

Business Paper

An Ordinary Council Meeting will be held on Tuesday 19 March 2024
in the Council Chambers located Corner Tozer and Elbow Streets,
West Kempsey commencing at 9:00 AM



kempsey.nsw.gov.au



NOTICE OF MEETING

Dear Mayor and Councillors,

In accordance with section 367 of the *Local Government Act 1993* notice is hereby given that an Ordinary Council Meeting will be held on Tuesday 19 March 2024 in the Council Chambers located Corner Tozer and Elbow Streets, West Kempsey commencing at 9:00 am

Craig Milburn

General Manager

Date: 12 March 2024

ORDER OF BUSINESS

9.1. Local Traffic Committee Meeting Minutes

10.1. Presentations by School Leaders

10.2. Planning Proposal PP_2023_2105 (PP2300005) - KLEP 2013 Housekeeping Amendment - South West Rocks Building Heights

10.3. Crescent Head Foreshore Community Advisory Group Terms of Reference and EOI

10.4. Proposed Dwelling - Marlin Circuit, Hat Head - DA2300773

10.5. Prioritisation of Sealing of Unsealed Roads

10.6. Slim Dusty Centre - Council application to become Crown Land Manager

10.7. Road Safety Strategy

10.8. Write-off of Outstanding Debt

10.9. Completion of Works on Private Land

10.10. Internal Audit Charters

10.11. Crescent Head Holiday Park - Shed Relocation

10.12. Statement of Cash and Investments - February 2024

11.1. Notice of Motion - Public Forum - Non-agenda Items

11.2. Notice of Motion - Public Forum and Question Time

11.3. Delegates Report - Social Media for Councillors

11.4. Delegates Report - Bush Fire Management Committee - 14 February 2024

12.1. Legal Matters

12.2. Audit, Risk & Improvement Committee - February 2024 Meeting Minutes and Annual Activity Report

12.3. Land Acquisition - Lot 1 DP1263874

12.4. Confidential Mayoral Minute - General Manager's Interim Performance Review

REMINDER OF OATH OR AFFIRMATION

Under Clause 3.37, Statement of Ethical Obligations, in Kempsey Shire Council's Code of Meeting Practice, business papers for all ordinary and extraordinary meetings of the Council and Committees of the Council must contain a statement reminding Councillors of their oath or affirmation of office made under section 233A of the *Local Government Act 1993* and their obligations under the Council's Code of Conduct to disclose and appropriately manage conflicts of interest.

Councillors are therefore reminded of the oath or affirmation which was taken by each of them.

Oath of Councillor

I swear that I will undertake the duties of the office of Councillor in the best interests of the people of the Kempsey local government area and the Kempsey Shire Council and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the *Local Government Act 1993* or any other Act to the best of my ability and judgment.

Affirmation of Councillor

I solemnly and sincerely declare and affirm that I will undertake the duties of the office of Councillor in the best interests of the people of Kempsey local government area and the Kempsey Shire Council and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the *Local Government Act 1993* or any other Act to the best of my ability and judgment.

REMINDER OF REQUIREMENT TO DECLARE CONFLICTS OF INTEREST

Under Clause 3.37, Statement of Ethical Obligations, in Kempsey Shire Council's Code of Meeting Practice, business papers for all ordinary and extraordinary meetings of the Council and Committees of the Council must contain a statement reminding Councillors of their oath or affirmation of office made under section 233A of the *Local Government Act 1993* and their obligations under the Council's Code of Conduct to disclose and appropriately manage conflicts of interest.

Councillors are therefore reminded of their obligations to disclose and appropriately manage conflicts of interest.

Council's currently adopted Code of Conduct (the Code) may be found on Council's website.

The guidance below is intended for Councillors and only discusses their obligations. Members of Committees of Council, staff, advisers, and any other designated persons also have similar obligations.

This guidance is not a substitute for the full requirements of the Code, and in the event of any inconsistency between this guidance and the Code then the Code prevails. Councillors, staff, members of Committees of Council, advisers, and other designated persons must read and understand the Code.

A disclosure made at a meeting must be recorded in the minutes of the meeting. Disclosure must be made at briefing sessions, whether closed or open to the public, public forums, Council meetings, meetings of Committees or in any other forum in which the interest arises.

Pecuniary Interests

Part 4 of the Code relates to the identification, disclosure, and management of pecuniary interests.

A pecuniary interest is an interest that a Councillor has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to that Councillor or a person close to them.

There are a limited set of types of pecuniary interests that do not need to be disclosed, these are outlined in clause 4.6 of the Code.

Councillors must provide both written returns of interest in accordance with clause 4.21 of the Code and declare interests at each meeting where they arise in accordance with clause 4.28 of the Code.

Under clause 4.29 of the Code, a Councillor who declares a pecuniary interest must not be present, or in sight of, the meeting of Council at any time during which the matter is being considered or discussed by the Council or at any time during which the Council is voting on any question in relation to the matter.

The Minister for Local Government may, conditionally or unconditionally, allow a Councillor who has a pecuniary interest in a matter with which the Council is concerned to be present at a meeting of the Council, to take part in the consideration or discussion of the matter and to vote on the matter under certain circumstances.

Non-Pecuniary Interests

Part 5 of The Code relates to the identifications, disclosure, and management of non-pecuniary interests.

Non-pecuniary interests are a Councillor's private or personal interests that do not amount to a pecuniary interest (as previously defined). A non-pecuniary conflict of interest exists where a reasonable and informed person would perceive that a Councillor could be influenced by a private interest when carrying out their official functions in relation to a matter. The personal or political views of a Councillor do not constitute a private interest.

Non-pecuniary conflicts of interest must be identified and appropriately managed to uphold community confidence in the probity of Council decision-making. The onus is on Councillors to identify any non-pecuniary conflict of interest they may have in matters that they deal with, to disclose the interest fully and in writing, and to take appropriate action to manage the conflict in accordance with the Code.

When considering whether a Councillor has a non-pecuniary conflict of interest in a matter they are dealing with, it is always important to think about how others would view their situation.

