

INDEPENDENT REVIEW OF THE  
REPORT  
“HUNTFEST REVIEW July 2015”

BY  
INDEPENDENT AUDIT COMMITTEE MEMBERS  
19 October 2015

19 October 2015

Councillor Lindsay Brown (Mayor)  
Councillor Rob Pollock  
Councillor Danielle Brice  
Councillor Gabi Harding  
Councillor Liz Innes  
Councillor Milton Leslight  
Councillor Neil Burnside  
Councillor Peter Schwarz  
Copy to Dr Dale, General Manager

Eurobodalla Shire Council  
Moruya NSW 2537

Dear Councillors

The Panel of Independent Members of the Audit Committee has now completed its task to review the HUNTFEST REVIEW July 2015 (hereafter referred to as *The Dale Report*) and hereby submit our report for your consideration.

In the course of our investigation the Independent Review Panel:

Find that for each of HUNTFEST's 2013, 2014 and 2015, that 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) are legal and do not breach any Council's policy".

Conclude that *The Dale Report* incorporates information that provides a very clear and compelling evidentiary trail that shows that due processes 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).

Recommend that ESC:

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

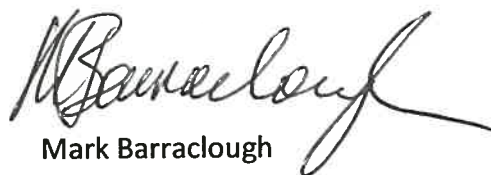
Yours sincerely



Ken Mitchell  
Chair



Sharlene Cohen



Mark Barraclough

## Contents

Introduction .....	4
<i>The Dale Report</i> submitted to the 28 July Ordinary Meeting of Council. ....	4
Independent Members of the Audit Committee .....	4
Terms of reference .....	5
Objectives of the Independent Review process.....	5
Methodology .....	6
Summary of Dr Dale's Findings .....	6
Summary of Dr Dale's Conclusion .....	6
Cross check the inventory of documents received within in <i>The Dale Report</i> . ....	6

## Compile a timeline of key aspects of the HUNTFEST Process and Procedures by Council 7

HUNTFEST Overview of Change of Activities over time.....	8
HUNTFEST 2013.....	9
Findings for HUNTFEST 2013.....	10
HUNTFEST 2014.....	11
Findings for HUNTFEST 2014.....	11
HUNTFEST 2015.....	12
Findings for HUNTFEST 2015.....	13
Analysis of key issues arising in <i>The Dale Report</i> . ....	14
Review of terminology: .....	14
Display or Sale of Guns and/or Ammunition.....	14
Police Considerations .....	14
Legal Considerations .....	15
Findings .....	17
Findings In regard to HUNTFEST 2013: .....	17
Findings In regard to HUNTFEST 2014: .....	17
Findings In regard to HUNTFEST 2015: .....	17
Findings in regard to Legal Advice: .....	17
Findings in regard to variation of Event in 2014 and 2015 .....	17
Conclusion .....	18
Recommendations .....	18
DECLARATION OF IMPARTIALITY .....	19
ATTACHMENT 1 – Information from Dr Dale .....	20
ATTACHMENT 2 – Information from Dr Dale .....	20

ATTACHMENT 3 – Telephone interview with Sparke Helmore Lawyers.....	20
---	----

## Introduction

The purpose of this report is to provide an independent review of *ESC HUNTFEST REVIEW of July 2015* by Dr Catherine Dale, ESC General Manager, (*The Dale Report*) and report back to Council.

*The Dale Report* submitted to the 28 July Ordinary Meeting of Council.

*The Dale Report* was submitted to the Ordinary Meeting of Council of 28 JULY 2015 with 4 recommendations:

1. Council receive and note the report titled 'HUNTFEST Review July 2015' (*The Dale Report*).
2. Council indicate additional comments or clarifications to *The Dale Report*.
3. Once finalised, *The Dale Report* 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 brief Council on the risk management process undertaken with regard to the operations of HUNTFEST.

Council CARRIED the above recommendations.

## Independent Members of the Audit Committee

Dr Dale participated in the 4 August 2015 Audit Committee meeting and as part of agenda item 18, in compliance with recommendation 3 of the Council Meeting of 28 July 2015, formerly handed *The Dale Report* to the **Independent Members of the Audit Committee that were present**. Present to receive the report were Ms Sharlene Cohen and Mr Ken Mitchell, who in turn formally accepted to undertake this Independent Review. Mr Mark Barraclough was interstate but had also agreed to undertake the review and was subsequently provided his copy of the report.

Dr Dale drew the Chair's attention to a variation in the report to that provided to Council for 28 July 2015 Ordinary Meeting in that the Final Report included Attachment 8.

It should be noted that this task of review has not been handed to the 5 members of the Audit Committee, but exclusively to the **Independent Members of the Audit Committee**. Together the 3 independent members comprise the **Independent Review Panel**.

## Terms of reference

The Independent Review Panel were not given specific Terms of Reference by Council. What Council provided was a general statement as follows:

*“Once finalised, the report titled ‘HUNTFEST Review July 2015’ (The Dale Report) 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.”*

Therefore the Independent Review Panel have determined that the Terms of Reference are simply:

**“To review *The Dale Report* and report back to Council”.**

The Independent Review Panel also excludes any consideration of HUNTFEST on moral and/or ethical issues and simply confines its considerations to Council’s processes and procedures that relate to Dr Dale’s Final Report (*The Dale Report*).

