot 1, DP 807062 and Lots 1 and 2 DP 584738, Dunns Creek Road, Woodlands (excluding Deferred Matter)	Dwelling entitlement map – include RU1 part of properties.
5	Clause 2.8	Change the number of days for a permissible temporary use of land from 182 days to 52 days, to correct a typographical error and ensure consistency with adjoining Councils.	Nil
6	Map	Change the minimum lot size and height of buildings standards for part of Lot 3 DP 1125636 at Glasshouse Rocks Road, Narooma.	Lot Size Map – remove lot size standard (10ha) for IN1 part Height of Buildings Map – change IN1 part from I (8.5m) to K (10m)
7	Map	Rezone Lot 103 DP 1073425, Tomakin Road Mogo from RU1 (Primary Production) to SP3 (Tourist), consistent with the zoning of land upon which the existing zoo is located and change the lot size and height of buildings maps accordingly.	Zoning Map – change from RU1 to SP3 Lot Size Map – Remove A1 (1000ha) Height of Buildings Map – Add I (8.5m) (currently no height standard)
8	Map	Rezone Lot 1 DP 1169236 and Lot 3 DP 865527 from the R3 (Medium Density Residential) and R5 (Large Lot Residential) zones respectively to the B5 (Business Development) zone and change lot size and height of buildings maps accordingly. <b>Note:</b> Need to also amend clause 17 in Schedule 1 to remove reference to vehicle sales or hire premises which is a permitted use in the B5 zone, however the reference to vehicle repair station should be retained in clause 17.	Zoning Map – change from R3 to B5 Lot Size Map – remove lot size standards (550m <sup>2</sup> /1500m <sup>2</sup> ) Height of Buildings Map – change Lot 3 DP 865527 from I (8.5m) to K (10m)
9	Schedule 1	Add a new clause in Schedule 1 to enable the land uses below as permitted with consent on part of	Nil

		<p>the land zoned B5 (Business Development) at Moruya.</p> <p>Additional land uses:</p> <ul style="list-style-type: none"> <li>• Community facility</li> <li>• Information and education facility</li> <li>• Office premises</li> <li>• Recreation facility (indoor)</li> <li>• Restaurant or café</li> <li>• Shop top housing</li> <li>• Veterinary hospital</li> </ul>	
10	Schedule 1	<p>Delete from clause 4 (2) in Schedule 1 "if the premises are located on the ground floor as part of a mixed use development that includes residential accommodation" and add the following additional land uses:</p> <ul style="list-style-type: none"> <li>• Funeral home</li> <li>• Information and education facility</li> <li>• Public administration building</li> <li>• Veterinary hospital</li> </ul>	Nil
11	Schedule 1	<p>i. Add new clauses in Schedule 1 to enable the land uses below as permitted with consent on the following properties:</p> <ul style="list-style-type: none"> <li>• Land zoned R2 (Low Density Residential) and R3 (Medium Density Residential) at Campbell and Page Streets and Mirrabooka Avenue, Moruya.</li> <li>• Land zoned E4 (Environmental Living) at Church Street, Moruya</li> <li>• Land zoned R2 (Low Density Residential) and R3 (Medium Density Residential) at Princes Highway, Narooma</li> </ul> <p>Additional land uses for all above properties:</p> <ul style="list-style-type: none"> <li>• Funeral home</li> <li>• Information and education facility</li> <li>• Office premises</li> <li>• Public administration building</li> <li>• Veterinary hospital</li> </ul> <p>ii. Add new clause in Schedule 1 to enable the land uses below as permitted with consent on land zoned R3 (Medium Density Residential) at Campbell Street, Narooma:</p> <ul style="list-style-type: none"> <li>• Entertainment facility</li> <li>• Food and drink premises</li> <li>• Function centre</li> <li>• Funeral home</li> </ul>	Nil

		<ul style="list-style-type: none"> <li>• Information and education facility</li> <li>• Office premises</li> <li>• Public administration building</li> <li>• Veterinary hospital</li> </ul> <p><b>Note:</b> Also include Sec 3, Lot 6, DP 758754 in this new clause in Schedule 1 as this lot has been proposed to be rezoned to R3 in the previous planning proposal for minor housekeeping amendments.</p>	
12	Land Use Table	Include in the RU1 (Primary Production) zone land use table as permitted with consent: boat building and repair facility.	Nil
13	Schedule 2	<p>Add "Commercial use of public land and waterways" to the Exempt Development Schedule with the following conditions:</p> <ul style="list-style-type: none"> <li>• The use/activity must not permanently occupy the subject public land or waterway;</li> <li>• The use/activity must not involve the construction of any permanent structures on public land or in waterways; and</li> <li>• The proponent must have obtained a lease, licence or permit from the relevant public authority.</li> </ul> <p><b>Note:</b> Amendment to clauses 3.3 and 5.7 of ELEP 2012 may also be required to allow the commercial use of public land and waterways as exempt development.</p> <p><b>Note:</b> The types of commercial activities envisaged by this amendment include the following:</p> <ul style="list-style-type: none"> <li>• Surf schools;</li> <li>• Personal trainers;</li> <li>• Coffee vans;</li> <li>• Tourism businesses; and</li> <li>• Water sports and training activities.</li> </ul>	Nil
14	Clause	<p>Add a "Minimum lot size for split zones" clause.</p> <p><b>Note:</b> A clause similar to clause 4.1A of the Wollongong LEP 2009 may be appropriate. However, the clause should also apply to land with a split between a Special Purpose Zone or a Recreation Zone and another zone.</p>	Nil
15	Map and Schedule 4	Rezone part of Lot 4 DP 1090948 (Moruya Airport) from RE1 (Public Recreation) to SP1 (Special Activities) and reclassify changed area to	Zone Map – Rezone part of Lot 4 DP

		operational land and change the lot size map accordingly.	1090948 from RE1 to SP1 Lot Size Map – Remove A1 (1000ha) from part rezoned to SP1
16	Schedule 4	Reclassify Lot 71 DP 601741, 521 George Bass Drive, Malua Bay to operational land.	Nil
17	Schedule 4	Reclassify Lot 1 DP 1173024, Law Lane, Mogo to operational land.	Nil
18	Schedule 4	Reclassify part of Lot 45 DP 1151309, 1 Evans Street, Moruya to operational land.	See Attachment 3E
19	Schedule 4	Reclassify Lot 13 DP 838695, Costin Street, Narooma to operational land.	Nil
20	Map and Schedule 5	Addition of Eurobodalla Botanic Gardens Wallace Herbarium on part of SF 549 as a heritage item.	Heritage Map – Identify curtilage of herbarium as a heritage item
21	Map and Schedule 5	Addition of a dwelling at Lot A DP 367304, 253 Princes Highway, Narooma as a heritage item.	Heritage Map – Identify whole of lot as a heritage item
22	Map	Increase the height of buildings standard for land on the western side of Golf Links Drive, Batemans Bay adjoining the golf course.	Height of Buildings Map – change from M2 (12.5m) to O1 (15m).

### PART 3: JUSTIFICATION

Refer to Appendices 1 to 22.

### PART 4: COMMUNITY CONSULTATION

The majority of matters dealt with in this planning proposal are of a housekeeping nature, and do not result in any adverse impacts upon the community. However, some of the proposed amendments warrant or require community consultation. In particular, the proposed reclassifications of public land require community consultation, including a public hearing under the Local Government Act 1993. It is considered that an exhibition period of 14 days for the entire planning proposal is warranted.

#### Part 5: PROJECT TIMELINE

Anticipated commencement date (date of Gateway determination)	May 2015
Anticipated timeframe for the completion of required technical information	N/A
Timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)	June 2015
Commencement and completion dates for public exhibition period	June 2015 (14 days)
Dates for public hearing (if required)	13 July 2015
Timeframe for consideration of submissions	August 2015
Timeframe for the consideration of a proposal post exhibition	September 2015
Date of submission to the department to finalise the LEP	September 2015
Anticipated date RPA will make the plan (if delegated)	October 2015
Anticipated date RPA will forward to the department for notification	October 2015

## ATTACHMENT A – Evaluation Criteria for Delegation

**Local Government Area:** Eurobodalla Shire Council

**Name of draft LEP:** Eurobodalla Local Environmental Plan amendment No 8

**Address of Land (if applicable):** Various

**Intent of draft LEP:** To make a number of minor housekeeping amendments to ELEP 2012 and RLEP 1987 and a range of other amendments to ELEP 2012 including:

- Rezoning or land use proposals in response to land owner requests;
- Amendments to allow appropriate commercial use of public land and waterways;
- Review of land uses in certain lands adjoining town centres in accordance with the Employment Lands Strategy;
- Addition of a clause relating to the minimum lot size for certain split zones;
- Rezoning and/or reclassification of public land;
- Addition of new heritage items; and
- Increase in height of building standard for certain land at Batemans Bay.

**Additional Supporting Points/Information:** This LEP amendment is for a range of minor matters consistent with the types of draft LEPs that can routinely be delegated to Councils to prepare and make, as identified in Planning Circular PS 12-006.



(Note: where the matter is identified as relevant and the requirement has not been met, council is attach information to explain why the matter has not been addressed)	Council response		Department assessment	
	Y/N	Not relevant	Agree	Not agree
Is the planning proposal consistent with the Standard Instrument Order, 2006?	Yes			
Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Yes			
Are appropriate maps included to identify the location of the site and the intent of the amendment?	Yes			
Does the planning proposal contain details related to proposed consultation?	Yes			
Is the planning proposal compatible with an endorsed regional or sub-regional planning strategy or a local strategy endorsed by the Director-General?	Yes			
Does the planning proposal adequately address any consistency with all relevant S117 Planning Directions?	Yes			
Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Yes			
<b>Minor Mapping Error Amendments</b>	<b>Y/N</b>			
Does the planning proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?	Yes			
<b>Heritage LEPs</b>	<b>Y/N</b>			
Does the planning proposal seek to add or remove a local heritage item and is it supported by a strategy/study endorsed by the Heritage Office?	Yes (Partial)			
Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?	No			
Does the planning proposal potentially impact on an item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?	No			
<b>Reclassifications</b>	<b>Y/N</b>			
Is there an associated spot rezoning with the reclassification?	Yes			
If yes to the above, is the rezoning consistent with an endorsed Plan of Management (POM) or strategy?		N/A		
Is the planning proposal proposed to rectify an anomaly in a classification?	Yes			
Will the planning proposal be consistent with an adopted POM or other strategy related to the site?		N/A		
Will the draft LEP discharge any interests in public land under section 30 of the Local Government Act, 1993?	No			



If so, has council identified all interests; whether any rights or interests will be extinguished; any trusts and covenants relevant to the site; and, included a copy of the title with the planning proposal?		N/A		
Has the council identified that it will exhibit the planning proposal in accordance with the department's Practice Note (PN 09-003) Classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land?	Yes			
Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?	Yes			
<b>Spot Rezoning</b>	<b>Y/N</b>			
Will the proposal result in a loss of development potential for the site (ie reduced FSR or building height) that is not supported by an endorsed strategy?	No			
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?	Yes (Partial)			
Will the planning proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?	No			
If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed?		N/A		
Does the planning proposal create an exception to a mapped development standard?	No			
<b>Section 73A matters</b>				
Does the proposed instrument a. correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?; b. address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?; or c. deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land? (NOTE – the Minister (or Delegate) will need to form an Opinion under section 73(A(1)) of the Act in order for a matter in this category to proceed).	Yes			



4	<p>Submission relates to amendment number 13. Object to inclusion in Exempt Development Schedule for the following reasons:</p> <ul style="list-style-type: none"> <li>- There is no obligation for Council to consult with the community about the use of public land.</li> <li>- The proposal could enable commercial activities at an event, such as Huntfest, to operate without consent.</li> <li>- Denying the public a chance to comment is a fundamental breach of Council's accountability obligations.</li> <li>- Exempt development is limited to very low impact development and some commercial activities may not be low impact.</li> <li>- The planning proposal does not address potential social effects.</li> <li>- Huntfest is a commercial activity, and if it is found to require consent, could then be approved as exempt development under this proposal.</li> </ul>	<p>The intention is for low-impact activities only to be exempt development on public land and waterways, as evidenced by the proposed conditions included in the planning proposal. The planning proposal identified the purpose of the amendment is for the following kinds of businesses:</p> <ul style="list-style-type: none"> <li>• Surf schools;</li> <li>• Personal trainers;</li> <li>• Coffee vans;</li> <li>• Tourism businesses; and</li> <li>• Water sports and training activities.</li> </ul> <p>The planning proposal will reduce unnecessary regulations and costs for these kinds of small business operators. Under sections 47 and 47A of the Local Government Act 2003, Council is required to publicly notify a proposal that requires a lease or licence to be granted over public land. Persons can make submissions and Council is required to consider those submissions prior to granting a lease or licence.</p> <p>The proposal does not relate to the holding of events on public land and therefore does not change the regulatory requirements relating to the holding of events such as Huntfest. Under clause 65 of State Environmental Planning Policy (Infrastructure) 2007, development that is consistent with a Plan of Management for the subject land does not require development consent. If a Plan of Management provides for the holding of events, development consent is not required. If a Plan of Management does not provide for the holding of events, development consent would be required under clause 2.8 of Eurobodalla Local Environmental Plan 2012, for the temporary use of land.</p> <p>Council is currently developing a policy relating to the commercial use of public land which will facilitate the consideration of social, economic and environmental matters in the processing of licence applications.</p>
5	<p>Submission relates to amendment number 13. The impacts on the wider community of commercial use of public lands must be considered by Council as part of an approval process.</p>	
6	<p>Submission relates to all amendments. No objections raised.</p>	<p>Noted.</p>
7	<p>Submission relates to all amendments. No objections raised.</p>	<p>Noted.</p>



11	Submission relates to amendment number 8. The proposal has potential significant impacts on my house from noise, traffic and environmental pollution. Concerned about the environmental impact. The proposal is not based on community demand or consultation. No justification is provided for the rezoning. The land should remain in zone R5.	There are two sites the subject of this amendment. One of the sites has been developed as a service station. The other has development consent for a vehicle sales or hire premises and vehicle repair station. The development was commenced, but has not been completed. Given the existence of an operational consent on the land, the approved use was included in Schedule 1 of LEP 2012. Regardless of this planning proposal, the site can be developed for the approved use, being vehicle sales or hire premises and vehicle repair station. This planning proposal applies the correct zoning for that use. Rezoning to B5 enables alternative business opportunities to be considered for the land. Any future development application would need to consider the potential impacts of development on nearby residences and the environment and conditions could be imposed to mitigate any impacts. The proposal has the potential to generate local employment and business development opportunities.
12	Submission relates to amendment number 18. Support the amendment.	Noted.
13	Submission relates to amendment number 18. No objection to proposal. Request the proposal be amended to provide legal access to adjoining land as well.	Whilst no objection is raised to the suggestion, advice from the NSW Department of Planning and Environment is that such a change would require a new Gateway Determination and re-exhibition of the change, or a new planning proposal process to commence.
14	Submission relates to amendment number 10. Concerned about increased traffic and impact on entering and leaving property on Old Princes Highway.	Land along the Old Princes Highway is already being used for a range of commercial developments, including doctors, dentists, various offices, a funeral home and a motel. The proposed amendment ensures those and other commercial uses are permissible with consent under LEP 2012. Any future development application would need to consider the potential impacts of development on nearby residences and the road network and conditions could be imposed to mitigate any impacts. It is noted that some improvements to the local road network have recently been undertaken by Council.
15	Submission relates to amendment number 18. Support the amendment.	Noted.
16	Submission relates to all amendments. No objections raised.	Noted.
17	Submission relates to amendment number 11(i). While we prefer our land to be designated/zoned 'School of Arts', we understand this is not possible under current planning regulations. No objection to the additional permitted uses proposed.	Noted. The intention is for low-impact activities only to be exempt development on public land and waterways, as evidenced by the proposed conditions included in the planning proposal. The planning proposal identified the purpose of the amendment is for the following kinds of businesses: <ul style="list-style-type: none"> <li>Surf schools;</li> <li>Personal trainers;</li> <li>Coffee vans;</li> <li>Tourism businesses; and</li> <li>Water sports and training activities.</li> </ul> The planning proposal will reduce unnecessary regulations and costs for these kinds of small business operators. Under sections 47 and 47A of the Local Government Act 2003, Council is required to publicly notify a proposal that requires a lease or licence to be granted over public land. Persons can make submissions and Council is required to consider those submissions prior to granting a lease or licence. Council is currently developing a policy relating to the commercial use of public land which will facilitate the consideration of social, economic and environmental matters in the processing of licence applications.
18	Submission relates to amendment number 13. It is never a good idea to avoid making decisions. Giving away control over commercial activities on public land is to abandon responsibility for safeguarding the public interest. The DA process provides for Council to determine if a commercial activity is in the public interest and to set conditions if they approve them.	Noted.
19	Submission relates to all amendments. No objections raised.	Noted.
20	Submission relates to amendment number 21. Only the building, not the whole lot, is of heritage value. Object to mapping whole lot as having heritage value.	Under the technical requirements for mapping heritage items issued by the NSW Department of Planning and Environment, the whole of a lot in an urban area that contains a heritage item must be mapped. However, the heritage inventory sheet which describes the heritage item, identifies that it is only the dwelling and its streetscape presentation that is of heritage significance. Any development application on the land would have regard to the description of the heritage item in the inventory sheet.

21	<p>Submission relates to amendment number 13. The term "commercial use" is too vague. There is no current duplication of approval processes, but two complementary and necessary processes. Regarding activities such as Huntfest as exempt development is entirely inappropriate. The proposal will erode community confidence in Council decisions if no consideration is given by Council to the social impacts of commercial activities on public land.</p>	<p>The intention is for low-impact activities only to be exempt development on public land and waterways, as evidenced by the proposed conditions included in the planning proposal. The planning proposal identified the purpose of the amendment is for the following kinds of businesses:</p> <ul style="list-style-type: none"> <li>• Surf schools;</li> <li>• Personal trainers;</li> <li>• Coffee vans;</li> <li>• Tourism businesses; and</li> <li>• Water sports and training activities.</li> </ul> <p>The planning proposal will reduce unnecessary regulations and costs for these kinds of small business operators. Under sections 47 and 47A of the Local Government Act 2003, Council is required to publicly notify a proposal that requires a lease or licence to be granted over public land. Persons can make submissions and Council is required to consider those submissions prior to granting a lease or licence.</p> <p>The proposal does not relate to the holding of events on public land and therefore does not change the regulatory requirements relating to the holding of events such as Huntfest. Under clause 65 of State Environmental Planning Policy (Infrastructure) 2007, development that is consistent with a Plan of Management for the subject land does not require development consent. If a Plan of Management provides for the holding of events, development consent is not required. If a Plan of Management does not provide for the holding of events, development consent would be required under clause 2.8 of Eurobodalla Local Environmental Plan 2012, for the temporary use of land.</p> <p>Council is currently developing a policy relating to the commercial use of public land which will facilitate the consideration of social, economic and environmental matters in the processing of licence applications.</p>
22	<p>Submission relates to amendment number 13. Exempt development is not intended to allow Councils to rely on their duties to closely scrutinise commercial developments or for citizens not to have the right of input into whether developments are approved. Our waterways should not be overrun by jet skis. Our ovals and cycleways should not be turned into free amenities for small businesses to profit from. Residents need to be informed of proposed developments that concern them, especially any commercial developments.</p>	<p>The intention is for low-impact activities only to be exempt development on public land and waterways, as evidenced by the proposed conditions included in the planning proposal. The planning proposal identified the purpose of the amendment is for the following kinds of businesses:</p> <ul style="list-style-type: none"> <li>• Surf schools;</li> <li>• Personal trainers;</li> <li>• Coffee vans;</li> <li>• Tourism businesses; and</li> <li>• Water sports and training activities.</li> </ul> <p>The planning proposal will reduce unnecessary regulations and costs for these kinds of small business operators. Under sections 47 and 47A of the Local Government Act 2003, Council is required to publicly notify a proposal that requires a lease or licence to be granted over public land. Persons can make submissions and Council is required to consider those submissions prior to granting a lease or licence.</p> <p>The proposal does not relate to the private use of public land or waterways, such as the use of jet skis, though it would apply to the operation of a jet ski training or tourist business, should one be proposed. Council is currently developing a policy relating to the commercial use of public land which will facilitate the consideration of social, economic and environmental matters in the processing of licence applications.</p>

23	<p>Submission relates to amendment number 13. Exempt development is limited to very low impact development and some commercial activities may not be low impact. The checks and balances in place are there for a reason. Merely gaining a licence or permit does not delve into social impact. No justification for changes except to cut red tape. Council policy should be more transparent not less.</p>	<p>The intention is for low-impact activities only to be exempt development on public land and waterways, as evidenced by the proposed conditions included in the planning proposal. The planning proposal identified the purpose of the amendment is for the following kinds of businesses:</p> <ul style="list-style-type: none"> <li>• Surf schools;</li> <li>• Personal trainers;</li> <li>• Coffee vans;</li> <li>• Tourism businesses; and</li> <li>• Water sports and training activities.</li> </ul> <p>The planning proposal will reduce unnecessary regulations and costs for these kinds of small business operators. Under sections 47 and 47A of the Local Government Act 2003, Council is required to publicly notify a proposal that requires a lease or licence to be granted over public land. Persons can make submissions and Council is required to consider those submissions prior to granting a lease or licence.</p> <p>The proposal does not relate to the holding of events on public land and therefore does not change the regulatory requirements relating to the holding of events such as Huntfest. Under clause 65 of State Environmental Planning Policy (Infrastructure) 2007, development that is consistent with a Plan of Management for the subject land does not require development consent. If a Plan of Management provides for the holding of events, development consent is not required. If a Plan of Management does not provide for the holding of events, development consent would be required under clause 2.8 of Eurobodalla Local Environmental Plan 2012, for the temporary use of land.</p> <p>Council is currently developing a policy relating to the commercial use of public land which will facilitate the consideration of social, economic and environmental matters in the processing of licence applications.</p>
24	<p>Submission relates to amendment number 8. The proposed rezoning to B5 will spoil the entry to Batemans Bay and impact on tourism. It will also impact on adjoining residents due to loss of bushland and outlook, loss of property value, reduction in quality of life and increase in traffic and noise.</p> <p>Concern is raised at the lack of notification to all residents of Penthouse Place and the classification of the proposal as "Housekeeping".</p> <p>Disagree that the proposal reflects existing land uses and development approvals. Disagree that the proposal is consistent with South Coast Regional Strategy and Council's Community Strategic Plan. The proposal should be based on a strategic study on impact of development on tourism and investment interest in commercial development. New commercial and industrial development should happen adjoining the existing commercial/industrial areas of Batemans Bay. Concerned about environmental impact from more clearing of bushland.</p> <p>The existing Schedule 1 use for vehicle sales and repair was not known to residents and there was no consultation about this. The existence of a small commercial zone at the corner of the site is controversial with residents and has failed to attract investment, despite clearing of trees by Council.</p> <p>Any commercial development of the land will require public investment to upgrade the Old Kings Highway and new stormwater infrastructure. Increased traffic on Old Punt Road will introduce new hazards.</p> <p>The property should be open space or nature reserve.</p>	<p>There are two sites the subject of this amendment. One of the sites has been developed as a service station. The other has development consent for a vehicle sales or hire premises and vehicle repair station. The development was commenced, but has not been completed. Given the existence of an operational consent on the land, the approved use was included in Schedule 1 of LEP 2012.</p> <p>Regardless of this planning proposal, the site can be developed for the approved use, being vehicle sales or hire premises and vehicle repair station. This planning proposal applies the correct zoning for that use.</p> <p>Rezoning to B5 enables alternative business opportunities to be considered for the land. Any future development application would need to consider the potential impacts of development on nearby residences and the environment and conditions could be imposed to mitigate any impacts. Should any infrastructure upgrades be required as a result of a proposed development, the proponent would be required to undertake or contribute to undertaking those upgrades. The proposal has the potential to generate local employment and business development opportunities.</p> <p>The planning proposal was notified by letter to the postal address of adjoining land owners as per usual practice.</p>

25

Submission relates to amendment number 13. The proposal is not a housekeeping matter. The proposal would prevent community from knowing about planned activities in their area. People won't be aware of the licensing and permit process.  
The proposal increases the risk of more activities similar to Huntfest.  
The term "appropriate" commercial use suggests guidelines will be established, but this is not included in the planning proposal.

The intention is for low-impact activities only to be exempt development on public land and waterways, as evidenced by the proposed conditions included in the planning proposal. The planning proposal identified the purpose of the amendment is for the following kinds of businesses:

- Surf schools;
- Personal trainers;
- Coffee vans;
- Tourism businesses; and
- Water sports and training activities.

The planning proposal will reduce unnecessary regulations and costs for these kinds of small business operators. Under sections 47 and 47A of the Local Government Act 2003, Council is required to publicly notify a proposal that requires a lease or licence to be granted over public land. Persons can make submissions and Council is required to consider those submissions prior to granting a lease or licence.

The proposal does not relate to the holding of events on public land and therefore does not change the regulatory requirements relating to the holding of events such as Huntfest. Under clause 65 of State Environmental Planning Policy (Infrastructure) 2007, development that is consistent with a Plan of Management for the subject land does not require development consent. If a Plan of Management provides for the holding of events, development consent is not required. If a Plan of Management does not provide for the holding of events, development consent would be required under clause 2.8 of Eurobodalla Local Environmental Plan 2012, for the temporary use of land.

Council is currently developing a policy relating to the commercial use of public land which will facilitate the consideration of social, economic and environmental matters in the processing of licence applications.