Non-pecuniary conflicts of interest may be either significant or not significant. Clause 5.9 provides guidance on the types of conflict that may be regarded as significant.

A significant non-pecuniary interest that arises in relation to a matter under consideration at a Council meeting must be managed in the same manner as a pecuniary interest. That is, a Councillor who declares a significant non-pecuniary interest must not be present, or in sight of, the meeting of Council at any time during which the matter is being considered or discussed by the Council or at any time during which the Council is voting on any question in relation to the matter.

A non-pecuniary interest that is not significant does not require further action. A Councillor disclosing such an interest must explain in writing why they consider the interest not to be significant.

Political Donations

Councillors should be aware that matters before Council or committee meetings involving their political donors may also give rise to a non-pecuniary conflict of interest.

Councillors must ensure that they are familiar with clauses 5.15 to 5.19 of the Code if Council is to consider a matter concerning an entity that has made a political donation to them.

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1 OPENING PRAYER

“Dear Lord, help us in our deliberations today so that our decisions will be for the greater good for the whole of Kempsey Shire - Amen”

2 ACKNOWLEDGEMENT OF COUNTRY

“Kempsey Shire Council acknowledges the land of the Thunggutti/Dunghutti Nation. We pay respect to Elders past and present. We acknowledge the role of emerging leaders to continue to guide us in the future. We acknowledge the Stolen Generations and the need to change practices to be inclusive. This land always was and always will be Thunggutti/Dunghutti land.”

3 ACKNOWLEDGEMENT OF SERVICE MEN, WOMEN AND FAMILIES

“Council acknowledges the sacrifice made by Australian service men and women, and their families, in particular, those who gave their lives in defence of the freedom we enjoy today.”

4 APOLOGIES AND APPLICATIONS FOR A LEAVE OF ABSENCE OR ATTENDANCE BY AUDIO-VISUAL LINK BY COUNCILLORS

That any apologies submitted by Councillors for non-attendance at the meeting be accepted and leave of absence granted.

That any applications for attendance by audio-visual link submitted by Councillors be accepted and permission granted.

5 CONFIRMATION OF MINUTES

RECOMMENDATION:

That the minutes of the Ordinary Meeting of Kempsey Shire Council dated 20 February 2024 be confirmed.

1. Ordinary Council Meeting 20 February 2024 Draft Minutes For Adoption [5.1.1 - 11 pages]

6 DISCLOSURES OF INTEREST

That any declared interests be noted.

7 ITEMS PASSED BY EXCEPTION

The Council or a Committee of Council may, at any time, resolve to adopt multiple items of business on the agenda together by way of a single resolution.

Before the Council or Committee resolves to adopt multiple items of business on the agenda together, the Chairperson must list the items of business to be adopted and ask Councillors to identify any individual items of business listed by the Chairperson that they intend to vote against the recommendation made in the business paper or that they wish to speak on.

The Council must not resolve to adopt any item of business that a Councillor has identified as being one they intend to vote against the recommendation made in the business paper or to speak on.

RECOMMENDED:

That the recommendations contained in the following items be adopted:

- 9.1. Local Traffic Committee Meeting Minutes**
- 10.6. Slim Dusty Centre - Council application to become Crown Land Manager**
- 10.7. Road Safety Strategy**
- 10.8. Write-off of Outstanding Debt**
- 10.9. Completion of Works on Private Land**
- 10.10. Internal Audit Charters**
- 10.11. Crescent Head Holiday Park - Shed Relocation**
- 10.12. Statement of Cash and Investments - February 2024**
- 11.3. Delegates Report - Social Media for Councillors**
- 11.4. Delegates Report - Bush Fire Management Committee - 14 February 2024**
- 12.1. Legal Matters**
- 12.2. Audit, Risk & Improvement Committee - February 2024 Meeting Minutes and Annual Activity Report**
- 12.3. Land Acquisition - Lot 1 DP1263874**

8 MAYORAL MINUTES

There is a Confidential Mayoral Minute included as item 12.4.

9 REPORTS OF COMMITTEES

9.1 Local Traffic Committee Meeting Minutes

Officer Michael Jackson, Director Operations & Planning

File Number F21/1958

PURPOSE

Adopt the minutes and recommendations of the Local Traffic Committee meeting held 27 February 2024.

RECOMMENDATION

That Council notes the minutes and adopts the recommendations of the Local Traffic Committee meeting held 27 February 2024.

BACKGROUND

A copy of the minutes of the meeting of the Local Traffic Committee held 27 February 2024.

KEY CONSIDERATIONS

Policy and Legislation

Local Traffic Committees operate in accordance with the Transport for NSW document 'A Guide to the Delegation to Councils for the Regulation of Traffic, including the Operation of Traffic Committees', the Roads Act 1993 and prevailing road rules.

Should Council not support the recommendations of a Local Traffic Committee it must inform Transport for NSW and the NSW Police of its intentions, with Transport for NSW and the NSW Police having an opportunity for appeal via the Regional Traffic Committee.

Strategic Alignment

The purpose of the Local Traffic Committee aligns with the road management and maintenance functions of Council reflected within the integrated planning & reporting suite of documents of Council.

Impact on Financial Sustainability

Works may be identified arising from the considerations of the Local Traffic Committee. These are either funded via the maintenance budget, capital projects where applicable or grant funding from external sources. Where no funding source exists, the proposed works must await the allocation of funding.

Stakeholder Engagement

Stakeholder engagement occurs for agenda items as appropriate and the details of this are outlined within the Committee's agenda to assist in consideration of the matters included.

The Committee also provides a good platform for collaboration in decision making between local and state levels of government on local traffic matters.

ATTACHMENTS

1. Minutes 27 February 2024 [9.1.1 - 16 pages]

10 REPORTS TO COUNCIL

10.1 Presentations by School Leaders

Officer	Daniel Thoroughgood, Group Manager Governance and Information Services
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File Number	F18/611
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PURPOSE

Receive a presentation from School Leaders of Kempsey Shire High Schools and Colleges as resolved by Council at its Ordinary Council Meeting 17 October 2023 taken on Cr Ring's Notice of Motion.

