



AGENDA

Ordinary Meeting of Council

25 October 2022

Statement of Ethical Obligations

The Mayor and Councillors are reminded that they remain bound by the Oath/Affirmation of Office made at the start of the council term to undertake their civic duties in the best interests of the people of Eurobodalla Shire Council and to faithfully and impartially carry out the functions, powers, authorities and discretions vested in them under the *Local Government Act 1993* or any other Act, to the best of their skill and judgement. The Mayor and Councillors are also reminded of the requirement for disclosure of conflicts of interest in relation to items listed for consideration on the Agenda or which are considered at this meeting in accordance with the Code of Conduct and Code of Meeting Practice.

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

ON TUESDAY 25 OCTOBER 2022

COMMENCING AT 12.30PM

AGENDA

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

1. WELCOME

2. ACKNOWLEDGEMENT OF COUNTRY

3. APOLOGIES

Nil

4. CONFIRMATION OF MINUTES OF PREVIOUS MEETING

4.1 Ordinary Meeting held on 11 October 2022

5. DECLARATIONS OF INTEREST OF MATTERS ON THE AGENDA

(Declarations also to be made prior to discussions on each item)

Page No.

6. MAYORAL REPORTS

Nil

7. NOTICES OF MOTION

Nil

8. QUESTIONS ON NOTICE FROM COUNCILLORS

Nil

9. PETITIONS

Nil

10. GENERAL MANAGER'S REPORTS

GMR22/103 Investments made as at 30 September 20223

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	Nil	
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KATHY ARTHUR
ACTING GENERAL MANAGER

GMR22/103 INVESTMENTS MADE AS AT 30 SEPTEMBER 2022

**S011-T00006,
S012-T00025**

Responsible Officer: Kathy Arthur - Acting General Manager

Attachments: Nil

Outcome: 5 Our engaged community with progressive leadership

Focus Area: 5.3 Work together to achieve our collective vision

Delivery Program Link: 5.3.1 Provide strong corporate and financial management that is ethical, fair, transparent and accountable

Operational Plan Link: 5.3.1.1 Provide sound and strategic financial management and reporting

EXECUTIVE SUMMARY

The purpose of this report is to:

- certify that Council's investments in financial instruments have been made in accordance with legal and policy requirements
- provide information and details of investments
- raise other matters relevant to investing.

RECOMMENDATION

THAT the certification of investments as at 30 September 2022, made in accordance with the *Local Government Act 1993*, Council's Investment Policy and the provision of Clause 1 (Reg. 212) of the *Local Government (General) Regulation 2005*, be received.

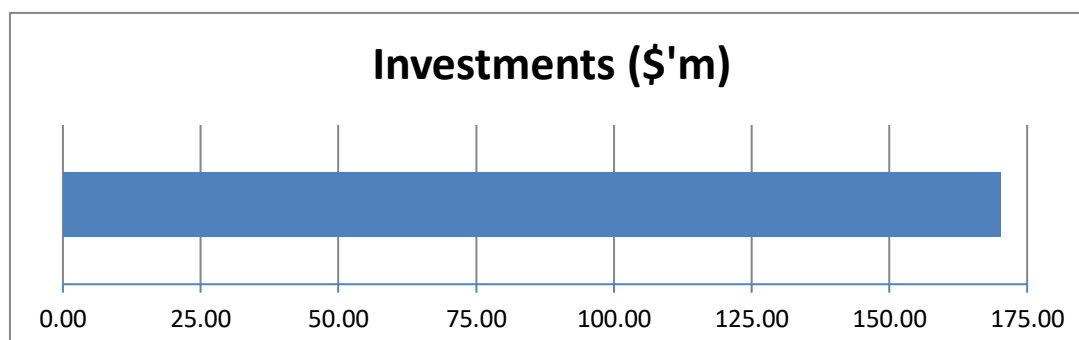
CONSIDERATIONS

Policy

The portfolio is compliant with Council's Investment Policy adopted by Council on 9 August 2022 (Minute 22/190).

Financial

Council investing overall



GMR22/103 INVESTMENTS MADE AS AT 30 SEPTEMBER 2022

**S011-T00006,
S012-T00025**

Council has \$170.21M (100%) invested in bank deposits. The bank deposits are held in banks rated A or greater, or covered by the AAA rated Government guarantee, except for \$39.50M invested in banks rated below A, and in the 'some limited risk' category of the policy.

Investments increased by \$8m during September 2022 due to cash flows from rate instalments and timings of cash receipts.

The 'some limited risk' category is now restricted to BBB+ rating institutions which allows up to 30% of all investments. Currently there is 23.21% invested in BBB+ rating category. Investment in Government guaranteed deposits is \$1.75M representing 1.03% of the portfolio.

There are \$61.0M (35.84%) of funds invested in institutions which either have no direct financing exposure to projects in the fossil fuel sector or no longer directly finance projects in the fossil fuel sector but still have some exposure from historical funding.

The weighted average return for all investments for the month is 3.48%, which is above the Council policy benchmark of bank bill swap rate (BBSW) + 0.25% (3.02%).

Summary investment information

The following table is a summary of investment categories and balances at month end.

CATEGORY	(\$)
At call deposit	12,960,302
Term deposits	155,500,000
Term deposits Government guaranteed	1,750,000
	170,210,302
<i>Weighted average interest %:</i>	3.48%
<i>Average 90 day BBSW + 0.25%</i>	3.02%

GMR22/103 INVESTMENTS MADE AS AT 30 SEPTEMBER 2022

**S011-T00006,
S012-T00025**

Policy and liquidity risk

The investment policy is divided into two risk categories of credit risk (risk of ultimately not being able to redeem funds) and liquidity risk (risk of loss due to the need to redeem funds earlier than the investment term). Our investments comply with the risk policy as shown in the following table.

Policy risk	Low liquidity risk %	Total % of investments	Policy risk % (max holdings)
Remote risk	1.03	1.03	100.00
Near risk free	75.76	75.76	100.00
Some limited risk (BBB+)	23.21	23.21	30.00
Grand total	100.00	100.00	

The unrestricted current ratio is the amount of unrestricted current assets compared to each dollar of current liability. The Office of Local Government suggests a minimum 1.5:1, and the unaudited unrestricted current ratio as at 30 June 2022 is 3.61:1. Council therefore has approximately \$3.61 of current assets for each \$1 of current liabilities.

CONCLUSION

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

GMR22/104 ADOPTION OF THE COMMUNITY ENGAGEMENT STRATEGY

S012-T00025

Responsible Officer: Kathy Arthur - Acting General Manager

Attachments: 1. Under Separate Cover - Draft Community Engagement Strategy

Community Goal: 5 Our engaged community with progressive leadership

Community Strategy: 5.1 Acknowledge our shared responsibility through an informed community

Delivery Program Link: 5.1.2 Provide a range of opportunities for the community to be consulted and engaged, guided by the Community Engagement Strategy

Operational Plan Link: 5.1.2.1 Invite community members to participate in decision-making by providing a broad range of engagement opportunities

EXECUTIVE SUMMARY

The purpose of this report is to present the Community Engagement Strategy for adoption.

Community engagement is one of the ways that Council is informed of different perspectives, potential solutions, and information before making decisions. We engage with the community using a variety of formal and informal techniques, guided by Council's adopted Community Engagement Framework and Participation Plan (2019).

Section 402A of the *Local Government Act 1993* now requires councils to establish and implement a strategy (called its Community Engagement Strategy) for engagement with the local community when developing its plans, policies and programs and for the purpose of determining its activities (other than routine administrative matters).

The draft Community Engagement Strategy was placed on public exhibition for 28 days and received no submissions.

RECOMMENDATION

THAT Council:

1. Adopts the Community Engagement Strategy.
2. Note that further consideration of additional changes may be made following future reviews.

BACKGROUND

In 2015, Eurobodalla Shire Council began a process to develop a community engagement framework with the aim of identifying how current Council practices could be improved. Council engaged a consultant to draft a Community Engagement Charter, Framework and Planning Tool with a view to:

- build a culture of effective engagement across the organisation
- understand the roles and responsibilities of internal stakeholders
- build a relationship of trust with external stakeholders
- deliver a consistent approach to engagement
- deliver change within the current available resources.

GMR22/104 ADOPTION OF THE COMMUNITY ENGAGEMENT STRATEGY

S012-T00025

After publicly exhibiting the draft framework for 42 days, undertaking a community workshop, and receiving and considering community feedback and input, Council adopted the Community Engagement Charter, Framework and Planning Tool in February 2017.

The purpose of the framework is to guide Council on best practice for engaging the community on issues or decisions where there is no statutory requirement or existing prescribed process.

In August 2019, Council reviewed the Framework with the purpose of incorporating requirements for a Community Participation Plan in accordance with the *Environmental Planning and Assessment Act 1979*. The purpose of the legislative changes was to ensure that Council had a single document that the community can access which explains how the community can participate in the planning process. The revised [Community Engagement Framework and Participation Plan](#) was publicly exhibited for 36 days and adopted by Council in November 2019. Council received no submissions.

At its meeting on 9 August 2022 Council resolved to amend the Community Engagement Framework and Participation Plan in terms of notifying adjoining properties on development applications.

Following the most recent amendments to the *Local Government Act 1993* (the Act) in the *Local Government Amendment (Governance and Planning) Act 2016*, the Office of Local Government revised the [Integrated Planning and Reporting Guidelines and Handbook](#) which now requires Council to have a Community Engagement Strategy.

Council is required to adopt the Community Engagement Strategy within 12 months following the 2021 Local Government elections.

CONSIDERATIONS

At its meeting on 9 August 2022 Council resolved to amend the Community Engagement Framework and Participation Plan in terms of notifying adjoining properties on development applications.

22/180 MOTION Councillor Hatcher

THAT Council:

- 1. From 1 September 2022 notify in writing, adjoining owners of land the subject of a development application that does not apply the acceptable solution for setbacks in the relevant Development Control Plan and provide a period of 14 days for a submission to be made to Council.*
- 2. Note that this will increase the work of staff and have an adverse impact on the determination time of development applications.*
- 3. Reconsider this matter as part of a comprehensive review by Council of the Community Engagement Framework and Participation Plan.*

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

It was acknowledged that this amendment will create additional work for Council staff and subsequently result in the delay in determination of development applications. In the circumstances, it is considered that this was an acceptable impact, noting that Council will

GMR22/104 ADOPTION OF THE COMMUNITY ENGAGEMENT STRATEGY

S012-T00025

reconsider this matter when reviewing the Community Engagement Framework and Participation Plan.

Legal

Section 402A of the *Local Government Act 1993* now requires councils to establish and implement a strategy (called its Community Engagement Strategy) for engagement with the local community when developing its plans, policies and programs and for the purpose of determining its activities (other than routine administrative matters). Council's existing Community Engagement Framework and Participation Plan has been reviewed and updated to create the draft Strategy.

Council is required to adopt the Community Engagement Strategy within 12 months following the 2021 Local Government elections.

Community and Stakeholder Engagement

Council placed the draft strategy on public exhibition for a period of not less than 28 days commencing on 14 September 2022 until 11 October 2022. Council received no submissions to the draft Community Engagement Strategy.

CONCLUSION

Section 402A of the Act now requires councils to establish and implement a Community Engagement Strategy for engagement with the local community when developing its plans, policies and programs and for the purpose of determining its activities (other than routine administrative matters).

Council's existing Community Engagement Framework and Participation Plan was reviewed following input from Councillors and updated to create the draft Community Engagement Strategy. The draft Strategy was placed on public exhibition for 28 days and Council received no submissions.

Council is required to adopt the Community Engagement Strategy within 12 months following the 2021 Local Government elections.

GMR22/105 2023 COUNCIL MEETING DATES

S012-T00025

Responsible Officer: Kathy Arthur - Acting General Manager

Attachments: Nil

Outcome: 5 Our engaged community with progressive leadership

Focus Area: 5.2 Proactive, responsive and strategic leadership

Delivery Program Link: 5.2.2 Implement effective governance and long-term planning

Operational Plan Link: 5.2.2.1 Assist the Council in meeting its statutory obligations and roles

EXECUTIVE SUMMARY

This report provides a schedule of proposed Council Meetings for the 2023 calendar year and seeks Council's endorsement of the schedule.

Under Section 365 of the *Local Government Act 1993*, Council is required to meet at least 10 times per year, each time in a different month. The proposed schedule includes 16 meetings to be held during 2023. In 2022, 19 ordinary meetings were scheduled to be held.

The schedule of meetings for 2023 has been developed to take into account Council's compliance and reporting requirements, public holidays, school holidays (when possible) and any other significant event.

It should be noted that the calendar may be amended at any time if Council resolves to alter the meeting days. The proposed schedule has followed normal procedure for the majority of the year.

RECOMMENDATION

THAT Council:

1. Endorse the following 17 dates as the meeting schedule for Council meetings for the 2023 calendar year:
 - (a) 14 February 2023
 - (b) 28 February 2023
 - (c) 14 March 2023
 - (d) 28 March 2023
 - (e) 9 May 2023
 - (f) 23 May 2023
 - (g) 27 June 2023
 - (h) 25 July 2023
 - (i) 8 August 2023
 - (j) 22 August 2023
 - (k) 12 September 2023
 - (l) 10 October 2023

GMR22/105 2023 COUNCIL MEETING DATES

S012-T00025

- (m) 24 October 2023
- (n) 14 November 2023
- (o) 28 November 2023
- (p) 12 December 2023

2. Note that the schedule of meeting dates may be amended at any time, as required.

BACKGROUND

Under Section 365 of the *Local Government Act 1993*, Council is required to meet at least 10 times per year, each time in a different month. The proposed schedule includes 16 meetings to be held during 2023. In 2022, 19 ordinary meetings were scheduled to be held.

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

A schedule of meetings for 2023 has been developed in consultation with Councillors. The calendar may be amended at any time if Council resolves to alter the meeting day/s.

CONSIDERATIONS

When developing the schedule of meetings for 2023 it is important to ensure that consideration of the Office of Local Government's compliance and reporting requirements, public holidays, school holidays (when possible) and any other significant event.

Consideration of statutory deadlines for Council's compliance and reporting requirements provides that the following Council meeting dates are required:

Date	Statutory Deadline
28 February 2023	December quarterly review and Six monthly progress report
23 May 2023	March quarterly review
27 June 2023	Adoption of Delivery Program and Operational Plan
28 November 2023	September quarterly review and Annual Report

Due to public holidays Council will have a recess in April for Easter and ANZAC day and second week in June. The third recess will occur in July which will coincide with the End of Term 2 school break. The fourth recess will occur in September to coincide with End of Term 3 school break. It is proposed to observe a recess during the Christmas break in December/January.

The calendar may be amended at any time if Council resolves to alter the meeting days. The proposed schedule has followed clause 2.2 (2) of Council's Code of Meeting Practice for the majority of the year.

GMR22/105 2023 COUNCIL MEETING DATES

S012-T00025

Date	Meeting Type
14 February 2023	Council Meeting
28 February 2023	Council Meeting
14 March 2023	Council Meeting
28 March 2023	Council Meeting
11 April 2023	Recess
25 April 2023	Recess
9 May 2023	Council Meeting
23 May 2023	Council Meeting
13 June 2023	Recess
27 June 2023	Council Meeting
11 July 2023	Recess
25 July 2023	Council Meeting
8 August 2023	Council Meeting
22 August 2023	Council Meeting
12 September 2023	Council Meeting
26 September 2023	Recess
10 October 2023	Council Meeting
24 October 2023	Council Meeting
14 November 2023	Council Meeting
28 November 2023	Council Meeting
12 December 2023	Council Meeting

Financial

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

Policy

Adoption of the schedule is in accordance with clause 2.2(1) of Council's Code of Meeting Practice.

As per clauses 3.1 and 3.28 of Council's Code of Meeting Practice Public Forum and Public Access will follow the same schedule of dates.

GMR22/105 2023 COUNCIL MEETING DATES

S012-T00025

Community and Stakeholder Engagement

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

CONCLUSION

The proposed schedule of Council meetings for 2023 has been prepared in consultation with Councillors and takes into account compliance and reporting requirements and public and school holidays. It is proposed that Council will have a recess in April for Easter and ANZAC Day. The second recess will occur in July which will coincide with the End of Term 2 school break. The third recess will occur in September to coincide with End of Term 3 school break. It is proposed to observe the recess during the Christmas break in December/January.

GMR22/106 2022 EDUCATION AND SCHOOL GRANTS

S014-T00011

Responsible Officer: Kathy Arthur - Acting General Manager
Attachments: 1. Confidential - 2022 Education and School Grant summary
Outcome: 5 Our engaged community with progressive leadership
Focus Area: 5.2 Proactive, responsive and strategic leadership
Delivery Program Link: 5.2.1 Be proactive leaders with a focus on 'community better'
Operational Plan Link: 5.2.1.2 Administer community grants and donations

EXECUTIVE SUMMARY

The Education and School Grant is a funding stream within the Annual Grants category and provides funding to local schools and education establishments for annual award presentations for academic and other achievement or annual scholarships offered by other educational institutions.

The grant was opened to the public on Friday 2 September 2022 and closed on Friday 30 September 2022. Seven applications were received during this time.

RECOMMENDATION

THAT Council approve the allocation of funds to the Education and School Grant recipients as noted in the confidential attachment.

BACKGROUND

The Education and Schools Grant stream is part of Council's Annual Grants category within its Community Grants policy. This grant is for local schools and education establishments for annual awards presentations for academic and other achievements or annual scholarships offered by other educational institutions.

The grant is structured as follows:

- Council may approve a budget allocation in the Operational Plan for each financial year.
- If a budget is approved, applications are invited once per year and will not be accepted outside the advertised application window.
- Successful grantees will be granted an annual amount to contribute to school presentation awards or annual scholarships.

The grant was opened to the public on Friday 2 September 2022 and closed on Friday 30 September 2022. Seven applications were received during this time.