REPORT ON PUBLIC HEARING HELD FRIDAY 11 SEPTEMBER 2015  
UNDER Sct'n 29 of LOCAL GOVERNMENT ACT 1993  
RE-CLASSIFICATION AND REZONING OF CERTAIN LAND (PART ELEP 2012 Amd 8)  
EUROBODALLA SHIRE COUNCIL

HEARING AND ASSESSMENT RECOMMENDATION

September 2015

Report 15/019

PREPARED BY

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## 1.0 INTRODUCTION

urPlan Consulting has been engaged by Eurobodalla Shire Council to conduct and chair a public meeting on 11 September 2015 and prepare a report to Council, in discussion of the issues arising and to forward recommendations pertaining to the re-classification and re-zoning of selected lands, (refer table 1). The public hearing was integral with the preparation of an LEP amendment as carried out under Section 55 Environmental Planning & Assessment Act, 1979. Required as part of the Planning Proposal (Amendment 8 of the Eurobodalla Local Environment Plan 2012 (LEP)), the lands in question will required re-classification from 'community' to 'operational' land as defined under the Local Government Act 1993.

The preparation of the LEP amendment and consultation was administered through the Department of Planning & Environment 'Gateway' process and Council has provided the reporting and consultation in accordance with the Departments guidelines for the 'making' of the LEP.

The proposed re-classification of the lands is part of a much broader planning proposal and relates to minor housekeeping matters to the present LEP 2012 and the older Rural Local Environmental Plan 1987 (RLEP). There were a total of 22 proposed amendment items within the planning proposal, however only items 15 to 19 of the amendment relate to land re-classification and are the subject of the public hearing.

The lands being the subject of the public hearing and requiring re-classification are principally land held in Council ownership and the re-classification is required to permit either the current activity or proposed activity to be undertaken.

Through the planning proposal, Council has identified the benefits and/or efficiencies afforded the continued land-use or for the community as a whole in effecting this process. Therefore in that regard Council has received approval through 'Gateway Determination' 15 May 2015, to proceed with the overall planning proposal.

This report details the nature and results of the public hearing and discusses the issues arising and in consideration of the Council objectives and offers recommendation as to the future action in respect to the re-classification and re-zoning of the identified sites.

## 2.0 IDENTIFIED SITES

The planning proposal to ELEP 2012 had identified 22 amendments required as general tidy-up items to the ELEP. Of these, only five amendments related directly to land where the proposed required re-classification. The following table includes the cartographical information in respect to the sites and the explanation/intention as described within the overall planning proposal.

Table 1

LOT ID AND ADDRESS	LAND AREA	AMENDMENT EXPLANATION	INTENTION
Part lot 4 DP 1090948 Bruce Cameron Drv, Moruya, NSW	12,574m <sup>2</sup>	To rezone part of Lot 4 DP 1090948 (Moruya Airport) from RE1 (Public Recreation) to SP1 (Special Activities) and reclassify changed area to operational land and change the lot size map.	To recognise existing infrastructure associated with Moruya airport and enable further associated infrastructure for the proposed re-development of the airport land.
Lot 71 DP 601741 521 George Bass Drv, Malua Bay, NSW	5897m <sup>2</sup>	Reclassify Lot 71 DP 601741, 521 George Bass Drive, Malua Bay to operational land.	In line with Councils infrastructure improvement plan it is intended to develop a sewer pumping station upon the land.
Lot 1 DP 1173024 Law Lane, Mogo NSW	37,640m <sup>2</sup>	Reclassify Lot 1 DP 1173024, Law Lane, Mogo to operational land.	To recognise the existing water treatment plant on site and enable development of further associated infrastructure.
Part lot 45 DP 1151309 1 Evans Street, Moruya, NSW	887m <sup>2</sup>	Reclassify part of Lot 45 DP 1151309, 1 Evans Street, Moruya to operational land.	To provide legal access to a dwelling on adjoining land which had previously using community land for practical access.
Lot13 DP 838695 Costin Street, Narooma, NSW	552.1m <sup>2</sup>	Reclassify Lot 13 DP 838695, Costin Street, Narooma to operational land.	To enable the transfer of land to adjoining owners, where-by the land is currently land-locked and not required for public, infrastructure or recreational purpose.

Within the purpose of the planning proposal, the intention is to undertake a re-classification of each portion of land identified. In addition the land at Moruya Airport will also be subject to a rezoning.

## 3.0 PLANNING PROPOSAL AND LEGISLATION

Where Council is considering land re-classification the LG Act requires that Council undertakes public notification and follows through with a 'public hearing' as required under s29 of the Act. A public hearing provides the opportunity for affected and interested members of the community to be familiar with the purpose of the individual matters of the proposal and to make verbal submissions in respect to the proposed action.

A public hearing was held on Friday 11 September 2015. The hearing, held in Council Chambers, was attended by three members of the public who were directly affected by the proposal and required some clarification to certain aspects of the intended future use and/or uses that may eventuate.

#### 4.0 SUBMISSIONS

The planning proposal was placed on public exhibition for 14 days during July 2015. During this exhibition period the Council received three written submissions that directly related to the described land. Two of the submissions indicated support for the proposed re-classification generally and were specific to the Evans Street land. The third submission requested that Council consider an alteration to the extent of the described area. A fourth submission was received by Council after the notified exhibition dates.

The late submission requested further clarification of the intended Council works that were proposed for the George Bass Drive, Malua Bay land. Due to the timing of this submission and that the land owner had indicated they would be in attendance at the public hearing, Council advised that a response to the enquiry would be provided at the hearing.

The following table provides a summary of submissions and to which land the submission related (if any).

Table 2

LAND	SUBMISSION DATE	SUBMISSION CONTEXT	SPECIFIC CONTEXT
1 Evans Street, Moruya	8 July 2015	Request an alteration to extent of affected land.	The submission requested that Council consider extending the area of the re-classification to provide a similar access intent for the neighbouring land.
1 Evans Street, Moruya	22 July 2015	General support to proposal for re-classification	(No specific context raised)
1 Evans Street, Moruya	22 July 2015	General support to proposal for re-classification	(No specific context raised)
521 George Bass Drv, Malua Bay	31 August 2015	Advice of attendance at hearing plus request for further development intent for the land	Raised a number of specific enquiries as to the nature and amenity issues in respect to the desired Council infrastructure development intended for the land.

It is important to note that only two of the five sites generated a submission and that none of the submissions were in any way opposing any of the action or future intent for the land, as described in the exhibition material.

The land located at 521 George Bass Drive Malua Bay raised the greatest discussion during the public hearing being offered by the immediate and adjoining neighbours. These enquiries, mainly in respect to the anticipated future provision of Council sewer infrastructure, were to a certain extent quite valid. The residence immediately to the south of the site is currently used as a holiday residence so is not occupied full-time, however the land owners indicated that their intention is to retire in the near future and reside full time within the residence. An existing sewer pumping facility is located directly to the rear of the neighbours property and has provided some concern as to its operation in the past. In that regard the land owners were seeking further detail as to the nature, bulk and operational amenity of a much larger facility located within close proximity to their residence.

Council engineering staff had provided some preliminary design detail which was discussed with the land owners. As to when this infrastructure would be commissioned and operational, was not available for the hearing. The land owners requested that Council remain in contact with them and provide a works time-frame when such advice is further established by engineering staff.



It is understood that in respect to all identified properties the action of re-classification will be at the instigation and to benefit Council in its ongoing land management actions. However in respect to the land at 1 Evans Street, Moruya the action will have a direct benefit for the adjoining private land owner, but in that respect the action and re-classification effect simply rectifies a practical vehicle access issue and does not in any way provide future development benefit for the land owner.

#### 5.0 SITE SPECIFIC RECOMMENDATIONS

The public exhibition period generated only four written submissions, of these three related to the one site. Where the submissions raised specific issues, these were not in themselves directly concerned with the process of the re-classification and re-zoning. It is apparent from the submissions and in discussion during the public hearing that land owners and adjoining owners were requiring clarification as to the future use of the land, rather than the re-classification process itself.

However, there needs to be an assessment as to whether the retention or the land as 'community land' is offering the optimal opportunity to best achieve good land management and/or a desirable community benefit. Community land' can only be developed for the wider community benefit transferring the land to 'operational' will more readily facilitate the potential as described within the planning proposal. Conversely, leaving the land as 'community' and vacant can have unintended social consequences. Unattended and poorly maintained vacant land tends to attract anti-social behaviour and renders Council vulnerable to litigation risk. Likewise, retaining the land under community classification requires Council to devote resources to maintenance which could be allocated more efficiently if the land were operational and available to be utilised for the intended purpose.

The question of re-classification and re-zoning as it relates to the allotments, the subject (in part) of the planning proposal, will be assessed in light of the gained overall benefit delivered to the community through the transfer process. It is not the purpose of this report to consider or presage, the action of Council in the future use or disposal of the land, but to assess the benefit of the transfer in terms of community benefit.

The following property assessment (Table 3) takes into consideration the current status of each land parcel and the contribution that parcel of land is offering in community benefit (if any) and whether a more managed contribution could be advantaged through the re-classification and re-zoning of the land.

In making an assessment of each of the selected sites, consideration will be given to a number of distinctive attributes, these include

- Location;
- Community contribution;
- Constraints;
- Potential benefit, and
- Submission issues.

Each of these attributes has been assessed in terms of the impact the transfer will impose on the allotment itself and for the community in its future benefit from the land.

Table 3

Site: Part lot 44 DP 1090948; Bruce Cameron Drive, Moruya

ATTRIBUTE	COMMENT
Location/siting	The land currently provides in part, access to the airport terminal building and vehicle access to the main airport parking area.
Community contribution	The land, as part of the main airport facility, is a major contributor to the local community and as an integral part of local economic structure.
Constraints	No obvious constraints to the continued use of the land.
Potential benefit	It is understood that the land forms part of the overall future airport precinct development masterplan. The land will need to be re-classified to ensure optimal recognition of the masterplan outcomes.
Submission issues	No submissions received
<b>RECOMMENDATION</b>  Due to the necessary contribution this land will provide in the overall airport masterplan and that there was no objection raised through the exhibition of the planning proposal, it is recommended that the land proceed for re-classification and re-zoning.	

Site: Lot 71 DP 601741; 521 George Bass Drive, Malua Bay

ATTRIBUTE	COMMENT
Location/siting	In relation to the existing surrounds the site is located at a very low elevation. The site is also positioned in close alignment to the existing major sewer infrastructure. Anecdotal evidence suggests the site is susceptible to flooding from local creek and overland drainage.
Community contribution	Although the site is in very close proximity to the existing and adjoining residences fronting George Bass Drive, the elevation of the land and its relationship to existing infrastructure would suggest the most expedient location for the proposed infrastructure augmentation. In terms of benefit to the greater community and efficiency of managing sewer augmentation, the site offers a greater holistic benefit.
Constraints	Local creek flooding; Local residential amenity.
Potential benefit	Direct benefit for future sewer infrastructure augmentation program.
Submission issues	Local residential amenity; Possible noise disturbance; Possible intermittent disturbance due to servicing and maintaining infrastructure
<b>RECOMMENDATION</b>  Due to the greater community benefit provided by the infrastructure upgrade it is recommended that this site continue in the proposal for re-classification. However, it is suggested that Council engineering staff engage with the adjoining land owners, with advice in respect to the on-going development infrastructure and building design as this progresses.	



Site: Lot 1 DP 1173024; Law Lane, Mogo

ATTRIBUTE	COMMENT
Location/siting	The site currently accommodates a water storage reservoir and water treatment plant. These facilities are substantially fully developed on the land.
Community contribution	Essential water supply infrastructure.
Constraints	Elevated land, surrounded by State Forest
Potential benefit	Existing
Submission issues	No submissions
RECOMMENDATION	
Continue with re-classification proposal	

Site: Part lot 45 DP 1151309; 1 Evans Street, Moruya

ATTRIBUTE	COMMENT
Location/siting	The identified land is sited at the Northern end of Evans Street and currently forms part of the Gundry Oval Recreational Area. The land has a common boundary with the western boundary of adjoining residential allotments. A short section of a small ephemeral gully is present within the land.
Community contribution	The land is currently uncommitted and forms part of the very eastern fringe of the recreational area. Although forming part of the open space, the land would not be suitable for furthering recreational facilities.
Constraints	Part of a larger Moruya River flood plain; Contains a short and usually dry gully.
Potential benefit	Directly benefits the adjoining land owner in providing practical vehicle access to an existing dwelling on the private land.
Submission issues	Received two form submissions supporting the reclassification. An additional submission was received by a land owner to the south of the proposed land requesting an extension of the defined land area to permit similar rear access.
RECOMMENDATION	
Noting the benefit to the land owner and that the specific proposal had unqualified Council support, it is recommended that the re-classification proposal continue.	

Site: Lot 13 DP 838695; Costin Street, Narooma

ATTRIBUTE	COMMENT
Location/siting	The land is sited across the southern boundary of three existing private allotments fronting Costin Street, South Narooma. It would appear that the land formed part of a road alignment in an historic development layout which has since been superseded by more recent surrounding development.
Community contribution	Due to the positioning of the land and that it is now land-locked by surrounding private development, there is very little opportunity for community benefit.
Constraints	Heavily vegetated and has no practical access.
Potential benefit	Benefit only attributed to adjacent land owners.
Submission issues	No submissions.
<b>RECOMMENDATION</b> Noting the location and constraints upon the land and that a wider benefit is considered unlikely, it is recommended that the land continue for re-classification.	

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**PSR15/057    PLANNING PROPOSAL - EUROBODALLA LEP 2012 - AMENDMENT                      81.0277.R**  
**NO. 9 - REZONING OF LAND AT BATEMANS BAY**

Responsible Officer:    Lindsay Usher - Director, Planning and Sustainability Services

Attachments:            1. Under Separate Cover - Amended Planning Proposal  
                                 2. Submissions Summary and Responses  
                                 3. Confidential - Submissions Combined

Focus Area:              Sustainable Communities

Delivery Program Link: S5.2 Maintain, update and communicate planning information and issues

Operational Plan Link: S5.2.2 Participate in State and regional planning forums and environmental reviews and report on and communicate issues relating to strategic planning

### **EXECUTIVE SUMMARY**

On 24 March 2015, Council endorsed a planning proposal to rezone land at Batemans Bay from the IN1 – General Industrial and R3 – Medium Density Residential zones to the B5 – Business Development zone for the purpose of seeking a gateway determination. The subject land included the Shady Willows Holiday Park, the former Bunnings site and a number of dwellings fronting Gregory Street.

The Department of Planning and Environment issued a Gateway Determination on 11 May 2015 and the planning proposal was placed on public exhibition from 26 August to 9 October 2015. 14 submissions, including one petition with 44 signatures, were received.

This report outlines and responds to the issues raised in submissions and presents an amended Planning Proposal to Council with a recommendation to adopt and forward the Planning Proposal to the NSW Department of Planning and Environment and Parliamentary Counsel to make the plan, subject to the proponent undertaking a traffic study to the satisfaction of the NSW Roads and Maritime Services. In response to submissions received, the Planning Proposal has been amended to remove the dwellings fronting Gregory Street from the area to be rezoned B5 Business Development.

### **RECOMMENDATION**

THAT Council:

1. Adopt the amended Planning Proposal attached to this report, subject to the submission of a traffic report by the proponent that addresses the issues raised by the NSW Roads and Maritime Services.
2. Resolve to make the amendments to the Eurobodalla Local Environmental Plan 2012 following the completion of a traffic study to the satisfaction of the NSW Roads and Maritime Services.
3. Forward the Planning Proposal to Parliamentary Counsel with a request to draft the

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amendments and to the NSW Department of Environment and Planning and Environment for reporting and monitoring purposes.

4. Notify in writing all those who made submissions of its decision.
5. Notify in writing the proponent and all relevant property owners of its decision.

**BACKGROUND**

Council received a request to consider the rezoning of land at Batemans Bay from the R3 Medium Density Residential and IN1 General Industrial zones to the B5 Business Development zone. Changes to the Height of Buildings Map and Lot Size Map were also proposed. A planning report was submitted by the proponent in support of the request.

The subject land is currently occupied by the Shady Willows Holiday Park (caravan park), the former Bunnings store and a number of residential properties fronting Gregory Street.

The proposal did not initially include the dwellings fronting Gregory Street. Council staff suggested to the proponent that these properties be included to ensure a broader strategic review of the area was undertaken. The proponent wrote to the land owners at that time to seek their views, but none were forthcoming.

A planning proposal was then developed and endorsed by Council on 24 March 2015 for submission to the Department of Planning and Environment for a Gateway Determination. The planning proposal included the proposed rezoning and lot size change, but Council did not support the inclusion of the proposed change to the building height map for the land. Council wrote to all land owners within the precinct prior to preparing the planning proposal and prior to the Council meeting to seek their views and inform them of the process. No written responses were received.

The Gateway Determination was issued on 11 May 2015. Delegation to Council to finalise the planning proposal following public exhibition was granted.

The planning proposal was placed on public exhibition from 26 August to 9 October 2015 with 14 submissions received, including one petition with 44 signatures.

**CONSIDERATIONS**

**Legal**

The Environmental Planning and Assessment Act 1979 outlines the processes that must be followed in order to make an amendment to an environmental planning instrument, such as a Local Environmental Plan. The subject amendments have been prepared in accordance with these requirements.

**Policy**

The Planning Proposal has been prepared in accordance with Department of Planning and Environment Guidelines for preparing planning proposals and local environmental plans.

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**Environmental**

Environmental issues have been considered as part of the planning proposal. There are no significant environmental values on the subject land. The land drains to the “watergardens” wetland (not a SEPP 14 wetland) and any increased stormwater runoff generated by development of the land will need to be stored and treated on site prior to entering the natural system. A stormwater master plan will be required as part of any future development application for the land.

The Gateway Determination required a Stage 1 Preliminary Contamination Assessment to be undertaken by the proponent prior to community consultation. The proponent submitted a Stage 1 assessment which recommended that a Stage 2 assessment be undertaken as part of any future development application for the land. The Stage 1 assessment found that the risk of contamination of the land is low, however soil testing should be undertaken as part of the Stage 2 assessment with respect to areas of fill of unknown origin, low lying areas where any potential contaminants may be more concentrated, an area that may have previously contained a fuel tank and under any timber-framed building that may have been treated for white ants. The assessment also recommended an asbestos assessment be undertaken as part of any future development application.

**Asset**

The site is serviced with water and sewer services that have capacity to accommodate a bulky goods type development. Such a development may increase traffic volumes in the vicinity of the site and impact on the road network.

The NSW Road and Maritime Services has requested that a traffic impact study be undertaken prior to the rezoning. Further discussion on this matter is included in the Community Engagement section of this report.

Development of the site will also require upgrading of stormwater infrastructure as a condition of any future development consent.

**Social Impact**

Social impacts have been considered as part of the planning proposal. In response to objections from land owners relating to the loss of public and Aboriginal housing in the subject area, these dwellings fronting Gregory Street are recommended to be removed from the planning proposal.

It is noted that the caravan park owner has obligations under the Residential Parks Act 1998 (s102 and s102AA) with respect to a long term tenant who is issued a termination notice on the grounds that there will be a change of use, including providing 12 months to vacate the premises and potentially providing compensation to the tenant. The tenant has the right to apply to the NSW Civil and Administrative Tribunal for an order to postpone the date for vacating the site.

Some of the existing improvements upon the land (particular the former Bunnings building) are aged and visually detract from the streetscape. Redevelopment of the land will have the potential to improve the visual quality of the area.

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**Economic Development Employment Potential**

Economic impacts have been considered as part of the planning proposal. The proposal will generate growth in business development and employment opportunities in Batemans Bay, particularly in bulky goods development which currently have very limited opportunities to develop in Batemans Bay.

Additional business development opportunities in Batemans Bay will have a positive impact on the local economy in terms of construction and operational employment opportunities and increased retail competition.

The proposal will displace an existing caravan park which, under the current approval, provides 5 long-term sites and 78 short-term sites. There are no campsites. The rezoning proposal will therefore result in the loss of some tourist and visitor accommodation in Batemans Bay. It should however be noted that alternative development opportunities already exist on the land, such as redevelopment for medium density housing, and should this rezoning not proceed, the current land owners could propose alternative residential development of the land.

**Community Engagement**

We have consulted with the community by seeking feedback through public exhibition from 26 August to 9 October 2015, where the planning proposal was placed on Council's website, at the Batemans Bay library and Moruya customer service centre. In accordance with the requirements of the Environmental Planning and Assessment Act 1979, a notice was also placed in the local paper to inform the community of the proposed amendments.

Of the 14 submissions received, ten objected to the planning proposal. The most common issues raised related to the potential for increased traffic, particularly heavy vehicle traffic and increased noise. These and other issues raised relate to the future use of the land and can be addressed in the design of any future development and in the conditions of development consent, if consent were to be issued. As discussed below, a traffic study has been requested by the NSW Roads and Maritime Services prior to the rezoning being completed.

Three of the submissions were from owners of residential development fronting Gregory Street within the subject area proposed to be rezoned. Two of these submissions objected to being included within the proposed rezoning and one identified a preference not to be included in the proposed rezoning. Given these submissions, and on the basis that the remaining land within the proposed rezoning is of a suitable shape and size for development of large-floor plate retail activities, it is proposed to exclude the dwellings fronting Gregory Street (2A South Street and 4 to 12 Gregory Street) from the area proposed to be rezoned. The only exception to this is a dwelling on the same site as the former Bunnings hardware store.

The proponents have been advised of this recommended change to the planning proposal. In response the proponent has requested that the dwelling at 12 Gregory Street (which is in the same ownership as the Shady Willows Holiday Park) be retained within the proposed B5 zoning to provide a safe ingress and egress from any development on the site. In giving further consideration to this issue, it is not proposed to change the recommendation to remove the dwellings fronting Gregory Street from the planning proposal. The former Bunnings site has a direct frontage to Gregory Street and any future development of this site could propose an

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access point from Gregory Street in this location (subject to the outcomes of a traffic study). Any future development of the Shady Willows site could, through negotiation with the adjoining land owner, connect into that access point (should this be satisfactorily addressed through the required traffic study). This is preferable to there being potentially two access points on Gregory Street, should the sites be developed separately.

A submission from the NSW Roads and Maritime Services (RMS) has requested that a traffic study be undertaken prior to the rezoning. The RMS has raised concerns about the possible increase in traffic generation from future development of the land and its impact on the intersection of the Princes Highway and the Old Princes Highway. The RMS has also stated that the opportunity may be lost for future development contributions to be applied to any upgrade if it is not considered prior to the rezoning.

The RMS has rightly recognised the potential for future development of the land to have an impact on the road network and such future development may warrant upgrades to the road network. However, a portion of the site is already zoned IN1 General Industrial and can be developed for a range of traffic generating industrial developments without the need for this planning proposal. The remainder of the site can also be significantly intensified for medium density residential development under the current R3 zone. It is possible that redevelopment of the land under the current zoning could have a greater impact on the road network than a future development in the B5 Business Development zone. It is noted that the Gateway Determination for the planning proposal did not require a traffic impact study prior to community consultation.

Regarding the funding of road upgrades, Council's current Section 94 Development Contributions Plans relate to improvements to the local road network, not to State or National Highways (the only current exception is the intersection of the Princes Highway with the proposed link road south of Batemans Bay). However, there remains the opportunity for a Voluntary Planning Agreement to be negotiated with a proponent at the development application stage. Alternatively, road works can be required as conditions of development consent where they reasonably relate to the impact of the proposed development.

At this rezoning stage, where there is no specific development proposal, a traffic study will need to be at a high level and be based on a range of assumptions about future development outcomes. The outcomes of such a traffic study will most likely include recommendations for the preferred location of future access points and potential traffic management measures that may be required. These outcomes will guide more detailed traffic assessment at the development application stage. On this basis, it is considered that Council can resolve to adopt the planning proposal subject to the completion of a traffic study to the satisfaction of the NSW Roads and Maritime Services.

A summary of the submissions and proposed responses is included in the attachment to this report.

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**CONCLUSION**

The planning proposal to rezone land at Batemans Bay to the B5 Business Development zone and modify the lot size map for the subject land was exhibited in accordance with the requirements of the Gateway Determination issued by the Department of Planning and Environment.

Of the 14 submissions received, ten objected to the proposal on various grounds relating to the future development of the land. These concerns can be addressed as part of any future development application. Two of the objections were from land owners within the area proposed to be rezoned. Given these objections, the dwellings fronting Gregory Street are proposed to be removed from the proposed rezoning. This will not prejudice the development of the remaining land for large-floor plate retail development.

In response to the submission from the NSW Roads and Maritime Services requesting a traffic study to assess the potential impacts of future development facilitated by this planning proposal on the road network, it is recommended that Council resolve to adopt the planning proposal subject to the completion of a traffic study to the satisfaction of the NSW Roads and Maritime Services.

Subject to the above, the amended planning proposal can be finalised. Council has received delegation to finalise this Planning Proposal.