RECOMMENDATION

That Council receives presentations from School Leaders of Kempsey Shire High Schools and Colleges.

10.2 Planning Proposal PP_2023_2105 (PP2300005) - KLEP 2013 Housekeeping Amendment - South West Rocks Building Heights

Officer Marnie Jeffery, Strategic Planning Officer

File Number PP2300005

PURPOSE

Consider the following planning proposal for progression to the next stage of the local plan making process.

Proposal: To amend the KLEP 2013 Height of Building map to align with the adopted South West Rocks Structure Plan

Location: Various identified lots within the South West Rocks Structure Plan study area

Proponent: Kempsey Shire Council

Status: Community and agency consultation undertaken

Council is to consider the matters raised in the community and agency submissions and decide whether to progress the making of the amendment to the Kempsey Local Environmental Plan (KLEP) 2013. The Department of Planning, Housing and Infrastructure (formerly the Department of Planning and Environment) has not authorised Council to be the local plan-making authority in this matter, therefore the Department of Planning, Housing and Infrastructure will undertake a final review of the proposal before determining whether to make the proposed KLEP 2013 amendment.

RECOMMENDATION

That Council:

1. **endorses the progression of this planning proposal, which applies to various lots within South West Rocks, to the making of the amendment to the Kempsey Local Environmental Plan 2013;**
2. **requests that the Minister's delegate of the Department of Planning, Housing and Infrastructure finalise and make the plan; and**
3. **requests the Department of Planning, Housing and Infrastructure notify the plan on the NSW Legislation webpage upon the making of the Kempsey Local Environmental Plan 2013 amendment.**

BACKGROUND

A delegate for the Minister of Planning, Housing and Infrastructure has determined not to authorise Council to be the plan-making authority in this matter so that a final, impartial review of the proposal and submissions made during consultation prior to finalisation can be made by the Department of Planning, Housing and Infrastructure. This is due to the Department becoming aware of concerns raised by some landowners affected by the planning proposal.

Council must still instruct the Department to undertake the following:

- making the amending LEP; and
- Request the amending LEP be notified on the NSW Legislation website.

The plan comes into effect the day that it is published on the NSW Legislation website.

Subject land

The land subject to the Planning Proposal is located within the South West Rocks Structure Plan study area (Figure 1) and consists of various land use zones and minimum lot sizes. However, all the land subject to this Planning Proposal are parcels which do not currently have, but are identified as requiring, a regulated building height applied under the provisions of the Kempsey Local Environmental Plan 2013.

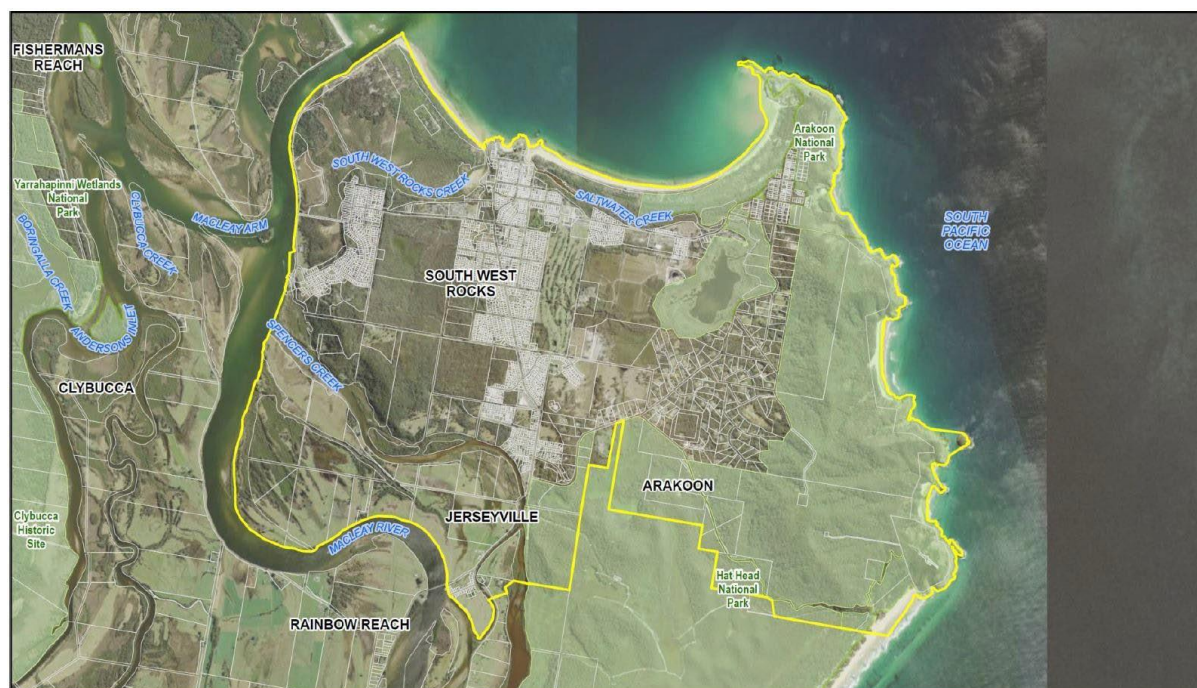


Figure 1 - SWR Structure Plan study area.

recommended to apply to the land parcels identified in the following table and as shown in Figure 2. These height restrictions align with the recommendations of the South West Rocks Structure Plan.

Table 1 - Land subject to building height amendments.