Council received the following seven applications as listed below:

	Organisation	Application Type
1	Moruya Public School	Primary
2	St Peter's Anglican College	Primary
3	Moruya High School	Secondary

GMR22/106 2022 EDUCATION AND SCHOOL GRANTS

S014-T00011

4	Batemans Bay High School	Secondary
5	Broulee Public School	Primary
6	Narooma Public School	Primary
7	St Peter's Anglican College	Secondary

All applications received for 2022-23 were assessed within the total budget of \$8,701.

CONSIDERATIONS

There were seven applications received. A confidential summary sheet is attached for Councillor's information.

Policy

The Education and Schools Grant stream is part of Council's Annual Grants category within its Community Grants policy.

Financial

In 2022-23 Council has a budget of \$8,701 for Education and School Grants.

Community and Stakeholder Engagement

We have informed the community through providing information on Council's website and advertising on Council's noticeboard page. All schools were also notified in writing of grant application process.

CONCLUSION

The Education and Schools Grants provide the opportunity to support local schools and education establishments for academic or other achievement.

PSR22/041	ADOPTION OF THE DRAFT MORUYA RIVER, MUMMAGA LAKE, WAGONGA INLET ESTUARINE COASTAL MANAGEMENT PROGRAM	S017-T00013, S014-T00007
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Responsible Officer: Lindsay Usher - Director, Planning and Sustainability Services

Attachments: 1. Under Separate Cover - Draft Estuarine Coastal Management Plan

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

Community Strategy: 1.2 Value, protect, and enhance our natural environment

Delivery Program Link: 1.2.2 Maintain healthy waterways and catchments by finalising and implementing estuary management plans and monitoring impacts

Operational Plan Link: 1.2.2.1 Finalise the Wagonga, Mummaga and Moruya Estuary Coastal Management Plans

EXECUTIVE SUMMARY

The draft Moruya River, Mummaga Lake and Wagonga Inlet Estuarine Coastal Management Program (the draft Estuaries CMP) has been revised to incorporate feedback received during public exhibition and is ready for Council to consider for adoption. The draft Estuaries CMP is attached.

The draft Estuaries CMP identifies risks, issues and opportunities for the long-term management of these three high-value waterways in a strategic and integrated manner, consistent with the *Coastal Management Act 2016* (CM Act) and the NSW Government's Coastal Management Manual (the CM Manual).

At the Ordinary Meeting of Council on 21 October 2021, Council resolved to publicly exhibit the draft Estuaries CMP from 5 November 2021 to 5 January 2022 (a period of 56 days). This was intended to allow the community more time to make submissions during the holiday period.

Twenty-two community submissions were received during the exhibition period and one submission after the exhibition period had ended.

The key changes made to address submissions in the revised draft Estuaries CMP include:

- Action Wa8 has been changed to examine opportunities to collaborate with the Boats Afloat organisation to restore the Ringlands Jetty rather than remove it.
- Acknowledgement feedback from this exhibition that relates to the Dalmeny Land Release Area Development Control Plan (DCP).
- DPI Fisheries proposed installation of litter baskets (action EM6) however subsequently removed funding support. As such the action was removed from this draft Estuaries CMP.
- Clarification of the intent of Action Mu5 to discuss saltmarsh management along Attunga St, Dalmeny to reduce impacts from mowing, but that it would not reduce access by residents.

PSR22/041 ADOPTION OF THE DRAFT MORUYA RIVER, MUMMAGA LAKE, WAGONGA INLET ESTUARINE COASTAL MANAGEMENT PROGRAM

**S017-T00013,
S014-T00007**

A certified Estuaries CMP will enable Council to have access to up to 2:1 funding allocated under the NSW Government's Coastal Management Program Fund. This funding is only available for projects identified in a certified CMP.

RECOMMENDATION

THAT Council:

1. Adopt the draft Moruya River, Mummaga Lake and Wagonga Inlet Estuarine Coastal Management Program
2. Forward the adopted Moruya River, Mummaga Lake and Wagonga Inlet Estuarine Coastal Management Program to the NSW Minister for Local Government for certification

BACKGROUND

All coastal councils are required to prepare a Coastal Management Program (CMP) under Part 13 of the *Coastal Management Act 2016* (CM Act) to secure financial support from the NSW Government to deliver actions. A CMP must be prepared in accordance with the CM Manual and aims to support the objectives of the *Marine Estate Management Act 2014*.

A CMP sets out the long-term strategy for the coordinated management of the coast, with a focus on achieving the objectives of the CM Act. Preparation of a CMP follows a five-stage process, as outlined in the CM Manual (figure 1). Stage 4 of the process includes public exhibition, Council adoption and certification by the NSW Government. Stage 5 is the implementation of the certified CMP.

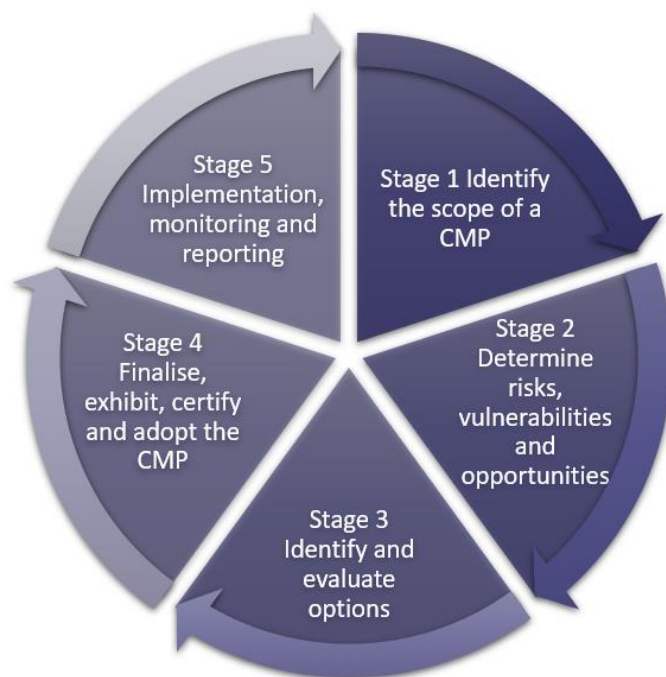


Figure 1. A diagram of the five-stage coastal management process, as outlined in the Coastal Management Manual.

**PSR22/041 ADOPTION OF THE DRAFT MORUYA RIVER, MUMMAGA
LAKE, WAGONA INLET ESTUARINE COASTAL MANAGEMENT
PROGRAM**

**S017-T00013,
S014-T00007**

Council entered into a funding agreement with the NSW Government, who provided 1:1 funding of \$34,920 for the preparation of a CMP for Moruya River, Mummaga Lake and Wagonga Inlet. Council contributed the other \$34,920. The locations of these estuaries are shown in figure 2. Following an open tender process in 2018, Council engaged coastal management specialists, Salients, to prepare the draft Estuaries CMP.

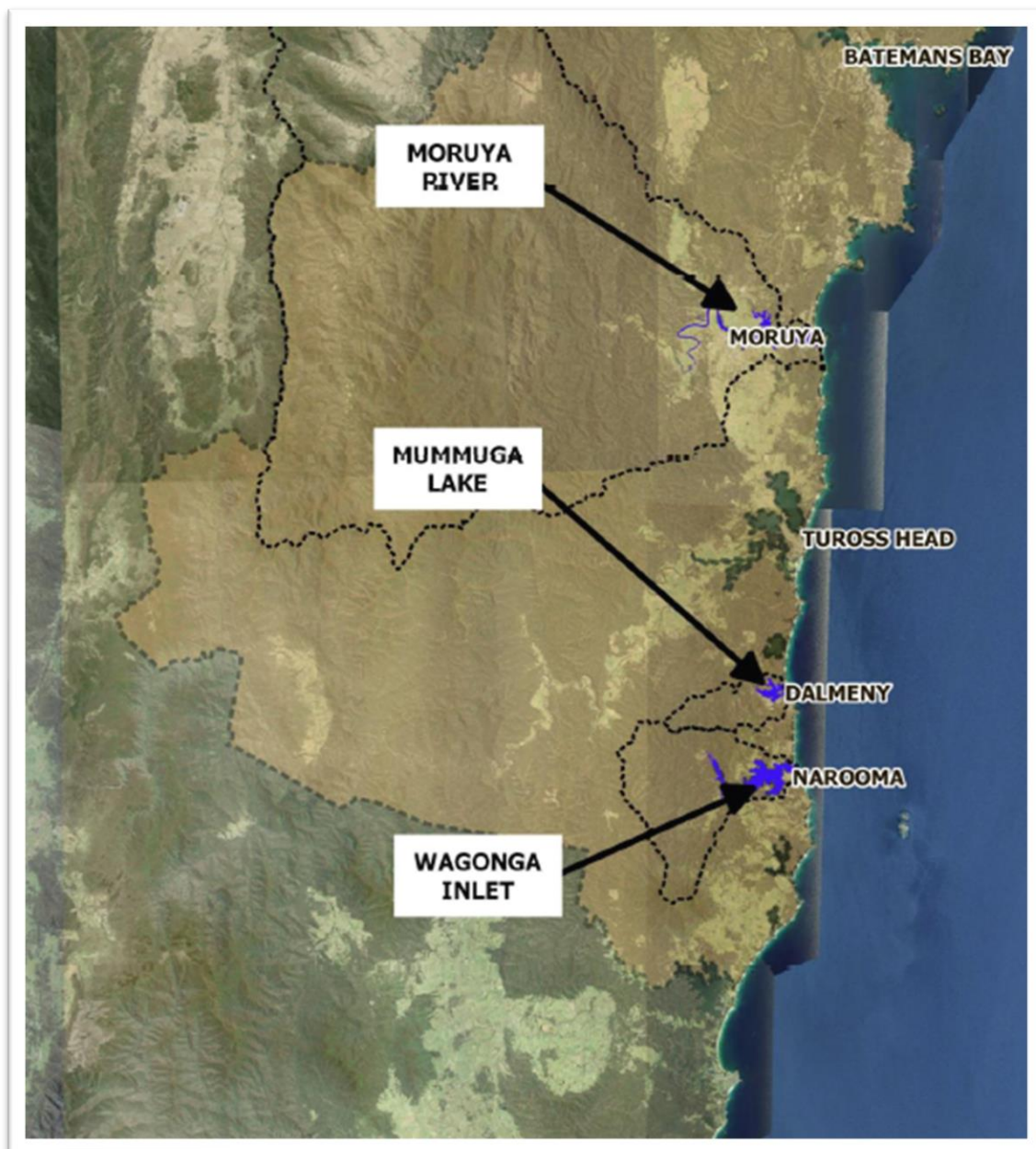


Figure 2. A map of the study area for the draft Moruya River, Mummaga Lake and Wagonga Inlet estuaries CMP

A primary objective of the draft Estuaries CMP is to protect and enhance coastal environmental values, including natural character, scenic value, biological diversity and ecosystem integrity and resilience.

**PSR22/041 ADOPTION OF THE DRAFT MORUYA RIVER, MUMMAGA
LAKE, WAGONGA INLET ESTUARINE COASTAL MANAGEMENT
PROGRAM**

**S017-T00013,
S014-T00007**

The draft Estuaries CMP includes a scoping study, vulnerability assessment and a robust suite of actions for the coordinated management of the three estuaries, to be undertaken by Council and relevant NSW Government agencies. The draft Estuaries CMP aims to support the social and cultural values of the coastal zone and maintain public access, amenity, use and safety. A key emphasis of the draft Estuaries CMP is on environmental outcomes, including management of high-value biodiversity areas, water quality and foreshore management.

CONSIDERATIONS

The draft Estuaries CMP is attached and includes:

- The draft Estuaries Coastal Management Program which includes:
 - A snapshot of issues across each estuary and how they are addressed in this draft Estuaries CMP
 - A Business plan outlining actions to be implemented by Council and other public authorities
 - A Monitoring, evaluation and reporting program
- Appendix A: Scoping Study
- Appendix B: Stage 2 assessment
- Appendix C: Consultation Summary
- Appendix D: Option Risk Assessment
- Appendix E: management options assessment
- Appendix F: Review of funding options and statutory responsibilities

There are 32 actions in the draft Estuaries CMP. These actions can be further broken down into the following key threat categories:

- 6 actions that address coastal development threats and inform planning (e.g mapping of the Coastal Vulnerability Area for each estuary)
- 18 that inform environmental outcomes (e.g revegetation works)
- 3 that address cultural heritage risks (e.g protecting midden sites through formalised access)
- 3 actions that provide coastal protection value (e.g bank stability and rock revetment works at Moruya and Wagonga).

Over the 56 days of public exhibition, 22 community submissions were received. An additional submission was received several weeks after the exhibition which was also considered. It is noted that most submissions were related to the Dalmeny Land Release Area (LRA), and its potential impacts upon the Mummaga Lake Catchment. The exhibition period coincided with the commencement of work on the Master Plan for Dalmeny LRA in December 2021.

There is nothing in the draft Estuaries CMP that would prohibit the development of the land release area. The development of the LRA must comply with Council's Soil and Water Management Code as part of managing potential threats to waterways. Council also assesses developments against the requirements of the *Marine Estate Management Act 2014* (Mummaga Lake is a part of the Batemans Marine Park) and the *Resilience and Hazards State*

PSR22/041 ADOPTION OF THE DRAFT MORUYA RIVER, MUMMAGA LAKE, WAGONA INLET ESTUARINE COASTAL MANAGEMENT PROGRAM

**S017-T00013,
S014-T00007**

Environmental Planning Policy 2021. In response to submissions the final ECMP contains a recommendation for the Dalmeny LRA Development Control Plan to include controls to manage potential impacts of development on Mummaga Lake.

The draft Estuaries CMP includes an action to monitor the water quality of Mummaga Lake, however this is a requirement regardless of whether the LRA is developed or not.

Table 1: Summary of submissions and how they have been addressed in the revised draft Estuaries CMP.

Summary of issue raised in submissions	How addressed in revised draft Estuaries CMP
<p>Impacts of the Dalmeny Land Release Area on Mummaga Lake - 12 submissions.</p> <p>Requests that adoption of the draft Estuaries CMP is delayed allowing for assessments of potential impacts of development of the Dalmeny LRA e.g. nutrient loads and once the results of these assessments are known, that Council reconsider the suitability of the Dalmeny Land Release Area for clearing and development.</p> <p>Response</p> <p>Development of the Dalmeny LRA will require controls to manage any potential impacts to the lake. This will be a requirement of the development regardless of the adoption of this CMP and does not rely upon a CMP for Mummaga Lake to be completed.</p>	<p>The revised draft Estuaries CMP includes recommendations for the Dalmeny Land Release Area DCP to include controls around runoff and stormwater to ANZECC standard.</p>
<p>Failure to include Mummaga Lake in the draft Estuaries CMP (2 submissions)</p>	<p>No change required.</p> <p>Mummaga Lake is one of the three (3) Estuaries in the scope of the Estuaries CMP.</p>
<p>Population Growth (2 submissions)</p> <p>Latest population growth in Dalmeny does not match the forecasted population growth in the document.</p> <p>Response:</p> <p>The revised draft acknowledges that development of the Dalmeny Land Release Area will increase the number of residents living in Dalmeny. The rate that this occurs will depend on many factors including the approvals times, rate of construction, housing prices, development costs, interest rates. The expected population growth in Dalmeny over the next 10 years is based on information provided by Forecast id. The proposed Development Control Plan and masterplan will also influence staging and timing.</p>	<p>No change required.</p>
<p>Timing of Exhibition (1 submission)</p> <p>The draft Estuaries CMP was exhibited during the holiday period (5 November 2021 until 5 January 2022). During this time, community may have been elsewhere engaged with family, holidays, etc. Council should re-exhibit the CMP due to the timing.</p>	<p>No change required.</p> <p>The holiday period was factored into the (exceptional) length of public exhibition (56 days instead of the required 28 days).</p>

PSR22/041 ADOPTION OF THE DRAFT MORUYA RIVER, MUMMAGA LAKE, WAGONGA INLET ESTUARINE COASTAL MANAGEMENT PROGRAM

**S017-T00013,
S014-T00007**

Summary of issue raised in submissions	How addressed in revised draft Estuaries CMP
<p>Ringland Jetty (2 Submissions) Community boating group Boats Afloat, supported by other community members, requested a change to Action Wa8 to remove demolition of a derelict jetty in the Ringlands area. They would prefer to see the jetty restored.</p> <p>Response: Boats Afloat offered to undertake restoration if Council would be willing to enter an MOU for the jetty to be passed into their care and responsibility. If there is a failure to restore and maintain the jetty occurs, demolition would be the next course of action.</p>	<p>Action Wa8 has been changed to examine opportunities to collaborate with the Boats Afloat organisation to restore the Ringlands Jetty.</p>
<p>Estuaries Steering Committee Concern that the establishment of Estuaries Steering Committee in the draft Estuaries CMP overlaps with Council's Coastal and Environment Management Advisory Committee (CEMAC) and there is no community representation proposed.</p> <p>Response: These are two separate committees each with different functions and responsibilities.</p> <p>1. The publicly attended Committee established to discuss Coastal Management; this is the Coastal & Environment Management Advisory Committee (CEMAC). This committee has 11 community representatives.</p> <p>Council's CEMAC serves to facilitate engagement across community, Council and government agencies.</p> <p>2. The proposed Estuaries Steering Committee is an implementation committee of government agencies. The purpose of the proposed Estuaries steering committee, is to monitor, report on and determine prioritisation of the actions of the CMP across the parties responsible for financing and delivering actions in the CMP. Community will be kept informed (including through the CEMAC). However, it is not a strategic committee requiring broader stakeholder input as the committee will be acting on the recommendations of the plan.</p>	<p>No change required.</p>

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**S017-T00013,
S014-T00007**

Summary of issue raised in submissions	How addressed in revised draft Estuaries CMP
<p>Land acquisition: Acquiring land adjacent to Wagonga inlet for purpose of rehabilitation of saltmarsh / landward expansion would be a desirable outcome</p>	<p>No change required. This intent aligns with ongoing work undertaken at Punkally creek, which has included a campaign of several years led by NSW Local Land Services. Action Wa3 in the draft CMP will continue this work, with LLS providing the funding and undertaking the work.</p>
<p>Installation of litter baskets (action EM6) should be given high priority given their efficacy at reducing waste (1 Submission).</p>	<p>Removed. DPI Fisheries proposed this however has subsequently removed funding support. As such the action was removed from this draft Estuaries CMP.</p>
<p>No mention of Mill Bay area sand flats (1 Submission).</p> <p>Response: This wetland was not seen as an area requiring management because wetland and seagrasses are in good health. DPI Marine Parks usually have the authority over this area, but Council may have a role in compliance if the wetland is impacted unlawfully (e.g. illegal horse riding).</p>	<p>No change required.</p>
<p>Council needs to have allocated staff to securing grants and working with landowners to secure grants (1 submission)</p> <p>Response: Council has a fulltime grant coordinator to seek grants for Council works. Where appropriate this can be in collaboration with landholders.</p>	<p>No change required.</p>

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Summary of issue raised in submissions	How addressed in revised draft Estuaries CMP
<p>Saltmarsh mowing and compliance (two submissions) Action Mu5 outlines a requirement to discuss saltmarsh management along Attunga St, Dalmeny. A small number of residents in the area have historically mown the saltmarsh, which is an offence under the <i>Marine Estate Management Act 2014</i>.</p> <p>Response: Council have met onsite and resolved the issue through clarification of intentions and a site inspection.</p> <p>The intention of action Mu5 is for illegal clearing of saltmarsh to be reduced, not for access to be restricted. This was clarified at a meeting with adjacent residents on 21 March 2022, where access points were examined.</p> <p>Residents were pleased with the clarity on the action intent and offered to spread that information with other interested residents.</p>	<p>A small wording change in the draft Estuaries CMP clarifies the intent of action Mu5.</p>

Legal

All coastal councils are required to prepare a Coastal Management Program (CMP) under Part 13 of the *Coastal Management Act 2016* (CM Act) to secure financial support from the NSW State Government. The draft Estuaries CMP has been prepared in accordance with the NSW Government's Coastal Management Manual (CM Manual). A comprehensive checklist of requirements has been undertaken by the Department of Planning and Environment, which has found that all requirements for certification have been met.