## Objectives of the Independent Review process

The Independent Review Panel determined that key objectives of the review process include:

1. ▶ Management of this review process by the 3 Independent members of the Audit Committee must be completely independent of the Council itself.
2. ▶ All parts of the review process must be transparent (easily open to examination by a third party).
3. ▶ The report must be sufficiently detailed to provide satisfactory assurance to the public of the robustness of the review.
4. ▶ The report must provide sufficient, verified information which clearly shows that the criteria have been met.
5. To make appropriate findings.
6. To draw an appropriate conclusion.
7. To make appropriate recommendations.

## Methodology

The methodology approach by the Independent Review Panel is to:

1. State the findings and conclusion of *The Dale Report* that are to be reviewed.
2. Review the relevant information, findings and conclusion;
3. Make our own findings;
4. Draw our own conclusion and
5. Make recommendations.

### Summary of Dr Dale's Findings

We hereby include the direct transcription of the findings from *The Dale Report*.

***"There are four distinct approval processes relevant to the HUNTFEST event, two of which require Council approval and two which are external to Council. Council is responsible for: Development application process (Environment Planning and Assessment Act 1979 and State Environment Planning Policies (SEPP)) and an event licence under the Crown Lands Act 1989."***

***"In Section 5 of this report the Development approval requirements for temporary structures and the legal advice that supports the findings that the use is permissible under the State Environment Planning Policies (Infrastructure 2007) Clause 65 is outlined. The Development Approval for temporary structures was determined by officers under delegated authority."***

***"In Section 6 the licence requirements and the process for the subsequent amendments is examined. The licence and subsequent amendments were approved by Council. As outlined in the attached report, having reviewed the legal advice, relevant legislation and Council policies, it is considered that this event and associated activities is permissible. It is also considered that the appropriate approvals have been issued as approved by staff under delegation and by Council, in accordance with Council's policies and processes, the Environmental Planning and Assessment Act 1979 and the Crown Lands Act 1989."***

### Summary of Dr Dale's Conclusion

We hereby include the direct transcription of the Conclusion from *The Dale Report*.

***"Accordingly having reviewed the legal advice and Council policies, this event and associated activities is permissible and it is considered that the appropriate approvals which have been granted are in accordance with Council's policies, processes and legal obligations."***

Cross check the inventory of documents received within in *The Dale Report*.

As it was foreshadowed that the Final Report to the Audit Committee may be subject to amendment from that submitted to the meeting of 28 July, the Independent Review Panel

decided to check the inventory of documents (attachments) and any material changes to the final report as a starting point.

As stated above, Dr Dale drew the Chair's attention to a variation in the report to that provided to Council for 28 July 2015 Ordinary Meeting (inclusion of Attachment 8). Accordingly as a starting point the Independent Review Panel determined to review the content of the material in the report as handed to us by Dr Dale.

1. Attachment 8 – The Independent Review Panel note that on the official handing over the report to the Audit Committee Chair on 4 August, Dr Dale pointed out Attachment 8 and informed the Chair that she had included Attachment 8 in this the FINAL REPORT. Dr Dale advised that Attachment 8 was the superseded policy (28 February 2012) that prevailed at the time of the original consent being made AND the revised Events Policy (of 10 September 2013). Dr Dale advised that this inclusion as an additional attachment was of her initiative for transparency in response to discussion/information arising during Council meeting of 28 July 2015. Confirmed with subsequent email from Dr Dale.
2. Confidential Attachment 5. – On examination of the document the Independent Review Panel found that the date on the documents listing is 30 May 2015. However this is a typographical error as the date on both Confidential Attachment 5 documents, the email and the letter, is 31 May 2015.
3. Dr Dale advised that there are no additional material variations from her report to Council on 28 July 2015.

Compile a timeline of key aspects of the HUNTFEST Process and Procedures by Council  
The Review Panel decided to re-reconstruct the information in *The Dale Report* into a time line of all issues for each of the 3 years events based on information in the report to better appreciate the activities and communications via a time line.

## HUNTFEST Overview of Change of Activities over time

EVENT	HUNTFEST 2013 8-9 June 2013	HUNTFEST 2014 7-8 June 2014	HUNTFEST 2015 6-7 June 2015
Event within Councils approval comprises (section 2)	Photographic and DVD Competition including Hunting and Camping Expo.	Photographic and DVD Competition including Hunting and Camping Hunting Expo, incorporated the display of firearms, archery and simulator.	Photographic and DVD Competition including Hunting and Camping Expo incorporating all activities permissible under an Arms Fair Permit, archery and imitation firearm laser game, the operation of a mobile air rifle range, and use of all of NATA oval.

From this table (above) it can be seen how HUNTFEST has evolved over time. For HUNTFEST 2014 and HUNTFEST 2015 the specified variations were sought and approval/consent provided (see below).