Lot and DP	Street Address	Building Height Change	
		Current	Proposed
Lot 2 DP 1091323	Phillip Drive	-	8.5m
Lot 364 DP754396	2 Sportsmans Way	-	8.5m
Lot 367 DP754396		-	8.5m
Lot 4 DP 1032643		-	8.5m
Lot 5 DP 1032643		-	8.5m
Lot 6 DP 1032643		-	8.5m
Lot 7 DP 1032643		-	8.5m
Lot 7001 DP 1073214	Buchanan Drive	-	8.5m
Lot 7002 DP 1073215	Ocean Drive / O'Keefe Road	-	8.5m
Lot 7041 DP 1120754	2A Livingstone Street	-	8.5m
Lot 7042 DP 1120754	Ocean Drive	-	8.5m
Lot 7308 DP 1138202	Buchanan Drive	-	8.5m

Lot 372 DP 704869	Buchanan Drive	-	8.5m
Lot 1 DP 778105	Livingstone Street	-	8.5m
Lot 337 DP 754396	Livingstone Street	-	8.5m
Lot 7305 DP 1127502	Livingstone Street	-	8.5m
SP62275	1 Ocean Drive	-	8.5m
Lot 375 DP 822657	3 Ocean Drive	-	8.5m
Lot 374 DP 822657	9 Ocean Drive	-	8.5m
Lot 373 DP 822657	Ocean Drive	-	8.5m
Lot 286 DP 754396	Gregory Street	-	8.5m
Lot 235 DP 754396	1 Gregory Street	-	8.5m
Lot 269 DP 754396	1 Gregory Street	-	8.5m
Lot 341 DP 754396	Gregory Street	-	8.5m
Lot 2331 DP 1196964	19A Gregory Street	-	8.5m
SP 100324	19 Gregory Street	-	8.5m
Lot 377 DP 823789	Gordon Young Drive	-	8.5m
Lot 376 DP 823789	39-89 Gordon Young Drive	-	8.5m
Lot 379 DP 823785	91 Gordon Young Drive	-	8.5m
Lot 3 DP 20188	98 Gregory Street	-	11m
Lot 2031 DP 579067	102 Gregory Street	-	11m
Lot 231 DP 754396	255-279 Gregory Street	-	11m

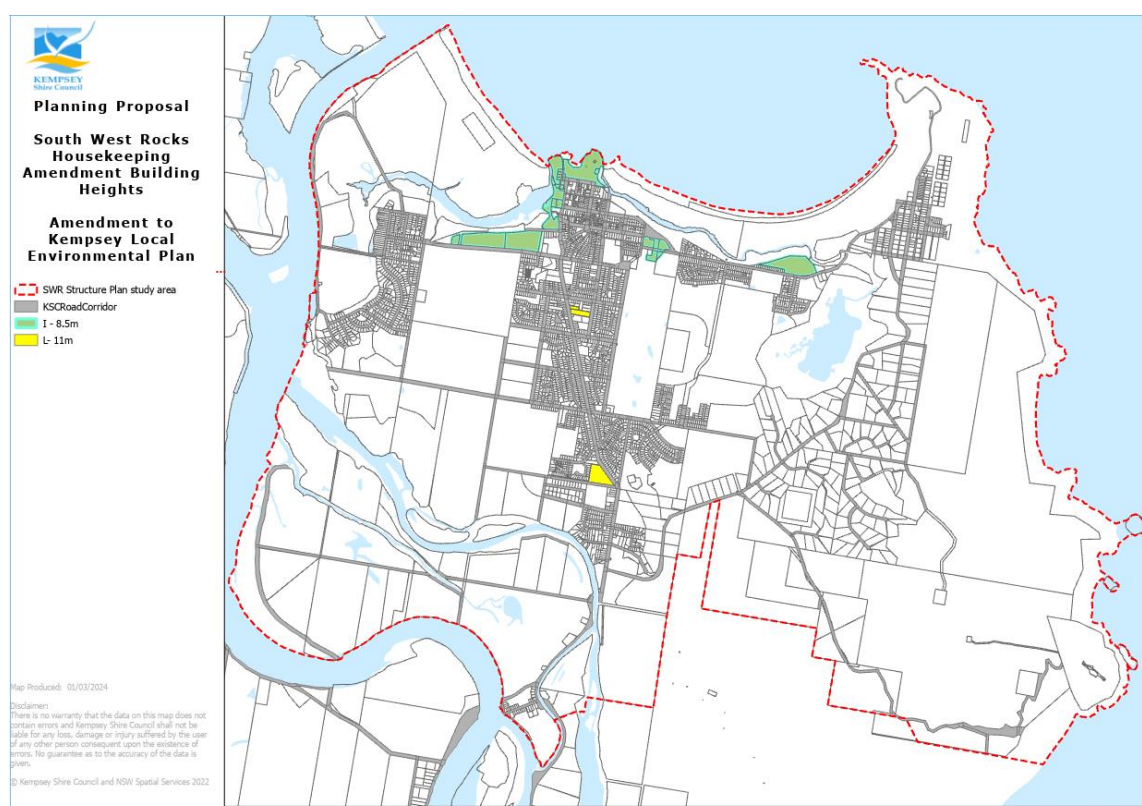


Figure 2 - Land subject to building height amendments.

The South West Rocks area contains a large portion of underutilised R3 Medium Density Residential zoned land and R1 General Residential land yet to be delivered. The development of this R3 and R1 zoned land can deliver the dwelling targets projected for South West Rocks and the introduction of the building height limits subject to this Planning Proposal will not result in losses in potential housing in the area. The Kempsey Local Growth Management Strategy (2023) indicates that across the Kempsey Shire there appears to be adequate areas zoned and/or approved for residential development, which can meet the projected housing demand.

It is important to note that on advice from the Department of Planning, Housing and Infrastructure, the properties in Keith Andrews Avenue that were included in the proposal presented to Council at the 17 October Ordinary Council meeting were removed from this proposal, prior to public exhibition, due to a land zoning change also being required on some of the subject sites. It is proposed to include this land in a future planning proposal to ensure amendments to the land zoning and building heights occur concurrently.

At the 17 October 2023 Ordinary Meeting, Council resolved the following:

1. *submits the planning proposal which seeks to amend the Height of Buildings Map for various lots within South West Rocks, to the Minister for Planning and Public Spaces for gateway consideration pursuant to section 3.34 of the Environmental Planning and Assessment Act 1979;*
2. *requests that the Secretary of the Department of Planning and Environment issue Council with written authorisation to exercise plan making delegations in relation to this proposal; and*
3. *undertakes, subject to the gateway determination, community consultation for the planning proposal as required.*

On 13 November 2023 a delegate for the Minister of Planning and Public Spaces issued a Gateway Determination (attached) to proceed with the planning proposal, with conditions, and notified Council that the Department of Planning, Housing and Infrastructure will be the local plan-making authority for this matter and written authorisation was not issued to Council to exercise plan making delegations in relation to this proposal. The timeframe for completing the LEP amendment is 6 months from the date Gateway Determination is issued (by 13 May 2024).