**PLANNING PROPOSAL FOR LAND AT BATEMANS BAY - SUBMISSIONS SUMMARY AND RESPONSES**

No.	Issue	Staff Recommendation
1	Object to rezoning. Wish to maintain a residential zoning of the dwellings fronting Gregory Street. Council should seriously consider the impact of heavy vehicles and delivery vehicles on tenants. Also object on the grounds that the subject land has cultural significance to the Walbunja people.	Recommend removal of dwellings fronting Gregory Street from area to be rezoned. The cultural significance of the land to the Walbunja people can be considered as part of any future development application for the land.
2	Object to rezoning. Concerned that house values will fall, traffic on Bavarde Avenue will increase and noise impacts from industry. Concerned about loss of Aboriginal housing on Gregory Street. Not all people affected were notified.	Recommend removal of dwellings fronting Gregory Street from area to be rezoned. Traffic and noise issues can be addressed through design of any future development on the land. The B5 zone facilitates large floor-plate retail activities (bulky goods retail), not industrial development. There is no evidence to support any impact from development of the land on house values in the area. In accordance with standard procedures, all persons who adjoin and live opposite the subject area were notified in writing of the planning proposal. Broader notification of the community was undertaken through a public notice in the local newspaper.
3	Object to rezoning. Concerned about increase in heavy vehicles, more noise, loss of privacy, devaluing land, extra traffic. Concerned where driveways will be located. Also object to any high-rise in this area.	Traffic, heavy vehicles, location of driveways, noise and privacy issues can be addressed through design of any future development on the land. The planning proposal does not involve high-rise development. There is no evidence to support any impact from development of the land on house values in the area.
4	Urge Council to carefully consider proposed change. Concerned that land might be used as a bulky goods terminal or similar heavy industrial. Existing Kylie Crescent area is more suitable and adequately caters for this kind of development. Concerned at flow on impacts for residents.	The B5 zone facilitates large floor-plate retail activities (bulky goods retail), not heavy industrial development. There is currently very limited available land in the Batemans Bay area for new bulky goods retail type developments. Impacts on residents from development of the land can be considered as part of any future development application.
5	Support the proposed rezoning. Rezoning to B5 will encourage the renewal of a prominent location which has potentially higher commercial, employment and community benefits.	Noted

6	Object to rezoning. Concerned about increase in traffic and noisy trucks. Intersection of South Street and Old Princes Highway is currently unsafe. development on the land.
7	No fundamental objection, however preference is for dwellings fronting Gregory Street to be excluded from the planning proposal.  Recommend removal of dwellings fronting Gregory Street from area to be rezoned.
8	Request a traffic impact study prior to rezoning. Future development may warrant upgrades, or contributions to upgrades to the local road network, including the intersection to the Princes Highway and the Old Princes Highway. The opportunity for development contributions towards those upgrades may be lost if it is not considered prior to rezoning.
9	No objection.

The RMS have rightly recognised the potential for future development of the land to have an impact on the road network and such future development may warrant upgrades to the road network. However, a portion of the site is already zoned IN1 General Industrial and can be developed for a range of traffic generating developments without the need for this planning proposal. The remainder of the site can also be significantly intensified for medium density residential development under the current R3 zone. It is possible that redevelopment of the land under the current zoning could have a greater impact on the road network than a future development in the B5 Business Development zone.

Regarding the funding of road upgrades, Council's current Section 94 Development Contributions Plans relate to improvements to the local road network, not to State or National Highways. However, there remains the opportunity for a Voluntary Planning Agreement to be negotiated with a proponent at the development application stage. Alternatively, road works can be required as conditions of development consent where they reasonably relate to the impact of the proposed development.

At this rezoning stage, where there is no specific development proposal, a traffic study will need to be at a high level and be based on a range of assumptions about future development outcomes. The outcomes of such a traffic study will most likely include recommendations for the preferred location of future access points and potential traffic management measures that may be required. These outcomes will guide more detailed traffic assessment at the development application stage.

Noted

10	<p>Object to rezoning. Wish to maintain a residential zoning of dwelling on Gregory Street. Concerned about increased traffic, heavy traffic, increased noise and exhaust pollution, decreased property value, loss of privacy, reduced quality of life, loss of natural habitat. Not all people affected were notified.</p>	<p>Recommend removal of dwellings fronting Gregory Street from area to be rezoned. Traffic, heavy vehicles, noise, privacy and environmental issues can be addressed through design of any future development on the land. There is no evidence to support any impact from development of the land on house values in the area. In accordance with standard procedures, all persons who adjoin and live opposite the subject area were notified in writing of the planning proposal. Broader notification of the community was undertaken through a public notice in the local newspaper.</p>
11	<p>Petition containing 44 signatures. Object to rezoning to Industrial for the following reasons:</p> <ul style="list-style-type: none"> <li>- Increased hazard to residents</li> <li>- Poor community consultation</li> <li>- Industrial development</li> <li>- Increased noise and traffic movements of heavy/commercial vehicles</li> <li>- Increased hours of operation</li> <li>- No industrial zoning to be introduced</li> </ul> <p>Request mayor and councillors to attend onsite meeting (Gregory Street).</p>	<p>The planning proposal proposes rezoning to B5 Business Development. This is not an industrial zone. In accordance with standard procedures, all persons who adjoin and live opposite the subject area were notified in writing of the planning proposal. Broader notification of the community was undertaken through a public notice in the local newspaper. Traffic, heavy vehicles, safety, noise and hours of operation issues can be addressed through design of any future development on the land. The Mayor and Council staff have attended site meetings with some residents to discuss the planning proposal.</p>
12	<p>Object to rezoning. Concerned about increased noise from trucks and heavy vehicles.</p>	<p>Noise from trucks and heavy vehicles can be addressed through design of any future development on the land. Traffic, heavy vehicles, noise and privacy issues can be addressed through design of any future development on the land. There is no evidence to support any impact from development of the land on house values in the area.</p>
13	<p>Object to rezoning. Not all residents were notified. Concerned about extra heavy vehicle movement in the area, noise, loss of privacy, devaluing properties and extra traffic.</p>	<p>In accordance with standard procedures, all persons who adjoin and live opposite the subject area were notified in writing of the planning proposal. Broader notification of the community was undertaken through a public notice in the local newspaper.</p>

14	Object to rezoning. The subject land has cultural significance to the Walbunja people. Request meeting with Council representatives to discuss cultural significance of land and suggest ways Council and land owners can recognise and pay honour to the original owners and Native Title claimants. Request a proper survey to identify any Aboriginal sites before further development.	A survey of the land and consideration of its cultural significance to the Walbunja people can be incorporated into any future development application for the land. Council staff attended a site meeting with Walbunja elders to discuss their concerns.
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**PSR15/058 PARLIAMENTARY INQUIRY INTO REGIONAL PLANNING PROCESSES IN NSW E90.0008**

Responsible Officer: Lindsay Usher - Director, Planning and Sustainability Services

Attachments: 1. Eurobodalla Shire Council submission

Focus Area: Sustainable Communities

Delivery Program Link: S5.2 Maintain, update and communicate planning information and issues

Operational Plan Link: S5.2.2 Participate in State and regional planning forums and environmental reviews and report on and communicate issues relating to strategic planning

### **EXECUTIVE SUMMARY**

The NSW Parliament has commenced an inquiry into Regional Planning Processes in NSW. This inquiry is a current Legislative Council inquiry conducted by the State Development Committee. The terms of reference was referred to the committee by the Hon Troy Grant MP, Deputy Premier, on 13 August 2015.

Submissions to the inquiry are due by 11 December 2015. The first public hearing will take place in Sydney on 4 March 2016. Further hearings and regional visits will be held throughout 2016. The committee is likely to report in late 2016.

Key issues included in the submission are:

- The upcoming Department of Planning and Environment Regional Plan should be a comprehensive, whole of Government, whole of sector plan, including discussion or identification of strategic local, regional and State level infrastructure items.
- Lack of local / regional adaptability for state level legislation / regulation / policy.
- There is a need to review the approval process to increase exempt and complying development in coastal areas.
- Integrated development could be further improved so that subsequent approvals are not required.
- A Regional Planning Act is not considered appropriate, but a new Environmental and Planning and Assessment Act (EP&A Act), reducing the number of acts from EP&A Act, Threatened Species Conservation Act, Rural Fires Act, Native Vegetation Conservation Act, Heritage Act, etc and streamline the approval process under a new Act would be welcomed.
- Government led incentives on the upfront cost of regional development could assist regional development. This could be in the form of a regional development funding program to help offset upfront costs of qualifying regional development.

### **RECOMMENDATION**

THAT Council endorse the attached submission to the Parliamentary inquiry into regional planning processes in NSW.

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**PSR15/058 PARLIAMENTARY INQUIRY INTO REGIONAL PLANNING PROCESSES IN NSW E90.0008**

**BACKGROUND**

Council was briefed on the inquiry and its terms of reference on 20 October 2015 and again on 17 November 2015. Staff from various divisions within Council have met to discuss the inquiry and have prepared a submission for the consideration by and endorsement of Council. Submissions to the inquiry are due by 11 December 2015.

**CONSIDERATIONS**

Terms of reference of the inquiry are:

1. Opportunities to stimulate regional development under the planning framework including through legislation, policy, strategy and governance.
2. Constraints to regional development imposed by the planning framework, and opportunities for the framework to better respond to regional planning issues.
3. The suitability of a stand-alone regional planning Act.
4. The effectiveness of environmental planning instruments including State Environmental Planning Policies and Local Environmental Plans (including zoning) to stimulate regional development, and opportunities to improve their effectiveness.
5. Opportunities to increase delegations for regional councils in regard to the planning making processes.
6. Opportunities for strategic planning to assist in responding to challenges faced by communities in regional areas including through Regional Plans.
7. Opportunities for government-led incentives that promote regional development.
8. Pathways to improve decision making processes for regional development proposals, including increasing the use of complying development, improving negotiation processes for voluntary planning agreement.
9. Any other related matter.

A submission addressing the terms of reference has been prepared and is attached. Key issues included in the submission are:

- The upcoming Department of Planning and Environment Regional Plan should be a comprehensive, whole of Government, whole of sector plan, including discussion or identification of strategic local, regional and State level infrastructure items.
- Lack of local / regional adaptability for state level legislation / regulation / policy.
- There is a need to review the approval process to increase exempt and complying development in coastal areas.
- Integrated development could be further improved so that subsequent approvals are not required.
- A Regional Planning Act is not considered appropriate, but a new Environmental and Planning and Assessment Act (EP&A Act), reducing the number of acts from EP&A Act, Threatened Species Conservation Act, Rural Fires Act, Native Vegetation Conservation Act, Heritage Act, etc and streamline the approval process under a new Act would be welcomed.

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**PSR15/058 PARLIAMENTARY INQUIRY INTO REGIONAL PLANNING PROCESSES IN NSW E90.0008**

- Government led incentives on the upfront cost of regional development could assist regional development. This could be in the form of a regional development funding program to help offset upfront costs of qualifying regional development.

**Legal**

The inquiry into Regional Planning Processes in NSW is a current Legislative Council inquiry conducted by the State Development Committee. Terms of reference for the inquiry are related to NSW planning legislation.

**Social Impact**

The terms of reference for the inquiry indicate that there is the potential for positive social impacts as a result of improved regional planning process arising from the inquiry, should appropriate changes to regional planning processes be implemented.

**Economic Development Employment Potential**

The terms of reference for the inquiry indicate that there is the potential for positive economic development impacts as a result of improved regional planning process arising from the inquiry, should appropriate changes to regional planning processes be implemented

**Community Engagement**

The NSW Parliament has commenced an inquiry into Regional Planning Processes in NSW and has released terms of reference and called for submissions by 11 December 2015. The first public hearing will take place in Sydney on 4 March 2016. Further hearings and regional visits will be held throughout 2016. The inquiry is likely to report in late 2016.

**CONCLUSION**

The NSW Parliament has commenced an inquiry into Regional Planning Processes in NSW. Submissions to the inquiry are due by 11 December 2015. The attached submission has been prepared for the endorsement of Council.

## **PARLIAMENTARY INQUIRY INTO REGIONAL PLANNING PROCESSES IN NSW**

### **SUBMISSION BY EUROBODALLA SHIRE COUNCIL**

#### **1. Opportunities to stimulate regional development under the planning framework including through legislation, policy, strategy and governance.**

The key strategic planning document that will guide regional development is the NSW Government's regional plan. Currently, for the South Coast, this plan is called the South Coast Regional Strategy. While this has been a useful planning tool to support planning decisions, it could not be said to have stimulated regional development. For many years, Council has been calling on the NSW Government to include future major infrastructure items in a revised regional plan, as it is these major infrastructure items that will support confidence and investment by others in the region.

The Department of Planning and Environment are currently preparing a new regional plan, to be called the South Coast and Tablelands Regional Plan. At a workshop with the Department on 2 September 2015, Council was disappointed to learn that it now appears the new Regional Plan will not be a comprehensive, whole of Government, whole of sector plan, and be limited to a strategy for planners only. In particular, the apparent lack of discussion or identification of strategic local, regional and State level infrastructure items is a missed opportunity.

#### **2. Constraints to regional development imposed by the planning framework, and opportunities for the framework to better respond to regional planning issues.**

The planning framework provides for separate planning processes for regional development as defined under the State Environmental Planning Policy (State and Regional Development) 2011 and the Environmental Planning and Assessment Act 1979 provides specific planning processes for State Significant Development (including exemptions from certain other approvals that local developments must obtain where appropriate). Development that does not meet the definitions of regional development or state significant development, though they may be of regional importance, are therefore more constrained by the planning system.

There is a lack of local / regional adaptability for state level legislation / regulation / policy. Planning instruments such as the standard instrument Local Environmental Plan (SI LEP) and the Exempt and Complying Development Code SEPP being amended to metropolitan, rural and coastal LEPs rather than one size fits all would be a significant improvement. A South Coast Code SEPP and coastal SI LEP would be of assistance.

It is suggested that the approval process could be reviewed to increase exempt and complying development in coastal areas, for example allowing for more development to happen in environmentally sensitive areas if it is ancillary to an existing dwelling.



Integrated development could be further improved so that subsequent approvals are not required. If a development application is required, this should be the one and only approval required and agencies have their opportunity to comment / condition during the assessment process. An example of this is the Rural Fires Act and section 100B. A section 100B is required for a childcare centre. Under the standard instrument definition of childcare centre, it specifically excludes home-based childcare. The NSW Rural Fire Service is of the view that a child care centre includes home-based child care for the purpose of section 100B, even though the Rural Fires Act has no definition. Someone wishing to provide home-based child care would then submit a development application, it would be approved without it being considered integrated development but the Rural Fire Service could take action as a section 100B bushfire safety authority was not issued.

Short stay accommodation such as AirBNB is a similar issue. In some LGAs it does not require consent, but under the Rural Fires Act potentially needs a 100B bushfire safety authority. These examples demonstrate how the planning system can be difficult to navigate.

Integrating approvals like section 68 and section 138 into complying development would also simplify regional development.

Marine Park legislation requires a development application to be lodged even for internal changes to buildings in Batemans Bay. This is unnecessary.

### **3. The suitability of a stand-alone regional planning Act.**

It is unclear what a stand-alone regional planning Act would do differently from a state-wide or a metropolitan-based planning Act. Planning process across NSW, whether they be in cities or regions should be consistent. A regional planning Act is not considered appropriate, but a new Environmental and Planning and Assessment Act (EP&A Act), reducing the number of acts from EP&A Act, Threatened Species Conservation Act, Rural Fires Act, Native Vegetation Conservation Act, Heritage Act, etc and streamline the approval process under a new Act would be welcomed.

### **4. The effectiveness of environmental planning instruments including State Environmental Planning Policies and Local Environmental Plans (including zoning) to stimulate regional development, and opportunities to improve their effectiveness.**

Environmental planning instruments are not tools to stimulate development. They are tools to facilitate development through zoning, land use permissibility and development standards. In terms of facilitating development, environmental planning instruments should provide for as wide a range of permissible uses as possible and be flexible in enabling changes of land use and redevelopment. Development is stimulated when land owners and investors have confidence to increase their level of investment in their properties and their communities.

Specific comments under TOR number 2 are relevant here also.

**5. Opportunities to increase delegations for regional councils in regard to the planning making processes.**

Current delegations to Councils for plan making purposes appear to be working well for Eurobodalla. However, delegations cannot currently be made for planning proposals that include minor reclassifications of public land. This is a matter that could be further reviewed. Despite delegations, the plan making process still takes far too long. The time taken to receive Gateway Determinations from the Department of Planning and Environment is one area which could be improved.

Recent advice from the Department is that councils cannot make minor changes to LEP amendments after exhibition. This needs to be corrected and would seem to be an extreme reaction to a recent court decision.

Parliamentary counsel drafting LEP amendment documents after adoption of an LEP amendment also slows up the process. Drafting should be done by Council, within Departmental templates and reviewed by the Department and included in exhibition material.

**6. Opportunities for strategic planning to assist in responding to challenges faced by communities in regional areas including through Regional Plans.**

Covered in responses to other TORs.

**7. Opportunities for government-led incentives that promote regional development.**

An issue with development in regional centres is that land prices are not what they are in metropolitan areas so the costs of gaining approval and going through the approval process, delays etc are proportionally more of the land cost than they are in the metropolitan area. Therefore return on investment can be lower. This can be an inhibitor to regional development. 1,700 of our 3,000 businesses are owner run. Only 500 have more than 4 employees. Government led incentives on the upfront cost of regional development could assist. This could be in the form of a regional development funding program to help offset upfront costs of qualifying regional development.

**8. Pathways to improve decision making processes for regional development proposals, including increasing the use of complying development, improving negotiation processes for voluntary planning agreement.**

Council has previously made many submissions to the Department of Planning and Environment for improvements to the exempt and complying development system, particularly to increase the capacity for complying development in Eurobodalla. Please refer to specific comments in TOR number 2.

**9. Any other related matter.**

The requirements for Environment Protection Authority (EPA) licensing as it relates to infrastructure delivery appears at odds. On the one hand it appears set up to permit rural road construction (up to 5km in length) under the schedule without licensing, only now to be tripped up by an interpretation that the volume of material (intended more for gravel pit operation) should apply to road reconstruction. This (new) interpretation by the EPA to Roads and Maritime Services (RMS) recently caused us a delay whilst an EPA license was obtained for earthworks exceeding 30,000 tonnes. This makes no sense when you consider that to even gravel a section of road that long you would exceed the 30,000 tonnes. Apparently there have been fairly high level discussions between RMS/EPA on this issue with the result that RMS are now seeking licenses for relatively small earthwork jobs on rural classified roads. This is certainly not helping stimulate regional development.

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**PSR15/059 DEVELOPMENT APPLICATION 87/16 - BRIDGE PLAZA  
CLYDE STREET, BATEMANS BAY**

**84.0798.D**

Responsible Officer: Lindsay Usher - Director, Planning and Sustainability Services

Attachments: Nil

Focus Area: Productive Communities

Delivery Program Link: P3.1 Provide development assessment services

Operational Plan Link: P3.1.1 Assess and determine Development Applications

Applicant: Nix Anderson

Land: Lot 21 DP100129, Lot 1, 2 and 4 DP100129, Lot 1 DP 380318, Lot 4 DP585556

Area: 1.8074 hectares

Setbacks: Various

Height: 15.9 metres

Zone: B4 – Mixed Use

Current Use: Shopping mall, shops, motel, car park

Proposed Use: Shops, car park accommodation units

Description: Alterations to Bridge Plaza, expansion of car park, demolition of buildings, new retail premises, short term accommodation, solar panel installation and boundary adjustments

Permitted in Zone: Yes

DA Registered: 25 August 2015

Recommendation: Approval subject to conditions

**EXECUTIVE SUMMARY**

The report seeks Council determination of a development application for a proposal that involves redevelopment of a number of commercial properties located between Clyde and North Streets in Batemans Bay. The development includes:

- Converting the Clyde Motor Inn to retail space, car parking and short term accommodation with a public courtyard
- Construction of two new stand-alone shops in North Street
- Partial demolition of buildings in Clyde Street and complete demolition of three buildings in North Street
- Alteration of the North and Perry Street intersection with addition of a fourth leg to provide access to an additional 80 car parking spaces in an expanded Bridge Plaza car park
- Minor external changes to be made to the Bridge Plaza mall
- Streetscape works in North and Clyde Streets

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**PSR15/059 DEVELOPMENT APPLICATION 87/16 - BRIDGE PLAZA  
CLYDE STREET, BATEMANS BAY**

**84.0798.D**

The development application was publically advertised and a total of 16 objections were received, with the most common issue raised being the partial demolition of the Ned Kelly shop at 5 Clyde Street. To compensate for the partial loss of the building, the Applicant has agreed to restore the remaining portion of the building as recognition of its history and make it an attractive shop front whilst retaining its commercial function.

Analysis of the impact on traffic movement and circulation was undertaken by the Applicant's consultant and through computer modelling. This analysis found that the offset fourth leg will provide some additional delays at the signalised intersection. However it will be within acceptable tolerances and will not have a detrimental impact on the overall operation of the local road network.

The application is recommended for approval subject to conditions.

**RECOMMENDATION**

THAT Council approve Development Application 87/16 for redevelopment of retail premises and car park at Lot 21 DP100129, Lot 1, 2 and 4 DP100129, Lot 1 DP380318, Lot 4 DP585556, Clyde and North Streets, Batemans Bay subject to the following conditions:

**GENERAL CONDITIONS**

1. ***Approved plans***

The development must be carried out in accordance with the plans stamped and numbered 16/87 and supporting specifications and documentation, or as modified by any conditions of this consent, or as noted in red by Council on the approved plans.

<b>Plan No.</b>	<b>Date of Plan</b>	<b>Prepared by</b>
AD-DA000-REV E	5.8.2015	Scott Carver/Nix Anderson
AD-DA001-REV E	5.8.2015	Scott Carver/Nix Anderson
AD-DA002-REV E	5.8.2015	Scott Carver/Nix Anderson
AD-DA003-REV H	12.11.2015	Scott Carver/Nix Anderson
AD-DA004-REV E	2.11.2015	Scott Carver/Nix Anderson
AD-DA201-REV D	27.10.2015	Scott Carver/Nix Anderson
AD-DA202-REV E	12.11.2015	Scott Carver/Nix Anderson
AD-DA203-REV C	5.8.2016	Scott Carver/Nix Anderson
AD-DA204-REV C	5.8.2015	Scott Carver/Nix Anderson
AD-DA205-REV A	12.11.2015	Scott Carver/Nix Anderson
AD-DA301-REV D	27.10.2015	Scott Carver/Nix Anderson
AD-DA302-REV D	16.11.2015	Scott Carver/Nix Anderson
AD-DA303-REV E	27.10.2015	Scott Carver/Nix Anderson
AD-DA304-REV A	18.8.2015	Scott Carver/Nix Anderson
AD-DA305-REV B	12.11.2015	Scott Carver/Nix Anderson
AD-DA306-REV C	27.10.2015	Scott Carver/Nix Anderson
AD-CD124	6.10.2015	Scott Carver
AD-CD601	19.11.2015	Scott Carver
SS15-3005-101 REV D	4.11.2015	Site Image

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**PSR15/059 DEVELOPMENT APPLICATION 87/16 - BRIDGE PLAZA  
CLYDE STREET, BATEMANS BAY**

**84.0798.D**

SS15-3005-102-REV D	4.11.2015	Site Image
SS15-3005-501-REV D	4.11.2015	Site Image

Document title	Date of document	Prepared by
BASIX Certificates – 655544M_01-03	17.8.2015	ADP Consulting

*Note: Any alteration to the plans and/or documentation may require the lodgement of an application to modify the consent under s96 of the Environmental Planning and Assessment Act (EPA Act) 1979, or a fresh development application. Your Principal Certifying Authority should be consulted prior to any works contrary to this consent being carried out.*

*Where there is an inconsistency between the documents approved with this consent and the following conditions, the conditions shall prevail to the extent of that inconsistency.*

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE/ COMMENCEMENT OF WORKS**

**2. Section 94A Contributions (for development >\$0.5m)**

Pursuant to Section 80A(1) of the Environmental Planning and Assessment Act 1979, and the Eurobodalla Shire Council Section 94A Development Levy Contribution Plan – 2007 (S94A Plan) a development contribution is required to be paid to Council prior to issue of the Construction Certificate.

Where the cost of the development exceeds \$500,000, the S94A Plan requires a cost estimate report prepared by a registered Quantity Surveyor to be forwarded to Council with payment of the contribution. The S94A contribution amount is calculated at the rate of 1% of the total development cost and shall be used by Council in the provision, extension or augmentation of public amenities or public services. The amount to be paid is to be adjusted at the time of the actual payment, in accordance with the provisions of the S94A Plan.

*Note: Development costs include GST and are to be calculated in accordance with the definition of development costs in cl.25J of the Environmental Planning and Assessment Regulation 2000 at current prices.*

**3. Construction Certificate**

The construction works subject of this development consent **MUST NOT** be commenced until:

- (a) Detailed plans/specifications of the building have been endorsed with a Construction Certificate by the Principal Certifying Authority (PCA), and
- (b) The person having the benefit of the development consent has appointed a Principal Certifying Authority, and has notified the Council of the appointment, and

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**PSR15/059 DEVELOPMENT APPLICATION 87/16 - BRIDGE PLAZA  
CLYDE STREET, BATEMANS BAY**

**84.0798.D**

- (c) The person having the benefit of the development consent has given at least two days' notice to the Council of the person's intention to commence the erection of the building; and
- (d) Builders name and licence number has been supplied to the Principal Certifying Authority; and
- (e) A sign has been erected on site in a prominent position containing the information prescribed by Clause 98A(2) & (3) of the EP & A Regulations being the name, address and telephone number of the Principal Certifying Authority for the work, and name of the principal contractor for the work and telephone number on which that person may be contacted outside working hours, and stating that unauthorised entry to the site is prohibited. This sign must be maintained on site while work is being carried out and removed when the work has been completed.

**4. *Design of Food Premises***

The construction and fit-out of any food premises shall comply with the construction requirements of the Food Act 2003, Food Regulation 2004, Food Standards Australia New Zealand (FSANZ) and AS4674-2004 "*Design, Construction and Fit-Out of Food Premises*".

Prior to the issue of a Construction Certificate, plans and specifications showing compliance with the above, which include details of fixtures and fittings together with wall, floor and ceiling finishes to all food preparation, coolroom and storage areas, shall be submitted to and approved by the Principal Certifying Authority.

**5. *Signage and Line marking.***

Prior to commencement of works, or issue of a Construction Certificate, whichever is to occur first, the Street Signage and Line marking Plans shall be presented to the Local Traffic Committee with details by the Applicant on the consultation process including how the proposed changes to the traffic and parking is to be relayed to adjoining property owners and occupiers.