## HUNTFEST 2013

Event Dates	8-9 June 2013
Event within Councils approval comprises	Photographic and DVD Competition including Hunting and Camping Expo.
DA Application	<p>51/13</p> <p><u>14 June 2012</u> – Council received both an <i>Application for the Hire of Eurobodalla Shire Council Facility</i> and an <i>Event Application Form</i> lodged by The Club. After due process by Council it was determined that a Temporary Structures Development Application needed to be submitted by The Club.</p> <p><u>26 June 2012</u> – Council Ordinary Meeting resolved to support in principle the use of the venue by The Club but also advised The Club that formal consent for the structures and event is still required.</p> <p><u>3 July 2012</u> – Council wrote to The Club advising resolution of support but that formal approval by way of a development consent for the structures and event application is still required.</p> <p><u>30 July 2012</u> – development application lodged by The Club for temporary use of structures.</p>
DA consent	<p><u>2 August 2012</u> – Council referred the development application to RMS.</p> <p><u>16 August 2012</u> – RMS advised that RMS had no objection to the DA.</p> <p><u>12 October 2012</u> – Development Consent granted by Council under delegation, Consent valid for 5 years (A2)</p>
DA Plan Number	13/15
Event Licence	<p><u>23 October 2012</u> – Council Ordinary Meeting resolved, subject to Ministers consent, to grant a 5 year Licence to The Club subject to conditions.</p> <p><u>13 November 2012</u> request for Licence consent by Minister sent to Crown.</p> <p><u>27 November 2012</u> – Consent from Crown was received by Council.</p> <p><u>28 November 2012</u> – Copies of Licence agreement were forwarded by Council to The Club.</p> <p><u>10 December 2012</u> - In Ordinary Meeting of Council on Variation of Event Licence, Council advised that Local Police Commander will determine the number of armed guards at the hall at all times.</p> <p><u>21 March 2013</u> – following execution of the Licence by The Club and the then General Manager, the Licence Agreement was executed by the Minister administering the Crown Land Act.</p>

Findings for HUNTFEST 2013

Based on the review of all the communications and deliberation by Council, we have found that all due processes and procedures have been undertaken in an appropriate manner for both of the requirements by Council (both the Development Application and the Licence).

## HUNTFEST 2014

Event Dates	HUNTFEST 2014 7-8 June 2014
Event within Councils approval comprises	Photographic and DVD Competition including Hunting and Camping Hunting Expo, incorporated the display of firearms, archery and simulator.
DA Application	51/13 still valid
DA Consent	<u>20 November 2013</u> request by The Club for different site plan in accordance with Condition 2 of the development consent. <u>17 January 2014</u> – variation request approved by Council under delegation.
DA Plan Number	13/15 was still valid
Event Licence	<u>11 November 2013</u> , application by The Club to amend licence to allow 1. Display firearms 2. Interactive video games/simulator 3. Intro to archery. <u>28 November 2013</u> – Clarification sought by Dept. Premier & Cabinet on Council's role in approving events generating both public support and opposition. <u>29 November 2013</u> -- that DPC requires events to possess appropriate permits, Council approval and be legal; and clarified that approval responsibility lies with each Council and their subsequent policies. <u>10 December 2013</u> council granted approval subject to Ministers consent (A5) <u>29 May 2014</u> a copy of the Commissioner's Permit – Arms Fair Principal Dealer issued on 19 May 2014 and a copy of Commissioner's Permit – Imitation Firearms Laser Game issued 20 May 2014 was received. <u>3 June 2014</u> – Council Lawyers advise The Club that they and any agents/others etc. cannot sell guns or conduct an Arms Fair at HUNTFEST (CA7).

## Findings for HUNTFEST 2014

The 2 key point of difference for HUNTFEST 2014 are the allowance of the 3 amendments and the refusal to allow sale of guns or conduct an Arms Fair. Based on the review of all the communications and deliberation by Council, we have found that all due processes 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).

## HUNTFEST 2015

Event Dates	6-7 June 2015
Event within Councils approval comprises	Photographic and DVD Competition including Hunting and Camping Expo incorporating all activities permissible under an Arms Fair Permit, archery and imitation firearm laser game, the operation of a mobile air rifle range, and use of all of NATA oval.
DA Application	51/13 was still valid
DA consent	<u>2 June 2015</u> – Councils lawyers provided further written advice in response to the matters raised (CA6). In essence that advice was that “development consent is not required for uses identified in Councils Plan of Management for the land” and that the proposed “activities .... fall within the ambit of the above mentioned uses”. (See context under Event Licence Consent correspondence below.)
DA Plan Number	13/15 was still valid
Event Licence	<p><u>26 August 2014</u> – Council motion requiring 28 days consultation for any amendment regarding weaponry &amp;/or ammunition and report presented to council within 49 days of advertising the amendment.</p> <p><u>5 September 2014</u> – Council receive request to amend licence</p> <ol style="list-style-type: none"> <li>1. Allow all legal activities covered by Fair Arms Permit.</li> <li>2. Operation of mobile air rifle range</li> <li>3. Increase area to cover whole NATA reserve.</li> </ol> <p><u>10 September 2014</u> – Council publically notified community. 511 submissions were received (271 supporting and 218 opposing).</p> <p><u>14 October 2014</u> – Councillor Harding tabled an online petition of 40,804 entries around the world opposing the sale of guns and ammunition at HUNTFEST.</p> <p><u>25 November 2014</u> – Council Ordinary Meeting:</p> <ul style="list-style-type: none"> <li>• Council advised no legal reason to decline the request for the amendments.</li> <li>• Council advised proposed variation does not breach any Council policy including events policy.</li> <li>• Council recommendation to grant variation to the 5 year licence subject to Ministers consent (as required).</li> <li>• Council resolved to send public consultation details etc. to deputy Premier, Minister for LG, Minister for RI, Minister for PI, and local State member.</li> </ul> <p><u>8 December 2014</u> – Council forward request for consent for 3 variations sent to Minister for Crown lands.</p> <p><u>15 December 2014</u> – Council receives Crown Lands advising that it will only address the consent to the licence after the Arms Fair Permit was received by NSW Police.</p>