KEY CONSIDERATIONS

Policy and Legislation

The planning proposal plan-making authority is authorised to exercise the functions under section 3.36(2) of the Environmental Planning & Assessment Act 1979 to make the plan, subject to the following:

- a. the planning proposal authority has satisfied all the conditions of the Gateway Determination;
- b. the planning proposal is consistent with applicable directions of the Minister under section 9.1 of the Environmental Planning & Assessment Act 1979 or the Secretary has agreed that any inconsistencies are justified; and
- c. there are no outstanding written objections from public authorities.

Council has assessed the planning proposal and is satisfied that it meets all the requirements of section 3.36(2), as stated above and have addressed them accordingly in this report.

As Council has not been authorised to be the local plan-making authority in this matter, the Department of Planning, Infrastructure and Housing will therefore exercise its function as the local-plan making authority.

Strategic Alignment

The amendment of the building height for the subject sites ensures that the important characteristics that make this area distinctive are maintained, enhanced and protected, which is consistent with the strategic intent expressed in Council's South West Rocks Structure Plan.

Impact on Financial Sustainability

The proposal will not result in extra demand for infrastructure or impose additional costs on Council services.

Stakeholder Engagement

The Gateway Determination for this planning proposal states that public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Environmental Planning & Assessment Act 1979 as follows:

- (a) the planning proposal is categorised as "standard" as described in the *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, August 2023) and must be made publicly available for a minimum of 20 working days; and
- (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in *Local Environmental Plan Making Guideline* (Department of Planning and Environment, August 2023).

Exhibition must commence as soon as possible following the date of the Gateway Determination.

Community consultation

The planning proposal was placed on public exhibition from Thursday 16 November 2023 to Friday 15 December 2023 (21 working days). Council directly notified all affected landowners of the public exhibition period via email and Council's website and social media channels were utilised to inform the broader community of the exhibition period.

A total of 120 public submissions were received (attached) – 113 in support and 7 objections. A summary of matters raised in the objections are provided below with comments/responses provided.

With regard to the objections received, Council did not receive correspondence from some of these objectors during the extensive community consultation process undertaken in the preparation of the SWR Structure Plan. Therefore, a number of the matters now raised were not identified with Council and consideration was unable to be given to address these matters in the SWR Structure Plan. This Planning Proposal is merely implementing the recommendations identified in the adopted SWR Structure Plan.

Submission	Comment/Response
Subject land is zoned C3 Environmental Conservation and contains registered middens on site.	Subject land does not currently contain a building height limit. The introduction of a height limit is not to promote development of a

<p>A further height increase in an area subject to a tree management plan is not warranted.</p> <p>Huge impact on value for some units adjoining subject land.</p>	<p>site, it is to ensure any future development, if any, is sympathetic to the site and its surrounds.</p> <p>Any future development must obtain the necessary approvals through the State government and Council and must comply with the provisions of:</p> <ul style="list-style-type: none"> • any relevant State legislation, i.e. Heritage, Biodiversity, etcetera; • objectives of the land zone, permissibility and any other relevant clauses of the KLEP 2013; • the Kempsey Development Control Plan; and • any other relevant Council plans and policies.
<p>Existing building no longer sustainable and requires urgent upgrade. Investigations have been undertaken to construct building which would provide broad community benefits exceeding proposed 8.5m height limit.</p> <p>11m height limit generally applied to business and commercial areas.</p>	<p>Any proposal to redevelop the site would be assessed on its merits and compliance with the relevant provisions.</p> <p>However, under the provisions of KLEP 2013, development standards such as building height can be varied under cl. 4.6 – Exceptions to development standards. Any proposal would need to demonstrate how the development meets the objectives of cl. 4.6 and demonstrates that the development standard being varied is unreasonable or unnecessary in the circumstances.</p> <p>Alternatively, a separate Planning Proposal could be submitted for consideration, to amend the building height standard.</p>
<p>Proposed future development of site to deliver tourist and visitor accommodation cannot be delivered within 8.5m height limit.</p> <p>Current housing choice & affordability in South West Rocks adversely impacted by use of existing dwelling stock as short term holiday rentals.</p> <p>Proposed future development aligns with State government and Council plans.</p> <p>Building height standard is not consistent with the strategic intentions of the landowner.</p>	<p>Any proposal to redevelop the site would be assessed on its merits and compliance with the relevant provisions.</p> <p>However, under the provisions of KLEP 2013, development standards such as building height can be varied under cl. 4.6 – Exceptions to development standards. Any proposal would need to demonstrate how the development meets the objectives of cl. 4.6 and demonstrates that the development standard being varied is unreasonable or unnecessary in the circumstances.</p>

Recommend subject site be amended to 13.5m height of building standard.	Alternatively, a separate Planning Proposal could be submitted to amend the building height standard.
Proposed building height limit not consistent with the objectives of the land zoning for the site, being R3 Medium Density Residential.	The objectives of the R3 Medium Density Residential zone can still be achieved within the 8.5m building height limit, e.g. provide housing needs for the community, provide a variety of housing types and enables other uses that provide facilities or services that meet the day to day needs of residents.
Planning Proposal is not considered a basic amendment, due to considerable implications it could have on housing supply and impacts on existing land holdings.	The Department of Planning, Housing and Infrastructure categorises the planning proposal as a 'standard', not basic, planning proposal in accordance with the <i>Local Environmental Plan Making Guideline, August 2023</i> .
<p>Planning proposal fails to:</p> <ul style="list-style-type: none"> consider the site-specific merit of any of the sites impacted by the Planning Proposal. <p>consider existing development approvals over land parcels and the height of existing development.</p> <ul style="list-style-type: none"> Provide any economic, environmental or social impact assessments that detail the potential implications of the Planning proposal. 	<ul style="list-style-type: none"> Any proposal to redevelop sites subject to this Planning Proposal would be assessed on their merits and compliance with the relevant provisions. <p>However, under the provisions of KLEP 2013, development standards such as building height can be varied under cl. 4.6 – Exceptions to development standards. Any proposal would need to demonstrate how the development meets the objectives of cl. 4.6 and demonstrates that the development standard being varied is unreasonable or unnecessary in the circumstances.</p> <p>Alternatively, a separate Planning Proposal could be submitted to amend the building height standard.</p> <ul style="list-style-type: none"> Social, environmental and economic impacts on South West Rocks have been considered in the preparation of Council's strategic plans, including the SWR Structure Plan, which supports revitalisation to existing commercial centres and gives greater certainty to the community and for future development of the area. Large portions of R3 Medium Density Residential zoned land are underutilised,