**6. *Car Parking Plan***

All buildings are to be provided with accessible car parking in accordance with the Building Code of Australia.

**7. *Application for Hoardings & Scaffolding***

If the site or building works will cause a public place to be unsafe or obstructed, a separate application shall be made to Council for approval under Section 68 of the Local Government Act 1993, to erect a hoarding or scaffolding in a public place. Such an application shall include structural design, structural certification and details of compliance with WorkCover requirements.

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**PSR15/059 DEVELOPMENT APPLICATION 87/16 - BRIDGE PLAZA  
CLYDE STREET, BATEMANS BAY**

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**8. *Water & Sewer Inspections***

All plumbing and drainage works (water supply, sanitary plumbing and drainage, and hot water) are to comply with Plumbing and Drainage Act 2011 and the Plumbing Code of Australia. Works must only be installed by a licensed person and must be inspected and given final clearance from Council prior to issue of any Occupation Certificates.

The following inspections are required to be carried out by Council in regard to the installation of plumbing and drainage works. Inspections may be arranged by contacting Council's Building Certification Unit:

- (a) Sanitary drainage under hydrostatic test and prior to backfilling trenches or covering
- (b) Hot and cold water plumbing under pressure test prior to covering
- (c) Internal stackwork under hydrostatic test prior to covering and
- (d) Issue of final satisfactory inspection.

**9. *Inspection of Sewer and Water Works***

Contact is to be made with Council's Water and Sewer Inspector on (02) 4474 7457 or 0418 412909, two days prior to commencing any excavation for the sewer or water extension, sewer pump station and rising main. Payment for inspections are to be in accordance with Council's fees and charges and are to be paid prior to final inspection. The final certificate to occupy/ use the development is not to be issued prior to submission of Work as Executed plans and testing of the new sewer or water main by Council.

**10. *Water and Sewer Infrastructure***

Prior to commencement of works, or issue of Construction Certificate, whichever is to occur first, Section 68 Approvals under the Local Government Act 1993, must have been obtained from Council for the water supply and sewer works.

**11. *Site Waste Management***

A site rubbish enclosure must be provided prior to commencement of any work for the period of the proposed work and remain in place for the duration of all works. All waste materials from the site must be disposed of at an authorised waste facility.

**12. *Streetscape Works***

Prior to commencement of works, or issue of Construction Certificate, whichever is to occur first, the Council must receive and approve detailed plans for streetscape works generally consistent with plans SS15-3005-101, B SS15-3005-102 B and SS15-3005-501 B. The plans shall include landscaping and finishes consistent with the surrounding Batemans Bay CBD. The streetscape works shall include provision for future undergrounding of overhead power supply.



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**PSR15/059 DEVELOPMENT APPLICATION 87/16 - BRIDGE PLAZA  
CLYDE STREET, BATEMANS BAY**

**84.0798.D**

**13. Stormwater and Site Drainage**

Prior to commencement of works, or issue of Construction Certificate, whichever is to occur first, a Section 68 Approval under the Local Government Act 1993 must have been obtained from Council for the drainage works. Plans are to be prepared by a suitably qualified person and approved by Council for the control of stormwater from the development. The final design is to be prepared in accordance with AS3500 and Council's Infrastructure Design Standard (IDS).

**14. Water Quality**

Water Quality treatment facilities for the areas that are the subject of any ground disturbance associated with the approved development shall be provided in accordance with Council's Infrastructure Design Standards (IDS) as follows:

- 80% retention of typical urban annual load for Total Suspended Solids (TSS)
- 45% retention of typical urban annual load for Total Phosphorous (TP)
- 45% retention of typical urban annual load for Total Nitrogen (TN)
- 70% retention of typical urban annual load for gross pollutants (litter).

**15. Acid Sulphate Soil**

The development site is within an area classified as Class 3 on LEP maps. If excavation is proposed below 1m of natural ground level, soil samples are to be assessed for content of acid sulphate material by a suitably qualified person and the results lodged with the Principal Certifying Authority prior to the release of Construction Certificate(s).

If acid sulphate materials are identified no excavation shall take place until the applicant has lodged an Acid Sulphate Soils Management Plan prepared by a suitably qualified person in accordance with the NSW Acid Sulphate Soils Manual. The plan is to be submitted for approval and undertake such measures as are required by Principal Certifying Authority.

**16. Soil and Water Management Plan**

Prior to commencement of works, or issue of Construction Certificate, whichever is to occur first, the applicant shall prepare a Soil and Water Management Plan (SWMP) to be incorporated in the Engineering Design/construction Plans. The SWMP is to be prepared in accordance with "Managing Urban Storm water: Soils and Construction – Volume 1, Landcom 2004".

Erosion control measures conforming to the approved Soil and Water Management Plan are to be in place prior to the commencement of any ground disturbance works.

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**PSR15/059 DEVELOPMENT APPLICATION 87/16 - BRIDGE PLAZA  
CLYDE STREET, BATEMANS BAY**

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**17. *Waste Management Plan***

A Waste Management Plan shall be submitted to and approved by Principal Certifying Authority, prior to commencement of works (including demolition works), or prior to the issue of Construction Certificate, whichever is to occur first. The Plan shall address, but not be limited to, the following matters:

- (a) details of reuse, that ensures the material removed from the site, to the maximum extent possible, is not disposed of to landfill.
- (b) details of demolition works and the presence of any asbestos or other hazardous waste
- (c) details of waste to be generated by the work
- (d) arrangements for removal of waste material from site
- (e) destination of waste materials being removed from the site.
- (f) a copy of the Waste Management Plan is to be submitted to Council.

**18. *Construction Management Plan***

A Construction Management Plan shall be submitted to and approved by Council prior to commencement of works, or issue of Construction Certificate, whichever is to occur first. The Plan shall address, but not be limited to, the following matters:

- (a) hours of work
- (b) contact details of site manager
- (c) arrangements for site deliveries and removal of material from site
- (d) details of hoardings
- (e) details of demolition works and the presence of any asbestos or other hazardous waste
- (f) traffic and/or pedestrian control measures
- (g) dust control measures
- (h) noise control measures
- (i) screening from adjoining properties
- (j) community consultation details regarding the impacts and disruptions that are likely to be caused by the development.

**Flood/Coastal Adaptation Conditions**

**19. *Floor Levels for Retail Buildings A & B***

The minimum floor level of Retail Shop B shall be at or above 2.44m AHD. This level is to be certified by a registered surveyor prior to the structure proceeding past the nominated level.

The minimum floor level of Retail Shop A shall be at or above 2.7m AHD. This level is to be certified by a registered surveyor prior to the structure proceeding past the nominated level.

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**20. *Ocean/Flood - Design Response***

Prior to issue of a Construction Certificate, submission to and approval by the Principal Certifying Authority, of certified designs by a suitably qualified and experienced Structural/Civil Engineer that the development below the Flood Planning Level (FPL) will be capable of withstanding the impact of the flood hazard applicable to the location. The design shall be in accordance with the Building Code of Australia. The applicable flood planning level for the development is 3.14m AHD.

**21. *Flood Compatible Materials***

Prior to the release of a Construction Certificate plans are to be submitted to the satisfaction of the Principal Certifying Authority showing all building materials used below the 1% (AEP) minimum habitable floor level, and including the floor, to be of flood compatible materials, ie. the structural integrity of the materials must not be adversely affected by repeated immersion in flood water. Details of these materials are to be consistent with Council's "Guidelines for Flood-Compatible Materials". The 1% AEP floor level is 3.14m AHD.

**22. *Ocean/Flood - Footings***

A report and design by a professional engineer experienced in soil mechanics is to be provided to the Principal Certifying Authority prior to the issue of the Construction Certificate that demonstrates the footings can sustain the building load as the foundations transform with subsurface water inundation and the bearing capacity of the foundations diminish with projected sea level rise.

The report shall also assess the effect of rising salinity to account for the degradation of concrete quality if this type of footing is selected.

**Heritage Conditions**

**23. *No 5 and 7 Clyde Street***

- (a) No. 5 – The Store – The retained part of the building (as shown on the approved plan) is to be returned to its historic configuration, including shop front and awning and side window openings. Render to be stripped off the walls and a mechanical or chemical damp proof course installed to discourage rising damp. Demolition of the brick walls shall be done by hand so as to retain as many bricks for possible reuse including in the construction of the new wall. Heritage interpretative display boards are to be incorporated into the development. The plans prepared for the Construction Certificate are to be submitted to Council for approval by Council's Heritage Advisor.
- (b) No. 7 – The Residence – The historic exterior of the former residence including both brick and timber sections, is to be subject of restoration and maintenance. The rear and sides of the building that are visible to the public shall be restored to the satisfaction of Council's Heritage Advisor. The key elements of this restoration include application of paint and replacement of inappropriate vertical metal sheet cladding with a more sympathetic material. Plans and elevations of proposed works are to be submitted to Council for approval by Council's Heritage Adviser.

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- (c) An archival record of each building (5 and 7 Clyde St) shall be prepared and submitted to and approved by Council prior to commencement of any demolition works. It is to include plans and elevations, along with digital photographs of the exterior and interior.
- (d) The restoration works referred to in (a) and (b) are to be completed prior to commencement of use of the expanded car park. In the event this cannot be completed prior to commencement use of the additional 80 car parking spaces, a bond to the value of the works is to be lodged with Council.

**Engineering Conditions**

**24. Sewer Pump Station**

Prior to commencement of works, or issue of Construction Certificate, whichever is to occur first, submission to and approval by Council of plans for the relocation of Council Sewer Pump Station No. 26 from the proposed access location at North Street and a sewer extension to new boundary of Lot 3 DP 100129. The new location conceptual shown in plan AD-DA003-REV H by Scott Carver Pty Ltd is to allow access and sufficient hardstand area for a service vehicle (SRV size) to service the pump station so as to not obstruct normal traffic flows. The design shall include modification to the discharging sewer mains, the receiving manhole and rising main

Plans are to be prepared by a suitably qualified engineer in accordance with Council's water and sewer design standards. All levels are to be shown in Australian Height Datum (AHD).

<sup>1.</sup>  
2. The relocation of the sewer pump station to within Lot 4 DP585556 requires the creation of easements to benefit Council to enable Council access for maintenance purposes. Prior to commencement of works, or issue of Construction Certificate, whichever is to occur first, the applicant/consent holder shall submit to Council of Plan of Survey and 88B instrument or transfer and grant signed by burdened parties for an easement and right of way benefiting Council for approval by Council. The easements and right of way shall be created free of all costs to Council. The easements shall be as follows:

- Easement to pump sewerage
- Easement for services
- Easement for water supply
- Right of access from North Street to the pump station

<sup>3.</sup>  
4. Easements to be 3m width, centrally located over the services and the pump station and surrounds.

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**25. Relocate Sewer Main**

A Construction Certificate is to be lodged and approved By Council for the relocation of the sewer main. Plans are to be prepared by a suitably qualified engineer in accordance with Council's water and sewer design standards for the relocation of the sewer main. The plans are to incorporate the proposed footing design, traversing the new and redundant mains, designed in accordance with "Build in the Vicinity of Sewer Mains" Policy.

**26. Buildings Near Sewer**

Prior to the issue of a Construction Certificate, submission to and approval by the Principal Certifying Authority (PCA) of designs prepared by a suitably qualified engineer for special footings for any structures to be adjacent to Council's sewer main. The design is to be consistent with Council's Policy "Build in the Vicinity of Sewer Mains".

**27. Water Meter –Commercial Development**

Prior to commencement of works, or issue of Construction Certificate, whichever is to occur first, certification on the recommended water meter size required for the development in accordance with AS 3500.1:2003 National Plumbing and Drainage Code and AS2441-2005 Installation of Fire Hose reels shall be carried out by a suitably qualified hydraulic engineer/consultant

*Note: All fire hose reels must be supplied through the metered supply.*

*Please contact Council's Water and Sewerage Project Engineer on 44741342 to arrange a quote. Prepayment will be required at Council Administration Centre at Vulcan Street Moruya, the Batemans Bay or Narooma Depot. All work is to be undertaken at full cost to the applicant.*

*Note: A backflow prevention device is to be installed and certified by a private plumber in accordance with Council's Backflow Prevention policy.*

**28. Separate Water Meters**

Prior to issue of Construction Certificate(s) payment to Council the standard fee for separate water meters to suit the development. Each shop and accommodation unit is to be separately metered. The existing connection to Lot 4 DP585556 shall be relocated. Connections and meters to be located so as to be independently serviced and to be accessible to Council's Water Meter Reader at all times.

**29. Sewerage Manhole**

Ground surface levels adjacent to any sewer manhole are to be maintained. Manholes within driveways will require provision of a trafficable lid at the Applicant's cost.

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**30. Car Park Design & Construction**

Car parking spaces, manoeuvring areas and access driveways are to be sealed, drained, line marked, constructed and maintained to pavement designs prepared by a qualified engineer in accordance with AS 2890.1 & 2.

Such plans are to include drainage and are to address expected vehicle loading and any fill compaction requirements.

**31. Roadworks**

A Construction Certificate is to be lodged and approved by Council as the Roads Authority for any works within the road reserve. Detailed engineering drawings in accordance with Council's Infrastructure Design Standard (IDS) and the approved plans are to be proved to Council prior to any works commencing.

**32. Construction in a Road Reserve**

Prior to commencement of any works within the road reserve a separate approval is to be obtained from Council under section 138/139 of the Roads Act. The application would consider:

- Public safety, WH&S issues, risk assessment, public liability insurance, control of vehicle and pedestrian traffic, location of plant and equipment, inspections bonding and an application fee.
- Where a traffic control plan is required, the plan is to be prepared by a suitably qualified consultant, certified by the Roads and Maritime Service (RMS), in work site traffic control plan preparation.
- Where the Traffic control plan requires a reduced speed, or temporary traffic signals, a Speed Zone Authorization (SZA) is to be obtained from Council for the specific days of work.
- Where works are on a Roads and Maritime Services (RMS) road or would impact traffic on an RMS road, a Road Occupancy Licence (ROL) is to be obtained from the RMS Ms Peta Smith (02 42212509) or email. [rol\\_southern@rta.nsw.gov.au](mailto:rol_southern@rta.nsw.gov.au)
- Council will require details of the community consultation undertaken and proposed to be undertaken, prior to the commencement of works.

Where works are undertaken by other than the developer, the supervisor of the works is to be advised of this condition. Details for an application form and fees are available by contacting Council's Engineering Development Assessment Officer (44741254) and form available from

[http://www.esc.nsw.gov.au/media/395951/Section\\_138\\_Roads\\_Act.pdf](http://www.esc.nsw.gov.au/media/395951/Section_138_Roads_Act.pdf)

Carrying out works contrary to this condition will result in a penalty being issued under the roads act and works being suspended until such time as a Section 138 consent being issued.

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**33. *Discharge of Liquid Trade & Factory Waste***

Liquid trade and factory waste or chemicals or other impurities from any business, trade or manufacturing process other than domestic sewage is not permitted to be discharged into Council's sewerage system without application and approval by Council. The application for approval must be in accordance with Council's Liquid Trade Waste (LTW) Policy.

**Building Construction**

**34. *Asbestos/Demolition involving Asbestos Removal***

5. W  
here asbestos material is to be removed or disturbed as a result of any proposed demolition, alteration or addition:
- (a) Building demolition works are to be carried out in accordance with AS2601-2001 – The demolition of Structures.
  - (b) The removal of bonded asbestos material (of an area of more than 10m<sup>2</sup>) or any amount of friable asbestos material must be undertaken by a licenced contractor. An Asbestos Removal Control Plan is to be prepared and complied with in accordance with the 'Code of Practice – How to Safely Remove Asbestos' published by WorkCover NSW (Catalogue No. WC03561), available at: <http://www.workcover.nsw.gov.au/law-and-policy/legislation-and-codes/codes-of-practice>
  - (c) Standard commercially manufactured signs containing the words "Danger Asbestos Removal in Progress" measuring not less than 400 x 300mm are to be erected in prominent visible positions during asbestos removal process.
  - (d) All asbestos material removed is to be disposed of to a landfill site licensed to receive asbestos.
  - (e) All adjoining properties and those opposite the development must be given prior notice in writing of the dates and times when asbestos removal is to be conducted. The notification is to identify the licensed asbestos removal contractor and include a contact person for the site together with telephone and email details. [25.01]
- 6.

**35. *Hours of Operation - NOISE***

Construction work on the site shall only be carried out between the hours of 7.00am and 6.00pm on Monday to Friday inclusive, or between 8.00am to 5.00pm on Saturdays. Construction may occur outside of these hours if it is not audible at any residential premise or other sensitive noise receptor. No construction activity to occur on Sundays or public holidays.

**36. *Loading and Unloading of Construction Vehicles***

All loading and unloading associated with construction must be accommodated on-site. If this is not feasible, an application may be made for the provision of a construction zone, during the specified hours of work

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**37. *Shoring and Adequacy of Adjoining Property***

If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense protect and support the adjoining premises from possible damage from the excavation, and where necessary, underpin the adjoining premises to prevent any such damage.

**38. *Public Way to be Unobstructed***

The public way shall not be obstructed by any materials, vehicles, refuse skips or the like, under any circumstances at any time during construction.

**39. *Public Footpaths***

A safe pedestrian circulation route a minimum of 1.5m wide and with a pavement free of trip hazards shall be maintained at all times on, or adjacent to the public footpaths fronting the construction site. Where the footpath is damaged, repair works shall be carried out when directed by Council officers and in accordance with the relevant clauses of the current edition of Council's Development Specifications.

Where circulation is diverted on to the roadway, clear directional signage and protective barricades shall be installed in accordance with Australian Standard AS1742-3 1996 *Traffic Control Devices for Work on Roads*.

**40. *Boundary Check***

The building shall be set out by a registered surveyor to verify the correct position in relation to property boundaries and the approved plans. A plan prepared by a registered surveyor shall be submitted to the Principal Certifying Authority certifying that the works have been located in accordance with the approved development application prior to proceeding past the relevant stage of construction.

**Batemans Bay Marine Park Authority Requirements**

**41. (a) Stormwater**

During construction and in operation, any stormwater leaving the site should comply with the water quality benchmarks for estuaries within the Batemans Marine Park catchment as expressed in the NSW Water Quality Objectives (WQOs) developed in accordance with the ANZECC 2000 Guidelines on Water Quality. Further info is available on the Office of Environment and Heritage website at <http://www.environment.nsw.gov.au/ieo/Clyde/index.htm>).

**(b) Sediment and erosion control**

Design, management and implementation of pollution controls must be consistent with "Managing Urban Stormwater: Soils and Construction" (NSW Landcom 2004) to ensure containment of sediment to the immediate work site. All sediment control measures must be regularly inspected and cleaned out and/or repaired as necessary, and all collected silt must be disposed of appropriately.



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(c) Acid sulphate soil

In the event that acid sulphate soils are exposed, there must be no overflow of these soils into the Clyde River. The Batemans Marine Park office must be informed in a timely manner should acid sulphate soil enter into the waterway.

**Roads and Maritime Services Requirements**

42. (a) Prior to the issue of a Construction Certificate for works within the road reserve, the developer must enter into a Works Authorisation Deed (WAD) with the RMS for the design and construction of the fourth leg of the traffic signals at the junction of North Street and Perry Street.
- (b) Prior to any occupation or use of the approved development, the developer must provide the fourth leg of the traffic signals at the junction of North Street and Perry Street to the RMS' satisfaction and in accordance with Austroads Guide to Road Design Part 4a: Unsignalised and Signalised Intersections, Austroads Guide To Traffic Management Part 6: Intersections, Interchanges and Crossings (2007) and the RTA's Traffic Signal Design (2008).
- (c) All pavement design associated with the traffic signals must be in accordance with Austroads Standards.
- (d) The developer must upgraded/provided lighting in accordance with Australian Standard AS/NZS1158.
- (e) The developer must mitigate any increased road traffic noise associated with the traffic signals on nearby residents (and other sensitive receivers) in accordance with the Department of Environment, Climate Change and Water's Environmental Criteria for Road Traffic Noise.
- (f) The developer must develop and implement a community information strategy in relation to the new fourth leg of the traffic signals, in consultation with, and to the satisfaction of RMS.
- (g) The developer must ensure, to the satisfaction of Council, that post development stormwater discharge from the subject site into the classified road drainage system does not exceed the pre-development application discharge.
- (h) All roadworks, traffic control facilities and other works associated with this development, including any modifications required to meet RMS standards, will be at no cost to RMS. All works must be completed prior to occupation.
- (i) Traffic signals must be constructed by a pre-qualified contractor. A copy of pre-qualified contractors can be found on the RMS website at:  
<http://www.rta.nsw.gov.au/doingbusinesswithus/tenderscontracts/prequalifiedcontractors.html>
- (j) Section 87 consent for the traffic signals under the Roads Act, 1993 must be obtained from the RMS prior to construction.

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*Note: It is requested that Council advise the applicant that conditions of development consent do not guarantee RMS final consent to the specific road work, traffic control facilities and other structures and works on the classified road network. In this regard, prior to undertaking any such work, the applicant is required to submit detailed design plans and all relevant additional information prior to commencing work on the State road network. The developer will need to pay all RMS fees and charges associated with works. In the first instance, to progress the post consent process, the applicant should email the conditions of development consent to: [WAD.southern@rms.nsw.gov.au](mailto:WAD.southern@rms.nsw.gov.au).*

*The developer must apply for, and obtain a Road Occupancy Licence (ROL) from the Roads and Maritime Services Traffic Operations Unit (TOU) prior to commencing roadworks on a State Road or any other works that impact a travel lane of a State Road or impact the operation of traffic signals any road. The application will require a Traffic Management Plan to be prepared by a person who is certified to prepare Traffic Control Plans. Should the Traffic Management Plan require a reduction of the speed limit, a Speed Zone Authorisation will also be required from the TOU. The developer must submit the ROL application ten business days prior to commencing work. It should be noted that receiving an approval for the ROL within this ten business day period is dependent upon RMS receiving an accurate and compliant Traffic Management Plan.*

**PRIOR TO OCCUPATION OR COMMENCEMENT OF USE**

**43. Road Damage**

The cost of repairing any damage caused to Council or other public authority's assets in the vicinity of the subject site as a result of construction works associated with the approved development, is to be met in full by the applicant/developer prior to issue of any Occupation Certificate.

**44. Full Width Footpath Constructions**

Full width (boundary or building to kerb) concrete footpath paving, or paving blocks if approved in advance by Council, shall be constructed to the full road frontage of the property prior to occupation of the development. The paving shall provide a safe transition in level and width to connect with any existing paved footpath beyond the frontage of the property.

**45. Car Park Signage**

Signage shall be installed at the entry to the car park to warn pedestrians of vehicles exiting the car park. Further signage shall be installed near the car park exit to warn drivers of the presence of pedestrians using the footpath. The signage shall be installed prior to occupation of the building(s).

**46. Landscape Plan**

Completion of landscaping in accordance with the approved Landscape Plan prior to issue of any Occupation Certificate and such landscaping is to be continuously maintained in accordance with the approved Plan. Maintenance is the landowner's

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responsibility.

**47. *BASIX Certification***

The residential component of the development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate No(s) 655544M\_02, and any updated certificate(s) if amendments are made. The BASIX Certificate must be submitted to the Certifying Authority with all commitments clearly shown on the Construction Certificate plans.

**48. *Land Consolidation***

Consolidation of the land is to occur so that all car parking and access ways are incorporated into the same allotment as the Bridge Plaza.

**49. *Fire Safety Certificate***

Fire Safety Certificates shall be furnished to the Principal Certifying Authority for all the "Essential Fire or Other Safety Measures" forming part of this approval prior to issue of an Occupation Certificate.

**50. *"Work as Executed" Plans***

Prior to issue of any Occupation Certificate the applicant shall provide Work as Executed plans in accordance with Council's specification, duly certified by an engineer or registered surveyor, for all sewer and water supply construction work.

**GENERAL CONDITIONS**

**51. *Retail Buildings***

The five retail shop buildings approved by (referred to as Retail Shops A to E on the approved plans) are approved to be used as either 'food and drink premises' or 'shops' as defined in the LEP. Where used as food and drink premises a maximum seating capacity of 20 applies and a liquid trade waste facility must also be installed in the premises together with provision made for waste storage. If the seating capacity is to be greater than 20, a development application will be required to be submitted to Council for approval.

**52. *Accommodation Units***

- (a) The accommodation units are to be designed and constructed so as to minimise the impact of noise from external sources. This will include double glazing, acoustic rated wall and floor lining, and insulation. An accredited acoustic consultant be employed to make recommendations and for these to be incorporated into the plans submitted to the Principal Certifying Authority for issue of the Construction Certificate(s).
- (b) A parking space is to be dedicated to each of the short term stay units when in use.

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- (c) The tenancy of the accommodation units is limited to short term stays and not for permanent occupation.

**53. *Carpark/Road/Public Space Lighting***

All external lighting shall be installed and operated in accordance with the Australian Standard AS1158.1 'Lighting for roads and public spaces' and AS4282:1997 'Control of the obtrusive effects of outdoor lighting' prior to commencement of use of the portion of road or car park that forms part of the development.

**54. *Redevelopment of 3 Clyde Street***

The court yard and external finishes of 3 Clyde Street are to be completed prior to commencement of use of the expanded car park. In the event this cannot be completed prior to use of the 80 additional car parking spaces, a bond to the value of the works is to be lodged with Council.

**55. *Advertising Signs***

The advertising signage referred to in the approved plans as 'signage' are neither detailed nor dimensioned and therefore, details of all external signage proposed for each new premises will have to be submitted to Council for approval prior to installation. No signage is to be a flashing type and its illumination shall not distract passing motorists.

**56. *Water Pollution Controls***

The permanent water pollution control measures specified in the approved drainage design shall be maintained for the life of the development.