	<p><u>22 December 2014</u> – Letters sent by Council to Deputy Premier, Minister for LG, Minister for PI and Member for Bega advising of Council minute 14/339 , licence amendments and process followed.</p> <p><u>24 March 2015</u> – advice received from Crown Lands that Crown would consent to Licence amendments.</p> <p><u>22 April 2015</u> – The Club received Commissioner’s Permit – Arms Fair Principal Dealer.</p> <p><u>29 April 2015</u> – the Deed of Variation was executed on behalf of the Minister following the execution of the licence by the club and the General Manager on behalf of Council.</p> <p><u>21 May 2015</u> - Council received correspondence from EDO regarding “to what action Council proposes to take in respect to the above threatened breaches of Councils 2012 Consent &amp; EPA Act”.</p> <p><u>22 May 2015</u> – Council refers to lawyers to review the matter and draft response.</p> <p><u>26 May 2015</u> – Council Ordinary Meeting votes against a motion to revoke its approval of the additional activities (sale and display of firearms and ammunition, a mobile air rifle range and archery courses, a hunting simulator and animal skinning); and that the DA process that follows the legislation as required under the EPA Act be conducted.</p> <p><u>29 May 2015</u> – Councils lawyers wrote to EPA on the matter (CA4).</p> <p><u>1 June 2015</u> – Council lawyers were requested to provide a response to letter of 31 May 2015 from Councillors Harding and Brice.</p> <p><u>2 June 2015</u> – Councils lawyers provided further written advice in response to the matters raised (CA6). In essence that advice was that “development consent is not required for uses identified in Councils Plan of Management for the land” and that the proposed “activities .... fall within the ambit of the above mentioned uses”.</p> <p><u>4 June 2015</u> – Site induction completed.</p> <p><u>6-7 June 2015</u> – HUNTFEST conducted in accordance with Licence including Development Consent requirements.</p>
--	---

#### Findings for HUNTFEST 2015

The key point of difference for HUNTFEST 2015 is the conduct of the allowance of the 3 amendments and no legal grounds for Council to refuse the conduct an Arms Fair. Based on the review of all the communications and deliberation by Council as shown in *The Dale Report* , we have found that all due processes 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).

## Analysis of key issues arising in *The Dale Report*.

### Review of terminology:

In *The Dale Report* several terms are used in regard to the documentation of HUNTFEST issues and we comment on them as follows:

1. In Council's (David Meagher's) letter of Consent (Attachment 2) of 12 October, Council used the terms "festival" and "event" which appear to be somewhat interchangeable terms. In Council's report to the Ordinary Meeting of 23 October 2012 Council uses the term "Expositions".
2. In Council's Lawyers advice of 2 June 2015 the terms "catering", "entertainment", "exhibitions", "markets", "sales", "shows" and "sporting and organised recreational events" are each identified as uses development consent is not required.
3. The only use of the word "Fair" is related to the official Arms Fair Permit that is administered by the NSW Police and not subject to consent by Council.

### Display or Sale of Guns and/or Ammunition

HUNTFEST has evolved over the time. For HUNTFEST 2014 and HUNTFEST 2015 the specified variations were sought and approval/consent provided.

The Independent Review Panel considers that the most contentious variation of HUNTFEST relates to the display and sale of Guns and/or Ammunition.

At the time of initial consideration and the initial lodgement in 2012, Council were concerned with the name of the event. Council were advised by The Club that the Name was based on similar named events overseas (Canada, United States and New Zealand). Council should therefore have foreseen potential for longer term implications of the proposed event regarding the expected inclusion of the sale of Guns and Ammunition. This expected level of concern in 2012/13 for the likely evolution of incorporating Guns and Ammunition into subsequent HUNTFEST Events was not present in *The Dale Report* for the HUNTFEST 2013 (see recommendations).

It is noted under Legal considerations below that Council's amendment to the licence for HUNTFEST in 2014 allowed for the display of fire arms and did not allow for their sale. For the 2015 HUNTFEST the Arms Fair Permit was approved by the NSW Police and Council's licence was amended to allow the sale of firearms and ammunition and Council had no legal grounds for excluding proposed activities which were within the Arms Fair Permit.

### Police Considerations

1. In Ordinary Meeting of Council on 10 December 2012 on Variation of Event Licence, Council advised that Local Police Commander will determine the number of armed guards at the hall at all times.
2. A key requirement for Ministerial Consent for a Licence was that the event was lawful. The main Police consideration was the due process of Council to require that The Club obtain the necessary legal Arms Fair Permit which is administered via NSW

Police. Council denied Arms Fair related activities for HUNTFEST 2014 as The Club did not have the required Police approval for the Arms Fair Permit. For HUNTFEST 2015 The Club had the Police administered Arms Fair Permit and accordingly the Council complied with the law to allow the Arms Fair to be held.