Policy

Council is responsible for implementing actions in an adopted Estuaries CMP, including the Monitoring, Evaluation and Reporting (MER) program. These actions would be included in the Eurobodalla Shire Council Community Strategic Plan, Delivery Program and Operational Plans over the next 5 years.

An estuary advisory committee comprised of relevant State Government agencies and chaired by Council will be established for the monitoring, evaluation and implementation of actions in an adopted Estuaries CMP.

Environmental

A primary objective of the draft Estuaries CMP is to protect and enhance natural coastal processes and coastal environmental values including natural character, scenic value, biological diversity and ecosystem integrity and resilience. The draft Estuaries CMP is heavily focused on environmental outcomes. Of the 32 actions within the business plan for the draft Estuaries CMP, eighteen (18) are oriented towards environmental outcomes.

Social Impact

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An adopted Estuaries CMP will provide the community with certainty about how the estuaries will be managed in the future. This ensure estuary health and resilience and the resulting ecosystem services this provides, and access to the natural environment that is highly valued by locals and visitors.

Financial

A certified Estuaries CMP will enable Council to have access to up to 2:1 funding allocated under the NSW Government's Coastal Management Program Fund. This funding is only available for projects identified in a certified CMP.

Community and Stakeholder Engagement

The engagement process undertaken to inform the draft Estuaries included:

- Updates about the project made available on Council's website
- Late 2018: first round of engagement - early community engagement including:
 - Three community workshop/drop-in sessions in Narooma and Moruya
 - A NSW Government agency stakeholder meeting held in Narooma
- 2019: using the Round 1 feedback to prepare the stage 1 scoping study for the draft Estuaries CMP
- 2020: completing stage 2 and 3 of the coastal management process by undertaking meetings at various locations across the study area to discuss risks and management opportunities with:
 - Two Local Aboriginal Land Councils (Wagonga and Cobowra)
 - Two meetings with knowledge holders from the area on Country
 - Council's Aboriginal Advisory Committee
 - Residents
 - NSW Government agencies including DPI Fisheries, Batemans Marine Park, Local Land Services and National Parks & Wildlife Service
 - A Wagonga oyster farmer on site

Stage 3 also included a values and use survey advertised through Council's social media channels and a Landcare newsletter. Over 100 responses to the survey were received which resulted in an expanded list of proposed actions in the draft Estuaries CMP.

- 2022: the NSW Government reviewed the draft Estuaries CMP against the requirements of the *CM Act* and *CM Manual*. This included a review by Crown Lands, Local Land Services, National Parks and Wildlife Service, Batemans Marine Park and Department of Primary Industries – Fisheries. Changes requested by the agencies were considerable in nature and related largely to wording for actions and responsibilities. These agencies are currently preparing letters of support for the draft Estuaries CMP which will be submitted for certification alongside the adopted Estuaries CMP.

The final step was a public exhibition period from 5 November 2021 to 5 January 2022 (a period of 56 days). This was intended to allow community more time to make submissions during the holiday period. Twenty-two community submissions were received during the exhibition

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period and one submission after exhibition had ended. All submissions were considered and amendments made the draft Estuaries CMP where appropriate.

CONCLUSION

The draft Moruya River, Mummaga Lake and Wagonga Inlet Estuarine Coastal Management Program (the draft Estuaries CMP) has been revised to incorporate minor changes as a result of feedback received during public exhibition. The draft Estuaries CMP is now ready for Council to consider for adoption.

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

Attachments: 1. Confidential - Submissions

Community Goal: 3 Our region of vibrant places and spaces

Community Strategy: 3.1 Balance development between the needs of people, place and productivity

Delivery Program Link: 3.1.2 Provide receptive and responsive development assessment services

Operational Plan Link: 3.1.2.1 Assess and determine development applications

Applicant: Architects North

Land: Lots 10 and 11 DP19193, 390 and 392 Beach Road, Batehaven

Area: 1,722.6m²

Setbacks: Front – 3.6m variation
Side – 1.5m complies
Rear – 8.21m complies

Height: 13.2m (11.5m height limit)

Zone: R3 Medium Density Residential

Current Use: Dwelling and vacant land

Proposed Use: Residential Flat building

Description: Residential Flat Building (24 apartments)

Permitted in Zone: Yes

DA Registered: 4 January 2022

Reason to F&S: Clause 4.6 Variation to Height of Buildings

Recommendation: Approval subject to conditions

EXECUTIVE SUMMARY

This report seeks Council's determination of Development Application (DA) 0469/22 for demolition of an existing dwelling and replacement with a residential flat building containing 24 apartments at 390 and 392 Beach Road, Batehaven. The proposal is a four storey building including ground level car parking and three levels of residential apartments.

The development site is immediately opposite Caseys Beach in Batehaven.

The DA seeks a variation from the Eurobodalla Local Environmental Plan (ELEP) 2012 Clause 4.3 Height of Buildings. The ELEP defines the maximum building height of the subject site as 11.5m, taken from natural ground level. The proposal seeks a variation of 1.7m or 14.7% for the

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

The proposal is consistent with the requirements of the *Environmental Planning and Assessment Act (the EPA Act) 1979*, State Environmental Planning Policy (SEPP) 65 – Design Quality of Residential Apartment Development, the Apartment Design Guide, Eurobodalla Local Environmental Plan (ELP) 2012 and the Neighbourhood Centres Development Control Plan (DCP).

The DA was exhibited in accordance with the Community Engagement and Participation Plan during which time, 15 objections were received. These objections have been considered and addressed through either design amendments, clarification of the proposal or recommended conditions of consent.

Councillors were briefed on the development application on the 4 October 2022.

This report recommends approval of the DA subject to conditions.

RECOMMENDATION

THAT pursuant to the provisions of Section 4.16 of the *Environmental Planning and Assessment Act 1979*, Development Application No. 0469/22 for the erection of a residential flat building at 390 and 392 Beach Road, Batehaven be approved subject to the conditions set out below:

GENERAL CONDITIONS

1 Approved plans

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

DA and Sheet Nos.	Plan Nos.	Date of Plan	Prepared by
DA0469/22 – Sheet 1 of 41	2112 – A00 – Rev B	18/8/2022	Architects North
DA0469/22 – Sheet 2 of 41	2112 – A01 – Rev B	18/8/2022	Architects North
DA0469/22 – Sheet 3 of 41	2112 – A02 – Rev B	18/8/2022	Architects North
DA0469/22 – Sheet 4 of 41	2112 – A03 – Rev B	18/8/2022	Architects North
DA0469/22 – Sheet 5 of 41	2112 – A04 – Rev B	18/8/2022	Architects North
DA0469/22 – Sheet 6 of 41	2112 – A05 – Rev B	18/8/2022	Architects North

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DA0469/22 – Sheet 7 of 41	2112 – A06 – Rev B	18/8/2022	Architects North
DA0469/22 – Sheet 8 of 41	2112 – A07 – Rev B	18/8/2022	Architects North
DA0469/22 – Sheet 9 of 41	2112 – A08 – Rev B	18/8/2022	Architects North
DA0469/22 – Sheet 10 of 41	2112 – A09 – Rev B	18/8/2022	Architects North
DA0469/22 – Sheet 11 of 41	2112 – A10 – Rev B	18/8/2022	Architects North
DA0469/22 – Sheet 12 of 41	2112 – A11 – Rev B	18/8/2022	Architects North
DA0469/22 – Sheet 13 of 41	2112 – A12 – Rev B	18/8/2022	Architects North
DA0469/22 – Sheet 14 of 41	2112 – A14 – Rev B	18/8/2022	Architects North
DA0469/22 – Sheet 15 of 41	2112 – A15 – Rev B	18/8/2022	Architects North
DA0469/22 – Sheet 16 of 41	2112 – A16 – Rev B	18/8/2022	Architects North
DA0469/22 – Sheet 17 of 41	2112 – A17 – Rev B	18/8/2022	Architects North
DA0469/22 – Sheet 18 of 41	2112 – A18 – Rev B	18/8/2022	Architects North
DA0469/22 – Sheet 19 of 41	2112 – A19 – Rev B	18/8/2022	Architects North
DA0469/22 – Sheet 20 of 41	2112 – A32 – Rev B	18/8/2022	Architects North
DA0469/22 – Sheet 21 of 41	2112 – A30 – Rev B	18/8/2022	Architects North
DA0469/22 – Sheet 22 of 41	2112 – A30 – Rev B	18/8/2022	Architects North
DA0469/22 – Sheet 23 of 41	L301.1 – Ground Floor Landscape Plan	5/5/2022	Place Logic
DA0469/22 – Sheet 24 of 41	L301.2 – Level 1 Landscape Plan	5/5/2022	Place Logic
DA0469/22 – Sheet 25 of 41	L301.3 – Level 3 Rooftop Landscape	5/5/2022	Place Logic

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	Plan		
DA0469/22 – Sheet 26 of 41	L302.1 – Materials Palette	12/11/21	Place Logic
DA0469/22 – Sheet 27 of 41	L303.1 – Planting Schedule and Imagery	5/5/2022	Place Logic
DA0469/22 – Sheet 28 of 41	L303.2 – Landscape Details	12/11/21	Place Logic
DA0469/22 – Sheet 29 of 41	L304.1 – Landscape Diagrammatic Section – Visual Screening	24/11/21	Place Logic
DA0469/22 – Sheet 30 of 41	BASIX Commitments	Undated	Unattributed
DA0469/22 – Sheet 31 of 41	M9830 – Sheet 1 of 11 – Rev C	19/05/2022	Geoff Metzler & Associates Pty Ltd
DA0469/22 – Sheet 32 of 41	M9830 – Sheet 2 of 11 – Rev A	10/12/2021	Geoff Metzler & Associates Pty Ltd
DA0469/22 – Sheet 33 of 41	M9830 – Sheet 3 of 11 – Rev A	10/12/2021	Geoff Metzler & Associates Pty Ltd
DA0469/22 – Sheet 34 of 41	M9830 – Sheet 4 of 11 – Rev C	19/05/2022	Geoff Metzler & Associates Pty Ltd
DA0469/22 – Sheet 35 of 41	M9830 – Sheet 5 of 11 – Rev C	19/05/2022	Geoff Metzler & Associates Pty Ltd
DA0469/22 – Sheet 36 of 41	M9830 – Sheet 6 of 11 – Rev C	19/05/2022	Geoff Metzler & Associates Pty Ltd
DA0469/22 – Sheet 37 of 41	M9830 – Sheet 7 of 11 – Rev C	19/05/2022	Geoff Metzler & Associates Pty Ltd
DA0469/22 – Sheet 38 of 41	M9830 – Sheet 8 of 11 – Rev C	19/05/2022	Geoff Metzler & Associates Pty Ltd
DA0469/22 – Sheet 39 of 41	M9830 – Sheet 9 of 11 – Rev B	5/05/2022	Geoff Metzler & Associates Pty Ltd
DA0469/22 – Sheet 40 of 41	M9830 – Sheet 10 of 11 – Rev A	10/12/2021	Geoff Metzler & Associates Pty Ltd
DA0469/22 – Sheet 41 of 41	M9830 – Sheet 11 of 11 – Rev A	10/12/2021	Geoff Metzler & Associates Pty Ltd

Council Stamp No.	Document title	Date of document	Prepared by
DA0469/22 –	S4.14 Referral Response	19 September	NSW Rural Fire Service

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Document 1		2022	
DA0469/22 - Document 2	Radiant Heat Shield	1 March 2022	Harris Environmental Consulting
DA0469/22 – Document 3	Statement of Environmental Effects	24 May 2022	Zenith Town Planning
DA0469/22 – Document 4	BASIX Certificate 1269037M_02	25 May 2022	Certified Energy 1
DA0469/22 – Document 5	Hydrologic and Hydraulic Model Results and Associated Advice	14 June 2022	Rienco Consulting
DA0469/22 – Document 6	Traffic and Parking Assessment Report	May 2022	Positive Traffic

Note: Any alteration to the plans and/or documentation may require the lodgement of an application to modify the consent under Section 4.55 of the Environmental Planning and Assessment Act (EPA Act) 1979, or a fresh development application. Your Principal Certifier 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 Earthworks, retaining walls and structural support

Any earthworks (including any structural support or other related structure for the purposes of the development):

- (a) must not cause a danger to life or property or damage to any adjoining building or structure on the lot or to any building or structure on any adjoining lot, and
- (b) must not redirect the flow of any surface or ground water or cause sediment to be transported onto an adjoining property, and
- (c) that if fill brought to the site - must contain only virgin excavated natural material (VENM) as defined in Part 3 of Schedule 1 to the *Protection of the Environment Operations Act 1997*, and
- (d) that if excavated soil is to be removed from the site - it must be disposed of in accordance with any requirements under the *Protection of the Environment Operations (Waste) Regulation 2005*. [11.16]

3 Vehicle Direction

All vehicles to enter and exit the development in a forward direction to avoid possible conflict with through traffic on Beach Road. [14.25]

4 Water & Sewer Inspections

All plumbing and drainage works (water supply, sanitary plumbing and drainage, stormwater 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 Certificate.

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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:

- (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) The installation of the septic tank and any sullage trenches prior to backfilling or covering.
- (e) Issue of final satisfactory inspection. [2.16]

5 Noise from Deliveries/Waste Collection

Waste collections and deliveries from any vehicle or truck are not permitted on any part of the premises between 10pm and 7am Monday to Saturday inclusive or between 10pm and 9am on Sundays and Public Holidays. [20.07]

6 Demolition and Site Clearing Operations

Building demolition works are to be carried out in accordance with AS2601:2001. All demolition works must be carried out wholly within the allotment boundaries and must not extend onto the footpath area, public roadway or adjoining properties. Demolition is to comply with stamped approved DA0469/22, Document 3.

7 Storage of Materials

Storage of materials is not permitted on the public footpath area or roadway unless an approved hoarding is provided. [21.03]

8 Demolition - Damage to adjacent Properties

Demolition works are to be carried out so as not to cause damage to adjacent and adjoining properties (including the road reserve). All damage arising from the removal of the building is to be made good and any necessary repairs and renovations are carried out within six (6) months. The existing site to be left in a clear, clean condition with all existing plumbing and drainage lines terminated to the satisfaction of Council's Plumbing and Drainage Inspector. [21.04]

9 Asbestos Removal

Where asbestos material is to be removed or disturbed as a result of any proposed demolition, alteration or addition:

The removal of bonded asbestos material (of an area of more than 10m²) 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>;

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;

All asbestos material removed is to be disposed of to a landfill site licensed to receive asbestos. [25.01]

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10 Asbestos Clearance Certificate - Demolition of Existing Structure

Following the demolition works and prior to the commencement of construction, an Asbestos Clearance Certificate shall be submitted to the Principal Certifier confirming the subject land has been cleared of asbestos in accordance with the [Asbestos | SafeWork NSW <https://www.safework.nsw.gov.au/hazards-a-z/asbestos>](https://www.safework.nsw.gov.au/hazards-a-z/asbestos) requirements.

Note: In the event that you have engaged a suitably qualified consultant (that is a Licensed Builder or Asbestos Contractor) and it was determined that no Asbestos was detected. Please provide written certification from the Licensed Builder or Asbestos Contractor that the development does not contain any asbestos. [25.13]

11 Building near Sewer Mains

Special footings to be constructed adjacent to Council's sewer main in accordance with the approved Engineer's design submitted with this development application. [4.17]

12 Sewer Main Protection - Code of Practice

Any planting of vegetation or installation of structures within the 'zone of influence' of Council's sewer must be in accord with the 'Build in the Vicinity of Sewer Mains Code of Practice'. Schedule A of the Code provides a general list of plant species not suitable and these are not to be planted. The document is available on Council's website at <https://www.esc.nsw.gov.au/>. [4.19]

13 Compliance with RFS requirements

This consent is issued on the basis of compliance with stamped approved documents 1 and 2 attached to this consent.