<ul style="list-style-type: none"> • Provide sufficient evidence that there is available land supply to cater to the growing housing demand. • Provide any justification based on visual analysis as to why the building heights were selected for each site. • Provide sufficient justification as to the Planning Proposal meets the strategic intentions of the State Government and Councils own Strategic Planning documents. 	<p>and some R1 General Residential land is yet to be delivered. The development of this R3 and R1 zoned land can deliver the dwelling targets projected for South West Rocks and the introduction of the building height limits subject to this Planning Proposal, will not result in losses in potential housing in the area. The Kempsey Local Growth Management Strategy (2023) indicates that across the Kempsey Shire there is adequate areas zoned and/or approved for residential development, which can meet the projected housing demand.</p> <ul style="list-style-type: none"> • All the land subject to the Planning Proposal does not currently contain a regulated building height. The heights selected for the sites are sympathetic to the surrounding land and aim to ensure that future development is not inconsistent with the desired future character of the area, as identified in collaboration with the community, in the SWR Structure Plan. • The Planning Proposal aligns with the regional focused goals of the North Coast Regional Plan 2041: <ul style="list-style-type: none"> ○ <i>Goal 1: liveable, sustainable and resilient</i> ○ <i>Goal 3: growth change and opportunity</i> <p>The proposal also aligns with Council's strategic plans, the Local Strategic Planning Statements (LSPS), Kempsey Local Growth Management Strategy (2023) and the South West Rocks Structure Plan (2023).</p> <p>The land subject to this submission, is within the Coastal Use Environment Area, Coastal Environment Area, partly within the Coastal Wetland Proximity Area and adjacent to Coastal Wetlands. The proposed building height amendment assists in ensuring any development on the site aligns with the following objectives of the North Coast Regional Plan 2041 goals:</p> <ul style="list-style-type: none"> ○ protect regional biodiversity and areas of high environmental value;
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<ul style="list-style-type: none"> • Provide sufficient justification that would allow the contradiction of several ministerial directions. 	<ul style="list-style-type: none"> ○ manage and improve resilience to shocks and stresses, natural hazards and climate change; and ○ celebrate local character. • The delegate for the Department of Planning, Housing and Infrastructure justified inconsistencies with the applicable Ministerial Directions under section 9.1 of the Environmental Planning & Assessment Act 1979, being 6.1 Residential Zones and 7.1 Employment Zones. Council may still need to obtain the agreement of the Secretary to comply with 4.3 Planning for Bushfire Protection prior to the LEP being made. As Department of Planning, Housing and Infrastructure are the plan-making authority in this instance, the Secretary's agreement can be provided at the finalisation stage. The Planning Proposal was referred to the NSW Rural Fire Service and no objection was received.
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State Agency Consultation

As required by condition 3 of the Gateway Determination, consultation was undertaken with the identified State Agency, the NSW Rural Fire Service. Whilst not required, Council chose to consult with a number of other State Agencies. A summary of their responses is provided below with comments/responses provided.

Council did not receive a response from Crown Lands, NSW Police or the Aboriginal Land Council within the recommended 'Response to Submission' timeframe of 5-25 working days identified in the *Local Environmental Plan Making Guidelines*, August 2023. (note that 41 working days had lapsed as of 1 March 2024).

Agency	Submission	Comment/Response
NSW Rural Fire Service	Raise no objection to the proposal. Future development applications are to address bushfire threat and it recommend measures to minimise bushfire risk	N/A
Biodiversity, Conservation and Science (BCD) – Department of	Supports introduction of building height limits. Future development of land zoned C2 Environmental Conservation	Future development on C2 and/or C3 land must comply with the provisions of:

Climate Change, Energy, the Environment and Water	and/or Environmental Management to be undertaken in a sustainable manner that ensures the existing environmental values are retained and enhanced. No further issues raised.	<ul style="list-style-type: none"> any relevant State legislation, i.e. Heritage, Biodiversity; objectives of the land zone, permissibility and any other relevant clauses of KLEP 2013; Kempsey Development Control Plan; and any other relevant Council plans and policies.
Heritage NSW – Department of Climate Change, Energy, the Environment and Water	Lower height limit advisable surrounding the Pilot Station, equivalent to single storey, but note the proposal is intended to protect the character of South West Rocks and the heritage significance of the Pilot Station.	N/A

Other Matters

Nil

CONCLUSION

The building height amendments proposed are consistent with Council's *South West Rocks Structure Plan 2023* in that the desired outcome aligns with the community's expectations and enhances the identified vision for this area.

ATTACHMENTS

1. Planning Proposal SWR Housekeeping Amendment Building Heights [10.2.1 - 32 pages]
2. Land subject to building height amendments map [10.2.2 - 13 pages]
3. SWR Structure Plan June 2023 [10.2.3 - 52 pages]
4. Gateway Determination [10.2.4 - 3 pages]
5. State Agency responses [10.2.5 - 4 pages]
6. Council Submissions REDACTED [10.2.6 - 285 pages]
7. Planning Portal Submissions REDACTED opt [10.2.7 - 39 pages]

10.3 Crescent Head Foreshore Community Advisory Group Terms of Reference and EOI

Officer Grant Dennis, Design and Investigation Manager

File Number F19/1812

PURPOSE

This Council report develops from the Council resolution 2023.172 regarding the Council Managed Crown Land and Crescent Head Foreshore Advisory Group.