3. The recent Police briefing with Council was conducted by Sgt Bob Moore and Constable Greg Flood. They addressed Councillors, Council Executive members and Independent Audit Committee members (Sharlene Cohen and Ken Mitchell) on Tuesday 15 September at Council Chambers. The police confirmed that :
  - There is a process for Police approving ARMS Fair Permits and this process was followed for Huntfest.
  - Approximately 22 ARMS Fair licences have been approved by NSW Police and the Narooma ARMS FAIR Permit was a normal process.
  - No unlawful activities were identified at Huntfest.
  - The Police had no issues with the way Huntfest was conducted.

#### Legal Considerations

*The Dale Report* includes:

1. In Council's (Kerry Foster) submission to Council for 23 October 2012 Ordinary Meeting of Council, Council advised that the applicant was an "Approved Hunting Organisation with approvals from the Game Council NSW. With legal obligation to act in accordance with the Game and Feral Control Act 2002".
2. In Ordinary Meeting of Council on 10 December 2012 on Variation of Event Licence, Council concluded that "The proposed activities sought to be permitted at HUNTFEST (2014) are legal and do not breach any Council's policy"
3. Council's amendment to the licence for HUNTFEST in 2014 allowed for the display of fire arms and did not allow for their sale. For the 2015 HUNTFEST the Arms Fair Permit was approved by NSW Police and Council's licence was amended to allow the sale of firearms and ammunition and Council had no legal grounds for excluding proposed activities which were within the Arms Fair Permit. Specific reliance by Council of legal advice from their lawyers was:
  - On 3 June 2014 - Council Lawyers advised The Club that they and any agents/others etc. cannot sell guns or conduct an Arms Fair at HUNTFEST 2014 (CA7).
  - On 29 May 2015 - Councils lawyers wrote to EPA on the matters raised by EPA (CA4).
  - On 1 June 2015 – Council lawyers were requested to provide a response to letter of 31 May 2015 from Councillors Harding and Brice.
  - On 2 June 2015 – Councils lawyers provided further written advice in response to the matters raised (CA6). In essence that advice was that "development consent is not required for uses identified in Councils Plan of Management for the land" and that the proposed "activities .... fall within the ambit of the above mentioned uses".

Based on the exchange on communications relating to legal matters in *The Dale Report* the Review Panel find that Council followed due process and sought and received legal advice and acted on that legal advice (also mentioned in Findings below).

During our considerations we received 3 written submissions relating to Huntfest. We addressed all matters raised and on 2 October 2015 Sharlene Cohen and Ken Mitchell conducted a telephone interview with Daryl Gray, from Sparke Helmore Lawyers, who provided the legal advice to ESC. (See Attachment 3). In summary of dealings with ESC regarding Huntfest, Mr Gray advised:

- Nothing unlawful has occurred in relation to this matter by Council.
- The process by ESC has been entirely appropriate. Council knew they had to get everything right because they knew it was going to be a community concern.
- Hierarchy of structure for Council decisions:
  - Legislation – Act – Regulation. Have to follow in accordance to the law.
  - Policy Documents eg Ombudsman guidelines. Are only guidelines and council can be flexible in their determinations. These documents are designed to help the quality of the decision-making process.
- Daryl's final words were:
  - Did council have the power to make the determination in regards to regulation and policy – Yes.
  - Did council follow the statutory process – Yes.
  - Was it council's decision to make – Yes.
- Asked has council followed sufficient due process – Daryl answered Yes.

We were totally satisfied with the comments by Daryl Gray. He confirmed that the ESC legal matters were clear and conclusive.

Accordingly we conclude ESC legal matters sound and require no further legal advice.



## Findings

Based on the exchange on communications relating to legal matters in *The Dale Report* the Review Panel **find** the following:

### Findings In regard to HUNTFEST 2013:

1. Council did follow due process with the Development Application.
2. Council did follow due process with the Licence Application.

### Findings In regard to HUNTFEST 2014:

3. Council did follow due process with the Development Application.
4. Council did follow due process with the Licence Application.

### Findings In regard to HUNTFEST 2015:

5. Council did follow due process with the Development Application.
6. Council did follow due process with the Licence Application.

### Findings in regard to Legal Advice:

7. Council did follow due process and sought and received legal advice and acted on that legal advice. (Also see Attachment 3).

### Findings in regard to variation of Event in 2014 and 2015

8. HUNTFEST has evolved over the time. For HUNTFEST 2014 and HUNTFEST 2015 the Review Panel **find** that 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) are legal and do not breach any Council's policy".