14 Essential Energy requirements

- a. Essential Energy's records indicate that there are existing overhead powerlines located across the street frontage of this property. As per the revised plans and information provided by the Applicant, it is proposed that this overhead infrastructure will be undergrounded. Such undergrounding will be at the Applicant's expense and must meet the requirements of Essential Energy's contestable works process. Refer Essential Energy's Contestable Works Team via email contestableworks@essentialenergy.com.au contestableworks@essentialenergy.com.au for all requirements.
- b. Following undergrounding of the existing powerlines across the street frontage:
 - i. Prior to carrying out any works in this location and/or within 1.0 metre either side of these cables, a "Dial Before You Dig" enquiry should be undertaken in accordance with the requirements of *Part 5E (Protection of Underground Electricity Power Lines)* of the *Electricity Supply Act 1995* (NSW) to locate these cables.
 - ii. Works around the cables must be managed. If the ground levels over the cables are to be altered, clearances must be maintained and cable integrity protected.

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- iii. Any excavation works in this area for the proposed new driveway/s must comply with the latest industry guideline currently known as *ISSC 20 Guidelines for the Management of Activities within Electricity Easements and Close to Infrastructure*.
- iv. The cables should be in conduit under any new driveway/s and driveway/s should not be placed over the top of any joints and spare conduit should be available - refer Essential Energy's policy *CEOM7098 Distribution Underground Design and Construction Manual*. Note that approval is not possible where the driveway/s are proposed to be located with an impact on existing cables, cable joints, pits pillars and the like - refer *ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure*.
- c. Satisfactory arrangements must be made with Essential Energy for the provision of power with respect to the proposed development. It is the Applicant's responsibility to make the appropriate application with Essential Energy for the supply of electricity to the development, which may include the payment of fees, contributions and if required, new designated electrical infrastructure is required, then all fees for such infrastructure (which may be substantial) will be borne by the Applicant. Refer Essential Energy's Contestable Works Team for requirements via email contestableworks@essentialenergy.com.au <<mailto:contestableworks@essentialenergy.com.au>>.
- d. The Applicant will need to engage the services of an Accredited Service Provider to ensure adequate provision of power is available to each unit in accordance with *NSW Service and Installation Rules*. A Level 2 Electrician will be able to advise on these requirements and carry out the required work to ensure compliance.
- e. Any proposed landscaping in the vicinity of existing or proposed electrical infrastructure must comply with *ISSC 20 Guidelines for the Management of Activities within Electricity Easements and Close to Infrastructure*.

15 **Approved Development**

This development has been approved based on the Design Verification Statement prepared by Architects North and contained in Document 1 - Statement of Environmental Effects prepared by Zenith Town Planning.

16 **Garage Door**

The garage door must be operated automatically via remote. No vehicle is permitted to stop or park over the footpath/verge of Beach Road.

17 **Colours and Materials**

This building has been approved based on the colours and materials demonstrated on stamped approved plans DA0469/22 Sheet 8. Any proposed material change shall be submitted to and approved by Council, prior to the change occurring.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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18 *Structural (Dilapidation) Reports*

Prior to release of any Construction Certificate, the applicant shall submit a structural report detailing the existing condition of adjoining buildings, infrastructure and roads at 390 and 392 Beach Road, Batehaven. The report shall be prepared by a suitably qualified Structural Engineer and a copy provide to Council.

19 *Adaptable Housing* Access and facilities for persons with disabilities are to be provided in accordance with the Development Control Plan that requires a minimum of one in every four of the dwellings able to demonstrate that it can satisfy the requirements of Australian Standard AS4299-Adaptable Housing. Complete details of compliance with these instruments is to be provided to the Certifying Authority prior to the issue of a Construction Certificate. [23.27]

20 *Detailed Site Investigation*

Prior to the release of any Construction Certificate, the land shall be investigated, by a suitably qualified consultant, to ensure that there is no contamination present on site.

21 *Detention Rainwater Tank Reuse*

The water collected within the detention rainwater tanks is to be used for the purposes of landscaping, washing down the garbage storage area and washing of vehicles. Plans shall be submitted to the satisfaction of the Certifier prior to issue of the Construction Certificate.

22 *Access*

Prior to release of the Construction Certificate, submission to the Principal Certifier of a plan showing details of the access driveway construction addressing the following:

- (a) The location of the driveway within the site and extending to the existing road;
- (b) A long section showing existing and final levels along the centre line of the driveway from the road centre line to the back of the vehicle standing area, with final levels providing grades conforming to 'Councils Infrastructure Design Standards <<http://www.esc.nsw.gov.au/development-and-planning/tools/development-control-plans/Infrastructure-Design-Standard-IDS.pdf>> or to AS/NZS 2890.1:2004 ;
- (c) Any design not compliant with Council's Infrastructure Design Standard is to be certified by the designer for compliance with AS/NZS 2890.1:2004;
Method of containing all fill and excavation associated with the driveway within the lot;
- (e) The extent of earthworks within the footpath area adjacent to the driveway to provide a maximum slope of 1 in 8 (12.5%);
- (f) The location of all services in plan and elevation and any alterations required to conform to the standards of the service provider;
- (g) The method of controlling water flows to address safety, short and long term erosion to industry standards; and

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(h) Pavement designs]

(i) The driveway is to be generally 6.0m wide across the verge. In the direction of travel toward the road, at a point 1.0m from the road formation, the driveway can flare for the provision of a vehicle crossing 6.0m to a width of 7.5m where it adjoins the gutter invert or edge bitumen. Where upright kerb and gutter exists, the vehicle crossing is to comply with Council's Infrastructure Design Standard, drawing 4400-a 001-b-1. [14.04]

23 Car Park Design

Prior to the issue of a Construction Certificate submission to and approval by the Certifying Authority of plans prepared by a suitably qualified engineer for 39 resident car parking spaces and five visitor spaces, manoeuvring areas and access driveways all being sealed and conforming to AS2890.1 & 2. Such plans are to include drainage and pavement designs and are to address expected vehicle loading and any fill compaction requirements. The car park design is to be accompanied by a management plan detailing vehicle parking arrangements for residents and visitors. [15.02]

24 Long Service Levy

Long Service Levy is required to be paid to the NSW Long Service Payment Corporation prior to the issue of a Construction Certificate. The amount to be paid is 0.35% of the cost of buildings and works where these are valued at \$25,000 or more.

25 Construction Management Plan

A Construction Management Plan shall be submitted to and approved by Council prior to the issue of a Construction Certificate. 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.

26 Section 7.11 Contributions

Payment to Council pursuant to 7.11 of the *Environment Planning and Assessment Act 1979*, of contributions towards the provision of public amenities or services. The current contribution rates for the current financial year are as follows:

Facility	2 by 3+ bedroom dwelling	12 by 2 bedroom dwelling	9 by 1 bedroom / studio dwelling	Total (no. of dwellings * rate)

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Open Space and Recreation	2 * 476	12 * 272	9 * 221	\$6,205
Community and Cultural	2 * 138	12 * 79	9 * 64	\$1,800
Arterial Roads	2 * 4,748	12 * 2,713	9 * 2,205	\$61,897
Paths and Cycleways	2 * 633	12 * 362	9 * 294	\$8,256
Stormwater	2 * 1,278	12 * 730	9 * 593	\$16,653
Marine	2 * 192	12 * 110	9 * 89	\$2,505
Plan Preparation and Administration	2 * 112	12 * 64	9 * 52	\$1,460
Total	2 * 7,578	12 * 4,330	9 * 3,518	\$98,778

The above contributions are to be paid prior to the issue of any Construction Certificate, and will be payable at the rate applicable at the time of payment.

Note: *The above contributions are reviewed at least annually and may be subject to increases as a result of indexation or other forces.*

The plan can be viewed on Council's website at [Contributions Plan \(nsw.gov.au\)
<https://www.esc.nsw.gov.au/ data/assets/pdf file/0005/218966/Eurobodalla-Local-Infrastructure-Contributions-Plan-2022.pdf>](https://www.esc.nsw.gov.au/data/assets/pdf_file/0005/218966/Eurobodalla-Local-Infrastructure-Contributions-Plan-2022.pdf)

27

Water/Sewer Developer Contributions - Development

Prior to the issue of a Section 68 Approval/Construction Certificate, the developer/consent holder will have to be eligible to obtain a Section 307 Certificate of Compliance under the *Water Management Act 2000*/ compliance with Section 64 of the *Local Government Act 1993*. To be eligible, the developer/consent holder will have to contribute:

- a) \$87,358 (12.4 ETs) for the augmentation of water supply mains and storage within Eurobodalla Shire where 1.0 ET = \$7,045.
- b) \$134,329.60 (15.1 ETs) for the augmentation of sewerage works within Eurobodalla Shire where 1.0 ET = \$8,896.

The contribution shall be paid to the Eurobodalla Shire Council. Evidence of the payment shall be submitted to Principal Certifier prior to the issue of the Construction Certificate.

Note: *The above contributions are reviewed at least annually and may be subject to increases as a result of indexation or other forces. Contributions can be paid prior to each stage of the development.* [3.11a]

28

Water Meter - Multi Unit Development

Prior to works commencing, submission to and approval by Council of certification and a layout plan for the service by a suitably qualified hydraulic engineer/consultant 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. Individual meters to be sized in accordance with AS/NZS3500.1:2003 Plumbing and Drainage - Water Services.

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- All fire hose reels must be supplied through the metered supply.
- Each residence is to be separately metered from the main or internally. That is, either by connection to Council's water main by a single Council meter with all residences separately metered by private meters within the development or individual Council connections and meters from Council's main for each residence.
- Council will provide a quote to construct the water service complete with meter with prepayment required prior to works being scheduled. The meter is to be located so as to be accessible to Council's Water Meter Reader at all times. Any work required to Council's infrastructure to extend the main or allow installation of the meter other than a standard meter connection, is to be undertaken at full cost to the applicant.
- A backflow prevention device is to be installed and certified by a private plumber in accordance with Council's Backflow Prevention policy.
- A standard meter connection is where the water main is located on the same side of the street as the property, the meter is to be located approximately 2.4m from the water main to just inside the property boundary and laid in a non-hard surface area (grassed). Please contact Council's Water and Sewerage Project Engineer on 44741342 to arrange the quote and prepayment will be required to be receipted at Council Administration Centre at Vulcan Street Moruya, the Batemans Bay or Narooma depot.
- Any amendments to the building or building envelope to accommodate the design may require additional approval from Council. [5.05a]

29

Stormwater Management – Multi Unit Development

Prior to the issue of a Construction Certificate, submission to the Principal Certifier of plans addressing stormwater management for the development. The plans are to be certified by a suitably qualified drainage consultant or engineer for compliance with the following:

- i) AS/NZS 3500.3:2015.
- ii) Infrastructure Design Standard (IDS)
- iii) 70% retention of the typical urban annual load for gross pollutants.
- iv) Provide a sediment trap at the site extremity.
- v) Point of discharge from the site is to be connected to Council infrastructure in accordance with Council's Infrastructure Design Standard.

Note: Notwithstanding the above minimum requirements, in accordance with the *Protection of the Environment Operations Act 1997*, a person who pollutes any waters (pollute waters includes cause or permit any waters to be polluted) is guilty of an offence and is liable under that Act. [6.32]

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30 *Ocean/Flood*

Prior to issue of a Construction Certificate, submission to the Principal Certifier of plans by a suitably qualified and experienced Structural/Civil Engineer certifying that the development will be capable of withstanding the impact of the flood/ocean hazard applicable to the location. The applicable flood planning level for the development is 3.01m AHD. [7.04]

31 *Flood*

Prior to the release of a Construction Certificate plans are to be submitted to the satisfaction of the Principal Certifier showing all building materials used below the nominated flood planning level, 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". [7.05]

32 *Bushfire Protection Construction Details required*

Prior to the issue of the Construction Certificate detailed plans and specifications of the building construction shall be submitted to the Principal Certifier demonstrating compliance with the BAL levels and requirements stipulated in stamped approved documents 1 and 2 attached to this consent. [9.02]

33 *Landscaping Plan*

Prior to release of any Construction Certificate, the applicant shall submit to the Principal Certifier a revised landscaping plan that is compliant with the NSW Rural Fire Service Planning for Bush Fire Protection 2019 and stamped approved document 1.

PRIOR TO COMMENCEMENT OF WORKS

34 *Erosion and Sedimentation Control*

Prior to commencement of any earthworks, installation of all measures necessary to effectively control soil erosion on the site to prevent silt discharge into drainage systems and waterways in accordance with Council's Soil and Water Management Code. The measures, to include sediment fencing and erosion control devices, are to be maintained and remain in place until the development is completed and disturbed areas are stabilised.

Note: *Clean Up Notices and/or on-the-spot fines may be imposed by Council for non-compliance with this condition.* [11.13]

35 *Imported Fill*

Prior to the importation of fill onto the development site details of the origin/quality of the material are to be provided to the Principal Certifier. The fill is to be certified as virgin excavated natural material (VENM) of similar material to the existing soil type on the land, and is to be tested for suitability to achieve the required 98% dry density compaction of a subgrade material, the material is to comply with AS3798-2007 and AS1289-2000. [11.15]

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36 Erosion and Sediment Controls - Installation

The Principal Contractor or Owner-builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:

- a) The Soil and Water Management Plan if required under this consent;
- b) "Do it Right On Site, Soil and Water Management for the Construction Industry" published by the Southern Sydney Regional Organisation of Councils, 2001; and
- c) "Managing Urban Stormwater - Soils and Construction" 2004 published by the NSW Government (The Blue Book).

Where there is any conflict, The Blue Book takes precedence. [11.20]

37 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 undertaken by other than the applicant, the supervisor of the works is to be advised of this condition. Details for an application form and fees are available by contacting council Engineering Development Assessment Officer (44741254) & 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. [14.09]

38 Construction Certificate

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

- Detailed plans/specifications of the building have been endorsed with a Construction Certificate by a registered certifier, and
- The person having the benefit of the development consent has appointed a Principal Certifier, and has notified the Council of the appointment, and
- The person having the benefit of the development consent has given at least two (2) day's notice to the Council of the person's intention to commence the

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erection of the building; and

- Builders name and licence number has been supplied to Council or the Principal Certifier; and
- Home Building Compensation Fund (HBCF) has been paid and a copy of the Certificate supplied to Council or the Principal Certifier; and
- 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 Certifier 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. [2.06]

39 ***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. [22.01]

40 ***Essential Energy condition***

Prior to any demolition works commencing, any service line/s to the properties must be disconnected.

DURING CONSTRUCTION

41 ***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. [0131]

42 ***Certification Height of Building***

The residential flat building must be constructed in accordance with the maximum finished levels outlined below:

- ground floor habitable level 2.51m AHD;
- first floor level 5.5m AHD;
- second floor level 8.4m AHD;
- third floor level 11.3m AHD; and
- roof level 14m AHD.

The floor levels and ridge level must be certified by a registered surveyor. Evidence is to be submitted to the satisfaction of the Principal Certifier, prior to continuing construction. Construction is not to continue until the Principal Certifier has signed off that the floor level or ridge level is in accordance with the approved levels outlined in this condition. [23.33]

43 ***Public Way to be Unobstructed***

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The public way shall not be obstructed by any materials, vehicles, refuse skips or the like, under any circumstances at any time during construction. [14.10]

44 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*. [14.12]

45 Approved Plans to be On-Site

A copy of the approved and certified plans, specifications and documents incorporating conditions of approval and certification shall be kept on the site at all times and shall be readily available for perusal by any officer of Council or the Principal Certifier. [2.22]

46 Construction Hours - NOISE

If audible at any residence or other sensitive noise receiver, construction may only be carried out between 7.00am and 6.00pm on Monday to Friday, and 8.00am to 5.00pm Saturdays. No construction can be carried out on a Sunday or public holiday if audible at any residence or other sensitive receivers. [20.01]

47 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 Certifier certifying that the works have been located in accordance with the approved development application prior to proceeding past the relevant stage of construction. [23.05]

48 Implementation of BASIX commitments

While building work is being carried out, the applicant must undertake the development strictly in accordance with commitments listed in BASIX certificate(s) approved by this consent, for the development to which the consent applies, and any updated certificate(s) if amendments are made. [23.26]

PRIOR TO OCCUPATION OR COMMENCEMENT OF USE

49 Structural (Dilapidation) Report – Post Construction

Prior to the release of any Occupation Certificate, the applicant shall submit to the Principal Certifier and Council a report prepared by a suitably qualified Structural Engineer that demonstrates the post construction condition of the buildings, roads and infrastructure assessed prior to construction in accordance with condition 26 of this consent.

This report must detail if there has been any structural damage which has occurred as

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a result of construction activities.

Any remediation or rectification works as determined by the report must be completed with satisfactory evidence provided prior to the issue of any Occupation Certificate.

Note: All rectification works are at the expense of the developer.

50

Action Plan

Prior to the issue of a Construction Certificate, a site-specific Flood Action Plan, prepared by a suitably qualified engineer is to be submitted to and approved by Council. Evidence of implementation of the Flood Action Plan is necessary prior to the occupation of commencement of operations. The Flood Action Plan is to include an Emergency Plan available from the [NSW State Emergency Service \(SES\) Website](http://www.sesemergencyplan.com.au/) [<http://www.sesemergencyplan.com.au/>](http://www.sesemergencyplan.com.au/). The site-specific Flood Action Plan is to include but not be limited to:

- a) Property Address
- b) Local Emergency Contact Numbers
- c) Local Radio Stations for Emergency Warnings
- d) Bureau of Meteorology Website for Emergency Warnings
- e) Flood Warnings and Approximate Site Levels for occupants to determine flood severity.
- f) Evacuation Procedures
- g) Evacuation Map
- h) Location of SES Emergency Plan
- i) Location and Contents of Emergency Kit as per SES Emergency Plan. [7.15]

51

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. [0209]

52

Layback Gutter

Prior to the issue of any Occupation Certificate, provision of a 6m wide layback gutter crossing and reinstatement of kerb over redundant laybacks to 'Councils Infrastructure Design Standards <http://www.esc.nsw.gov.au/development-and-planning/tools/development-control-plans/Infrastructure-Design-Standard-IDS.pdf> Plan No 4400-A-0001-b-1. [14.17]

53

Landscape Plan

Completion of landscaping in accordance with the approved Landscape Plan and the requirements of Documents 1 and 2 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 responsibility. [16.04]

54

Landscaping Plan of Management

In accordance with the Apartment Design Guide, the applicant shall submit to the Principal Certifier a written plan of management to ensure that the landscaping is maintained in accordance with the landscaping plan, approved in accordance with

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this consent.