**57. *Safer by Design in Business Areas***

Windows fronting pedestrian walkways shall use and maintain transparent clear glass and not be covered with any medium that prevents surveillance and visibility.

**58. *Pedestrian Linkage***

The pedestrian link between Bridge Plaza mall on Lot 21 DP712243 and the arcade at 9 Clyde Street (Lot 3 DP710593) is not to be blocked off to ensure pedestrian permeability and connectivity is maintained.

**PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

**59. *Easements***

The Plan of Survey subject of a Subdivision Certificate shall create drainage, water, sewer and service easements where required and/or as directed by Council free of all costs to Council.

**60. *Right of Carriageway***

The Plan of Survey subject of a Subdivision Certificate shall indicate restrictions on the

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title of Lot 21 of DP 712243 under Section 88B of the Conveyancing Act 1919 creating a right of carriageway in favour of Lot 1 of DP 100129 for which access is to be provided being of a width adequate to accommodate the full width as constructed.

**61. "Work as Executed" Plans**

Prior to issue of a Subdivision Certificate the applicant shall provide Work as Executed plans in accordance with Council's specification, duly certified by an engineer or registered surveyor, for all construction work required pursuant to a condition of subdivision.

**ADVISORY NOTES**

***Sea Level Rise and Flooding Liability***

This land may be subject to flooding and sea level rise and this development has been assessed using the best available information regarding the likelihood of inundation and/or coastal erosion at the date of determination. The infrastructure in this locality (such as sewer, water, stormwater and roads) may also be subject to flooding and sea level rise. At the granting of consent there is no commitment or intention by Council to improve or maintain infrastructure should this be impacted by flooding or sea level rise in the future.

If the land is impacted by flooding or sea level rise, Council will not, pursuant to Section 733 of the Local Government Act 1993, incur any liability in respect of the granting of this consent.

***Disability Discrimination Act 1992***

This application has been assessed in accordance with the Environmental Planning and Assessment Act, 1979. It does not imply that the proposal complies with the Disability Discrimination Act 1992.

The applicant/owner is responsible to ensure compliance with this and other anti-discrimination legislation.

***BCA Compliance***

This development application has been subject to a merit based assessment. The plans lodged and approved have not been assessed against the provisions of the Building Code of Australia (BCA). It is your responsibility to ensure the plans lodged with any Construction Certificate application show full compliance to all provisions of the BCA.

***Discovery of a Relic***

If Aboriginal relics or objects are uncovered during work, excavation or disturbance of the area, any such activity must stop immediately. The Environmental Protections and Regulation Group of the Office of Environment and Heritage is to be immediately contacted. Depending on the possible significance of the relics, an archaeological assessment and an excavation permit under the NSW Heritage Act 1977 may be

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required before further works can continue in the area.

***Public Utility Adjustments***

Adjustments to the public utilities necessitated by the development shall be completed prior to occupation of the development and in accordance with the requirements of the relevant authority, all at no cost to Council. Approval of Essential Energy will be necessary in relation to the relocation of any power lines under its charter.

These conditions have been applied to this consent for the following reasons:

- Ensure that the proposed development:
  - (a) achieves the objectives of the Environmental Planning and Assessment Act, 1979;
  - (b) complies with the provisions of all relevant Environmental Planning Instruments;
  - (c) is consistent with the aims and objectives of Council's Development Control Plans, Codes and Policies.
- To ensure that the relevant public authorities have been consulted and their requirements met, or arrangements made, for the provision of services to the satisfaction of those authorities.
- To meet the increased demand for public amenities and services attributable to the development in accordance with Section 94 of the Environmental Planning and Assessment Act, 1979 and Section 64 of the Local Government Act 1993.
- To ensure the protection of the amenity and character of land adjoining, and in the locality of the proposed development.
- To minimise any potential adverse environmental, social or economic impacts of the proposed development.
- To ensure that all traffic, car parking and access requirements arising from the development are addressed.
- To ensure the development does not conflict with the public interest.

**BACKGROUND**

The principal purpose of the redevelopment is to expand the car parking area for the Bridge Plaza shopping centre. The present centre is anchored by the Woolworths supermarket supported by eight speciality shops, however as acknowledged by the Applicant, its operation is hampered by a number of deficiencies, including a lack of parking and poor vehicular ingress and egress for both customers and service deliveries.

The proposal involves the purchase of three properties, which will enable the total vehicle parking capacity to grow to 283 spaces with the addition of 84 spaces. The original approval of the shopping complex in 1984 required provision of 231 spaces, which was reduced to 198 with a cash contribution paid to Council for the shortfall. In 1992 the KFC outlet was approved requiring an additional five spaces to be provided, a further increase in 2005 to 204 spaces then reduced to 202 in 2009.

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The current proposal of 283 spaces provides parking for a number of new premises including the shopping mall however the total number being provided will exceed that required by Council's Parking and Access Code by some 12 spaces.

The current floor area of the Bridge Plaza will not change from the current 5,526 m<sup>2</sup>, and the total gross leasable floor area for the complete redevelopment will be 6430m<sup>2</sup> with the addition of four new shops which takes the total number of spaces required to 271 spaces, allowing for the three spaces required for the accommodation facility.

The service delivery operation that enables trucks to enter the site from North Street and exit onto Clyde Street was approved in 1984. It involves vehicles crossing the neighbouring vacant allotment (former Golden Fleece Service Station) via a right of way. This arrangement is not to change with the current proposal, however a widening of the entry onto North Street will improve accessibility for heavy vehicles.

**POLICY**

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

*Eurobodalla Local Environmental Plan 2012*

The land is zoned B4 – Mixed Use in which the various land uses and works proposed are permitted with development consent and consistent with the objectives of the zone. The Local Environmental Plan (LEP) identifies a number of maximum building heights that apply to the land, and even though one component of the development being the mall entry/advertising structure reaches a height of 15.9m, it is compliant with the maximum limit for that area of 18.0m.

Clause 6.14 of the LEP advocates design excellence in Batemans Bay with emphasis on achieving a high standard for architectural design. The proposal includes a number of architectural elements including the mall entry structure which is based on having a tall similar steel fabricated appearance as the nearby Clyde River Bridge.

The proposed conversion of the Clyde Motor Inn to become an open public courtyard with opportunity for al fresco dining overlooked by new shop fronts and accommodation facilities, as well as providing pedestrian and view corridor linkages, further supports the requirements of the LEP.

*Batemans Bay Regional Centre Development Control Plan (RCDCP)*

The proposal is compliant with all relevant acceptable solutions identified in the RCDCP and considered to be consistent with the objectives and principles set out in the Plan.

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*State Environmental Planning Policy (SEPP) 71 – Coastal Protection*

The development will improve accessibility to the town's riverside and will not have a detrimental impact on visual amenity and therefore is consistent with the principal planning matters set out for consideration in the SEPP.

*Flooding and Coastal Hazard Adaption*

The development application was supported by a Coastal Hazard Assessment Report which identified flood immunity floor levels. Following modification of the submitted plans the proposed floor level was set at 2.44m AHD the minimum height that satisfied the 5% AEP flood plus 300mm freeboard as well an allowance for sea level rise. The current commercial floor level to meet the 1% AEP for the site is 3.14m AHD (WRL Preliminary Draft Report 2012), however the Council's adopted approach is to apply the 5% AEP level for commercial development in Batemans Bay, Moruya and Narooma flat for a shorter planning period.

The existing buildings at No. 3, 5 and 7 Clyde Street have floor levels below the current flood level, however it is not considered practical or reasonable to require these floor levels to be raised. To mitigate the development against current and future flooding impacts the following controls are to be implemented as recommended by the Applicant's engineering consultant:

- The developments to be constructed with flood compatible materials to 3.14m AHD
- Electrical circuits to be installed above 3.14m AHD or water proofed
- Structural design to consider flood forces
- Prepare a flooding and inundation evacuation plan
- Provide overland flow path to Clyde Street

**ENVIRONMENTAL**

The land is identified as potentially containing acid sulphate soils and any ground disturbance to a depth of one metre will require a management plan to ensure there is no off site impacts. The Batemans Marine Park Authority have reinforced the importance of protecting the nearby waterway and recommend best practice principles be applied to ensure any stormwater leaving the site complies with NSW Water Quality Objectives.

The Council's Infrastructure Design Standards specifies the requirements for stormwater treatment, and these are to be applied as condition of approval.

**CONSULTATION**

The application was referred to Essential Energy, Roads and Maritime Service, and the Batemans Bay Marine Park Authority, with the later two requesting additional information,



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**PSR15/059 DEVELOPMENT APPLICATION 87/16 - BRIDGE PLAZA  
CLYDE STREET, BATEMANS BAY**

**84.0798.D**

before giving support for the proposal subject to inclusion of a number of conditions on development consent. Essential Energy did not provide a response.

The application was advertised and notification given to neighbouring land owners. Sixteen written objections were subsequently received, identifying three issues.

1. Heritage

Fourteen submissions objected to the proposed partial demolition to be undertaken at 5 Clyde Street (former Ned Kelly Discount Store), whilst four of these also objected to the works proposed for 7 Clyde Street (Bush and Beaches Real Estate and the Batemans Bay Locksmith).

The application was referred to Council's Heritage Advisor who assessed the impact of the proposed development on the two buildings at 5 and 7 Clyde Street. Both buildings are not listed as heritage items, although Council's Heritage Advisory Committee recently recommended that both should be listed.

The former residence (7 Clyde St) has a possible build date of 1869 and the original residence is still largely in situ, however when viewed from the street there is no evidence of this with a modern shop front and awning having been added in a more recent time.

The proposal seeks to remove two chimneys located at the rear of the building and with structural cracking, the chimneys are not considered to be individually significant. Council's Heritage Advisor recommends the historic exterior of the former residence needs restoration and maintenance. Weatherboards should be painted and non sympathetic vertical metal sheeting removed. The rear and sides of the building will be visible to the public and it is appropriate that they should be restored to an acceptable standard to offset the removal of the chimneys.

The Store, or Ned Kelly Building at 5 Clyde Street, was also built in 1869 by Francis Guy for use as a collection point for goods and produce bound for the Sydney markets. The proposal is to remove the rear section of the building, leaving the front portion for use as a retail premises.

The building has been altered from its original form being completely cement rendered and fitted with a modern shop front and awning. The Applicant, in an appreciation of the cultural significance of the building and the role it played in the mercantile activity of the early township, submitted a proposal to include an interpretative display at the site to provide some permanent representation of the significance of the building. Council's Heritage Advisor agreed to the demolition provided the proposed interpretative display is complemented by a reproduction of the original shop front and verandah and removal of the render.

Restoration of the reduced building particularly the shop front and awning, would restore one of Batemans Bay's oldest surviving buildings while retaining its commercial function. This recommendation was accepted by the Applicant and modified plans were subsequently provided showing a new front façade with a timber shop front and verandah.

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**PSR15/059 DEVELOPMENT APPLICATION 87/16 - BRIDGE PLAZA  
CLYDE STREET, BATEMANS BAY**

**84.0798.D**

2. Traffic Impacts

The proposal involves the introduction of a fourth leg at the North and Perry Street intersection which will not be in alignment with Perry Street. The Local Traffic Committee and Roads and Maritime Services (RMS) requested PARAMICS modelling to be carried out to establish if the fourth leg is acceptable in terms of the impact it will have on the efficiency of the local road network. The RMS have provided a response advising that it is generally satisfied with the proposed fourth leg and the proposed amendments that will be made to the layout and operation of the traffic signals.

In relation to the possibility of making adjustments to the junction of Princes Highway and North Street, the RMS advised that it was uncertain whether a practical solution could be made to this intersection. Further it advised that as the redevelopment is not likely to significantly increase heavy vehicle movements, it questions if it would be reasonable to require the developer to address the existing conditions than have already been proposed.

The Application includes alternations being made to the existing car park entry adjacent to KFC outlet to improve the turning area available for larger delivery vehicles that service the Woolworths supermarket. One objector raised concerns with the operation of the heavy vehicles that access the supermarket. Although the submitter was advocating Clause 6.14 of the LEP, which obliges Council to ensure that service access achieves 'design excellence', the fact that the proposal does not change or alter the configuration and layout of the Bridge Plaza building, and therefore unlikely to cause a perceptible increase in service vehicle movements, the Council would be acting beyond its power to require the existing approved service delivery facility and operation to be altered in its determination of this development application.

The Local Traffic Committee requested the PARAMICS modelling to be carried out and following receipt of this data, the Applicant's traffic consultant advised that the efficiency of the intersection, with or without the offset fourth leg, will provide a service with acceptable delays and spare capacity for a signalized intersection.

The PARAMICS analysis also assessed the network wide impacts of the intersection and showed no tangible difference in the network wide operation. The modelling showed the offset intersection increased the queue lengths on North Street in the order of two to three car lengths in the peak operation, over an intersection without an offset. The modelling also showed the offset intersection increased the intersection delays in the order of ten seconds in the peak periods when comparing an intersection without an offset.

3. Arcade Entry

One submitter on behalf of the owner of 11 Clyde St, was seeking assurance that the redevelopment would not close off the pedestrian link that exists between the Bridge Plaza mall and the arcade at 11 Clyde Street. A condition is included to ensure this opening remains and thus maintain the town planning principle of pedestrian permeability and connectivity.

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**CONCLUSION**

The proposal is satisfactory in terms of all relevant planning policy and legislative framework. There are a number of design elements that are particularly worthy and the overall development will make a positive contribution to the economic well-being of the Batemans Bay town centre.

It is recommended that development consent be approved subject to conditions.

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**PSR15/060 DEVELOPMENT APPLICATION 235/16 - MACKAY PARK BATEMANS BAY 89.2899.D**

Responsible Officer: Lindsay Usher - Director, Planning and Sustainability Services

Attachments: Nil

Focus Area: Productive Communities

Delivery Program Link: P3.1 Provide development assessment services

Operational Plan Link: P3.1.1 Assess and determine Development Applications

Applicant: Eurobodalla Shire Council

Land: Lot 1 DP 447931, Lot 259 DP 755902, Part Lots 30 and 31 DP 755902

Zone: RE2 – Public Recreation, RE1 – Private Recreation, E2 – Environmental Conservation

Current Use: Mackay Park Sports Field

Proposed Use: Temporary events, structures and event related camping

Description: Temporary events, structures and event related camping

Permitted in Zone: Yes

DA Registered: 27 October 2015

Reason to F&S: Council managed land, Council is the applicant

Recommendation: Approval

### **EXECUTIVE SUMMARY**

The purpose of this report is to seek approval for the temporary use of Mackay Park in Batemans Bay to stage a maximum of ten (10) events per year and up to three (3) days in duration. The types of events that would be carried out under this proposal include concerts, festivals, expos such as the Caravan and Camping Show and the Red Hot Summer tour. The development application will address event activities, event related camping and the temporary structures required for Red Hot Summer in January 2016.

The application is being reported to Council because it involves Council managed land and Council is the applicant.

### **RECOMMENDATION**

THAT Council approve Development Application 235/16 for temporary events including temporary structures and event related camping at Lot 1 DP 447931, Lot 259 DP 755902, Part Lots 30 and 31 DP 755902, Vesper Street Batemans Bay subject to the following conditions:

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**PSR15/060 DEVELOPMENT APPLICATION 235/16 - MACKAY PARK BATEMANS BAY 89.2899.D**

**GENERAL CONDITIONS**

1. **Approved plans**

The development must be carried out in accordance with the plans stamped and numbered 16/235 and supporting specifications and documentation, or as modified by any conditions of this consent, or as noted in red by Council on the approved plans. All building work must be carried out in accordance with the requirements of the *Building Code of Australia*.

Council Stamp No.	Plan title	Date of Plan	Prepared by
16/235	Temporary Structures Permissible Zone	Undated	Eurobodalla Shire Council
16/235	Parking plan	Undated	Eurobodalla Shire Council
16/235	Event Camping	Undated	Eurobodalla Shire Council

Council Stamp No.	Document title	Date of document	Prepared by
Attachment A	Stage – Red Hot Summer	undated	powa

**Note:** Any alteration to the plans and/or documentation may require the lodgement of an application to modify the consent under s96 of the Environmental Planning and Assessment Act (EPA Act) 1979, or a fresh development application. Your Principal Certifying Authority should be consulted prior to any works contrary to this consent being carried out.

Where there is an inconsistency between the documents approved with this consent and the following conditions, the conditions shall prevail to the extent of that inconsistency.  
[2.05a]

2. **Limit of Consent**

The development described in this consent shall be limited to ten (10) events annually for up to three (3) days in duration.

The use shall cease after a period of five (5) years from the date of commencement of this consent. A further development application/modification may be lodged with Council prior to the expiration of the consent, for the continuation of the use.

Note: small scale events approved through the Small Events on Council Reserves application process are not included in the (10) events.

3. **Hours of operation**

Events that propose amplified music or voices shall operate only between the following hours:

8.00am and 11.00pm Monday to Thursday

8.00am and 12.00 midnight Friday and Saturday

8.00am and 8.00pm Sunday

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**PSR15/060 DEVELOPMENT APPLICATION 235/16 - MACKAY PARK BATEMANS BAY 89.2899.D**

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**4. Traffic Management Plan**

An event based traffic management plan, as required in the event application should be prepared and submitted to Eurobodalla Shire Council's Traffic Committee for review. This plan should include but not be limited to proposed parking and pedestrian management associated with the event.

The development shall apply for a Road Occupancy Licence (ROL) from the Roads and Maritime Services (RMS) Traffic Operations Unit (TOU) prior to commencing work within the classified road reserve or within 100m of traffic signals. The application shall be accompanied by the event based TMP and associated traffic control plans (TCP's). These documents must be prepared by a person who is certified to prepare Traffic Control Plans. Should the TMP include a reduction of the speed limit, a Direction to Restrict will also be required from the TOU. The developer shall submit the ROL application a minimum of 10 business days prior to commencing work. It should be noted that receiving an approval for the ROL within this 10 business day period is dependent upon the RMS receiving an accurate and compliant TMP.

The Princes Highway (Vesper Street) adjoining the subject land is declared a Controlled Access Road and accordingly direct access to or from the Princes Highway is only permitted at the Proclaimed (Public) Access Point located directly opposite Beach Road.

**5. Parking**

Parking area labelled (F) in approved plan shall remain clear for the use of patrons of the swimming pool and mini golf. Appropriate signage is to be in place and traffic marshalls shall manage the use of parking (F) for the duration of events.

**6. Event related camping**

This approval allows the operation of temporary, event related camping in accordance with condition 1. Sanitary facilities required for the temporary camping shall comply with the requirements within Council's Events guideline.

**7. General Terms of Approval - NSW Rural Fire Service**

This response is to be deemed a bush fire safety authority as required under section 100B of the 'Rural Fires Act 1997' and is issued subject to the following conditions:

- (a) Access to the site for emergency services vehicles shall be available at all times.

**Evacuation and Emergency Management**

The intent of measures is to provide suitable emergency and evacuation (and relocation arrangements for occupants of special fire protection purpose developments. To achieve this, the following conditions shall apply:

- (b) An Emergency/Evacuation Plan is to be prepared detailing the following:
- under what circumstances will the complex be evacuated

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**PSR15/060 DEVELOPMENT APPLICATION 235/16 - MACKAY PARK BATEMANS BAY 89.2899.D**

- where will occupants be evacuated to
- roles and responsibilities of persons coordinating the evacuation
- roles and responsibilities of persons remaining within the complex after evacuation and
- a procedure to contact the NSW Rural Fire Service District Office/NSW Fire Brigade and inform them of the evacuation and where they will be evacuated to.

**8. Temporary Structures**

This consent approves the stage for the Red Hot Summer Event to be held in January 2016 in accordance with condition 1 - Attachment (A).

Details of temporary structures relating to future events shall be provided to Council no less than six (6) weeks prior to the event. This information will be assessed by Council's Development Services to determine the approval process required. A modification of this consent may be required to approve structures that are not exempt under relevant legislation.

An Occupation Certificate is required for temporary structures defined as an 'Entertainment Venue'.

**9. Noise Levels**

The L.AMAX. noise level from event activities must not exceed 75dBA(A) measured at the nearest affected residential property boundary. Noise levels shall be determined in accordance with AS1055.1. Where entertainment concludes after 10.00pm the event manager shall also be responsible for assisting with the quiet and orderly dispersal of the audience. Council reserves the right to review the prescribed noise levels on receipt of validated noise complaints.

**10. Licence Agreement**

Festival/Event organisers are to enter into a licence agreement with Reserve Trust Manager and submit an event application to Council, for the use of Mackay Park for future events.

**ADVISORY NOTES**

**Flooding Liability**

The land may be subject to flooding and the development has been assessed using best available information concerning the likelihood of flooding at the date of determination. If the land is flooded Council will not, pursuant to Section 733 of the Local Government Act 1993, incur any liability in respect of the granting of this consent.<sup>[7.10]</sup> Events that propose the sale of alcohol will be required to obtain a licence from the Office of Liquor and Gaming.

These conditions have been applied to this consent for the following reasons:

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**PSR15/060 DEVELOPMENT APPLICATION 235/16 - MACKAY PARK BATEMANS BAY 89.2899.D**

- Ensure that the proposed development:
  - (a) achieves the objectives of the Environmental Planning and Assessment Act, 1979;
  - (b) complies with the provisions of all relevant Environmental Planning Instruments;
  - (c) is consistent with the aims and objectives of Council's Development Control Plans, Codes and Policies.
- To ensure that the relevant public authorities have been consulted and their requirements met, or arrangements made, for the provision of services to the satisfaction of those authorities.
- To meet the increased demand for public amenities and services attributable to the development in accordance with Section 94 of the Environmental Planning and Assessment Act, 1979 and Section 64 of the Local Government Act 1993.
- To ensure the protection of the amenity and character of land adjoining, and in the locality of the proposed development.
- To minimise any potential adverse environmental, social or economic impacts of the proposed development.
- To ensure that all traffic, carparking and access requirements arising from the development are addressed.
- To ensure the development does not conflict with the public interest.

## **BACKGROUND**

The reserve comprises Lot 1 DP 447931, Lot 259 DP 755902, part Lot 30 DP 755902 and part Lot 31 DP 755902. Mackay Park is a Crown Reserve categorised for Public Recreation and managed by Council under the Eurobodalla (North) Reserve Trust.

Council does not have a Plan of Management for Mackay Park and therefore this application is being prepared to improve coordination, regulation and provide a platform to support local, regional and hallmark festivals and events within the park.

Mackay Park is ideally suited as an event venue given the proximity to hotels, restaurants and accommodation. Additionally, existing infrastructure including parking, clubroom and facilities support the use of the reserve for events.

## **POLICY**

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

### *State Environmental Planning Policy (SEPP) 71 – Coastal Protection*

The proposal has been considered against the objectives of the SEPP and found to be consistent.

### *State Environmental Planning Policy 14 – Coastal Wetlands*

The proposal has been considered against the objectives of the SEPP and found to be consistent.



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**PSR15/060 DEVELOPMENT APPLICATION 235/16 - MACKAY PARK BATEMANS BAY 89.2899.D**

*Eurobodalla Local Environmental Plan 2012*

The land is zoned RE1 Public Recreation, RE2 Private Recreation & E2 Environmental Conservation.

Clause 1.2 & Clause 2.3 – Aims and Permissibility

The proposal does not contradict any of the aims of the plan or objectives of the zone and is permissible with Council consent;

Clause 2.8 – Temporary Use of Land

The proposal does not compromise the future use of the reserve nor have any detrimental impacts on the land. Events will occur a maximum of 30 days in any 12 month period;

Clause 5.5 – Coastal Zone

The proposal will not impact on coastal biodiversity and ecosystems and is unlikely to generate any significant cumulative impacts;

Clause 6.3 – Acid Sulfate Soil

Proposal will not impact potential class 3 Acid Sulfate Soil as no earthworks are involved.

Clause 6.5 – Flood planning

Land is flood prone – general advice included in consent

*Parking and Access Code*

A total of 769 parking spaces are available in accordance with the parking plan provided. This number excludes parking for patrons of the swimming pool and mini golf. Parking and traffic management for future events will be managed with the event application in conjunction with the local Traffic Committee.

**ENVIRONMENTAL**

Conditions of consent are included to minimise impacts to the surrounding areas in relation to noise, traffic and provision of sanitary facilities, waste facilities and security.

Noise Levels

Condition 9 is imposed to control and manage noise levels from events proposing amplified music and voices.

Traffic

The existing traffic network is considered acceptable and will cope with the proposed development subject to traffic management plans.

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**PSR15/060 DEVELOPMENT APPLICATION 235/16 - MACKAY PARK BATEMANS BAY 89.2899.D**

**CONSULTATION**

The application has been advertised and notified to adjoining properties with the close of submissions on 18 November 2015. No submissions were received during the notification period.

**CONCLUSION**

Events play a key role in fostering regional tourism and economic development and strengthen communities as a whole.

Approval of the application before Council will aid in attracting events to the Region by providing a clear approval pathway for future events in Mackay Park.

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**PSR15/061 DRAFT WATER GARDENS FLYING-FOX CAMP MANAGEMENT PLAN E15.9191**

Responsible Officer: Lindsay Usher - Director, Planning and Sustainability Services

Attachments: 1. Confidential - Submissions  
2. Confidential - Responses to submissions  
3. Under Separate Cover - Draft Grey Headed Flying-fox Management Plan

Focus Area: Sustainable Communities

Delivery Program Link: S4.1 Undertake environmental protection and restoration works

Operational Plan Link: S4.1.1 Implement natural resource, coastal and estuary projects

### **EXECUTIVE SUMMARY**

This report seeks approval to adopt the draft Water Gardens Grey-headed Flying-fox Camp Management Plan (the Plan) following the report to Council on 27 October 2015 (PSR15/050). The Plan has been on public exhibition and submissions have been considered. The draft Plan provides a framework for management of the Grey-headed Flying-fox Camp in the Water Gardens area, Batemans Bay.