The resolution noted that the Foreshore Revitalisation Project, encompassing planning of the Crescent Head Foreshore, was to be placed on hold until the finalisation of the Draft Council Crown Land Plan of Management (POM).

Council staff have since undertaken community consultation for the Draft Council Crown Land POM. In light of 1286 supportive generic submissions and an additional 6 supportive submissions, Council staff have developed a preferred direction for Council consideration. It is important to note that this recommendation is pending the formal adoption of the POM.

The proposed recommendation includes endorsement to proceed with direct negotiations with the Country Club for a lease of the golf course, tennis courts and clubhouse on reserve 63725, at market rent. Additionally, it involves the establishment of the Community Advisory Group (CAG) to inform the Crescent Head Foreshore Revitalisation Project and revising the CAG Terms of Reference (TOR) to exclude consultation over this proposed lease area.

RECOMMENDATION

That Council:

- 1. notes the strong community support for the 21-year renewal of the Crescent Head Country Club (CHCC) Golf Course lease on fair and reasonable terms, with over 1200 submissions of support received through the exhibition of the draft Council managed Crown Land Plan of Management;**
- 2. enters into direct negotiation with Crescent Head Country Club on a 21-year lease, in accordance with the terms of the Crown Land lease guidance and lease template, at an independently valued market rent;**
- 3. removes the CHCC Golf Club lease from the TOR from the Community Advisory Group (CAG);**
- 4. notes that the operation of the Crescent Head Holiday Park is outside of the TOR for the Community Advisory Group (CAG) and that the revised Concept Plans will be publicly exhibited in March to April 2024 prior to being reported back to a future Council meeting for adoption; and**
- 5. endorse the Crescent Head Foreshore Advisory Group TOR and Expression of Interest for Public Exhibition.**

BACKGROUND

In the September 2023 meeting Council resolved (2023.172).

That Council:

- 1. notes that the draft Council Managed Crown Land Plan of Management is awaiting minister's consent;**

2. notes that once the draft Council Managed Crown Land Plan of Management has minister's consent, it will be placed on public exhibition;
3. exhibits the draft Council Managed Crown Land Plan of Management for a period of 42 days to give the community suitable time for review and submission;
4. undertakes community engagement expeditiously regarding leases proposed for renewal within the draft Council Managed Crown Land Plan of Management for Crescent Head Crown Land (as per section 47 Local Government Act 1993) when required;
5. notes the Crescent Head foreshore revitalisation project will be placed on hold until the draft Council Managed Crown Land Plan of Management is finalised and adopted inclusive of leases proposed for renewal in Crescent Head (noting previous Council Resolution 2021.122 part 3);
6. notes that revisions to, and implementation of, the Crescent Head Holiday Park Concept Plan will proceed independently of the matters considered in this report as resolved by the August and September 2023 Council meetings; and
7. acknowledges that the proposed Community Advisory Group previously endorsed for the Crescent Head foreshore revitalisation project, have expanded TOR and scope to include areas proposed for leases on Crown Reserve in Crescent Head.

Council Managed Crown Land Plan of Management

Council conducted a public exhibition of the Council Managed Crown Land-Draft Plan of Management through Your Say Macleay from 1 November 2023 to 15 December 2024. During this period, Council received 1286 submissions in the form of standard letter, supporting the 21-year renewal of the Crescent Head Country Club's (CHCC) lease on the golf course, tennis courts and clubhouse on Crown Land, under fair and reasonable lease terms. Additionally, Council received 6 other submissions expressing support for the lease renewal from various stakeholders, including the Crescent Head Residents and Ratepayers Association, Crescent Head Kempsey Surf Life Saving Club, Golf NSW, and individual residents. In contrast, there was one submission advocating for further exploration of alternative uses for this land.

Considering this strong endorsement from the community and Council resolution 2023.172 (4) in September 2023, which insisted on swift community engagement regarding the lease renewal, it is recommended that Council proceed with direct negotiation with the CHCC for the lease renewal, in accordance with Council and Crown Land leasing policy.

In recommending moving to direct negotiation (as opposed to an open expression of interest for lease), we note that there would be limited other capable applicants for this land, and that CHCC:

1. operates as a registered club, and non-profit organisation, in accordance with section 46A (3) and 55 (3)(b) of the *Local Government Act 1993*, delivering community services and facilities for the region;
2. has a proven track record of specialised and professional and stewardship of the reserve, with specialised staff and equipment;
3. has delivered significant improvements to the land, and
4. has strong community support.

To proceed with executing the lease, Council will need to undertake the following steps:

1. complete a survey of the land and, with the approval of Crown Land, register the survey plan to create a separate title covering the golf course and tennis club;
2. engage an independent valuer to determine the market rent for the site, in accordance with Crown Land policies;
3. finalise the lease terms, in accordance with the Crown Land lease template;
4. notify the public of Council's intention to enter into a lease for a minimum of 28 days;
5. consider submissions during this notice period;
6. adopt the Council-managed Crown Land Plan of Management; and
7. execute the lease and register on title.

Crown Lands provides clear guidance on the lease terms and the process to determine market rent. Importantly, Crown and Council acknowledge that rent will be the independently assessed market rent for the land, taking into consideration any applicable restrictions, conditions, or terms. Further details on leasing, rents and rebates are available at: [Market rent redetermination | Crown Lands \(nsw.gov.au\)](https://www.nsw.gov.au/market-rent-redetermination/crown-lands) and Council's Procedure 1.2.7, Rental Assessment and Rebate.

Council has commenced discussions with CHCC regarding the process of the lease execution, lease terms in line with Crown's lease template.

Simultaneously, work is underway on the draft Crown Land Plan of Management with Crown Lands. This involves addressing additional issues raised by Crown Lands and incorporating feedback received from submissions. The complete results of this engagement and further input from Crown Lands will be reported at a future meeting. A revised POM will be presented for adoption.