55 ***Occupation Certificate***

The development shall not be used or occupied until an Occupation Certificate has been issued by the Principal Certifier. [2.14]

56 ***Privacy Screening for decks***

Privacy screen(s) are required for the areas of the deck(s) located within 9m of the deck or transparent windows/doors of a residential neighbour's living room as shown on the approved plans, and/or where marked in red on the approved plans. The privacy screen(s) must face the affected side or rear boundary, be between 1.5m (min) to 1.7m (max) in height (measured from the deck's floor level), have individual openings of 30mm wide and the total of all openings be less than 30% of the surface area of the screen. The screens must be installed prior to issue of any Occupation Certificates. [23.02]

57 ***Land Consolidation***

Consolidation of the land into one lot is required. Plan of consolidation to be registered with the Land and Property Information NSW prior to issue of any Occupation Certificate. [3.15]

58 ***Works as Executed Plans and any other Documentary Evidence***

Before the issue of the Occupation Certificate, the applicant must submit, to the satisfaction of the principal certifier, works-as-executed plans, any compliance certificates and any other evidence confirming the following completed works:

- a) All stormwater drainage systems and storage system
- b) Landscape Plan including the plan of management in accordance with conditions 53 and 54
- c) Fire Safety Certification in accordance with conditions 59 and 60
- d) A Certificate from a Registered Surveyor in accordance with condition 42
- e) Certification from a suitably qualified consultant of remediation works carried out in accordance with conditions 10 and 49, if required
- f) Structural dilapidation reports and evidence of rectification works as required by conditions 18 and 49 must be submitted.

The principal certifier must provide a copy of the plans to Council with the Occupation Certificate. [6.06]

59 ***Fire Safety Certificate***

A Fire Safety Certificate shall be furnished to the Registered Certifier for all the "Essential Fire or Other Safety Measures" forming part of this approval prior to issue of an Occupation Certificate. A copy of the Fire Safety Certificate must be submitted to Council by the Registered Certifier prior to issue of an Occupation Certificate. [8.01]

60 ***Annual Fire Safety Statement***

- (a) A final Fire Safety Certificate shall state that each essential fire safety measure specified in the current Fire Safety Schedule for the building to which the Certificate relates:

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- (i) has been assessed by a properly qualified person; and
- (ii) was found, when it was assessed, to be capable of performing to a standard not less than that required by the current fire safety schedule for the building for which the Certificate is issued.
- (b) The assessment must have been carried out within the period of three (3) months prior to the date on which the final Fire Safety Certificate is issued.
- (c) The choice of person to carry out the assessment is up to the owner of the building.
- (d) The person who carries out the assessment:
 - (i) must inspect and verify the performance of each fire safety measure being assessed; and
 - (ii) must test the operation of each new item of equipment installed in the building premises that is included in the current Fire Safety Schedule for the building.
- (e) As soon as practicable after a final Fire Safety Certificate is issued, the owner of the building to which it relates:
 - (i) must cause a copy of the Certificate (together with a copy of the current Fire Safety Schedule) to be given to the Commissioner of New South Wales Fire Brigades; and
 - (ii) must cause a further copy of the Certificate (together with a copy of the current Fire Safety Schedule) to be prominently displayed in the building.

61 *Adaptable Housing*

The Principal Certifier is to ensure prior to the issue of any Occupation Certificate that a minimum of 6 residential units is compliant with the requirements of AS4299-Adaptable Housing. [23.28]

62 *Parking*

Prior to issue of any Occupation Certificate, construct/provide car parking in accordance with the approved plans. [15.06]

63 *Bush Fire Protection Measures*

Prior to the issue of any Occupation Certificate, the Certifier shall ensure that all bush fire protection measures required for compliance with Document 1 have been completed.

ADVISORY NOTES

A *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*.

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The applicant/owner is responsible to ensure compliance with this and other anti-discrimination legislation. [0010]

B *Disclaimer - s88B Restrictions on the Use of Land*

The applicant should note that there could be covenants in favour of persons, other than Council, restricting what may be built or done upon the subject land. The applicant is advised to check the position before commencing any work.

Under the Eurobodalla Local Environmental Plan, Agreements, Covenants or Instruments that restrict the carrying out of the proposed development do not apply to the extent necessary to enable the carrying out of that development, other than where the interests of a public authority is involved. [0013]

C *Use of Mobile Cranes*

The applicant shall obtain all necessary permits required for the use of mobile cranes on or surrounding the site, prior to the commencement of works.

For special operations including the delivery of materials, hoisting of plant and equipment, and erection and dismantling of on-site tower cranes which warrant the on street use of mobile cranes, permits must be obtained from Council:

- (a) at least 48 hours prior to the works for partial road closures which, in the opinion of Council will create minimal traffic disruptions and
- (b) at least four (4) weeks prior to the works for full road closures and partial road closures which, in the opinion of Council, will create significant traffic disruptions.

The use of mobile cranes must comply with the approved hours of construction and shall not be delivered to the site prior to 7.30am without the prior approval of Council. [0243]

D *Underground Utility Services Check*

The applicant shall contact the "Dial Before You Dig" service on telephone (02) 1100, fax number 1300-652-077 or email mocsinfo@mocs.com.au, prior to the commencement of excavation, to ascertain the presence and type of underground utility services in the vicinity of the development. [0263]

E *Ocean Location*

Council is of the opinion that the land is located within a corrosive environment, ie. that it is located within 1km from breaking surf, within 100m of salt water not subject to breaking surf or heavy industrial areas. Materials used in construction may require a higher level of corrosion protection in accordance with relevant Australian Standards and the Building Code of Australia. [10.16]

F *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 & 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 that area. [13.07]

G NCC/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. [2.23]

H Council's Sewer Plan

Attached to the approval is a copy of Council's sewer plan. If excavating near the sewer for access construction or other, please contact Council's nearest depot for further information if required.

This diagram has been compiled on the best available information but can only be taken as a guide. Exact location should be physically determined on site.

Disclaimer: *This information is released by Eurobodalla Shire Council on the condition that the recipient of this document, or the reader of it, acknowledges that should they rely on any aspect of this document, they do so at their own risk and release Eurobodalla Shire Council of all liability and responsibility for any errors, omissions or inaccuracies contained within or arising from this information.* [4.12]

I Flooding /Sea level rise Liability

The land may be subject to flooding/sea level rise and the development has been assessed using best available information concerning the likelihood of flooding/ sea level rise 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. [7.10]

J Essential Energy - General Comments

1. If the proposed development changes, there may be potential safety risks and it is recommended that Essential Energy is consulted for further comment.
2. Any existing encumbrances in favour of Essential Energy (or its predecessors) noted on the title of the above properties should be complied with.
3. In addition, Essential Energy's records indicate there is overhead electricity infrastructure located within the properties and within close proximity of the properties. Any activities within these locations must be undertaken in accordance with *ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure*. Approval may be required from Essential Energy should activities within the properties encroach on the electrical infrastructure.
4. Prior to carrying out any works, a "Dial Before You Dig" enquiry should be undertaken in accordance with the requirements of *Part 5E (Protection of Underground Electricity Power Lines)* of the *Electricity Supply Act 1995* (NSW).
5. Given there is electricity infrastructure in the area, it is the responsibility of

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the person/s completing any works around powerlines to understand their safety responsibilities. SafeWork NSW (www.safework.nsw.gov.au <<http://www.safework.nsw.gov.au>>) has publications that provide guidance when working close to electricity infrastructure. These include the *Code of Practice - Work near Overhead Power Lines/Underground Assets*.

K *Street Numbering*

Street numbers and the building name(s), if any, will need to be clearly displayed at either end of the ground level frontages, prior to the occupation of the building(s) or commencement of the use. If street numbers or a change to street numbers are required, a separate application shall be made to Council. [0246]

L *Requirement to Notify about New Evidence*

Any new information which comes to light during remediation, excavation or construction works which has the potential to alter previous conclusions about site contamination, heritage significance, threatened species or other relevant matters must be immediately notified to Council and the Certifier. Remediation is at the full cost of the owner.

M *Responsibility to Changes to Public Infrastructure*

While building works are being carried out, the applicant must pay any costs incurring as a result of the approved removal, relocation or reconstruction of infrastructure (including ramps, footpaths, kerb and gutter, light poles, kerb inlet pits, service provider pits or infrastructure, street trees or any other infrastructure) in the street footpath/road reserve area.

N *Ongoing Maintenance of Bush Fire Protection Measures*

It is the responsibility of the owner and manager of the building to ensure that the bush fire protection measures and landscaping are maintained at all times, for the life of the development in accordance with Document 1 and Planning for Bush Fire Protection 2019.

BACKGROUND

Development Application DA0469/22 was lodged with Council on 4 January 2022. The application proposed a residential flat building with an estimated cost of works of \$7 million.

The DA proposal seeks consent for:

- Demolition of the existing dwelling and ancillary structures
- Erection of a four storey residential flat building containing three levels of residential apartments (24); ground level car park; and landscaping.

The existing dwelling house and associated structures are located on two lots, with a number of exotic and native shrubs. The lots are zoned R3 Medium Density Residential under the ELEG 2012 and identified as being flood and bushfire prone.

The following concurrent approvals are sought under the *Local Government Act 1993*:

- Works within the road reserve

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- Sewer, water and stormwater works

The DA has been referred externally to the NSW Rural Fire Service and Essential Energy. The proposed development seeks a variation to Clause 4.6 of the *Eurobodalla Local Environmental Plan 2012*, and a variation to Clause 2.2 front setbacks of the Neighbourhood Centres Development Control Plan.

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) No 65 – Design Quality of Residential Apartment Development

The proposed development has been assessed against the provisions of the SEPP and the Apartment Design Guide (ADG). The proposed development is supported by a design verification statement and is consistent with the design quality principles. Notably, the proposal meets the following criteria of the ADG.

Privacy

The units achieve the required separation distances in the ADG.

Private Open Space

All units meet the minimum requirements for private open space.

Landscaping

A landscape plan has been submitted as part of the plan set which demonstrates compliance with the ADG.

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

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

State Environmental Planning Policy (Housing) 2021

The development does not propose any affordable rental housing, housing for seniors, a caravan park or manufactured home estate and therefore the SEPP does not apply to this development.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 – Vegetation in non-rural areas

The land is not mapped on the Biodiversity Values Map. The land is zoned R3 Medium Density Residential. The proposed area of clearing does not exceed the applicable threshold of 2500m². As such, a Biodiversity Development Assessment Report is not required for this development.

Chapter 4 – Koala Habitat Protection 2021

The land is zoned R3 Medium Density Residential. The land is not contained within any approved Koala Plan of Management. The land area is less than 1 hectare and does not include the removal of any trees listed in Schedule 3 of the SEPP. As such, the proposed development is unlikely to result in any significant impact to koalas.

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State Environmental Planning Policy (Resilience & Hazards) 2021

Chapter 2 – Coastal Management

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

The land is not located within any designated coastal vulnerability area however it is located within the coastal environment area as defined by the *Coastal Environment Area Map*.

The proposed development will not result in any significant impacts on:

- the biophysical, hydrological and ecological environments,
- any coastal environmental values or natural coastline processes,
- the water quality of the marine estate,
- the marine vegetation, native vegetation and fauna and their habitats,
- existing public open space access to and along the foreshore, including persons with a disability, aboriginal cultural heritage and the use of the surf zone.

The land is located within the Coastal Use area as defined by the *Coastal Use Area Map*.

The proposed development is not likely to cause an adverse impact to access to the foreshore or wind funneling or loss of views from public places to foreshores, the visual amenity and scenic qualities of the coast, aboriginal cultural heritage and the cultural and built environment.

The proposed development will result in over shadowing of the beach on the summer solstice. The over shadowing is considered acceptable as it is for a small portion of the beach occurring after 5pm. The majority of the development along Beach Road, regardless of height would cast a shadow on the beach at this time. The over shadowing is unavoidable and considered reasonable due to close proximity of the beach to the existing residential land. The proposed development will not result in any detrimental impact to the coastal use area.

The proposed development will not cause an increased risk of coastal hazards. There is currently no coastal management plan or program applying to the land.

Chapter 4 – Remediation of Land

Council has received no advice that the land is subject to any matter under the Contaminated *Land Management Act 1997*. A condition is imposed requiring that the applicant engage a suitably qualified consultant to undertake testing of the land to determine the level of contamination that may exist. The condition requires remediation to occur prior to issue of any construction certificate.

This approach has been taken as the land, at one time, did contain a vehicle sales premises. The unknown component is whether there was any mechanical works undertaken on the land. However, it is considered that even if contaminants are discovered during the testing, they will be at levels where remediation works will be easily conducted to make the land suitable for residential development.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2 – Part 2.3 - Division 4 – electricity generating works or solar energy systems

The proposed solar panels nominated on the roof are exempt.

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

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The proposed development was referred to Essential Energy due to the proximity of the development to the overhead power lines. The applicant in consultation with Essential Energy have determined that converting the overhead power lines to underground would be most suitable for this development. Appropriate conditions have been imposed and Essential Energy have provided conditions to be imposed on the development.

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

The proposed development is not subject to this provision. Beach Road in this location is not a classified road. As such, the provisions do not apply.

Eurobodalla Local Environmental Plan 2012 (ELEP)

Pursuant to the Eurobodalla Local Environmental Plan (ELEP) 2012 Clause 2.1 and 2.2, the site is zoned R3 Medium Density Residential. The objectives of the R3 zone are as follows:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage tourist and visitor accommodation in areas of demand subject to controls to ensure the adequate protection of a permanent residential housing supply and amenity.
- To encourage walking, cycling and the use of public transport.

The proposed development is defined as a residential flat building, which is permitted in the R3 Medium Density zone with development consent.

The objectives of the R3 zone are met through the provision of a mix of residential accommodation types adjacent to the Caseys Beach foreshore and within close proximity to the Neighbourhood Centres of Batehaven and Sunshine Bay.

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

Clause 2.7 Demolition

The proposed development seeks consent for the demolition of existing structures on the land. Conditions are to be imposed to ensure the demolition works accord with standard practice and asbestos clearance certificates are obtained.

Clause 4.3 Height of buildings

Pursuant to Clause 4.3, the maximum height of buildings is 11.5m. The proposed development seeks to construct a building height of 13.2m, when measured from natural ground level. The physical height of the building is 12.6m. The difference relates to the depth of fill contained above natural ground level.

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

- to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,

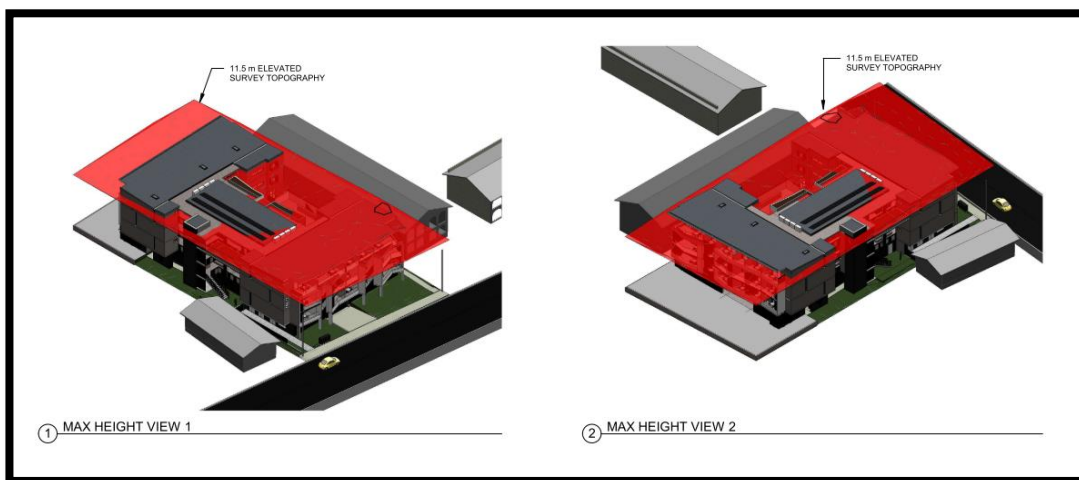
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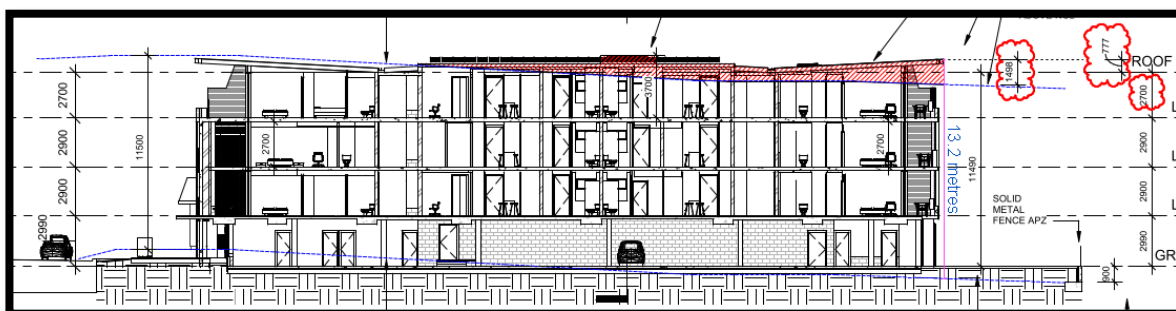
- to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.

Clause 4.6 – Exceptions to development standards

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



The above images depict the extent of the proposed height variation. The parts of the roof which are visible above the red exceed the 11.5m height of buildings maximum limit.



The proposed development seeks a variation to the roof height proposed on the central and rear buildings, as depicted above. The maximum height requests a 14.7% variation to the 11.5m height of buildings standard. The proposed maximum height variation is 1.7m higher than the 11.5m development standard.

The variation excludes the solar panels which are exempt under section 2.41 of the Transport and Infrastructure SEPP.