## Conclusion

*The Dale Report* concludes

***“Accordingly having reviewed the legal advice and Council policies, this event and associated activities is permissible and it is considered that the appropriate approvals which have been granted are in accordance with Council’s policies, processes and legal obligations.”***

Based on the review of all the communications and deliberation by Council as shown in *The Dale Report*, the Independent Review Panel concludes that *The Dale Report* incorporates information that provides a very clear and compelling evidentiary trail that clearly shows that due processes 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

The Independent Review Panel recommend:

1. That ESC set the highest standards of transparency of independence and integrity for all future ESC independent reviews by adopting best practice that requires all such future independent investigations of ESC matters with expectation by the community for high transparency be conducted at arm’s length from Council staff.
2. That all such future independent reviews be issued with clear Terms of Reference.
3. That ESC requires all persons nominated as Independent Reviewers to make a suitable declaration such as this panel has undertaken. If any person feels that they are unable to comply with this requirement, they should discuss the matter with the engaging Agency (ESC) and their nominating body to determine whether or not, in all of the circumstances, they should decline nomination as an Independent Reviewer.
4. At the time of consideration for the initial lodgement in 2012, Council were concerned with the name of the event. Council were advised that the Name was based on similar named events overseas (Canada, United States and New Zealand) and Council should have foreseen a longer term view of the proposed event. Accordingly the Independent Review Panel recommends that 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 from commencement.

## DECLARATION OF IMPARTIALITY

**ESC's INDEPENDENT AUDIT COMMITTEE MEMBER's  
DECLARATION OF IMPARTIALITY**

We the undersigned being Independent members of the ESC Audit Committee and Independent Reviewers in the matter of *The Dale Report* of July 2015 on HUNTFEST.  
EACH INDIVIDUALLY DECLARE:

1. I do not have and have not had any business or personal relationship with a party related to or Dr Dale's report of the review of HUNTFEST
2. I do not have any kind of involvement that may cause a reasonable person to suspect that I may be biased, including:
  - A family relationship;
  - A close personal relationship;
  - A relationship involving personal hostility; or a
  - Business or employment relationship.
3. I do not have or have not had any other personal or professional involvement in the matter to be considered (e.g. pecuniary or non-pecuniary interest in the matter – such as acting as a party's adviser in the matter).
4. I understand that, while acting as an Independent Reviewer, I am not subject to direction by, nor should I act on instructions from, any person, body or authority other than legal directions (e.g. from a court of law).
5. I will conduct my duties as an Independent Reviewer in accordance with Local Government Agency Agreements with fairness, equity and impartiality independent of any interests of the body which nominated me.
6. I will contribute to the identification of the key issues of the review and participate in the analysis and assessment of those issues based on my own opinions on the merits and the information before me.
7. After making this declaration, should a relationship, involvement or interest of a kind described in this declaration develop, and there are grounds for reasonable suspicion of bias or prejudice on my part, I will disqualify myself from considering the review.
8. I will ensure that the all evidence and associated materials used in the deliberation of the review remain strictly confidential.
9. I acknowledge that the written recommendation is confidential and (subject to Local Government Agency Agreements) is only made available to the Councillors and General Manager. Any subsequent release is subject to their sanction.
10. I acknowledge that if I fail to comply with the requirements of this declaration, I may not be nominated for future Internal Review proceedings.

Sharlene Cohen

Mark Barraclough

Ken Mitchell

ATTACHMENT 1 – Information from Dr Dale

ATTACHMENT 2 – Information from Dr Dale

ATTACHMENT 3 – Telephone interview with Sparke Helmore Lawyers

## ATTACHMENT 1 – Information from Dr Dale

4 September 2015

Sharlene Cohen  
[sharlene@suretyproperty.com.au](mailto:sharlene@suretyproperty.com.au)

Dear Sharlene,

Thank you for your email of 26 August 2015 requesting additional information on the Huntfest review. I provide the following responses to your questions:

1. *A transcript of the council discussions on the 28/7 relating to your Huntfest report and consideration of referral to the audit committee.*

Please find below the link that that will allow access to the video footage as recorded. Please note that the file is complete as recorded as we do not modify or edit the footage for any purpose.

The reference point is 49 mins into the meeting relating to discussions re: hunt fest.

<http://cdn.interstreamcdn.com.au/interstreammedia/council/esc/esc-150728.mp4>

You will be able to view this footage on your council provided iPad by clicking on this link and fast forwarding to the reference point.

2. *We would like to clarify the objectives of us attending the foreshadowed Police briefing to Council. We are just unsure about the relevance of our attendance?*

This is a session to enable any councillors with concerns over the risk management practices relating to the handling of firearms to liaise directly with the police who assess and audit the risk management process. There have been many questions surrounding the sale of fire arms, requirements to purchase, security, safe keeping and handling that cannot be answered by council staff. These issues are relevant to the Arms Fair Permit and assessed by the Firearms Registry prior to issuing a permit. This information is not given out publically as it would undermine the security arrangements in place however this session will enable the police the address the concerns and provide assurance the event complies with all fire arm regulations and is conducted lawfully. Councillors who requested this review considered attendance would assist the independent Audit Committee members in their review of the report.