A total of two submissions were received following the public exhibition.

### **RECOMMENDATION**

THAT Council:

1. Adopt the draft Water Gardens Grey-headed Flying-fox Camp Management Plan
2. Refer the Water Gardens Grey-Headed Flying-fox Camp Management Plan to the Office of Environment and Heritage for approval.
3. Consider an annual budget of \$20,000 per annum to implement actions associated with the Plan
4. A budget variation of \$20,000 per annum be processed as part of the December quarterly review
5. Seek grant funding opportunities for water quality investigation of the Water Gardens
6. Seek grant funding and NSW and Australian government support for management of the Grey-Headed Flying-Foxes and the Water Gardens.

### **BACKGROUND**

On 27 October 2015 Council adopted the draft Water Gardens Flying-fox Camp Management Plan (Motion 15/197).

THAT:

1. Council publicly exhibit the draft Grey-headed Flying-fox Camp Management Plan for a period of twenty one days.

**PSR15/061 DRAFT WATER GARDENS FLYING-FOX CAMP MANAGEMENT PLAN E15.9191**

2. A further report regarding the Grey-headed Flying-fox Camp Management Plan be provided to Council following the exhibition period.

This report is to deliver the results following the public exhibition of the draft Flying-fox Camp Management Plan for the Water Gardens.

The key objective of the Plan is to address the concerns of the local residents and community near the Water Gardens and the broader community whilst not creating conflict between people and Flying-foxes elsewhere, and managing the camp consistent with statutory requirements.

**CONSIDERATIONS**

The objectives of this project are to be consistent with those of the NSW Office of Environment and Heritage *Flying-fox Camp Management Policy 2015*. The Plan will utilise the template from the NSW Government on Flying-fox management and consider both the NSW and Australian Government policies in regard to camp management. The Plan provides feasible options on managing the camp following community consultation and consideration of legislative requirements and research from other localities dealing with Flying-fox camps.

Issues raised in submissions

Matter raised	Response	Plan ref.
<i>Submission A</i>		
Tree removal plan should include gums that flower in warm months	<ul style="list-style-type: none"> <li>It is not proposed to remove flowering gum trees as it is not practical or feasible, and they are a very important part of the ecology of the Batemans Bay region. Gum trees support a wide range of species, including bats that are critical to pollination of our forests and crops.</li> <li>On the other hand, exotic palms are an invasive weed. When flying-foxes feed on the fruit of exotic palms the faeces is particularly problematic because of its colour and consistency. It is therefore proposed to have a program of exotic palm removal.</li> </ul>	5.4.2 6.3
Need to assess if the plan is working on an annual basis – 5 years is too long	<ul style="list-style-type: none"> <li>The Management Plan has been prepared in accordance with the requirements of the NSW Office of Environment and Heritage. This includes the need to review the plan every five years. As part of the usual management practices, Council will review the effectiveness of measures that are being implemented on an ongoing basis.</li> </ul>	6.5
<i>Submission B</i>		
Concern about poor water quality	<ul style="list-style-type: none"> <li>The plan recognises that water quality contributes to the overall appearance and environmental quality of the Water Gardens. It is influenced by nutrients associated with the flying-foxes, water fowl and urban sources (e.g. fertiliser and car cleaning detergent in stormwater runoff), as well as the hydrologic regime (flows in and out of the Water Gardens).</li> </ul>	3.7, 5.4.4 6.3

**PSR15/061 DRAFT WATER GARDENS FLYING-FOX CAMP MANAGEMENT PLAN**

**E15.9191**

Matter raised	Response	Plan ref.
Rubbish should not have been allowed to accumulate	<p>Water quality is also linked to sediment quality.</p> <ul style="list-style-type: none"> <li>The plan recommends that a specialist multidisciplinary investigation be undertaken to identify measures to improve water quality in the context of the site and its catchment.</li> <li>The plan recommends that an ongoing program of rubbish removal is undertaken.</li> </ul>	3.7, 5.4.4, 6.3
Who will control use of pressure cleaner and repair it	<ul style="list-style-type: none"> <li>High pressure cleaners (e.g. Gerni, Karcher) would be made available for rent from the Batemans Bay Council depot. Residents could 'rent' the high pressure cleaner by showing their rates notice or library card and paying a deposit that would be refunded when the equipment is returned on time and in good condition.</li> </ul>	5.4.1 6.3
Who will pay for water used by pressure cleaner	<ul style="list-style-type: none"> <li>The property owner / occupier would pay for water use noting that due to the high pressure, the application process is relatively efficient.</li> </ul>	5.4.1 6.3
What if you aren't able to use the pressure cleaner	<ul style="list-style-type: none"> <li>It is recommended that Council review the effectiveness of the subsidised pressure cleaners after one year. Council may then decide to subsidise an additional outdoor area cleaning service program (identified in the plan), particularly for residents who are unable to use the high pressure cleaner themselves.</li> </ul>	5.4.1 6.3
Who will pay for extra electricity needed for air conditioners	<ul style="list-style-type: none"> <li>The property owner / occupier would pay for electricity use.</li> </ul>	5.4.1 6.3
Bats are a health hazard and cause depression	<ul style="list-style-type: none"> <li>The NSW Department of Health advises that infections from viruses borne by flying-foxes are extremely rare.</li> <li>The plan identifies targeted measures that aim to address noise, odour and faecal drop experienced by residences that are most affected by the camp. The effectiveness of these measures will be regularly evaluated to determine future management priorities.</li> </ul>	Chpts 3 & 5
Flying-fox odour in car	<ul style="list-style-type: none"> <li>The plan recommends car covers be provided to selected residents.</li> </ul>	5.4.1 6.3
Use fire to disperse the camp	<ul style="list-style-type: none"> <li>Dispersal of the camp, such as by fire, is generally considered to be a 'last resort' option because so many previous dispersals have been expensive and unsuccessful.</li> <li>It is highly likely that new camps would establish in the local area (moving is not resolving the issue) if fire is used to smoke or burn flying-fox habitat at the Water Gardens. It is therefore</li> </ul>	5.6.2

**PSR15/061 DRAFT WATER GARDENS FLYING-FOX CAMP MANAGEMENT PLAN**

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Matter raised	Response	Plan ref.
	not recommended.	
Drain the water and fill the site to make all-day parking	<ul style="list-style-type: none"> <li>Any change to the current water management regime, such as filling or draining the Water Gardens, would require a full catchment study. This would include investigation of water quality and quantity impacts and issues, including possible impacts to areas downstream. The catchment study could inform engineering concept and detailed designs for possible redevelopment of the stormwater infrastructure, subject to approvals.</li> <li>The potential cost for the investigations and potential reconstruction would be &gt;\$1,500,000.</li> <li>This option was not recommended.</li> </ul>	5.6.1
Playground has been removed	<ul style="list-style-type: none"> <li>The playground was removed by Council due to ongoing vandalism. It was not related to flying-fox management.</li> </ul>	2.3.1
Reduce height of vegetation	<ul style="list-style-type: none"> <li>Removal of roosting habitat at the Water Gardens is likely to disperse the camp to other habitat in the local area (moving is not resolving the issue) and is therefore not recommended.</li> </ul>	5.6.2
Clothes line cover would stop fresh air and sunshine	<ul style="list-style-type: none"> <li>The plan recommends installation of a clothes line cover for selected residents to minimise the impact of faecal drop. Fresh air would still be able to dry the clothes.</li> <li>The most effective way to avoid faecal drop on clothes is to hang them out in the morning after the flying-foxes have flown into the camp, dry clothes during the day, then bring clothes inside before the flying-foxes fly out of the camp in the evening.</li> </ul>	5.4.1 6.3

### Legal

The Grey-headed Flying-fox (GHFF) is listed as a vulnerable species under both the NSW *Threatened Species Conservation Act 1995* and the Commonwealth *Environment Protection and Biodiversity Act 1999* and accordingly any impact on the GHFF requires approval of both the NSW and Australian Governments. Flying-foxes are also protected under the *National Parks and Wildlife Act 1974*.

### Environmental

Grey-Headed Flying-foxes are a native species that have a roosting camp in the Water Gardens Batemans Bay. They play a role in forest ecosystems as they pollinate and disperse seeds. The decline of Flying-foxes nationally has qualified the species for protection under NSW and Australian Government environmental law.

**PSR15/061 DRAFT WATER GARDENS FLYING-FOX CAMP MANAGEMENT PLAN**

**E15.9191**

**Social Impact**

The Flying-foxes have an impact on the community and particularly for those that reside close to the Camp. The draft Camp Management Plan attempts to address the concerns for the residents and the broader community. This includes: providing a long term solution; not to move the camp to sites near other residents or business; not to harm the Flying-foxes and not to degrade the natural values of the Water Gardens.

**Financial**

The draft Plan has been funded by Council with financial and technical support from the Office of Environment and Heritage. Any future actions associated with the Plan and endorsed by Council will require funding.

A table is provided below to identify proposed costs and actions.

Proposed actions and finance – Water Gardens

Action	Unit cost	5 year budget	Explanatory notes
Provide subsidised services or modifications	Various	\$20,000	<p>The first year of providing subsidised service would involve:</p> <ul style="list-style-type: none"> <li>• Purchase of two high pressure cleaners (eg Gerni, Karcher) and making these available for rent from the Batemans Bay Council depot. Residents living in close proximity (~250-500m) could 'rent' a high pressure cleaner by showing their rates notice or library card and paying a deposit that would be refunded when the equipment is returned on time and in good condition.</li> <li>• Council would seek expressions of interest from residents living in close proximity (~250metres) to the Water Gardens if they would like Council to supply a car cover or clothesline/outdoor area cover to reduce impacts from faecal drop. The resident would need to agree to how the item supplied would be used and assist with monitoring/reporting its effectiveness (eg via short questionnaire).</li> </ul> <p>At the end of Year 1, Council would report on the effectiveness of subsidised services prior to expanding the program with more of the same services and/or additional services such as:</p> <ul style="list-style-type: none"> <li>• outdoor area cleaning service</li> </ul>

**PSR15/061 DRAFT WATER GARDENS FLYING-FOX CAMP MANAGEMENT PLAN**

**E15.9191**

Action	Unit cost	5 year budget	Explanatory notes
			<ul style="list-style-type: none"> <li>• installation of air conditioner to allow windows to be closed in warmer weather to reduce impacts from noise and odour</li> <li>• installation of double glazed windows in bedrooms to mitigate noise</li> </ul>
Remove exotic palm trees	\$350/tree	\$5,000	<ul style="list-style-type: none"> <li>• Council would require the services of a contractor to remove 10-15 exotic palms in the vicinity of the Water Gardens.</li> <li>• Prior to engaging the contractor, Council would identify the locations of palms to be removed.</li> <li>• Priority would be given to palms on public land and private land within close proximity to the Water Gardens (~250m). Council would contact the landowners to ask if they would like the palms removed under this program. If the budget allows, Council could extend the invitation to private landowners in the broader area of Batemans Bay via the local media or website.</li> </ul>
Maintain existing buffer zones	\$5,000 pa	\$25,000	<p>The existing buffer zones would be maintained by:</p> <ul style="list-style-type: none"> <li>• Slashing or mowing ground cover to minimise weed infestation and prevent growth of saplings in the buffer – quarterly</li> <li>• Pruning overhanging branches – in July every second year (starting 2017) when flying-fox numbers in the camp are low and prior to the breeding season.</li> </ul>



**PSR15/061 DRAFT WATER GARDENS FLYING-FOX CAMP MANAGEMENT PLAN**

**E15.9191**

Action	Unit cost	5 year budget	Explanatory notes
Enhance appearance and facilities	Weed and rubbish removal \$15,000 pa  Signage \$5000  Water quality investigation \$50,000	\$130,000	<ul style="list-style-type: none"> <li>• Installation of signage would be a one-off cost. Weed and rubbish removal would be ongoing.</li> <li>• All on-ground works (rubbish and weed removal and installation of signs) should be scheduled at a time when there are no or small numbers of flying-foxes in the camp. Work should not be done in core roosting habitat areas. On ground work should be avoided when pups are most vulnerable in September and October.</li> <li>• Weed removal needs to be done by a bush regeneration team and should commence in the previously landscaped area near the site of the old playground. This approach will reduce prevalence of weeds on site, improve the appearance of the site and should be achievable with limited impact to the roosting flying-foxes.</li> <li>• Council to further consider the scope of the water quality investigation.</li> </ul>
Community support and advice	Covered by existing Council budgets		- Covered by existing Council activities. If the Plan is adopted ongoing staff costs will be required particularly for the implementation of the proposed actions.
Land use planning	Covered by existing Council budgets		- Covered by existing Council activities

**PSR15/061 DRAFT WATER GARDENS FLYING-FOX CAMP MANAGEMENT PLAN E15.9191**

Proposed Financial Budget

<b>ACTION</b>	<b>Year 1 \$</b>	<b>Year 2 \$</b>	<b>Year 3 \$</b>	<b>Year 4 \$</b>	<b>Year 5 \$</b>
Services	20,000	5,000	5,000	5,000	5,000
Palm Removal	5,000	-	-	-	-
Buffers*	-	5,000	5,000	5,000	5,000
Maintenance	15,000	10,000	10,000	10,000	10,000
Signs	5,000				
Water Quality	TBD				
<b>TOTAL</b>	<b>45,000</b>	<b>20,000</b>	<b>20,000</b>	<b>20,000</b>	<b>20,000</b>

TBD –to be determined

Buffer\* - not required in Year 1 as works occurred during August 2015.

A financial allocation (report PSR15/021) was provided in June 2015 to undertake the buffer works and the Camp Management Plan. Financial savings have been achieved to date due to the consolidation of the buffer works with other Council programs. In addition funding from the Office of the Environment and Heritage has also supported the program. These savings will support Year 1 actions identified and only the addition of the \$20,000 is required, enabling implementation of Plan.

Ongoing staff support and funding will also need to be considered to oversee the Plan delivery and can be further reported to Council following review of implementing the actions.

**Community Engagement**

The public exhibition was promoted via advertisement in the local press, media releases and via email to the Water Gardens GHFF Steering Committee.

Public Notices were placed in the newspaper on the 20 October 2015, 4 November 2015 and 11 November 2015. A Council media release was issued on the 27 October 2015. Information was placed on the Council website and on the website's 'slider'. It was promoted through Council's online newsletter on 16 November 2015. Hard copies of the Plan were made available at the Council Administration Office, local libraries and the Community Centre, Batemans Bay.

Additionally Council provided a hard copy on request to one resident in the vicinity of the Water Gardens.

Prior to developing the draft Grey Headed Flying-fox Camp Management Plan, a committee was formed to assist in guiding the preparation of the Plan. The committee comprises of representatives from Council and NSW Government, as well as Eurobodalla residents and special interest groups. Representatives have attended committee meetings to review the process to engage the community in developing the Plan, shared information about the project with their local networks and reviewed the draft Plan including the two community submissions received.

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**PSR15/061 DRAFT WATER GARDENS FLYING-FOX CAMP MANAGEMENT PLAN E15.9191**

**CONCLUSION**

The development of the draft Water Gardens Grey-headed Flying-fox Camp Management Plan encompasses broad community consultation and options for the longer term management of the Camp. There is a wide range of diverse community views on the issue and the appropriate course of actions attempts to consider these views and provide a balance with consideration of costs, risk, effectiveness and the NSW and Australian Government legislative framework.

Any identified works associated with the draft Plan would require funding and further consideration by Council.

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**IR15/051 LOCAL TRAFFIC COMMITTEE MEETING NO 5 FOR 2015-16**

**E15.9002**

Responsible Officer: Warren Sharpe OAM - Director Infrastructure Services

Attachments: Nil

Focus Area: Productive Communities

Delivery Program Link: P2.1 Undertake advocacy activities to further the development of transport infrastructure and support future growth

Operational Plan Link: P2.1.2 Coordinate the Local Traffic & Development Committees

### **EXECUTIVE SUMMARY**

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

The minutes of the Eurobodalla Local Traffic Committee meeting are included in this report for the Council's review. The main issues covered at the Eurobodalla Local Traffic Committee meeting of 6 November 2015 were as follows:

- Signage & Linemarking – Shore Street, Moruya
- Signage – Clyde Street, Batemans Bay
- Special Event Application – Carols at Long Beach
- Special Event Application – South Coast Caravan & Camping Show – Mackay Park, Batemans Bay
- Special Event Application – Colour Run, Batemans Bay
- Special Event Application – Red Hot Summer Tour, Batemans Bay

### **RECOMMENDATION**

THAT

1. The minutes of the Eurobodalla Local Traffic Committee Meeting No 5 of 2015 held on 6 November 2015 be received and noted.
2. Council Plan No 4634 Set A Sheets 1 and 2 detailing the proposed signage and linemarking associated with the shared path, Shore Street, Moruya be approved.
3. Plan No 5156 Set AG Sheet 01 detailing the 'No Parking' signs adjoining the NSW Fisheries premises on Clyde Street, Batemans Bay be approved.

### **BACKGROUND**

The Eurobodalla Local Traffic Committee Meeting No 5 for 2015-16 was held on 6 November 2015 in Council's Committee Room. It was attended by Councillor Neil Burnside (Chairperson), Mrs Danielle Brice (representative for the Hon Andrew Constance MP), Karl Brough (Roads and

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**IR15/051 LOCAL TRAFFIC COMMITTEE MEETING NO 5 FOR 2015-16**

**E15.9002**

Maritime Services), Heidi Hanes (Road Safety Officer) Dave Hunter (Traffic Officer) and Annette Thomas (Minute Secretary).

Apologies were received from Councillor Milton Leslight and Sergeant Angus Duncomb (NSW Police).

**MINUTES OF PREVIOUS MEETING**

The Minutes of the Eurobodalla Local Traffic Committee Meeting No 4 for 2015-16 held on Thursday 8 October 2015 were confirmed and accepted.

**OUTSTANDING ITEMS FROM PREVIOUS MEETING**

The Action Sheet outlining all of the Committee's outstanding items was distributed to members. The following items were discussed:

**2014.RT.010 Parking – River Street, Moruya**

At the Committee meeting on 16 July 2015 it was decided to write to the Hon Andrew Constance MP and the residents in River Street about the parking issues at Moruya Hospital. The Traffic Officer informed the Committee that letters have been sent to the residents and the letter to the Hon Andrew Constance MP will be sent before the next committee meeting on 10 December 2015.

**2014.RT.027 Bus Stop – Raymond Street, Narooma**

At the Committee meeting on 13 August 2015 it was decided that, due to safety concerns, the bus stop at the intersection of the Princes Highway and Raymond Street should be closed. The Traffic Officer informed the Committee that households in the Raymond Street and Hillcrest Avenue and the local schools were advised of the closure. The bus stop will cease operation on 9 November 2015.

**ROAD TRANSPORT (SAFETY AND TRAFFIC MANAGEMENT) ACT ITEMS FOR DETERMINATION**

**2016.RT.013 Signage & Linemarking – Shore Street, Moruya**

Each year Council nominates projects for consideration in the NSW Active Transport - Walking and Cycling Program. A proposal to build a section of shared path on Shore Street, Moruya from Church Street through to Thomas Street successfully obtained grant funds in 2015-16.

The design plan No 4634 Set A Sheets 1 and 2 which includes signage and linemarking were forwarded to the NSW Roads and Maritime Services and they were satisfied with the proposal.

The Committee was shown Plan No 4634 Set A Sheets 1 and 2 detailing the signage and linemarking associated with the shared path on Shore Street, Moruya. The Committee supported the plan as presented.

Recommendation:

That Council Plan No 4634 Set A Sheets 1 and 2 detailing the proposed signage and linemarking associated with the shared path, on Shore Street, Moruya be approved.

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**IR15/051 LOCAL TRAFFIC COMMITTEE MEETING NO 5 FOR 2015-16**

**E15.9002**

**2016.RT.014 Signage – Clyde Street, Batemans Bay**

A request has been made by NSW Fisheries to install signs outside their river side premises on Clyde Street, Batemans Bay.

NSW Fisheries are concerned that vehicles are obstructing access into and out of the boat shed section of the building and this is causing disruption to patrol activities.

The Committee discussed including 'Fisheries Vehicles Excepted' wording on the signs however this was not supported as it does not meet the standard.

The Committee were shown Plan No 5156 Set AG Sheet 01 detailing the signage located on Clyde Street, Batemans. The Committee agreed that 'No Parking' signage should be installed in the areas in front of the boat access doors of the premises.

Recommendation:

That Plan No 5156 Set AG Sheet 01 detailing the 'No Parking' signs outside the NSW Fisheries premises on Clyde Street, Batemans Bay be approved.

**INFORMAL ITEMS FOR DISCUSSION**

**2016.SE.009 Special Event Application – Carols at Long Beach**

The Long Beach Community Association will be holding a Carols night on Saturday 19 December 2015 on the foreshore adjoining Bay Road, Long Beach. This event has been held for a number of years in an informal manner. The number of people attending has steadily increased each year to a point where last year it was reported that an estimated 1,000 people attended.

To manage the event, the Association proposes to close a section of Bay Road and use the carpark area for pop up dining and event control. A temporary stage and toilets will be located near the carpark on the foreshore.

This is a Class 2 event within Council's Special Events Traffic Management Plan Guidelines. The Committee supported the plan as presented.

Recommendation:

That the 2015 Carols at Long Beach to be held on Saturday 19 December, located on the foreshore adjoining Bay Road, Long Beach, be approved based on the submitted traffic management plan and traffic control plan No 5156 Set AP Sheet 01.

**2016.SE.010 Special Event Application – South Coast Caravan & Camping Show – Mackay Park, Batemans Bay**

The 2015 South Coast Caravan and Camping Expo will be held at Mackay Park and will be similar to previous years. A new generic plan No 5156 Set AG Sheet 01 has been created and will be used for this event. The new generic plan will cater for most large events and was approved by the Committee at the 10 September 2015 meeting.

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**IR15/051 LOCAL TRAFFIC COMMITTEE MEETING NO 5 FOR 2015-16**

**E15.9002**

This is a Class 3 event within Council's Special Events Traffic Management Plan Guidelines. The Committee supported the plan as presented.

Recommendation:

That the South Coast Caravan and Camping Show to be conducted at Mackay Park from 6 November to 8 November 2015 be approved based upon Council's generic traffic management plan No 5156 Set AG Sheet 01.

**2016.SE.011 Special Event Application – Colour Run, Batemans Bay**

The Batemans Bay Colour Me Fun Run will be conducted on Saturday 24 January 2016 along the shared path adjoining Beach Road in Batemans Bay. The event will commence at 11.30am and conclude at 3.00pm.

This is a new event advertised as a, 'fun run with a difference'. It is a non-competitive, untimed, inclusive event with the added vibrancy, colour and enjoyment to Batemans Bay and the summer holiday population.

Participants will walk or run from Corrigans Reserve in Batehaven to Clyde Street in Batemans Bay and return. Along the way they will be covered with coloured flour at distribution points located at four sites.

A traffic management plan details the route and methodologies for dealing with pedestrian and vehicular traffic. Participants will be advised to stop and give way to traffic at all intersections and driveways. There will be event marshals in place along the route to assist participants and to ensure the safety of other non-event shared pathway users. There is no need to regulate traffic.

This is a Class 3 event within Council's Special Events Traffic Management Plan Guidelines. The Committee supported the plan as presented.

Recommendation:

That the Batemans Bay Colour Me Fun Run to be held on Saturday 24 January 2016, on the shared pathway from Batehaven to Batemans Bay CBD be approved based on the submitted traffic management plan.

**2016.SE.012 Special Event Application – Red Hot Summer Tour, Batemans Bay**

The Red Hot Summer Tour will be conducted on Saturday 2 January 2016 at Mackay Park, Batemans Bay. Gates open at 1.30pm and the event will conclude at 9.30pm.

This live music event has been touring regional areas for the past 7 years offering high level Australian music. The Batemans Bay concert will be one of 15 on the 2016 Tour and will include well known artists and bands such as Jimmy Barnes, Noiseworks and the Angels.

Event details including specific parking are contained in the event management plan. A traffic transport link management plan details the methodologies of accommodating and encouraging public transport use. The impact on non-event traffic is minimal as

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**IR15/051 LOCAL TRAFFIC COMMITTEE MEETING NO 5 FOR 2015-16**

**E15.9002**

the access to Mackay Park is via the traffic signals at the Princes Highway and Beach Road intersection.

This is a Class 3 event within Council's Special Events Traffic Management Plan Guidelines. The Committee supported the plan as presented.

Recommendation:

That the Red Hot Summer Tour live music event to be held on Saturday 2 January 2016 at Mackay Park, Batemans Bay be approved based on the traffic/transport link management plan and Council's generic traffic management plan No 5156 Set AG Sheet 01.

**GENERAL BUSINESS**

**2016.IN.008 Traffic Management - George Bass Drive, Tomakin to Broulee**

The representative for the Hon Andrew Constance, Ms Danielle Brice received correspondence from a resident who requested that the 80km speed zone be extended along George Bass Drive from Tomakin to Broulee. It was noted that this was a matter for the Roads & Maritime Services to review and the Traffic Officer will write back to the resident.

**2016.IN.009 Traffic Management - Queen Street, Moruya**

The RMS representative informed the Committee that correspondence has been received regarding the intersection of Queen Street and Princes Highway, Moruya with concerns of driver behaviour issues in relation to pedestrians. The Committee agreed that the RMS are discussing this with the Police and no further action is required.

**2016.IN.010 Traffic Management- Charity Run– Batemans Bay to Canberra**

The RMS representative informed the Committee that correspondence from a Batemans Bay resident has been received advising that he will be doing a solo charity run from Batemans Bay to Canberra with one support vehicle. The Roads & Maritime Services representative advised that the support vehicle will not be allowed to follow the runner (at low speed) and this will be dealt with by the State Planning and Major Event Unit.