- (1) The proposed development is consistent with the objectives of this Clause which are:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

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(2) Clause 4.3 is not expressly prohibited from the application of this Clause. This Clause permits consent being granted for contravention to the development standard.

(3) The proposed development is supported by a written request from the applicant.

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

The applicant provides the following reasons:

- the site levels require modification with an excavation of 0.6m at the eastern extent and 1m of fill required at the western end to provide a level platform for the ground floor car park and to withstand inundation.
- the encroachment above 11.5m gradually increases along the roofline to the west. The encroachment is limited to a small section above the centre of the building over the internal lifts and above the apartments facing west.
- SEPP65 contains minimum floor to ceiling heights to ensure an appropriate level of amenity is achieved within residential flat buildings. It is preferable to satisfy the criteria of SEPP65 than to reduce ceiling heights such that the height satisfies the ELEP development standard. This will ensure the amenity of living space within each apartment.
- The locality is one that is experiencing a character transition of single detached cottages to multi-unit dwellings of contemporary coastal design.
- Although intensification of the use of land is in contrast with the existing development during early periods of transition, this vision has been conceived

(4)(a)(i) The applicants written statement demonstrates that compliance is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify contravening the development standard.

(4)(a)(ii) The proposed development is in the public interest. This is because the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in this case.

(5)(b) Concurrence is assumed from the Planning Secretary. The development application must be determined by the elected Council due to the variation exceeding 10%. The variation is 14.7%.

The proposed height of buildings variation relates to approximately half the roof form. The height variation is at the rear of the site. The building presentation to the street is compliant.

The proposed development will not result in any detrimental impact. The installation of the proposed development with a roofline that partially exceeds the height of buildings development standard, does not result in any detrimental impact to the surrounding locality or result in a detrimental precedent being established. As such, the request to contravene the development standard is supported for the proposed development. It is therefore considered that the variation can be supported as the development is consistent with the Greater

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Batemans Bay Structure Plan, the Eurobodalla Local Environmental Plan, the Apartment Design Guide and poses minimal impact to adjoining properties.

Clause 5.21 Flood Planning

Council considers that the land subject to this DA is below the current 1:100 year flood planning level. The development application is supported by a model prepared by Rienco Consulting which identifies peak flood depths through the site in the 1% AEP at 650mm.

(2) *Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development:*

(a) is compatible with the flood function and behaviour on the land, and

The flood function and behaviour has been quantified by a Council study and is understood to be located in the flood fringe. Residential development is compatible with the flood function and behaviour on the land.

(b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and

The report discusses that the impacts on flood behaviour have been quantified by the detailed modelling in the report from the range of floods possible. The model results confirm that the development will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties.

(c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and

The report states that the safe occupation of the land is enhanced by the proposal, as on-site refuge is created, which does not exist with the current structures on the land.

(d) incorporates appropriate measures to manage risk to life in the event of a flood, and

The report states that appropriate measures to manage risk to life in the event of a flood can be incorporated into the future development. This relates to the minimum habitable finished floor levels and structural soundness along with the choice of construction materials.

(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.

The report concludes that the proposed development does not materially change flood behaviour. Peak flood velocity is predicted to be less than 0.05m/s in the peak of the 1% AEP design flood. The effects of infill residential development in such flood behaviour could not plausibly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.

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(3) *In deciding whether to grant development consent on land to which this Clause applies, the consent authority must consider the following matters:*

(a) the impact of the development on projected changes to flood behaviour as a result of climate change,

The report states the construction of the development would not exacerbate the projected changes to flood behaviour in the catchment. It is a replacement of an existing dwelling, which also has impacts.

(b) the intended design and scale of buildings resulting from the development,

The report concludes the design and scale of buildings, insofar as it is appropriate to comment, is suitable for the site with regard to design flood behaviour.

(c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of flood,

The report states that appropriate measures to manage risk to life in the event of a flood can be incorporated into the future development. Principally, this relates to minimum habitable finished floor levels and structural soundness along with the choice of construction materials all of which have been appropriately addressed by the proposal.

(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.

The report concludes there is no need to modify, relocate or remove a future building if the surrounding area is impacted by flooding, because the building would be designed to minimise the impact of inundation.

The surrounding area is not considered under any material threat from coastal erosion, given the revetment work on the eastern side of Beach Road.

Clause 6.3 Acid Sulfate Soils

The site is identified on the Acid Sulfate Soils map as containing Class 3 soils. As such, it is conditioned that a management plan be prepared and submitted. The plan must address the NSW Acid Sulfate Soil Manual and must be submitted for review prior to the issue of any Construction Certificate.

Clause 6.4 Earthworks

The earthworks that are proposed are ancillary to the residential flat building. The earthworks are minor in nature and will not result in any significant impact to the surrounding locality.

Clause 6.9 Stormwater management

The proposed development contains a 14,000L stormwater detention system which has been designed to capture the roof water generated by the proposed development. It is then conditioned that the detained water be reused within the development for the purposes of washing down the garbage storage area, landscaping and car washing. Appropriate conditions are imposed.

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Eurobodalla Interim Coastal Hazard Adaptation Code

The land is not mapped as being subject to sea level rise from inundation or erosion under the current Policy. An assessment against the draft Coastal Management Program (CMP) has also been undertaken and the proposed development does not raise any non-compliances with the draft CMP.

Floodplain Development Manual – The Management of Flood Liable Land (April 2005)

The proposed development has been assessed against the applicable flood study. The proposed development is proposed to be constructed above the flood planning level with any unhabitable construction below the flood planning level built to withstand the impacts of flooding. Appropriate conditions of consent have been included.

Parking and Access Code

The proposed development has been assessed against the provisions of the Parking and Access Code. The development proposes 39 car parking spaces for residents and five spaces at the rear for car washing and visitors. Access to the parking area for residents and visitors will be via a remote entry system which is to be managed by way of a management plan to be approved by Council as a condition of consent. The proposed development is compliant with the Code.

Neighbourhood Centres Development Control Plan

The proposed development is consistent with the provisions of the DCP. The proposed development involves a variation to the front setback. This variation relates to the front balconies. The main structure of the building is compliant with the setback requirement to the adjoining developments. The performance criteria of 2.3, P4 requires “*buildings are setback to contribute to the existing or proposed streetscape character, assist in the blending of new development into the streetscape, make efficient use of the site and provide amenity for residents.*” The proposed development is consistent with the future desired character for the locality. The R3 zone applies to the land fronting Beach Road. As such, the proposed development sets the standard for future development. It is considered that the proposed development is consistent with the performance criteria.

ENVIRONMENTAL

Ecological

The development including the demolition works is unlikely to result in any significant environmental or ecological impact to the surrounding locality. The site has been the subject of residential land use for many years and its proposed replacement does not result in any detrimental impact to the Marine Park, biodiversity or significant environmental features in the locality.

Cultural/Heritage

The proposed development is supported by an Aboriginal Heritage Information Management System (AHIMS) desktop search which has determined that there are no aboriginal sites previously recorded within 50m of the site. It is recommended that a notation on the consent be placed to advise of the developer’s responsibility in regard to the National Parks and Wildlife Act.

The subject site is not listed as a heritage item or in close proximity to a heritage item.

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CONSULTATION

The proposed development was exhibited to the local community on two occasions. The first advertising period commenced on 24 May 2019 until 2 June 2019. Ten (10) submissions in the form of objection were received.

The second occasion was following the receipt of additional information which significantly modified the appearance of the proposed development. The second round of notifications commenced on 23 June 2022 until 11 July 2022. Five (5) submissions in the form of objection were received. The following matters were raised in response to the proposed development and represent total concerns raised during the two exhibition periods:

Flooding, Sea Level Rise and Climate Change

In response to submissions that included flooding, sea level rise and climate change:

Comment:

The flood planning level and construction proposed below the flood planning level.

Response:

The proposed development involves all habitable spaces being constructed above the flood planning level. Any construction below the flood planning level is conditioned to be designed and constructed to withstand the potential impact from inundation.

Comment:

The risk to life and property insurance

Response:

The flood report submitted with the application nominates that the building will be able to withstand the impact of any inundation and occupants can stay in place if they choose to do so. Given the time difference between tides, it is considered that the occupants will be able to safely evacuate prior to any inundation occurring.

Comment:

Does the complex require a surge wall due to tidal inundation

Response:

The proposed development is not subject to inundation from sea level rise. The development does not require the installation of a surge wall.

Comment:

The impact on the creek

Response:

The proposed development will not result in any significant impact to the creek. The proposed development involves the installation of a stormwater detention system to retain a significant volume of water, before it is released into the stormwater system surrounding the site.

Comment:

Additional rates to maintain Caseys Beach rock wall

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Response:

The landowner is subject to the same rates as that have always existed on the land and there are no specific rates collected for this purpose. The proposed development is also subject to the additional developer contributions levied in accordance with Council's Developer Contribution Plans.

Comment:

Ground water investigation required

Response:

The proposed development does not require the detailed investigation. Appropriate geotechnical studies have occurred to ensure that the land is suitable for development.

Comment:

Footpath may need moving to the seaside.

Response:

In 2010, a concept plan prepared for the Batemans Bay Coastal Headlands Walking Trail (Gondwana Consulting, 2010) *nominated that a new footpath was to be constructed on the western side of Beach Road to allow travel between the northern end of Caseys Beach and Short Beach Creek before crossing back to the eastern side of Beach Road. The footpath is to be constructed to avoid wave impacts on walkers under high tides and/or storm conditions.* The proposed footpath will not be impacted upon by completion of the development. During construction any impact to the footpath will be assessed by Council in a s138 application to impact to the road network.

Comment:

Sea level rise

Response:

Council engaged Rhelm, a consulting Engineering firm specialising in Coastal issues to prepare a Coastal Management Program (CMP) in accordance with the NSW Government's coastal management framework. The CMP is being *prepared to implement a range of credible, evidence-based actions to address current and future risks, not only from coastal hazards, but for a broad range of community, stakeholder, economic, climate change, catchment processes and environmental issues and values.* Council's study is ongoing and has been prepared to meet the current and future State Government requirements. The land is not nominated as being subject to impacts from inundation or erosion in either the current or draft plans.

Comment:

Impact on home insurance

Response:

Insurance is not a planning consideration that is legally required to be addressed.

The proposed development is compliant with the appropriate flood planning requirements. The proposed development involves the design and subsequent construction to meet the flood planning level for the site. This flood planning level has been determined using studies which

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have determined the 1:100 flood level of Short Beach Creek. This factors in the ocean influences. In assessing any DA, Council can only rely on the policies and Government requirements that apply. This proposed development meets these criteria.

Privacy

In response to submissions that included “privacy”:

Response:

The Neighbourhood Centres DCP requires 9m separation between transparent doors and windows of living rooms and / or private open spaces. The proposed development complies with this requirement. There are no balconies which provide private open space within 9m of any private open space or living room windows.

The Apartment Design Guide (ADG) requires separation between windows and balconies to maintain visual privacy. The ADG provide minimum side and rear boundary setbacks of 6m for this height of development.

The side elevations indicate that there are a number of balconies visible. The southern elevation, these open balconies are walkways to the individual units. They are not spaces for congregation. They are narrow walkways and lead from the lift and stairwells to the entry of individual units. These are not defined as resulting in any privacy impact.

The balconies facing the rear site contain a privacy screen.

The northern elevation contains the communal open space area. All units are compliant with the setbacks from the adjoining property.

The proposed development is compliant with the applicable planning requirements for privacy. The installation of privacy screens has been depicted on the plans and conditioned to be installed prior to occupation of the building.

Building Height

Comment:

Issues raised include:

- Gain an additional level of apartments
- At a meeting of Council, when Chris Vardon was mayor, an agreement was made that no development on Beach Road would exceed two stories
- A four storey building is contrary to current community standard in this area;
- Excessive size of development
- Aesthetic impact of such a large building
- Undesirable precedent

Response:

Residential. The ELEM nominates the height of building development standard. The height of building applying to the land is 11.5m. The applicant has opted to request a variation to the

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development standard and proposes a development where the height only partially exceeds the development standard.

The ELEP allows for applicants to submit a request to vary the development standard. The proposed development is supported by this written request. The request nominates that the proposed development is consistent with the applicable Land and Environment Case Law and the planning controls applying to the proposed development.

In 2007, Council adopted the Greater Batemans Bay Structure Plan (GBBSP). The GBBSP assessed the future desired character of the Batehaven locality to inform the drafting of the ELEP. Extensive Community Consultation was undertaken with the local community in 2005. One of the results of the community consultation was that there was wide recognition from the local community that the future growth of Eurobodalla was inevitable and increased density was needed to address this and prevent urban sprawl, noting that “medium density housing is inevitable to deal with the growth”.

The GBBSP indicates that the land along Beach Road at Caseys Beach has always been identified as a Medium Density Residential zone. The land was zoned 2t in the Urban Local Environmental Plan. The introduction of the ELEP transferred this land zone directly to the new terminology of R3 Medium Density Residential.

The GBBSP also investigated the height of development across the area. This resulted in the 11.5 metre height limit being applied to the medium density zones.

The Eurobodalla Local Environmental Plan 2012 (ELEP) zones the land as R3 Medium Density

The proposed development only partially exceeds the 11.5m. The built form proposed on the street frontage is compliant with the 11.5m. The proposed development contains three storeys of residential living with the car parking partially submerged at ground level. The applicant could have opted for the construction of a basement, however, this is likely to have resulted in significant environmental implications. The construction of the car parking at ground level is considered to be a superior environmental outcome and is unlikely to result in any exposure of hazards such as the water table, acid sulfate soils, etc.

The proposed development involves a partial variation to the height. The proposed development involves approximately 50% of the roof area exceeding the 11.5m. The height exceedance does not equate to any additional units or storey. The height variation is not considered excessive being contained to the mid and rear section of the building. The flood planning level combined with the ground level parking means that the proposed development involves a minor variation. The assessment has been carried out and the proposed development is consistent with the planning controls and does not result in any detrimental impact to the proposed development standard.

Overshadowing

Comment:

Issues raised include:

- Loss of light
- Overshadowing extends to the beach

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- Substantial overshadowing of adjoining buildings
- Impact on plants in the garden

Response:

An assessment of the shadow diagrams indicates that the adjoining development to the south will be partially shadowed by the development. The shadows will be apparent for the afternoon. The applicant was also requested to show a compliant building height shadow and the proposed building height shadow. There is minimal difference between the two shadows. The shadow cast is compliant with the provisions for solar access contained in the Apartment Design Guide and Council's Development Control Plan.

The applicant was requested to provide an analysis of any shadow cast on Caseys Beach. Due to the orientation, no shadow is cast on to Caseys Beach on the winter solstice. This is due to the sun's position in the sky and the east west orientation of the land. Council requested that the applicant submit a shadow diagram for the summer solstice to address the impact on Caseys Beach. This indicated that the proposed building is likely to cast a shadow on the beach from 5pm. This would be typical of any development on Beach Road with a 11.5m height limit. The front of the building is the portion that will shade the beach. The applicable planning controls require an assessment between 9am and 3pm for the winter solstice only. As the proposed development does not result in any unreasonable shading of Caseys Beach between 9am and 3pm it is considered that the shadow cast at 5pm will not result in any detrimental or negative impact to the use of Caseys Beach. The shadow cast will be a small portion of the beach that will not result in any significant impact to the function of Caseys Beach.

The proposed development has been assessed in accordance with the ADG and the DCP. The proposed development is consistent with the principles, aims and objectives contained in these documents relevant to the development.

Out of Character

Comment:

Issues raised include:

- Unsuitable development for beach front area
- Development does not fit within the established character of the area and is considered out of context with the locality
- Size and height are not in keeping with the streetscape
- Caseys Beach is iconic to Batemans Bay. This development will have a negative impact
- Design is all about gaining as many units on two blocks for mass profit for the developers
- Fails to assist in any way with the chronic house shortage
- Aesthetic visual impact on the neighbourhood
- We don't want the Gold Coast here in Batemans Bay
- High Rise developments are ugly.

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Response:

The proposed development involves the construction of a residential flat building. The residential flat building is consistent with the medium density zone with this type of development permitted in the zone with development consent.

The proposed development is the first significant redevelopment of land in this locality and deemed consistent with the desired future character. This location has been nominated as suitable for increased densities allowing for tourist and residential accommodation closer to the neighbourhood centres of Batehaven and Sunshine Bay.

The proposed building is of a modern architectural style with articulation and shadow lines that provide visual interest and a positive contribution to the streetscape quality.

The building is compliant with the Apartment Design Guide and the desired future character of the area. The higher density outcome is consistent with the Eurobodalla Settlement Strategy, Structure Plan, Local Environmental Plan and Development Control Plan.

View Loss

Comment:

Issues raised include:

- Restrict views and airspace of adjoining residents
- Impact on view sharing corridors

Response:

The proposed development does not obstruct any views from the front or rear of an adjoining property. The orientation of the land means that there is minimal view loss.

The water views currently available to existing residents are across the side boundary. The walls /windows are positioned close to the boundary and it would be unreasonable expectation to be able to protect these view points. Irrespective of whether a two storey or a four storey building was being proposed, it would not be possible to protect these limited side looking view corridors. The Land and Environment Court View Loss Planning Principle, Tenacity, nominates that views from standing position across a side boundary are extremely difficult to protect and therefore view loss is considered acceptable.

Amenity – increased noise

Comment:

Additional noise disturbance from increased density

Response:

The proposed development involves the construction of a residential flat building. This type of development is consistent with the future desired character of the locality. The land zone provides for densification. Naturally, an increase in density and occupation rates increases noise.

The *Protection of the Environment Operations Act 1997* provides protection measures for residents, including limits on noise emanating from mechanical systems such as air conditions.

**PSR22/047 DEVELOPMENT APPLICATION DA0469/22 - RESIDENTIAL FLAT
BUILDING AT 390 AND 392 BEACH ROAD, BATEHAVEN**

**S006-
T00001**

Construction impacts

Comment:

Concerns raised about noise, dust road and truck traffic during construction.