3. *Attachment 8 – we would like to seek confirmation in writing as to the why/significance of Attachment 8.*

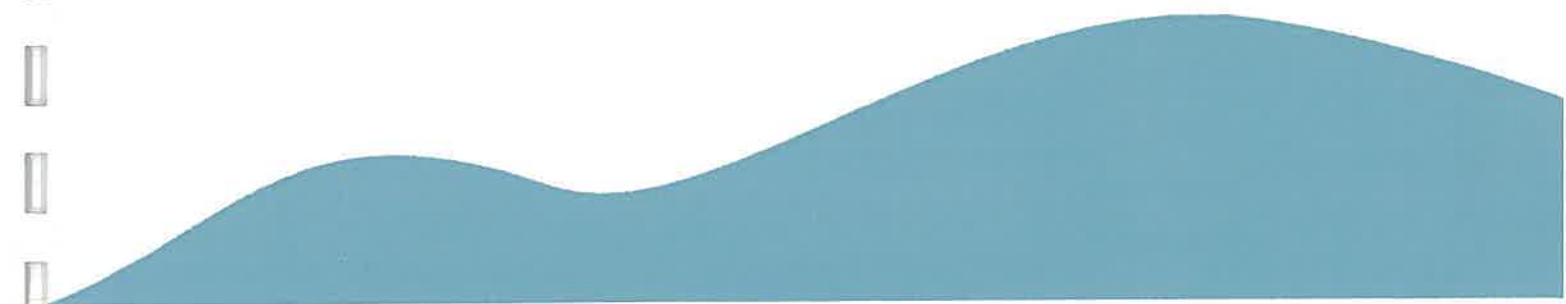
Attachment 8 is the former events policy that was current when the Huntfest event application was first considered by Council. After the elections the event policy was amended to its current form. Councillors who requested this review considered its inclusion in the report would assist the independent Audit Committee members in their review of the report. It demonstrates that the policy does not exclude events such as Huntfest from the region. Our policy states it is Council's role to facilitate the assessment of the event application, issue an event licence and ensure associated approvals and permits are obtained.

Should you require further information on this matter, please contact Mr Anthony O'Reilly, Council's Director Finance and Business and Development on 4474 1205.

Yours sincerely

*Catherine Dale*

Dr Catherine Dale  
**General Manager**



## ATTACHMENT 2 – Information from Dr Dale



## Attachment 2 - Information 2 from Catherine Dale

**From:** Catherine Dale [mailto:Catherine.Dale@esc.nsw.gov.au]  
**Sent:** Wednesday, 23 September 2015 1:48 PM  
**To:** Ken Mitchell (ken@amrsonline.com.au) <ken@amrsonline.com.au>  
**Cc:** Catherine Dale <Catherine.Dale@esc.nsw.gov.au>  
**Subject:** Response to Questions

Dear Ken

Please find outlined below a response to your questions for discussion when we meet tomorrow.

Regards

Catherine

*"In 2012 Council refused Ammunition to be associated with the event.*

- 1) *What was the manner of refusal and how is it possible that ammunition can be sold when the approval of Huntfest was based on excluding ammunition?"***

Council did not refuse ammunition to be sold associated with the event in 2012 because the Club did not apply for that option.

In June 2012 Council received an Application for Hire of Eurobodalla Shire Council Facility and an Event Application Form for a photographic and DVD competition and included an outdoor area with stalls promoting and selling game meats, local seafood, display of camping and hunting equipment (no firearms or ammunition), 4WD vehicle, and displays by other interested organisations. In the Overview section of the Club's 2012 application it stated that no firearms or ammunition would be sold.

In November 2013 the South Coast Hunters Club applied for three amendments to its Huntfest Event Licence granted in 2012. One of the amendments applied for was to enable the display of firearms. There was no mention of the sale of firearms nor ammunition.

Subsequent to the execution of the Deed of Variation to the Licence by the Club and the General Manager on behalf of Council, the Deed of Variation executed on behalf of the Minister was received on 21 February 2014. On 29 May 2014 a copy of the Commissioner's Permit – Arms Fair Principal Dealer issued on 19 May 2014 was received by Council. Staff noted the Commissioner's Permit for the Arms Fair authorised the licenced firearms dealer to display and sell firearms and sought clarification of this aspect from the Huntfest organisers.

It was confirmed that stall holders intended to sell firearms which was not permissible under Council's Licence Agreement. Following legal advice on 3 June 2014 (refer confidential Attachment 7 of my Huntfest Review July 2015), Council's lawyers wrote to the South Coast Hunters Club Inc. advising that the stallholders did not have permission to sell firearms, only to display and that the Licence Agreement for the specified use of the Crown Reserve was between the Club and the Council as Trust Manager. The Club was requested to ensure its adherence and that of the event participants to the Licence Agreement and the Deed of Variation as issued by Council. Again as there was no mention of ammunition in the request for the amendment, ammunition was not considered

by Council. As outlined above, Council did refuse the sale of firearms at this time as it was not explicitly stated in the Council resolution and the Ministerial approved amended licence.

On 29 August 2014 the Club wrote to Council to apply for amendments to its Huntfest Event Licence, amongst other things, to allow all legal activities covered under an "Arms Fair Permit" held by a licensed firearms dealer. At the Ordinary Meeting of Council of 25 November 2014 a motion was passed to "allow all legal activities covered under an Arms Fair Permit subject to the issue of an Arms Fair Permit by NSW Police". Under this NSW Police issued permit the display and sale of firearms and ammunition is permitted.

Council may resolve subsequent amendments to any license issued in accordance with legislation and governing Council policy as adopted. Event organisers are also able to apply to amend their licence application for Council consideration.

***"Regarding the Ombudsman's guidelines for Good Conduct and Administrative Practices – Guidelines for State and Local Government (2<sup>nd</sup> Edition):***

***1) Does Council comply with these guidelines when council instructs Council's external legal advisors when seeking legal advice? If not, why not?"***

It is considered that Council complies with "Chapter 7 Legal advice" of the *Good Conduct and Administrative Practices – Guidelines for State and Local Government* (the Guidelines) and only seeks legal advice for appropriate purposes (see *Clause 7.3.1* of the Guidelines).