**NEXT MEETING**

The next meeting of the Eurobodalla Local Traffic Committee is to be held on Thursday 10 December 2015 in the Council's Committee Room commencing at 9.30am.



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**FBD15/083 CODE OF CONDUCT COMPLAINTS STATISTICS REPORT**

**E13.7162**

Responsible Officer: Anthony O'Reilly - Director Finance and Business Development

Attachments: 1. Model Code of Conduct Complaints Statistics Report

Focus Area: Collaborative Communities

Delivery Program Link: C1.2 Manage the organisation to effectively and efficiently meet our statutory obligations

Operational Plan Link: C1.2.1 Respond to legislative and policy requirements set by the Department of Local Government

### **EXECUTIVE SUMMARY**

The Office of Local Government (OLG) requires Council to submit a Code of Conduct Complaints Statistics Report by the 30 November each year. Council submitted the Code of Conduct Statistics Report to the OLG on the 3 November 2015. A copy of the report is attached for Council information. The report includes statistical information on the code of conduct complaints relating to Councillors and the General Manager from the 1 September 2014 to 31 August 2015. As part of this process the report must be presented to Council by the 31 December.

### **RECOMMENDATION**

THAT Council receive and note the Code of Conduct Statistics Report.

### **BACKGROUND**

The Model Code of Conduct states a council official must act in a manner that is not likely to bring Council or holders of civic office into disrepute. Specially, they must not act in a way that:

- a) contravenes the Act, associated regulations, council's relevant administrative requirements and policies
- b) is detrimental to the pursuit of the charter of a council
- c) is improper or unethical
- d) is an abuse of power or otherwise amounts to misconduct
- e) causes, comprises or involves intimidation, harassment or verbal abuse
- f) causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment.

A council official must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out their functions under the Act or any other Act. Further, they must treat others with respect at all times.

When a complaint is lodged with a conduct reviewer they will conduct a preliminary assessment for the purpose of determining how the complaint is to be managed. The conduct reviewer may determine one or more of the following:

- to take no action

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**FBD15/083 CODE OF CONDUCT COMPLAINTS STATISTICS REPORT**

**E13.7162**

- to resolve the complaint by alternative and appropriate strategies such as, counselling, training, mediation, informal discussion, negotiation or apology, or
- refer the matter back to the general manager for alternative and appropriate strategies such as, counselling, training, mediation, informal discussion, negotiation or apology, or
- to refer the matter to another agency or body such as, ICAC, the NSW Ombudsman, the Office of Local Government or the Police, or
- to investigate the matter, or
- to recommend that the complaints coordinator convene a conduct review committee to investigate the matter.

If the conduct reviewer believes the complaint needs to be investigated, the conduct reviewer may make one or more of the following recommendations on completion of the investigation:

- that the council revise any of its policies or procedures
- that the subject person undertake any training or other education relevant to the conduct giving rise to the breach
- that the subject person be counselled for their conduct
- that the subject person apologise to any person or organisation affected by the breach in such a time and form specified by the recommendation
- that finds of inappropriate conduct be made public
- in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the Act
- in the case of the breach by a councillor, that the Council resolves as follows:
  - that the Councillor be formally censured for the breach under section 440G of the Act, and
  - that the matter be referred to the Office of Local Government for further action under the misconduct provisions of the Act.

The Model Code of Procedures (for administering the Model Code of Conduct) states that the following statistics must be reported to Council within three (3) months from the end of September each year.

- Total number of complaints received in the period about councillors and the General Manager under the code of conduct
- Total number of complaints finalised in the period about Councillors and the General Manager under the code of conduct
- The number of complaints finalised at the outset by alternative means by the General Manager or Mayor
- The number of complaints referred to the Office of Local Government under a special complaints management arrangement
- The number of code of conduct complaints referred to a conduct reviewer.

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**FBD15/083 CODE OF CONDUCT COMPLAINTS STATISTICS REPORT**

**E13.7162**

- The number of code of conduct complaints finalised at preliminary assessment by conduct reviewer
- The number of code of conduct complaints referred back to General Manager or Mayor for resolution after preliminary assessment by conduct reviewer
- The number of finalised code of conduct complaints investigated by a conduct reviewer
- The number of finalised code of conduct complaints investigated by a conduct review committee
- The number of finalised complaints investigated where there was found to be no breach
- The number of finalised complaints investigated where there was found to be a breach
- The number of complaints referred by General Manager or Mayor to another agency or body such as the ICAC, the NSW ombudsman, the Office of Local Government or the Policy
- The number of complaints being investigated that are not yet finalised
- The total cost of dealing with code of conduct complaints within the period made about Councillors and the General Manager including staff costs.

**CONSIDERATIONS**

All complaints received against Councillors and the General Manager from the 1 September 2014 to the 31 August 2015 have been included in this report. There are three code of conduct complaints that were received at the end of the reporting period and therefore, have not been finalised.

There was one code of conduct complaint that was investigated by the conduct reviewer in the 2013-2014 reporting period and not finalised. This investigation is now complete and included in the 2014-2015 report.

**Legal**

The Model Code of Procedures for administration of the Model Code of Conduct states that a Code of Conduct Complaints Statistics report must be presented to Council within three months from the end of September each year.

**Policy**

The Code of Conduct Complaints Statistics report is a requirement of the Model Code of Procedures for the administration of the Model Code of Conduct.

**Social Impact**

Enhancing transparency of Council Policy and procedures.

**Financial**

The total cost of dealing with code of conduct complaints relating to Councillors and the General Manager is \$22,770.00.

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**FBD15/083 CODE OF CONDUCT COMPLAINTS STATISTICS REPORT**

**E13.7162**

**Community Engagement**

The Model Code of Conduct is a mechanism that allows the public to submit complaints for breaches of the Code by Councillors and the General Manager. The Model Code of Conduct has been developed to assist council officials to act in a way that enhances public confidence in the integrity of local government.

**CONCLUSION**

The Code of Conduct Complaints Statistics Report has taken into account all the requirements listed in the Model Code of Procedures for administration of the Model Code of Conduct. Council submitted the Code of Conduct Complaints Statistics Report to the Office of Local Government on the 3 November 2015. It is recommended that Council receive and note the Code of Conduct Complaints Statistics Report.

## Office of Local Government

### Model Code of Conduct Complaints Statistics

Reporting Period: 1 September 2014 - 31 August 2015

**Date Due:** 31 December 2015

*To assist with the compilation of the Your Council publication it would be appreciated if councils could return this Report by 30 November 2015*

**Survey return email address:** [codeofconduct@olg.nsw.gov.au](mailto:codeofconduct@olg.nsw.gov.au)

<b>Council Name:</b>	<a href="#">Eurobodalla Shire Council</a>
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<b>Contact Name:</b>	<a href="#">Jeff Phillips</a>
<b>Contact Phone:</b>	<a href="#">02 4474 1267</a>
<b>Contact Position:</b>	<a href="#">Divisional Manager Governance &amp; Information</a>
<b>Contact Email:</b>	<a href="mailto:jeff.phillips@esc.nsw.gov.au">jeff.phillips@esc.nsw.gov.au</a>

All responses to be numeric

Where there is a zero value, please enter 0

**Enquiries:** Performance and Compliance Team  
Office of Local Government  
Phone: (02) 4428 4100  
Enquiry email: [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au)

## Model Code of Conduct Complaints Statistics Eurobodalla Shire Council

### Number of Complaints

1 a	The total number of complaints <b>received</b> in the period about councillors and the general manager under the code of conduct	22
b	The total number of complaints <b>finalised</b> in the period about councillors and the general manager under the code of conduct	20

### Overview of Complaints and Cost

2 a	The number of complaints <b>finalised at the outset</b> by alternative means by the general manager or Mayor	0
b	The number of complaints <b>referred to the Office of Local Government</b> under a special complaints management arrangement	0
c	The number of code of conduct complaints <b>referred to a conduct reviewer</b>	21
d	The number of code of conduct complaints <b>finalised at preliminary assessment</b> by conduct reviewer	18
e	The number of code of conduct complaints <b>referred back to GM or Mayor</b> for resolution after preliminary assessment by conduct reviewer	0
f	The number of finalised code of conduct complaints <b>investigated by a conduct reviewer</b>	1
g	The number of finalised code of conduct complaints <b>investigated by a conduct review committee</b>	0
h	Number of finalised complaints investigated where there was found to be <b>no breach</b>	0
i	Number of finalised complaints investigated where there was found to be <b>a breach</b>	1
j	Number of complaints referred by the GM or Mayor <b>to another agency</b> or body such as the ICAC, the NSW Ombudsman, the Office or the Police	1
k	Number of complaints being investigated that are <b>not yet finalised</b>	0
l	The <b>total cost</b> of dealing with code of conduct complaints within the period made about councillors and the general manager including staff costs	\$22,770



### Preliminary Assessment Statistics

3	The number of complaints determined by the conduct reviewer at the preliminary assessment stage by each of the following actions:	
a	To take no action	18
b	To resolve the complaint by alternative and appropriate strategies	0
c	To refer the matter back to the general manager or the Mayor, for resolution by alternative and appropriate strategies	0
d	To refer the matter to another agency or body such as the ICAC, the NSW Ombudsman, the Office or the Police	0
e	To investigate the matter	0
f	To recommend that the complaints coordinator convene a conduct review committee to investigate the matter	0

### Investigation Statistics

4	The number of investigated complaints resulting in a determination that there was <b>no breach</b> , in which the following recommendations were made:	
a	That the council revise its policies or procedures	0
b	That a person or persons undertake training or other education	0
5	The number of investigated complaints resulting in a determination that there <b>was a breach</b> in which the following recommendations were made:	
a	That the council revise any of its policies or procedures	0
b	That the subject person undertake any training or other education relevant to the conduct giving rise to the breach	1
c	That the subject person be counselled for their conduct	0
d	That the subject person apologise to any person or organisation affected by the breach	1
e	That findings of inappropriate conduct be made public	1
f	In the case of a breach by the general manager, that action be taken under the general manager's contract for the breach	0
g	In the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the Local Government Act 1993	0
h	In the case of a breach by a councillor, that the matter be referred to the Office for further action	1
6	Matter referred or resolved after commencement of an investigation under clause 8.20 of the Procedures	0

### Categories of misconduct

7 The number of investigated complaints resulting in a determination that there was a breach with respect to each of the following categories of conduct:

a General conduct (Part 3)

1

b Conflict of interest (Part 4)

0

c Personal benefit (Part 5)

0

d Relationship between council officials (Part 6)

0

e Access to information and resources (Part 7)

0

### Outcome of determinations

8 The number of investigated complaints resulting in a determination that there was a breach in which the council failed to adopt the conduct reviewers recommendation

0

9 The number of investigated complaints resulting in a determination that there was a breach in which the council's decision was overturned following a review by the Office

0



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**FBD15/084 CODE OF PRACTICE - LICENSING OF PUBLIC RESERVES**

**E80.1320**

Responsible Officer: Anthony O'Reilly - Director Finance and Business Development

Attachments: 1. Code of Practice

Focus Area: Support Services

Delivery Program Link: SS3.3 Provide administrative, technical, professional and trade services

Operational Plan Link: SS3.3.4 Manage Council property to achieve best value to the community

### **EXECUTIVE SUMMARY**

Council has previously considered applications and granted licences for the use of public reserves under its control for a variety of activities on a 'first come, first served' basis.

Crown Lands has provided Council written advice that for licences in excess of 12 months it requires licences for Crown reserves to be considered via an open and transparent process in order to meet the provisions of the 2006 ICAC Direct Dealing Guidelines. This requirement applies to all NSW councils.

Accordingly, on 14 October 2014, Council resolved that:

*"A procedure be developed to satisfy the Crown Lands Division's requirements regarding fairness and transparency in consenting to licences for terms in excess of twelve months."*

To meet the requirement of Council's resolution and Crown Lands requirements which were confirmed in July 2015, and to ensure the process by which licences are granted by Council over all public reserves it controls is fair and transparent, a Code of Practice for the granting of licences for activities conducted within Council controlled public reserves and associated buildings has been developed.

The main focus of the Code is for the:

- calling of expressions of interest for the use of Council controlled public reserves to ensure all groups, organisations and commercial operators have an equal opportunity to make applications for licences.
- for the establishment of a selection criteria by which conflicting applications can be assessed and considered by Council in determining who will be granted licences.

This report is presented for Council to note the Code of Practice for Licensing of Public Reserves and Associated Buildings.

### **RECOMMENDATION**

THAT the report on the Code of Practice for the Licensing of Council controlled public reserves and associated buildings for the purpose of conducting events, markets and commercial operations be received and noted.

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**FBD15/084 CODE OF PRACTICE - LICENSING OF PUBLIC RESERVES**

**E80.1320**

**BACKGROUND**

Council has previously considered applications and granted licences for the use of public reserves under its control for a variety of activities on a 'first come, first served' basis.

Crown Lands has provided Council written advice that for licences in excess of 12 months it would require licences for Crown reserves to be considered via an open and transparent process in order to meet the provisions of the 2006 ICAC Direct Dealing Guidelines. This applies to all NSW councils.

At its meeting held on 14 October 2014, following consideration of a report to grant a temporary licence to the Caravan and Camping Industry Association NSW to stage the South Coast Caravan, Camping and Holiday Expo on the Mackay Park Reserve at Batemans Bay (it wanted a further five-year licence), Council resolved in part that:

2. *A procedure be developed to satisfy the Crown Lands Division's requirements regarding fairness and transparency in consenting to licences for terms in excess of twelve months.*

**CONSIDERATIONS**

Council regularly receives requests for five year licences. In the last 12 months, there have been multiple requests including from some water based, commercial businesses that operate from public reserves (including jetski and kayak hire businesses), and for events such as the Caravan and Camping Show, Fridays on the Foreshore, Huntfest and the Narooma Forest Rally.

A Code of Practice for the granting of licences for activities conducted within Council controlled public reserves and associated buildings has been developed. The administrative process will ensure Council grants licences for Council controlled public reserves and associated buildings in a timely manner that meets legislative requirements, and will establish a consistent and fair framework to deal with requests for the use of public land.

The use of Council controlled public reserves could be for markets, events or commercial operations.

**Policy**

Council's '[The Use of Community Land Policy](#)' and the '[Events Policy](#)' are relevant to this Code of Practice.

For events, the policy states that 'The full process for assessing event applications is outlined in the [Eurobodalla Shire Event Guidelines](#).'

To ensure consistency with the Policy, the Code of Practice will form an appendix to the guidelines. The guidelines refer to applications where there is a date conflict but do not specify any procedural detail. To demonstrate that an open and transparent competitive process has been followed a rigorous process is required to be implemented.

**Legal**

Council must comply with the *Crown Lands Act 1989* and the *Local Government Act 1993* and any regulations made thereunder.

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**FBD15/084 CODE OF PRACTICE - LICENSING OF PUBLIC RESERVES**

**E80.1320**

***Crown Lands Act 1989***

If the status of land is '**Crown Reserve**' managed by a Trust for which Council is Trust Manager, consent of the Minister responsible for the administration of the *Crown Lands Acts 1989* must be obtained before the licence is executed for a licence with a term greater than 12 months.

Licences may be granted through public tender, public auction or by invitation for expressions of interest.

Unless Council, as the appointed reserve trust manager for Crown reserves, progresses licences by way of an open and transparent competitive process, Crown Lands requires Council to justify and document a case for direct dealing on the basis of one of the exemption categories outlined in the 2006 ICAC Direct Dealing Guidelines.

The NSW Government released a paper, '*Response to Crown Lands Legislation White Paper*' in October 2015. This may change the legislative framework under which licences on Crown Lands are dealt with but it will not change the need for an open and transparent competitive process. Crown Lands confirmed in July 2015 that Council's proposed process as outlined in this report is acceptable to them based on its interpretation of the ICAC guidelines.

***Local Government Act 1993***

If the land is Council owned and classified as **community** land, Council must give public notice of any proposed licence on Council owned community land by advertising in the local press.

The notice of the proposal must include:

- information sufficient to identify the land concerned
- the purpose for which the land will be used
- the term of the proposed licence (including any option term)
- the name of the proposed licensee, and
- a statement that submissions in writing may be made to the Council concerning the proposal within a period not less than 28 days which is in addition to the EOI process and timeframe.

If any objections are received, Council must consider all submissions before determining the licence. If the term of the licence exceeds five years and objections are received, the proposal must be sent to the Minister for Local Government who will decide if a licence will be granted.

There is no proposed change to this process.

**Code of Practice**

The Code of Practice is attached and the process is as follows:

- An annual expression of interest (EOI) process is undertaken for proponents wishing to take out a licence for the use of Council controlled public reserves and associated buildings
- Applications received are reviewed to see if there are any conflicts in terms of venues/dates
- If no conflicting EOIs are received, the licence application will be processed in accordance with Council procedure and a report presented to Council for a decision

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**FBD15/084 CODE OF PRACTICE - LICENSING OF PUBLIC RESERVES**

**E80.1320**

- If there are conflicting EOIs, a selective tendering process with pre-set selection criteria will be undertaken, and will be presented to Council for a decision
- If an application is received outside of the annual EOI process and does not conflict with any application received during the annual EOI process, it will be dealt with in accordance with Council's procedure and either the Crown Lands Act or the Local Government Act as appropriate then and will be presented to Council for a decision
- If an application is received outside the annual EOI process and does conflict with any application received during the annual EOI process and approved by Council, staff will seek to find alternative dates and venues for the applicant
- It is emphasised that **all** licences will be presented to Council for a decision.

**Asset**

In the Code of Practice:

*"public reserves"* means Crown Reserves under Trusteeship for which Council is Trust Manager and Council owned land classified as community land.

*"associated buildings"* means buildings within a reserve used in conjunction with the use of the reserve for the activity for which a licence is sought, not for the use of a building in isolation.

**Social Impact**

The Code of Practice will ensure all groups, organisations or commercial operators will have a fair and equal opportunity to apply for the use of a Council controlled reserve and associated buildings.

**Economic Development Employment Potential**

Public reserves in Eurobodalla host a number of activities crucial to the economic well-being of the Shire. These include national award winning Farmer's Markets, commercial events such as the Caravan and Camping Show which injects over \$1 million into the local economy, and commercial activities such as surf schools which are an essential part of the tourism economy.

**Financial**

The Code of Practice can be administered within current budgets.

**Community Engagement**

The first annual expression of interest process will be conducted in February and March 2016 and applicants will have 35 days to apply.

Where an application for a licence has already been requested, an EOI will be conducted immediately to allow such applications to be processed in a timely manner. An application for a five year licence to run from the expiry of their current licence has been received from Camping Caravan and Camping Industry Association NSW and the South Coast Hunters Club. Both applicants are seeking surety of tenure for their respective events. This surety proffers the opportunity to secure sponsorship for a longer period than otherwise would be available for a one year licence. A kayak business in Narooma and a Jet ski business in Batemans Bay have also sought multi-year licences.

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**FBD15/084 CODE OF PRACTICE - LICENSING OF PUBLIC RESERVES**

**E80.1320**

Subject to Council approval, the schedule for this immediate EOI processes is:

10 Dec 2015	Call for EOIs for events already in the system
4 Feb 2016	EOIs for these applicants close (56 days)
5 Feb 2016	If there is a conflict, applicants advised they have three weeks to submit a selective tender
29 Feb 2016	Selective tenders closes
1-8 Mar 2016	Tenders assessed
22 Mar 2016	Council Meeting to determine intent to issue licence

The first annual EO schedule is planned for:

1 Feb 2016	First annual call for expressions of interest for all venues opens
21 Mar 2016	First annual call for expressions of interest closes
22 Mar 2016	If there is a conflict, applicants advised they have three weeks to submit a selective tender
12 Apr 2016	Selective tenders closes
19 Apr 2016	Tenders assessed
10 May 2016	Council Meeting to determine intent to issue licence

**CONCLUSION**

The implementation of the Code of Practice for the granting of licences for activities conducted within Council controlled public reserves and associated buildings will ensure Council's procedure for granting future licences will be fair, transparent and complies with relevant legislation.

## CODE OF PRACTICE

Code name	Licensing of Council controlled public reserves and associated buildings for the purpose of conducting events, markets and commercial operations.
Responsible manager(s)	Divisional Manager Business Development and Events
Contact officer(s)	Andrew Greenway
Directorate	Finance and Business Development
Approval date	
Community Strategic Plan Objective	5. We help our local economy grow
Delivery Program link	L1.3 Implement recreation and community development initiatives L5.1 Implement Council's Recreation and Open Space Strategy P1.1 Facilitate growth and development of our business community P1.3 Seek and Support the development and hosting of events
Operational Plan link	L1.3.5 Improve community awareness and usage of recreation facilities P1.1.2 Provide business support and development activities P1.3.1 Support event organisers in the delivery of a range of events

### Summary

Council owns both community and operational land, public roads and manages Crown Reserves as Trust Manager. Council manages the use of its land holdings for the benefit of the community and/or to maximise the amount of revenue it derives from its land holdings.

This document details the process that will be followed for the granting of licences for the use of Council controlled public reserves and associated buildings, including community land and Crown reserves, in a timely manner that meets legislative and community requirements and establishes a consistent and fair framework to deal with requests for the use of public land.

This Code covers the following:

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1.3	Legislative Framework .....	2
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## 1 INTRODUCTION

### 1.1 Purpose

The purpose of this Code of Practice is to establish a process that will be followed for the granting of licences for the use of Council controlled public reserves and associated buildings, including **community** land and Crown reserves, in a timely manner that meets legislative requirements and establishes a consistent and fair framework to deal with requests for the use of public land.

### 1.2 Land to which this Code applies

This Code of Practice applies to all Council controlled public reserves and associated buildings, including community land and Crown reserves.

In this Code:

“public reserves” means Crown Reserves under Trusteeship for which Council is Trust Manager and Council owned land classified as community land.

“associated buildings” means buildings within a reserve used in conjunction with the use of the reserve for the activity for which a licence is sought, not for the use of a building in isolation.

### 1.3 Legislative Framework

Each application will be dealt with under the relevant legislation.

#### ***Crown Lands Act 1989***

If status of land is ‘**Crown Reserve**’ managed by a Trust for which Council is Trust Manager, consent of the Minister responsible for the administration of the *Crown Lands Acts 1989* must be obtained before the licence is executed for a licence with a term greater than 12 months.

Licences may be granted through public tender, public auction or by invitation for expressions of interest.

### **Local Government Act 1993**

If the classification of the Council land is '**Community**' and the licence is for any period that **does not** exceed five years, Council must give public notice of the proposal by advertising in the local press. The notice of the proposal must include:

- information sufficient to identify the land concerned
- the purpose for which the land will be used
- the term of the proposed licence (including any option term)
- the name of the proposed licensee
- a statement that submissions in writing may be made to the Council concerning the proposal within a period not less than 28 days which is in addition to the EOI process and timeframe.

If any objections are received Council must consider all submissions before determining the licence.

If the licence period exceeds five years, Council must give the same public notice of the proposal as above and if any objections are received consent for the licence will be required from the Minister for Local Government.

### **1.4 Objectives**

The objectives of this Code are to detail the process that will be followed for the granting of licences for the use of Council controlled public reserves and associated buildings in a timely manner that meets legislative requirements and establishes a consistent and fair framework to deal with requests for the use of public land.

### **1.5 Relationship to Legislation/ Policy/ Plan**

This Code should be read in conjunction with the following legislation, policy, plans or orders, standards or guidelines.

#### **1.5.1 Legislation**

[Local Government Act 1993](#)

[Crown Lands Act 1989](#)

#### **1.5.2 Policy**

Use of Community Land Policy

[\\fs\common\DB\Policy\Documents\LivePolicyDocs\2038.pdf](#)

Events Policy

[www.esc.nsw.gov.au/inside-council/council/council-policies/policies/Events-Policy.pdf](#)

This Policy states that the full process for assessing event applications is outlined in the Eurobodalla Shire Event Guidelines. For events, this Code of Practice will be an appendix to those guidelines.

#### **1.5.3 Standards or Guidelines**

Eurobodalla Shire Event Guidelines

[www.esc.nsw.gov.au/\\_data/assets/pdf\\_file/0015/12822/events\\_guidelines\\_and\\_application.pdf](#)



### **1.6 Timeline**

The Annual call for EOIs will be open for 42 days in February and March each year and seek EOIs for activities from 1 July of that year.

## **2 CODE DETAILS**

Once annually, Council will call for Expressions of Interests (EOI) from parties interested in using public reserves and associated buildings under council control for the purpose of:

- Running markets
- Holding events
- Conducting commercial activities

A template for EOIs will request:

- The name of the organisation
- Description and purpose of the activity
- Location of the activity
- Dates or Periods of proposed use e.g. 1<sup>st</sup> Sunday of each month
- Term of Licence Sought

EOIs would then be reviewed to determine any conflicts of dates and/or venues. The EOI will be processed in priority order based on the date of the activity.

All existing licence holders will be notified of the calling for EOIs.

### **Applications received outside the annual EOI process**

Council will accept licence applications all year round. Provided there are no conflicts with EOIs received during the annual EOI process and approve by Council, these applications can be processed.

Any requests for licences outside the EOI process will need to fit within the calendar of dates & venues available after the EOIs are processed.

### **Allocation**

Where there are no conflicts, including where licences are currently held, applicants would proceed to the appropriate application process to apply for a licence for their nominated venue and activity. All licences would be granted in accordance with Council's existing policies and procedures and will come before Council for a decision.

Any current licences will remain valid subject to the terms and conditions of the licence.

A standard licence template has been written with scope for specific terms and conditions relevant to the activity.

Where a conflict arises such as two or more applicants requesting the same venue for the same date(s), Council will use a selective tendering process. The outcome of the tendering process will come to Council for a decision.