Response:

The proposed development is conditioned to require the preparation and compliance with a construction management plan. The construction management plan includes measures to protect the amenity during construction. Matters such as dust suppression, noise, traffic parking and movements are all included. Non-compliance with the construction management plan can lead to the issue of Penalty Infringement notices by Council's Authorised Officers.

Comment:

Safety measures required for pedestrians, bike and car users, movement of heavy vehicle equipment and trucks for construction.

Response:

The development will require the drafting and preparation of a s138 Application under the *Roads Act 1997* prior to commencement of construction. The application investigates and provides measures to protect pedestrians and all road users during construction. Appropriate insurances are required to be held and maintained for the duration of the traffic implications. Appropriate conditions are imposed.

Comment:

Hours of construction, are curfews required?

Response:

Council's standard condition relating to construction noise allows for construction between 7am and 6pm Monday to Friday and 8am to 5pm Saturdays. No construction work is permitted on Sunday or public holidays if audible at any residence or other sensitive receivers. This condition has been included in the Recommendation.

Comment:

Environmental impacts during construction and after completion of Caseys Beach and the plovers and other wildlife protected on the beach.

Response:

The proposed development involves construction of a building on an existing residential zoned land. The land contains an existing residential development. The increased density in the locality is consistent with the future desired character of the urban area. The proposed development occupies a footprint already largely disturbed. The application has been assessed in accordance with the relevant legislation and concluded that there is unlikely to be any significant impact on wildlife.

**PSR22/047 DEVELOPMENT APPLICATION DA0469/22 - RESIDENTIAL FLAT
BUILDING AT 390 AND 392 BEACH ROAD, BATEHAVEN**

**S006-
T00001**

Comment:

Original beach cottages on Caseys Beach should be protected from new developments as they are what gives the area its charm

Response:

The original cottages along Caseys Beach do not hold any heritage significance. There is no legal ability to protect these cottages in their current form. The intended future desired character of the locality is for an increase in residential density in an high amenity, easily accessible location.

Comment:

Exposure of acid sulfate soils

Response:

The application was supported by an Acid Sulfate Soils Assessment prepared by a suitably qualified engineer. There is no legal requirement to require the submission of detailed footing designs for construction prior to the determination of a Development Application.

Environmental Impacts

Comment:

Soil stability

Response:

The proposed development is unlikely to result in any detrimental impact to the stability of the soil. As part of the Construction Certificate application process, the applicant will have to submit detailed civil engineering designs including footing details for the proposed building. The *Environmental Planning and Assessment Act 1979* does not permit the Council to seek submission of detailed civil engineering design plans at development application stage if they are to be subject of a subsequent construction certificate.

Comment:

Dilapidation of infrastructure

Response:

The proposed development is supported by civil works plans that indicate that there will be no detrimental impact to Council's sewer main. The footings for the development are conditioned to be constructed to be outside the zone of influence in accordance with the Development in the Vicinity of Sewer Main Code of Practice.

Due to the size of the proposed development, Council has imposed conditions that require the applicant to engage a structural engineer to prepare a dilapidation report for the existing buildings adjoining the land. The conditions require the dilapidation report be prepared and submitted prior to issue of any Construction Certificate.

**PSR22/047 DEVELOPMENT APPLICATION DA0469/22 - RESIDENTIAL FLAT
BUILDING AT 390 AND 392 BEACH ROAD, BATEHAVEN**

**S006-
T00001**

Comment:

Dilapidation of existing buildings

Response:

The proposed development is conditioned to ensure that there is no detrimental impact to adjoining surrounding development. The proposed development is conditioned to require the preparation of a dilapidation report. The dilapidation report will require a suitably qualified engineer to inspect the adjoining residences prior to the commencement of any construction. Then prior to the issue of any occupation certificate, a further inspection will be required which involves the engineer reinspecting the properties to assess any damage. If damage occurs, the repair works, at the cost of the developer will be required prior to issue of the final occupation certificate. As such, any detrimental impact to the existing adjoining development will be conditioned to ensure that damage occurring during construction is repaired to pre-development standards

Comment:

Impact to road verge due to construction activities

Response:

There is no evidence to indicate that the road will be impacted by construction activities. Council does however, imposed a condition that in the event of any works requiring upgrade or amendment to existing infrastructure, these works are completed at the cost of the developer and prior to occupation. Appropriate conditions are imposed.

Waste

Comment:

Post construction waste collection

Response:

The proposed development will be serviced by the Council kerbside collection. The bins will be moved to the kerbside for collection and returned to the storage area. A condition to this effect is included.

Council instructed the applicant to discuss the proposed development with independent Contractors to determine if there was any ability for the waste storage area to be privately managed. However, due to insufficient height, a garbage truck is unable to enter and exit the car parking area in a forward direction. On this basis, an assessment was undertaken to determine whether or not a kerbside collection was viable. It is considered that given the width of the site a kerbside collection was the most appropriate solution in this instance.

**PSR22/047 DEVELOPMENT APPLICATION DA0469/22 - RESIDENTIAL FLAT
BUILDING AT 390 AND 392 BEACH ROAD, BATEHAVEN**

**S006-
T00001**

Asbestos

Comment:

Safe removal of asbestos from existing structures

Response:

Demolition of the existing structures forms part of the proposed development. The developer is bound by compliance with all legislative requirements including Australian Standard AS2601 and NSW WorkCover requirements for the removal of asbestos.

All works will be undertaken by a licensed removalist in accordance with current legislative requirements. Appropriate conditions of consent are imposed.

Traffic and Carparking

Comment:

Parking – tandem spaces are insufficient to provide enough spaces, leading to parking on road network.

Response:

The proposed development is compliant with the Parking and Access Code. The development provides the required 39 car parking spaces. The development also provides five visitor car parking spaces.

Comment:

Visitor Parking – inadequate, fails standards

Response:

The proposed development involves the inclusion of five visitor car parking spaces. This is compliant with Council's Parking and Access Code. There is no ability to require additional car parking if it complies with Council's controls.

Comment:

Safety of cyclist lane

Response:

The proposed development does not present any safety hazard issue to the cyclist lane.

Comment:

On street carparking

Response:

The proposed development has been assessed as containing a compliant level of car parking that is consistent with the applicable planning requirements. The traffic impact assessment forming part of the development application indicates that there is a compliant level of car parking contained on site, consistent with the Australian Standard. It is considered that the proposed development contains adequate parking to comply.

**PSR22/047 DEVELOPMENT APPLICATION DA0469/22 - RESIDENTIAL FLAT
BUILDING AT 390 AND 392 BEACH ROAD, BATEHAVEN**

**S006-
T00001**

Comment:

Increased traffic congestion

Response:

A number of concerns raised the increase parking pressure along Beach Road at Caseys Beach. The development has been assessed as complying with the requirements of Council's Parking and Access Code. Based on the traffic study prepared by Positive Traffic Pty Ltd, the existing road network maintains a Level of Service (LOS) A. The proposed development has been modelled in accordance with the most up to date standards available. The proposed development is not expected to alter the traffic or impact on congestion with the Level of Service being maintained at a Level of Service A. Level of Service A is the highest level of service.

Overall the traffic impacts of the proposal are considered acceptable. The proposed development is conditioned to comply with the study.

Comment

Environmental impact of car wash bays

Response:

In accordance with Council's Parking and Access Code, car wash bays are required for a residential flat building. As such, the applicant has proposed that the visitor car parking spaces and the car wash bays be multi-purpose. This is considered acceptable and consistent with previous practice. It should also be noted that the policy was written prior to the establishment of commercial car washes in Batemans Bay.

The car parking area is a controlled area and any waste water will be collected and disposed of appropriately.

Comment:

Traffic noise

Response:

This development will result in a minor increase in traffic. The minor increase in traffic is unlikely to result in any negligible change to the volume of traffic experienced in the locality.

Bushfire Rating

Comment:

Bushfire Ratings are too conservative. It is questionable if BAL 29 and 19 is appropriate.

Response:

The proposed development was referred to NSW Rural Fire Service (RFS) for consideration due to the unmanaged vegetation at the rear of the site.

NSW RFS issued recommended conditions of consent which require the proposed development to be constructed to a BAL 29 level and the provision of a radiant heat shield.

**PSR22/047 DEVELOPMENT APPLICATION DA0469/22 - RESIDENTIAL FLAT
BUILDING AT 390 AND 392 BEACH ROAD, BATEHAVEN**

**S006-
T00001**

Economic Impact

Comment:

Negative economic impact on the value of land

Response:

The value of adjoining land is not a matter for consideration in accordance with the *Environmental Planning and Assessment Act 1979*.

The proposed development is considered to be consistent with the strategic planning intent for this locality and is compatible with the future desired character.

CONCLUSION

The development application seeks a variation from the Eurobodalla Local Environmental Plan (LEP) 2012 Clause 4.3 Height of Buildings. The LEP defines the maximum building height of the subject site as 11.5m, taken from natural ground level. The proposal seeks a variation of 1.7m or 14% for the highest portion of the building.

The proposal is consistent with the requirements of the *Environmental Planning and Assessment Act (the EPA Act) 1979*, State Environmental Planning Policy (SEPP) 65 – Design Quality of Residential Apartment Development, the Apartment Design Guide, Eurobodalla Local Environmental Plan (LEP) 2012 and the Neighbourhood Centres Development Control Plan (DCP).

The submissions have also been considered and have been either addressed through design amendments, clarification of the proposal or recommended conditions of consent.

This report recommends approval of the development application subject to conditions.

PSR22/048 CLIMATE CHANGE ADVISORY COMMITTEE

S010-T00037

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

Attachments: 1. Confidential - Nominations for Climate Change Advisory Committee

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

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

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

Operational Plan Link: 1.3.1.3 Facilitate a Climate Change Advisory Group

EXECUTIVE SUMMARY

The purpose of this report is to present the nominations received by Council in relation to representation on the Climate Change Advisory Committee (CCAC) - with a recommendation that Council accept all 15 nominees.

At the Ordinary Meeting of Council on 23 August 2022 (Minute 22/214) it was resolved to advertise for Expressions of Interest (EOI) to appoint a new Climate Change Advisory Committee. In accordance with this direction, staff called for Expressions of Interest. The EOI period has closed and nominations have been received by Council.

Adoption of the nominations will allow the CCAC to be established. The Committee is to provide advice and support to Council and the community to help deliver the Eurobodalla Climate Action Plan 2022- 2032. (This Plan was adopted by Council on 26 July 2022).

Fifteen nominations were received for the Climate Change Advisory Committee. All were of a high standard from individuals or group representatives with interest and knowledge in climate change and experience and/or expertise in climate adaptation and mitigation. It's recommended that all 15 be accepted.

RECOMMENDATION

THAT Council:

1. Appoint the recommended nominees to the Climate Change Advisory Committee, as contained in the Confidential Attachment.
2. Notify nominees of the outcome of the decision with a request to sign a Confidentiality Agreement in accordance with the Terms of Reference.
3. Make public, the list of members of the Climate Change Advisory Committee as determined by Council.

BACKGROUND

The establishment of the CCAC is an action (10.9) identified in the recently adopted Climate Action Plan 2022-2032 (CAP): *Facilitate a Climate Change Advisory Group comprising external, technical expertise that can assist Council and community implement the Climate Action Plan, including by accessing external funding opportunities to reduce emissions or climate risks.*

PSR22/048 CLIMATE CHANGE ADVISORY COMMITTEE

S010-T00037

At the Ordinary Meeting of Council on 23 August 2022 (Minute 22/214) it was resolved to:

1. *Establish a Climate Change Advisory Committee*
2. *Adopt the draft Terms of Reference for the Committee*
3. *Nominate Councillor Grace as Chairperson and Councillor Worthington as a participant on the Committee*
4. *Advertise for Expressions of Interests to appointment of a Climate Change Advisory Committee*
5. *Receive a further report on the Expressions of Interest and appointment of members to the Climate Change Advisory Committee.*

The call for Expressions of Interest (EOI) to fill all positions on the CCAC was advertised from 24 August 2022 until 26 September 2022 via Council's website, a media release and social media.

Confirmation of the nominations will allow the CCAC to be established.

The role of the Climate Change Advisory Committee (CCAC) is to provide a panel of community stakeholders and experts with a range of experience and viewpoint to provide guidance to Council and the community on implementing the Climate Action Plan.

The Expressions of Interest requested representation of groups and individuals that have an interest and expertise in climate adaptation and mitigation. In addition, expertise in identifying emerging issues and opportunities, and the ability to assist Council in the implementation of actions associated with the Climate Action Plan.

The Climate Change Advisory Group will also have representation from Council staff and NSW and Australian Government agencies.

The Terms of Reference called for a total of 12 to 15 community members and two councillors.

CONSIDERATIONS

Council received fifteen nominations for the positions.

A summary of the nominations for appointment are contained in a Confidential Attachment to this report.

Legal

There is no obligation or legal requirement for Council to facilitate a Climate Change Advisory Committee. Council has resolved through its adoption of the Climate Action Plan 2022-2032 to establish such a Committee. The Committee has an advisory role and does not have any delegated authority to make decisions or expenditure on behalf of the Council.

Environmental

The CCAC (Climate Change Advisory Committee) provides a point of contact with the community on environmental issues, as identified in the Climate Action Plan 2022-2032.

Social Impact

The CCAC will bring together a mix of different people and views from the community to work together with Council and NSW and Australian Government agencies on actions in the Climate Action Plan 2022-2032 that support social outcomes.

PSR22/048 CLIMATE CHANGE ADVISORY COMMITTEE

S010-T00037

Community and Stakeholder Engagement

The Climate Change Advisory Committee is an important focus group on climate adaptation and mitigation providing Council with specialist knowledge and community views to aid in the implementation of the Climate Action Plan.

The call for expressions of interest was promoted through:

- a media release
- social media
- Council's website
- Aboriginal Advisory Committee and
- Youth Committee.

A call for Expressions of Interest (EOI) to fill all positions on the CCAC was issued on 24 August 2022 and closed on 26 September 2022.

CONCLUSION

Fifteen nominations were received for the Climate Change Advisory Committee. All were of a high standard. It is recommended that all 15 nominations be accepted.

If Council accepts the nominations as put forward, nominees will be contacted and informed of the status of their nomination, asked to sign a confidentiality agreement and the list of committee members made public.

The Climate Change Advisory Committee will assist Council and the community in the implementation and delivery of the Climate Action Plan 2022-2032. The Group will aid Council in seeking opportunities and addressing barriers to implementation. They will work cooperatively to assist the community with transitional changes, increasing climate resilience and in securing funding to implement actions associated with the Climate Action Plan.

PSR22/049 LEASE OF PUBLIC ROAD - FLORA COURT - BATEMANS BAY

**S023-T00015
LAND ID: 36088**

Responsible Officer: Lindsay Usher - Director, Planning and Sustainability Services
Attachments: 1. Confidential - Lease of public road - Flora Court, Batemans Bay
Community Goal: 5 Our engaged community with progressive leadership
Community Strategy: 5.3 Work together to achieve our collective vision
Delivery Program Link: 5.3.2 Manage land under Council control
Operational Plan Link: 5.3.2.2 Manage leases and licences

EXECUTIVE SUMMARY

The purpose of this report is to recommend that Council grant a five-year lease over the service lane, Flora Court, Batemans Bay for carparking to the new business owners of the adjoining land.

In accordance with the *Roads Act 1993* and Council's Community Engagement Framework, the proposed lease was publicly notified for 28 days in August 2022. No submissions were received.

The lease will include conditions generally in-line with the previous lease.

RECOMMENDATION

THAT

1. Council grants a five-year lease to the new business owners over part of service lane Flora Court, Batemans Bay adjoining Lots 103 and 104 DP 1210970, including the following conditions:
 - (a) Provision of evidence of \$20 million public liability insurance
 - (b) Rental as set out in the confidential attachment to this report
 - (c) All costs associated with the lease to be borne by the lessee
 - (d) The lease be able to be terminated by Council at any time for any reason
 - (e) Lease conditions generally in line with the previous lease.
2. The General Manager be given delegated authority to negotiate further leases of part of the service lane to the business owners for carparking.

BACKGROUND

Flora Court, Batemans Bay is a service lane currently constructed to the southern boundary of Lot 104 DP 1210970 and east of Lot 103 DP 1210970. The area has been leased to the adjoining business owners since 2017 for carparking.

The part of Flora Court adjacent to Lots 103 and 104 DP 121970 is currently being occupied by the new business owners of those lots. Given the location of the partial service lane, it is of no use for any other purpose.

The current lease expired on 31 August 2022 and following discussions with the new business owners they have requested a lease be granted for five years.

In accordance with the *Roads Act 1993* and Council's Community Engagement Framework the proposed lease was publicly notified for 28 days. No submissions were received.

PSR22/049 LEASE OF PUBLIC ROAD - FLORA COURT - BATEMANS BAY

S023-T00015
LAND ID: 36088

CONSIDERATIONS

Conditions of the lease should be generally in-line with the previous lease.

The lease area is shown in the sketch below.



Lots 103 & 104 DP 1210970 Flora Court, Batemans Bay

Legal

In accordance with the provisions of Section 153 of the *Roads Act 1993*, Council can lease land comprising a public road to the landowner of the adjacent property, if in its opinion the public is not using it. The term can be a maximum of five years and can be terminated at any time by Council, for any reason.

[ROADS ACT 1993 - SECT 153 Short-term leases of unused public roads](#)

In accordance with Section 154 of the *Roads Act 1993* and Council's Community Engagement Framework, the proposed lease was publicly notified for 28 days. No submissions were received.

[ROADS ACT 1993 - SECT 154 Public notice to be given of proposed lease](#)

Policy

The lease will be in accordance with the *Roads Act 1993*. The term of the lease, together with any option of renewal, must not exceed five years.

PSR22/049 LEASE OF PUBLIC ROAD - FLORA COURT - BATEMANS BAY

**S023-T00015
LAND ID: 36088**

Asset

The area proposed to be leased is not required for public access. In accordance with the provisions of the *Roads Act 1993* a lease may be terminated by the road's authority at any time for any reason.

Social Impact

There are no detrimental social impacts with respect to the proposed lease.

Economic Development Employment Potential

The lease of the road will allow the business to operate more efficiently.