It is custom and practice for Council to seek legal advice in the following circumstances in accordance with *Clause 7.3.2 Responsibilities* of the Guidelines:

- "When making important decisions concerning the organisation that create legal liabilities or are likely to be subject to judicial or other external review (e.g. in dismissing an employee or entering into a contract).
- When exercising a power that, if not exercised properly, is likely to be subject to judicial review or criticism from a watchdog or regulator.
- Where there is a risk that the agency does not have the power to undertake the action proposed.
- Where some event has happened and it is unclear whether this may have put the agency under some legal obligation or liability, or whether the agency has any legal remedies available to it."

In accordance with this section of the Guidelines, Council ensures the "quality of its decision making" by "seek[ing] legal advice from an independent source rather than relying upon legal advice provided by any interested party." The legal advice sought in relation to Huntfest matters was from Sparke Helmore Lawyers. This firm is one of eight on a 'Legal Services Panel' that was independently assessed by Council's ROC (Region of Council) committee as being appropriate to serve members of this group. Sparke Helmore has no interest in this matter and is independent to Council's consideration of the matter. This is also in compliance with *Clause 7.3.2* of the Guidelines.

***2) "Did Council Explicitly instruct its external legal advisor when seeking advice on Huntfest legal matters?"***

&

***3) "Does Council fully brief its external legal advisors so that they are in a position to provide sound external advice?"***

As both these questions are similar, they have been answered together. Council's process when seeking external legal advice is a briefing in writing or initially verbally. Phone conversations between Council staff and the external legal advisors are followed up in writing (email or letter) and appropriately filed.

In line with *Clause 7.3.2* of the Guidelines. Council defines the briefing by including:

- The reason for the brief.
- Background (history) which may include a chronology of events, all relevant files, documents, correspondence or Council reports. Any further information that is requested by Council's legal adviser is made available.
- What matter or action is required to be considered (the scope of the advice).
- Timeframe for the provision of advice.
- Any follow up dates.
- Staff members who are to be the contact point for additional information.

Through this approach Council satisfies the guidelines of *Section 7.3. Seeking legal advice* of the Guidelines.

#### **4) How should we resolve the different opinions – with another opinion?**

Council obtained legal advice in response to the letter from the NSW EDO dated 21 May 2015. The advice provided by Council's solicitors to Council, explained the legal argument as to why development consent was not required for the event, including references to and nexus between the relevant provisions of the Plan of Management and State Environmental Planning Policy Infrastructure. In addition the position taken by the EDO assumed that the development consent issued by council was for the use of the land. The EDO erred on this point as the development consent was for temporary structures, not the use of the land. The EDO also erred in that the development consent related to Lot 7011 DP 1055108 not the land (Lot 1 DP 758754) upon which the sale and display of firearms occurred.

It is not normal practice, nor is it considered a good use of community resources, to obtain further legal opinion, especially when it was considered that there is no ground to question the advice received, given the EDO did not challenge the legal argument put by Council's solicitors. If the EDO or their clients believed that the position taken by Council was illegal, they could have brought the matter before the Land and Environment Court. Such action was not taken.

Council's approach is considered consistent with *Section 7.3 Seeking legal advice* of the Guidelines.

#### ***"Regarding Clause 1.1 on complying with the law:***

#### **5) Did Council fully comply with the Laws relating to Huntfest – both the letter and spirit of the law?"**

*Section 1.1 Complying with the law* of the Guidelines deals with both the principle of compliance with the law (*Clause 1.1.1*) and the responsibilities to comply with the law (*Clause 1.1.2*).

Council's legal advice states Huntfest is a permissible use in accordance with the Bill Smyth Reserve, Narooma Leisure Centre, Narooma Pool, NATA Oval, Wagonga Foreshore Reserve and Ken Rose Park Plan of Management (2008) which governs the use of the subject land and pursuant to *Clause 65* of

the *SEPP (Infrastructure 2007)* did not require Development consent. Councillors were provided with this legal advice and opinion for their consideration of the matter.

Development consent was required for the temporary structures associated with the event and the approval process for the temporary structures was carried out in accordance with the Environmental Planning and Assessment Act 1979. The licence and the amendments to the licence were granted as Trust Manager of the Eurobodalla (South) Reserve Trust in accordance with *Section 102 of the Crown Lands Act 1989* (NSW). Council resolved to grant a licence for Huntfest in 2012 and approved subsequent amendments to the licence in 2013 and 2014. Councillors were provided with this information for their consideration of the matter.

While community consultation was not a requirement under legislation or Council policy, Council has the authority to resolve that community consultation be undertaken in consideration of the amendment to the licence, which it did on 26 August 2014. Councillors were provide with all submissions for their consideration of the matter.

For the reasons above, as my report concludes, it is considered that Council has complied both with the letter and the spirit of the law as described in *Section 1.1 Complying with the law* of the Guidelines.

Please do not hesitate to let me know if you have any further queries or points of clarification or require any further documentation.

Regards

Catherine

**Dr Catherine Dale**

General Manager