Unsuccessful tenderers will be given the opportunity to nominate an alternate date for consideration.

### **Selective Tendering**

Where a venue is requested by more than one party for the same date and time, the applicants would each need to submit a tender for their activity including information to address the following selection criteria:

#### **1. Economic activity (30%)**

Level of economic activity expected and likelihood it will be achieved

- i. How the activity generates local economic activity and development
- ii. How the activity will attract external visitation to the area
- iii. The expected level of economic activity and overnight accommodation
- iv. The fee tendered – the amount of the fee payable to Council if the activity is not covered by Council's adopted fees and charges for the use of the public reserve

#### **2. Future Growth potential (20%)**

Level of future growth and likelihood it will be delivered

- i. How will the activity grow over the next 5 years and beyond
- ii. The expected level of visitation and / or economic activity

#### **3. Sustainability (25%)**

- i. Is the activity self-sustaining
- ii. If not, how likely is it that the activity will continue without ongoing external support

#### **4. Other benefits to the community (25%)**

- i. What is the level of community participation and what other benefits will the community receive from this event – e.g. support health programs, donations to the community, education support and development

It is expected that the details supplied about the activity would include the following information to enable assessment against the above criteria:

- A description of the activity, its longevity and sustainability, its future growth potential, and expected community benefits.
- A description of the proponent's management experience, financial viability and other relevant experience.
- Activity Marketing Plan. This may include information on whether the activity will be advertised locally or more broadly, and what mechanism will be used, such as print, and/or social media.

- Activity Budget. This may include such documents as profit and loss statements, balance sheets, or financial projections.
- Risk Management Plan
- Fee tendered, if the activity is not covered by Council's adopted fees and charges for the use of the public reserve

### **3 RESPONSIBILITIES**

#### **3.1 Staff**

Under supervision, applicable Council staff will be responsible for ensuring that this Code is implemented appropriately within their work area, after they have received relevant training to do so.

#### **3.2 Requests and Concerns**

Requests and concerns received from the community regarding this Code will be recorded on Council's Customer Service Request (CSR) or records system and handled in accordance with council's Customer Service policy. They will be used to help determine follow up actions and to analyse the history of requests and concerns.

#### **3.3 Complaints**

Complaints received regarding this Code will be lodged with the Public Officer and handled in accordance with Council's Complaints Policy.

### **4 MONITORING AND REVIEW**

This Code may be reviewed and updated as necessary when legislation or policy requires it; or Council's functions, structure or activities change; or when technological advances or new systems change the way that Council manages events.

### **5 GOVERNANCE**

*Related legislation and policies*

<b>Name</b>	<b>Link</b>
Related Council Policy or Code	<a href="http://www.esc.nsw.gov.au">www.esc.nsw.gov.au</a>
<i>Local Government Act 1993</i>	<a href="http://www.austlii.edu.au/au/legis/nsw/consol_act/lga1993182">www.austlii.edu.au/au/legis/nsw/consol_act/lga1993182</a>
<i>Crown Lands Act 1989</i>	<a href="http://www.austlii.edu.au/au/legis/nsw/consol_act/cla1989134/">www.austlii.edu.au/au/legis/nsw/consol_act/cla1989134/</a>

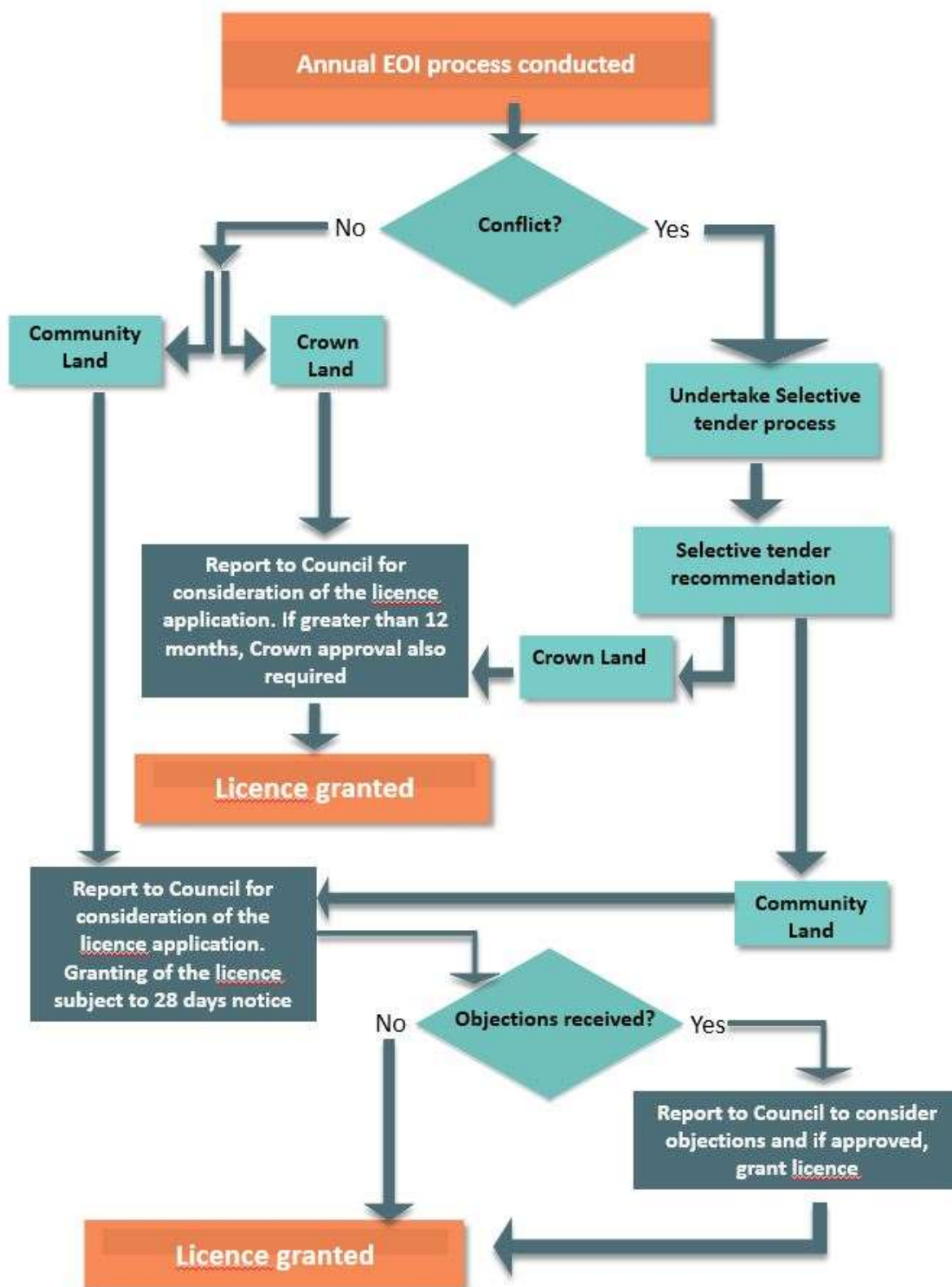
<b>Name</b>	<b>Link</b>
Division of Local Government	<a href="http://www.dlg.nsw.gov.au/">www.dlg.nsw.gov.au/</a>

*Change history*

<b>Version</b>	<b>Approval date</b>	<b>Approved by</b>	<b>Min No</b>	<b>File No</b>	<b>Change</b>
1	2015	Council	xx/xx		Policy commenced

*Internal use*

Responsible officer	General Manager			Approved by	Council
Min no		Report no		Effective date	
File No		Review date		Pages	7



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**FBD15/085 LEASE OF COUNCIL HOUSE - BOTANIC GARDENS**

**91.2621.B**

Responsible Officer: Anthony O'Reilly - Director Finance and Business Development

Attachments: 1. Confidential - Independant Rental Valuation

Focus Area: Support Services

Delivery Program Link: SS3.3 Provide administrative, technical, professional and trade services

Operational Plan Link: SS3.3.4 Manage Council property to achieve best value to the community

**EXECUTIVE SUMMARY**

The house within the Eurobodalla Regional Botanic Gardens has previously been occupied by the Botanic Gardens Manager. The current Gardens Manager has now moved.

At present, there are no alternate uses for the building and accordingly it is available for continued residential occupation.

Forestry Corporation of NSW, the landowner, has consented to the leasing of the premises for residential occupation.

For security reasons, it is considered appropriate for the lease of the house to be offered to Council staff with a preference given to employees associated with the Gardens or the Deep Creek Dam facility.

This report recommends the General Manager be given delegated authority to negotiate and grant a lease of the house to a Council employee for an amount not less than market rent determined by a registered valuer.

**RECOMMENDATION**

THAT The General Manager be given delegated authority to negotiate and grant a lease for the house within the Eurobodalla Botanic Gardens to a staff member of the Council for terms and conditions including:

- (a) A term of twelve months with an option of twelve months subject to Council's absolute discretion.
- (b) Rent being an amount not less than market rent determined by a registered valuer.
- (c) The lessee being responsible for locking gates at required times.
- (d) No plants to be introduced without the consent of the Botanic Gardens Manager.
- (e) Free-ranging pets prohibited.
- (f) Noise levels restricted to pre-determined level.
- (g) No personal exposure in the vicinity of the house.
- (h) Visitors' cars restricted to the public car park during Garden's opening hours.
- (i) The rent for an option, if granted, will be in line with the CPI.

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**FBD15/085 LEASE OF COUNCIL HOUSE - BOTANIC GARDENS**

**91.2621.B**

**BACKGROUND**

The house within the Eurobodalla Botanic Gardens has previously been occupied by the Botanic Gardens Manager. The current Gardens Manager has now moved out.

At present there are no alternate uses for the building and accordingly it is available for continued residential occupation.

**CONSIDERATIONS**

**Legal**

The Botanic Gardens are currently occupied under a permissive occupancy agreement with Forestry Corporation of NSW. Consent has been received from Forestry Corporation to rent the house for residential occupation.

A residential lease subject to terms and conditions outlined in this report is proposed.

**Asset**

The house is located within the gardens without a private access. The access is also shared with Deep Creek Dam and associated infrastructure.

The gates to the road into the Botanic Gardens and Deep Creek Dam are kept locked outside of the public opening hours of the Gardens.

As such, for security reasons, it is not considered appropriate for the house to be offered to the general public.

It is, however, considered reasonable for the offer to be made to Council employees with preference given to staff associated with the operations of the Gardens or the Deep Creek Dam facility.

Whilst there are currently no alternate uses for the house within the Gardens, this may not always be the case. Accordingly it is proposed any lease granted would be for a period of twelve months with an option for twelve months to be granted at Council's absolute discretion.

**Environmental**

Due to the sensitive nature of the Botanic Gardens, a condition of lease would be the restriction on the introduction of certain plant species as well as the prohibition of any free-ranging pets.

**Social Impact**

As the house is within a public area, restrictions will also need to be imposed on noise levels and personal exposure. During the Garden's opening hours, visitor carparking will be restricted to the public visitor car park.

**Financial**

A valuation of market rent has been determined by a registered valuer including rent subject to the proposed restrictions and obligations of the proposed lease.

The figures are set out in the Confidential Attachment.

The rent from the leasing of the house will increase the income for the Botanic Gardens.

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**FBD15/085 LEASE OF COUNCIL HOUSE - BOTANIC GARDENS**

**91.2621.B**

The rent for the option if granted will be increased in line with the CPI.

**Community Engagement**

It is proposed the offer of lease will be made firstly, to all Council staff associated with the Botanic Gardens and the Deep Creek Dam facility, and then open to all Council staff.

**CONCLUSION**

The house within the Botanic Gardens is available for lease and it is considered appropriate for the lease to be offered to Council staff for security reasons.



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## 17. DEALING WITH MATTERS IN CLOSED SESSION

In accordance with Section 10A(2) of the Local Government Act 1993, Council can exclude members of the public from the meeting and go into Closed Session to consider confidential matters, if those matters involve:

- (a) personnel matters concerning particular individuals; or
- (b) the personal hardship of any resident or ratepayer; or
- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business; or
- (d) commercial information of a confidential nature that would, if disclosed;
  - (i) prejudice the commercial position of the person who supplied it, or
  - (ii) confer a commercial advantage on a competitor of the council, or
  - (iii) reveal a trade secret,
- (e) information that would, if disclosed, prejudice the maintenance of law; or
- (f) matters affecting the security of the council, councillors, council staff or council property; or
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege or information concerning the nature and location of a place; or
- (h) an item of Aboriginal significance on community land.

and Council considers that discussion of the material in open session would be contrary to the public interest.

In accordance with Section 10A(4) of the Local Government Act 1993 the Chairperson will invite members of the public to make verbal representations to the Council on whether the meeting should be closed to consider confidential matters.

### RECOMMENDATION

THAT pursuant to Section 10A of the Local Government Act, 1993 the following items on the agenda for the Ordinary Council meeting be dealt with in Closed Session for the reasons specified below:

#### **CON15/021 Property Matter**

Item CON15/021 is confidential in accordance with s10(A)(2)(c) of the Local Government Act because it contains information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business and discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

#### **CON15/022 Property Matter**

Item CON15/022 is confidential in accordance with s10(A)(2)(c) of the Local Government Act because it contains information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business and discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

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## EUROBODALLA SHIRE COUNCIL

### ETHICAL DECISION MAKING AND CONFLICTS OF INTEREST

#### A GUIDING CHECKLIST FOR COUNCILLORS, OFFICERS AND COMMUNITY COMMITTEES

#### ETHICAL DECISION MAKING

- Is the decision or conduct legal?
- Is it consistent with Government policy, Council's objectives and Code of Conduct?
- What will the outcome be for you, your colleagues, the Council, anyone else?
- Does it raise a conflict of interest?
- Do you stand to gain personally at public expense?
- Can the decision be justified in terms of public interest?
- Would it withstand public scrutiny?

#### CONFLICT OF INTEREST

A conflict of interest is a clash between private interest and public duty. There are two types of conflict: Pecuniary – regulated by the *Local Government Act* and Department of Local Government; and Non-Pecuniary – regulated by Codes of Conduct and policy, ICAC, Ombudsman, Department of Local Government (advice only).

#### THE TEST FOR CONFLICT OF INTEREST

- Is it likely I could be influenced by personal interest in carrying out my public duty?
- Would a fair and reasonable person believe I could be so influenced?
- Conflict of interest is closely tied to the layperson's definition of "corruption" – using public office for private gain.
- Important to consider public perceptions of whether you have a conflict of interest.

#### IDENTIFYING PROBLEMS

- 1st** Do I have private interests affected by a matter I am officially involved in?
- 2nd** Is my official role one of influence or perceived influence over the matter?
- 3rd** Do my private interests conflict with my official role?

Whilst seeking advice is generally useful, the ultimate decision rests with the person concerned.

## AGENCY ADVICE

Officers of the following agencies are available during office hours to discuss the obligations placed on Councillors, Officers and Community Committee members by various pieces of legislation, regulation and Codes.

CONTACT	PHONE	EMAIL	WEBSITE
Eurobodalla Shire Council Public Officer	4474-1000	council@eurocoast.nsw.gov.au	www.esc.nsw.gov.au
ICAC	8281 5999	icac@icac.nsw.gov.au	www.icac.nsw.gov.au
Local Government Department	4428 4100	dlg@dlg.nsw.gov.au	www.dlg.nsw.gov.au
NSW Ombudsman	8286 1000 Toll Free 1800 451 524	nswombo@ombo.nsw.gov.au	www.ombo.nsw.gov.au

Reports to Committee are presented generally by 'exception' - that is, only those items that do not comply with legislation or policy, or are the subject of objection, are discussed in a report.

Reports address areas of business risk to assist decision making. Those areas include legal, policy, environment, asset, economic, strategic and financial.

### Reports may also include key planning or assessment phrases such as:

*Setback* Council's planning controls establish preferred standards of setback (eg 7.5m front; 1m side and rear);

*Envelope* taking into account the slope of a lot, defines the width and height of a building with preferred standard of 8.5m high;

*Footprint* the percentage of a lot taken up by a building on a site plan.

Acronym	Meaning	Description
ACR	Australian Capital Region	The political and strategic grouping of the ACT government and 17 adjacent councils.
AEP	Annual Exceedance Probability	For floods expressed as a % eg 1% = 1:100 year event. The NSW Flood Guidelines nominate types of development and controls.
AHD	Australian Height Datum	Floor levels for buildings set to remain at or above flood level (expressed as 'freeboard').
APZ	Asset Protection Zone	Area to be cleared and maintained around habitable buildings in bushfire prone areas.
AS	Australian Standard	Standards set by national body as minimum construction, service, system, planning or design requirements.

Acronym	Meaning	Description
BCA	Building Code of Australia	Prescribes minimum standards or performance base for building construction.
CAMP	Companion Animal Management Plan	Required by state law, plan nominating management of dogs and cats and areas for access for the exercise of dogs (eg beaches and reserves).
CC	Construction Certificate	Floor plans approved by council or private certifier in compliance with development conditions and BCA.
COPW	Condition of Public Works Report	Required by state law to define the condition of infrastructure assets, the cost to upgrade to defined standards, the current costs of maintenance and desired levels of maintenance.
CP	Cultural Plan	A cultural plan enables identification of cultural assets, identity and needs as well as providing a framework to develop cultural initiatives to increase opportunities for residents.
CSR	Complaint and Service Request	Requests received from public by phone, letter, email or Councillor to attend to certain works (eg pothole) or complain of certain service or offence (eg dogs barking).
DA	Development Application	Required by state law to assess suitability and impacts of a proposed development.
DAP	Disability Action Plan	Council plan outlining proposed works and services to upgrade facilities to progressively meet Disability Discrimination Act.
DCP	Development Control Plan	Local planning policy defining the characteristics sought in residential, commercial land.
DECCW	Department of Environment, Climate Change and Water (formerly EPA, NPWS, DEC)	State agencies (former Environment Protection and National Parks), DNR managing state lands and natural resources and regulating council activity or advising on development applications.
DWE	Department of Water and Energy	State agency managing funding and approvals for town and country water and sewer services and State energy requirements.
DoP	Department of Planning	State agency managing state lands and regulating council activity or advising on development applications or strategic planning.
DLG	Department of Local Government	State agency responsible for regulating local government.
DoL	Department of Lands	State agency managing state lands and advising on development applications or crown land management.
DoC	Department of Commerce	State agency (formerly Public Works) managing state public water, sewer and buildings infrastructure and advising/supervising on council infrastructure construction.

Acronym	Meaning	Description
DoH	Department of Health	State agency responsible for oversight of health care (community and hospital) programs. Also responsible for public warning of reportable health risks.
DOTAR	Department of Infrastructure, Transport and Regional Development and Local Government	Federal agency incorporating infrastructure, transport system, and assisting regions and local government.
EBP	Eurobodalla Bike Plan	Strategic Plan identifying priorities and localities for cycleways in the Shire.
EIS	Environmental Impact Statement	Required for designated and state developments researching and recommending solutions to social, economic and environmental impacts.
EMP	Estuary Management Plan	Community based plan, following scientific research of hydrology and hydraulics, recommending actions to preserve or enhance social, economic and environmental attributes of estuary
EMS	Environmental Management System	Plans prepared by council (such as waste management and strategic planning) around AS14000.
EOI	Expressions of Interest	Often called in advance of selecting tenders to ascertain capacity and cost of private sector performing tasks or projects on behalf of council.
EP&A	Environment Planning & Assessment Act	State law defining types of development on private and public lands, the assessment criteria and consent authorities.
ESC	Eurobodalla Shire Council	
ESD	Ecologically Sustainable Development	Global initiative recommending balance of social, economic and environmental values in accord with 7 ESD principles.
ESS	Eurobodalla Settlement Strategy	Council strategy prepared with assistance of government to identify best uses and re-uses of urban lands, the appropriate siting of private and public investment (eg institutions, employment areas or high density residential) based on current and planned infrastructure and land capacity.
ET	Equivalent Tenement	Basis of calculation of demand or impact of a single dwelling on water and sewer system.
FAG	Financial Assistance Grant	Federal general purpose grant direct to local government based on population and other 'disability' factors.

Acronym	Meaning	Description
FSR	Floor Space Ratio	A measure of bulk and scale, it is a calculation of the extent a building floor area takes up of an allotment.
GIS	Geographic Information System	Computer generated spatial mapping of land and attributes such as infrastructure, slope, zoning.
IPART	Independent Pricing & Regulatory Tribunal	State body that reviews statutory or government business regulatory frameworks and pricing levels.
IPWEA	Institute Public Works Engineers Australia	Professional association.
IWCMS	Integrated Water Cycle Management Strategy (or Plan)	Council plan identifying risk and social, economic and environmental benefit of proposed augmentation to water, sewer and stormwater systems.
IWMS	Integrated Waste Management (Minimisation) Strategy	Council plan identifying risk and social, economic and environmental benefit of proposed augmentation of waste (solids, effluent, contaminated, liquid trade waste).
LEP	Local Environment Plan	The statutory planning instrument defining the zones and objectives of urban and rural areas.
LGAct	Local Government Act	State law defining the role of Mayor, Councillors, staff, financing, approvals etc.
LGMA	Local Government Managers Australia	Professional association.
LGNSW	Local Government NSW	Representative advisory and advocacy group for councils in NSW.
MOU	Memorandum of Understanding	Agreement in principle between parties (eg council and agency) to achieve defined outcomes.
NPWS	National Parks & Wildlife Service	Now merged into DECCW.
NRM	Natural Resource Management	
NVC	Native Vegetation Act 2003	State law defining means of protection of threatened legislation and approval processes to clear land.
OC	Occupation Certificate	Issued by council or private certifier that building is safe to occupy and in compliance with development conditions and BCA.
OSMS	On site sewage management system	Includes septic tanks, aerated systems, biocycles etc.
PCA	Principal Certifying Authority	The person or organisation appointed by applicant to inspect and certify structures.

Acronym	Meaning	Description
PIA	Planning Institute of Australia	Professional association.
POEO	Protection of the Environment Operations Act	State law outlining standards for emissions and discharges and penalties for pollution.
PoM	Plan of Management (usually for community land)	Council plan nominating type of uses for community land and range of facilities progressively to be provided on land.
PPP	Public Private Partnerships	
PTS	Public Transport Strategy	Council strategy to initiate mechanisms to promote and facilitate public transport (bus, taxi, community transport, cycles) in design of subdivisions, developments and council works.
REF	Review of Environmental Factors	Council examination of risk and social, economic and environmental benefit of proposed works, assessed against state planning, environment and safety laws.
REP	Regional Environment Planning Policy	Outlines compulsory state planning objectives to be observed in development assessment and strategic planning.
RFS	Rural Fire Service	State agency responsible for providing equipment and training for volunteer firefighter brigades, and the assessment and approval of developments in bushfire prone lands.
RLF	Regional Leaders Forum	The group of mayors and general managers representing the councils in the ACR.
RMS	Roads & Maritime Service	State agency responsible for funding, construction and maintenance of state roads, the approval of council works on arterial roads and development applications.
S64	S64 Contributions Plan	Developer contributions plan to enable, with council and state funds, the augmentation of water, sewer and stormwater infrastructure.
S94 S94A	S94 Contributions Plan S94A Contributions Plan Levy Plan	Developer contributions to enable construction of public infrastructure and facilities such as roads, reserves, carparks, amenities etc.
SCG	Southern Councils Group	Political and strategic grouping of councils along the NSW south coast from Wollongong to the border, lobbying government for assistance (eg highways) and resourcing sharing initiatives.
SCRS	South Coast Regional Strategy	Regional Strategy prepared by DoP for ESC, BVSC and part SCC to guide new LEPs.

Acronym	Meaning	Description
SEA	Strategic Environment Assessment	Spatial assessment of environmental constraints of land considered in design and assessment of subdivision and infrastructure.  Scientific research behind assessment of capacity of land and waterways in rural residential and urban expansion lands to sustain human settlement.
SEPP	State Environmental Planning Policy	Outlines compulsory state planning objectives.
SNSWLHD	Southern NSW Local Health Districts	State board commissioned with oversight of health care in Highlands, Monaro and Far South Coast.
SoER	State of the Environment Report	Required by state law, the comprehensive assessment (every four years) of the condition and the pressures on the social, economic and environmental features of the Shire and appropriate responses to address or preserve those issues.
SP	Social Plan	Required by state law, the comprehensive assessment (every four years) of the condition and the pressures on the social framework of the community, their services and facilities and economic interactions.
.....SP	Structure Plan	Plan promoting landuses and siting of infrastructure and facilities in towns (eg, BBSP – Batemans Bay Structure Plan).
SRCMA	Southern Rivers Catchment Management Authority	State agency commissioned with assessment and monitoring of health and qualities of catchments from Wollongong to the border, and determine directions and priorities for public and private investment or assistance with grants.
STP	Sewer Treatment Plant	Primary, secondary and part tertiary treatment of sewage collected from sewers before discharge into EPA approved water ways or irrigation onto land.
TAMS	Total Asset Management System	Computer aided system recording condition and maintenance profiles of infrastructure and building assets.
TBL	Triple Bottom Line	Commercial term coined to encourage business to consider and disclose social and environmental risk, benefit and costs in the conduct of business to guide investors as to the long term sustainability and ethics of a business. Taken up by Council to record the basis of prioritisation, the review of condition, the monitor of progress and the financial disclosure of preventative or maintenance investment in council based social and environmental activities.
ToR	Terms of Reference	
TSC	Threatened Species Conservation Act 1995	State law governing the protection of nominated species and relevant assessment and development controls.



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Acronym	Meaning	Description
WCF	Water Cycle Fund	Combination of water, sewer and stormwater activities and their financing arrangements.
WSUD	Water Sensitive Urban Design	Principle behind the IWCMS and council development codes requiring new developments to reduce demand and waste on water resources through contemporary subdivision and building design.