Financial

All costs associated with the proposed lease will be borne by the Lessee.

Rental will be in-line with rental for the previous lease, increased annually by the greater of three percent, or in-line with CPI.

The current lease rental is \$3,694 per annum (excluding GST), and the rental figure was calculated in consultation with Infrastructure and relative to the cost of CBD carparking spaces.

Community and Stakeholder Engagement

In accordance with Section 154 of the *Roads Act 1993* and Council's Community Engagement Framework, the intention to grant a lease to the new business owners adjacent to the Flora Court service lane was publicly notified for 28 days. No submissions were received.

CONCLUSION

The existing lease over part of service lane Flora Court, Batemans Bay in August 2022.

There are now new business owners who have requested a lease.

The proposed lease was publicly notified for 28 days, and no submissions were received.

It is recommended that Council grant a five-year lease of the service lane, Flora Court, Batemans Bay for carparking to the new business owners of the adjoining land.

**PSR22/050 LICENCE RENEWAL - OUTDOOR DINING, MARA MIA
WALKWAY, BATEMANS BAY**

**S023-T00017
LAND ID: 23230**

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

Attachments: Nil

Community Goal: 5 Our engaged community with progressive leadership

Community Strategy: 5.3 Work together to achieve our collective vision

Delivery Program Link: 5.3.2 Manage land under Council control

Operational Plan Link: 5.3.2.2 Manage leases and licences

EXECUTIVE SUMMARY

The purpose of this report is to seek approval to grant a three-year licence to the business owner/licensee, Sam's Pizzeria on the Waterfront, for an outdoor dining area.

Other businesses also have or may apply for outdoor dining licenses on Mara Mia Walkway and this report also seeks authorisation to grant or renew licences along Mara Mia Walkway as they arise.

Mara Mia Walkway is Lot 323 DP 45828 within Crown Reserve R96919 Batemans Bay.

The licensee, Sam's Pizzeria on the Waterfront, has held an outdoor dining licence on the Mara Mia Walkway since April 2017 and has expressed interest in renewing the licence for a further three years.

In accordance with Section 47A of the *Local Government Act 1993* and Council's Community Engagement Framework, the intention to grant licences for outdoor dining areas within Mara Mia Walkway was publicly notified for 28 days. No submissions were received.

It is recommended that Council grant a three-year licence renewal to the licensee adjacent to Lot 323 DP 45828 Mara Mia Walkway, Batemans Bay and further grant, or renew licences to other outdoor dining licences on Mara Mia Walkway as they arise.

RECOMMENDATION

THAT

1. Council grant a three-year licence renewal to the business owners adjacent to Lot 323 DP 45828 within Crown Reserve R96919 Mara Mia Walkway, Batemans Bay for an outdoor dining area, including the following conditions:
 - (a) The licence fee be in accordance with Council's adopted fees and charges
 - (b) Provision of evidence of \$20 million public liability insurance
 - (c) Licence conditions generally in line with the previous licence.
2. The General Manager be given delegated authority to negotiate further licences to businesses adjacent to Mara Mia Walkway for outdoor dining areas as they arise.

**PSR22/050 LICENCE RENEWAL - OUTDOOR DINING, MARA MIA
WALKWAY, BATEMANS BAY**

**S023-T00017
LAND ID: 23230**

BACKGROUND

The current licence holders were first granted a licence for an outdoor dining area within Lot 323 DP 45828 Crown Reserve R96919 Mara Mia Walkway, Batemans Bay in April 2017, and has continued to use that area since that time.

The current licence has expired however the licence holder can continue operating under their current licence on a carry-over basis until 1 April 2023.

The licence holders have expressed interest in renewing the licence for a further three years.

In accordance with Section 47A of the *Local Government Act 1993* and Council's Community Engagement Framework, the intention to grant licences for outdoor dining areas within Mara Mia Walkway was publicly notified for 28 days. No submissions were received.

Conditions for the licence will be generally in-line with the previous licence.

Other businesses also have or may apply for outdoor dining licences on Mara Mia Walkway which will require renewal or approval as they arise.

CONSIDERATIONS

The licence area for Sam's Pizzeria is shown in the sketches below.



Mara Mia Walkway, Batemans Bay – adjacent to Lot 323 DP 45828

**PSR22/050 LICENCE RENEWAL - OUTDOOR DINING, MARA MIA
WALKWAY, BATEMANS BAY**

**S023-T00017
LAND ID: 23230**



Mara Mia Walkway, Batemans Bay

Legal

Lot 323 DP 45828 Mara Mia Walkway, Batemans Bay, being part Crown Reserve 96919, is under the management of Council as Crown Land Manager.

Council can only issue a licence for a period of up to five years for public reserves classified as community land and Crown Reserves, for which Council is Crown Land Manager, after giving public notice and considering any submissions in accordance with Section 47A of the *Local Government Act 1993*.

www.legislation.nsw.gov.au/#/view/act/1993/30/chap6/part2/div2/sec47a

Policy

Outdoor dining licences will be issued in-line with the provisions of Council's Footpath Trading Code - [Footpath-Trading-Code](#)

Most outdoor dining licences are on footpaths that are in a road reserve. When licences are in road reserves, and are consistent with the Footpath Trading Code, they are approved under staff delegation.

In this case, public notification and a report to Council are required as Mara Mia Walkway is Crown Land under Council's management.

Asset

It will be a condition of licences that the licence holders keep the licence areas in a clean, tidy and hygienic condition.

**PSR22/050 LICENCE RENEWAL - OUTDOOR DINING, MARA MIA
WALKWAY, BATEMANS BAY**

**S023-T00017
LAND ID: 23230**

Social Impact

Having outdoor eating areas adds to the cultural streetscape and should be encouraged but not at the cost of pedestrian safety.

Economic Development Employment Potential

Additional trading space for restaurants and cafes allows development of those businesses, enhancing their financial viability.

Financial

Licence fees will be in accordance with Council's adopted fees and charges for commercial use of public land.

Community and Stakeholder Engagement

In accordance with Section 47A of the *Local Government Act 1993* and Council's Community Engagement Framework, the intention to grant licences for outdoor dining areas within Mara Mia Walkway was publicly notified for 28 days. No submissions were received.

CONCLUSION

The three-year licence to the business owners adjacent to Lot 323 DP 45828, Crown Reserve R96919 Mara Mia Walkway has expired, however the licence holder can continue operating under that licence on a carry-over basis until 1 April 2023.

In accordance with Section 47A of the *Local Government Act 1993* and Council's Community Engagement Framework, the intention to grant outdoor dining licences for areas within Mara Mia Walkway was publicly notified for 28 days. No submissions were received.

It is recommended that Council grant a three-year licence renewal to the business owners adjacent to Lot 323 DP 45828, Crown Reserve R96919 Mara Mia Walkway, Batemans Bay and renewals and grant further licences to other businesses for outdoor dining areas on Mara Mia Walkway as they arise.

**PSR22/051 LICENCE RENEWAL - OUTDOOR DINING, ORIENT STREET,
BATEMANS BAY**

**S023-T00017
LAND ID: 23230**

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

Attachments: Nil

Community Goal: 5 Our engaged community with progressive leadership

Community Strategy: 5.3 Work together to achieve our collective vision

Delivery Program Link: 5.3.2 Manage land under Council control

Operational Plan Link: 5.3.2.2 Manage leases and licences

EXECUTIVE SUMMARY

The purpose of this report is to seek approval to grant a licence to the business owners of Little Wren Café adjacent to 3/32 Orient Street, Batemans Bay to establish an outdoor dining area.

The current licence expired on 10 October 2022. The business owners have expressed interest in renewing their licence and expanding the licence area.

The business owners own various cafes in Batemans Bay and Moruya, being Little Wren Café (on Orient Street), Alfresco (on North Street) and Alfresco (on Church Street, Moruya).

This proposal does not comply with the provisions of Council's Footpath Trading Code (the Code) which in most cases, requires any footpath trading to be carried out adjacent to the kerb, as opposed to adjacent to the premises boundary; therefore a determination must be made by Council.

It is recommended that Council grant a three-year licence and renewals to the business owners for their Orient Street, Batemans Bay store, Little Wren Café, extending their licence area at the front and side of the building.

RECOMMENDATION

THAT

1. An exemption to Council's Footpath Trading Code be made and Council grant a three-year licence for an outdoor dining area to the business owners adjacent to the boundary of 3/32 Orient Street, Batemans Bay including the following conditions:
 - (a) The licence fee be in accordance with Council's adopted fees and charges
 - (b) Provision of evidence of \$20 million public liability insurance
 - (c) The area to be kept in a clean, tidy and hygienic condition
 - (d) Licence conditions in line with the previous licence.
2. The General Manager be given delegated authority to negotiate further licences.

BACKGROUND

The business owners were first granted a licence for their outdoor dining area adjacent to 3/32 Orient Street, Batemans Bay in October 2021. Previous businesses in the same address have also held licences.

**PSR22/051 LICENCE RENEWAL - OUTDOOR DINING, ORIENT STREET,
BATEMANS BAY**

**S023-T00017
LAND ID: 23230**

The current licence expired on 10 October 2022. The business owners have expressed interest in renewing their licence and expanding the licence area. Additional trading space for restaurants and cafes allows development of those businesses, enhancing their financial viability and contributing to place activation within the Eurobodalla.

Council, as the roads authority, can give approval for footpath trading and grant a licence over part of the Orient Street, Batemans Bay in accordance with Section 125 of the *Roads Act 1993*, and there is no legal impediment for granting a licence over the operational land area.

Conditions for the licence will be generally in-line with the previous licence.

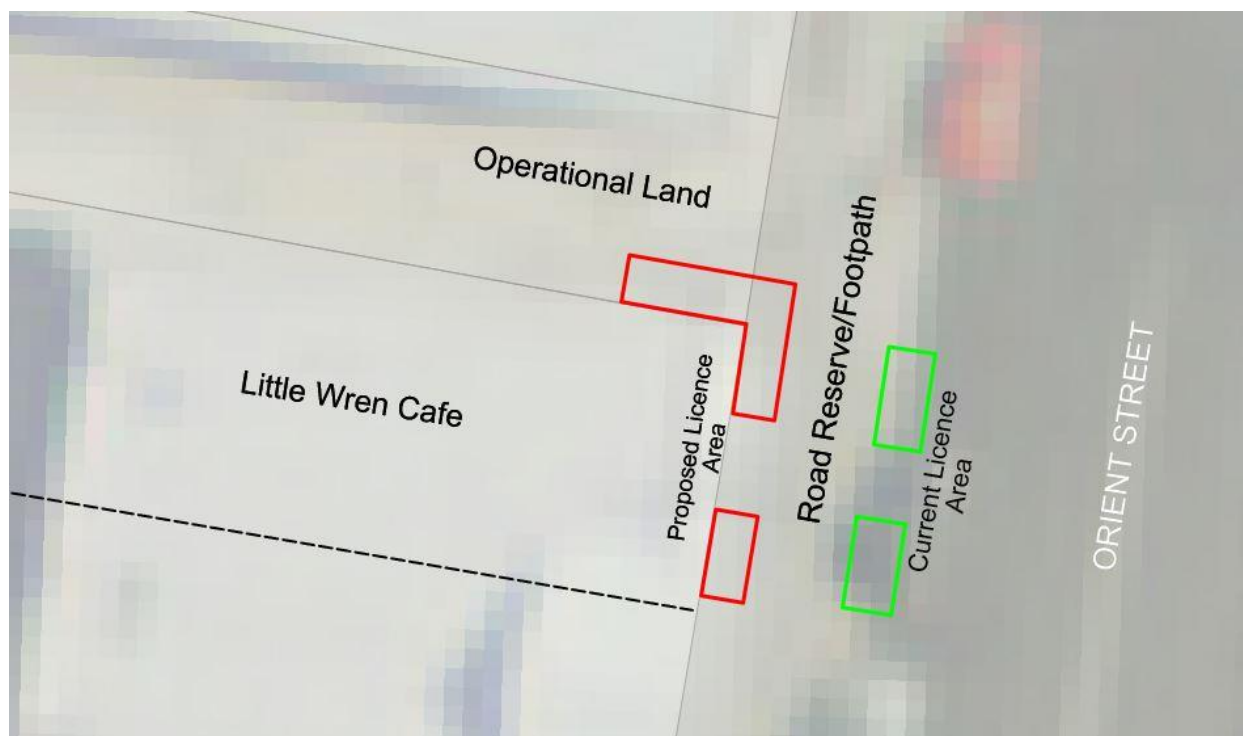
CONSIDERATIONS

The Code was developed on the basis of best practice in ensuring safe and unhindered access for all pedestrians, including those with impaired sight or mobility.

The licence area still allows a width of more than 2m for the movement of pedestrians, and the Footpath Trading Code specifies a minimum of 2m for walkway zones with squeeze points no less than 1.5m.

If the licence is granted, it will be a condition of the licence that there will be no obstruction to the existing concrete pathway.

The licence area is shown in the sketch below.



Little Wren Café licence area – 3/32 Orient Street, Batemans Bay

**PSR22/051 LICENCE RENEWAL - OUTDOOR DINING, ORIENT STREET,
BATEMANS BAY**

**S023-T00017
LAND ID: 23230**



Little Wren Café Street View Location 3/32 Orient Street, Batemans Bay

Legal

In accordance with Section 125 of the *Roads Act 1993* Council can give approval for footpath trading and grant a licence over part of a public road for which Council is the roads authority.

[http://www.legislation.nsw.gov.au/#/view/act/1993/33/part9/div1/sec125.](http://www.legislation.nsw.gov.au/#/view/act/1993/33/part9/div1/sec125)

Part of the proposed licence area is operational land. There is no legal impediment to granting a licence over operational land.

Policy

Council adopted its Footpath Trading Code in August 2010, which in most cases requires any footpath trading to be carried out adjacent to the kerb as opposed to adjacent to the business boundary.

Asset

It will be a condition of licences that the licence holders keep the licence areas in a clean, tidy and hygienic condition.

Social Impact

Having outdoor eating areas adds to the cultural streetscape and should be whilst being balanced with pedestrian safety.

**PSR22/051 LICENCE RENEWAL - OUTDOOR DINING, ORIENT STREET,
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Economic Development Employment Potential

Additional trading space for restaurants and cafes allows development of those businesses, enhancing their financial viability.

Financial

The licence fee will be in accordance with Council's adopted fees and charges for commercial use of public land.

Community and Stakeholder Engagement

Council's Community Engagement Framework and relevant legislation have been used to determine the best approach to engagement on this matter. Footpath trading licences are generally granted under section 125 of the *Roads Act 1993* and Council's Footpath Trading Code.

Part of the proposed licence area is operational land. There are no legal requirements for engagement in relation to granting a licence on operational land.

The public will be informed via this report to the Ordinary Meeting of Council. If the licence is granted, the potential impact on the community is considered minimal as there will be no obstruction to the existing pathway in that area.

CONCLUSION

The existing licence to the business owners of Little Wren Café expired on 10 October 2022. The business owners have expressed interest in renewing their licence and expanding their licence area.

It is recommended that Council grant a three-year licence and renewals to the business owners of Little Wren Café for the outdoor dining area adjacent to 3/32 Orient Street, Batemans Bay.

DEALING WITH MATTERS IN CLOSED SESSION

In accordance with Section 10A(2) of the *Local Government Act 1993*, Council can exclude members of the public from the meeting and go into Closed Session to consider confidential matters, if those matters involve:

- (a) personnel matters concerning particular individuals; or
- (b) the personal hardship of any resident or ratepayer; or
- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business; or
- (d) commercial information of a confidential nature that would, if disclosed;
 - (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the council, or
 - (iii) reveal a trade secret,
- (e) information that would, if disclosed, prejudice the maintenance of law; or
- (f) matters affecting the security of the council, councillors, council staff or council property; or
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege or information concerning the nature and location of a place; or
- (h) an item of Aboriginal significance on community land.

and Council considers that discussion of the material in open session would be contrary to the public interest.

In accordance with Section 10A(4) of the *Local Government Act 1993* the Chairperson will invite members of the public to make verbal representations to the Council on whether the meeting should be closed to consider confidential matters.

EUROBODALLA SHIRE COUNCIL

ETHICAL DECISION MAKING AND CONFLICTS OF INTEREST

A GUIDING CHECKLIST FOR COUNCILLORS, OFFICERS AND COMMUNITY COMMITTEES

ETHICAL DECISION MAKING

- Is the decision or conduct legal?
- Is it consistent with Government policy, Council's objectives and Code of Conduct?
- What will the outcome be for you, your colleagues, the Council, anyone else?
- Does it raise a conflict of interest?
- Do you stand to gain personally at public expense?
- Can the decision be justified in terms of public interest?
- Would it withstand public scrutiny?

CONFLICT OF INTEREST

A conflict of interest is a clash between private interest and public duty. There are two types of conflict: Pecuniary – regulated by the *Local Government Act* and Department of Local Government; and Non-Pecuniary – regulated by Codes of Conduct and policy, ICAC, Ombudsman, Department of Local Government (advice only).

THE TEST FOR CONFLICT OF INTEREST

- Is it likely I could be influenced by personal interest in carrying out my public duty?
- Would a fair and reasonable person believe I could be so influenced?
- Conflict of interest is closely tied to the layperson's definition of "corruption" – using public office for private gain.
- Important to consider public perceptions of whether you have a conflict of interest.

IDENTIFYING PROBLEMS

- 1st** Do I have private interests affected by a matter I am officially involved in?
- 2nd** Is my official role one of influence or perceived influence over the matter?
- 3rd** Do my private interests conflict with my official role?

Whilst seeking advice is generally useful, the ultimate decision rests with the person concerned.

AGENCY ADVICE

Officers of the following agencies are available during office hours to discuss the obligations placed on Councillors, Officers and Community Committee members by various pieces of legislation, regulation and Codes.

CONTACT	PHONE	EMAIL	WEBSITE
Eurobodalla Shire Council Public Officer	4474-1000	council@esc.nsw.gov.au	www.esc.nsw.gov.au
ICAC	8281 5999	icac@icac.nsw.gov.au	www.icac.nsw.gov.au
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.