In the event of delays in adopting the POM, Council will work with Crown Lands to finalise lease execution, pending the completion of all other steps. This ensures that progress can continue effectively, even if the Plan of Management adoption is delayed.

Crescent Head Foreshore Revitalisation and Community Advisory Group

During the September 2023 meeting Council resolved (2023.172.5), that Council defer the Foreshore Revitalisation project inclusive of the Community Advisory Group (CAG) until a clear direction regarding the Crown reserve 63725 could be established.

The project was recommended to be deferred due to concerns about potential impacts on planning of any future tenure on land boundaries, that was seen as contentious during the Public Domain Plan 2020. Resolving these matters prior to the planning of the foreshore was seen as pertinent to project success.

It is important to note that the existing foreshore site faces significant constraints; resolving traffic circulation issues raised by some community members through Crown Lease 63725 could address a multitude of safety, traffic, parking, open space, and amenity issues experienced within the foreshore reserve.

As previously mentioned, Council received over 1200 submissions during the Council Managed Crown Land Plan of Management engagement process for the Crescent Head Crown Lease 63725, encompassing the Holiday Park, Foreshore Revitalisation Project, and the Golf Course. Notably, the majority of the submissions were in favour of maintaining the existing golf course.

Given the community engagement regarding the Crown Lease, it is considered that there is a consensus within the community to maintain the current land use of Crown Lease 63725 inclusive of the golf course, tennis court, and club house.

In light of this community feedback, it is recommended to reverse recommendation 7 (2023.172.7) such that the proposed CAG does not consider proposed leases on the Crown Reserve and instead solely focuses on the footprint presented in Figure 1.

Figure 1 – Crescent Head Foreshore Community Advisory Group Footprint



The decision would be supported by the resolution to begin negotiations with the Country Club regarding their desired 21-year lease, charged at independently valued market rent.

Furthermore, endorsement of the boundaries and negotiations would enable Council staff to commence the Crescent Head Foreshore Revitalisation Project, starting with the establishment of the CAG within the next 4-6 weeks.

Crescent Head Holiday Park

Revised Concept Plans for Crescent Head Holiday Park, also located within reserve 63725, are nearing completion. These plans will include updated designs and perspective views for the cabins, safari tents, and reception/residence areas, and are expected to be released on public exhibition in the coming months. The Holiday Park will remain excluded from the Community Advisory Group TOR.

KEY CONSIDERATIONS

Policy and Legislation

The *Crown Land Management Act 2016* and the *Local Government Act 1993* are relevant legislation in matters pertaining to the draft POM and any new lease proposed within Crown land managed by Council.

Strategic Alignment

Areas within the report align to the North Coast Regional Plan 2036, Community Strategic Plan 2042 and the adopted Crescent Head Master Plan.

Impact on Financial Sustainability

There are no adverse impacts on the current operational plan or budget.

The modifications to the Crown Lease Boundaries 63725, inclusive of Council inheriting additional land, would have adverse impacts upon Council's financial sustainability, as capital and operational expenditure would be required to upgrade and/or maintain the area.

Stakeholder Engagement

The *Crown Land Management Act 2016* has prescribed engagement periods, which have been followed during the exhibition of the Council Managed Crown Lands Plan of Management.

The Crescent Head Public Domain Plan Engagement report was considered in the August 2021 Council meeting (resolution 2021.152) resolved, in part, to endorse the proposed engagement methodology. The methodology for engagement within this report has not been varied and involves the establishment of the mentioned CAG.

CONCLUSION

After community consultation for the POM, Council staff propose direct negotiations with the Country Club for a lease renewal and establishing the CAG to guide the Crescent Head Foreshore Revitalisation Project. Proceeding with direct negotiations with the CHCC for the lease renewal is recommended due to significant community support and limited capable applicants. This resolution enables Council staff to kickstart the Crescent Head Foreshore Revitalisation Project while ensuring compliance with relevant legislation and stakeholder engagement processes, promoting sustainable management of Crown Land in line with community feedback and strategic objectives.

ATTACHMENTS

1. 11.03.24 - DRAFT Crescent Head Foreshore Community Advisory Group Terms of Reference [10.3.1 - 12 pages]

10.4 Proposed Dwelling - Marlin Circuit, Hat Head - DA2300773

Officer Adam Costenoble, Development Services Manager

File Number DA2300773

PURPOSE

This report is submitted to Council for the determination of Development Application DA2300773 which proposes a Single Dwelling House and Driveway on Lot 55 DP847223, 32 Marlin Circuit, Hat Head.

The proposal seeks a variation greater than 10% to the height of buildings development standard of 8.5 metres set out in Clause 4.3 of Kempsey Local Environmental Plan (KLEP) 2013 and the Height of Buildings Map.

RECOMMENDATION

That Council:

1. **supports variation to the height of buildings development standard in Clause 4.3 of Kempsey Local Environmental Plan 2013; and**
2. **grant development consent to DA2300773 for a single dwelling house and driveway subject to the conditions contained in DA2300773 Recommended Conditions.**

BACKGROUND

The development application seeks to construct a single dwelling house and driveway and the proposed building height of the development ranges from 4m to 14m as depicted in DA2300773 Development Plans.

This represents a maximum 64% variation to the numerical development standard and an application has been made pursuant to clause 4.6 of KLEP 2013 to vary the development standard in this instance.



KEY CONSIDERATIONS

The application has been assessed against the relevant heads of consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*. This report provides a discussion of the key matters arising from the development.

Policy and Legislation

Kempsey Local Environmental Plan (KLEP) 2013

Permissibility

The proposal is within the RU5 Large Lot Residential Zone and dwelling houses are permitted with consent.

Clause 4.3 Height of Buildings

Pursuant to this clause the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map and a maximum building height of 8.5 metres applies to the land.

Clause 4.6 – Exceptions to development standards

The applicant's written request seeking to justify the contravention of the height of building development standard is provided in DA2300773 Clause 4.6 Request.

The objectives of this clause is to provide an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better outcomes for and from development by allowing flexibility in certain circumstances.

Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that -

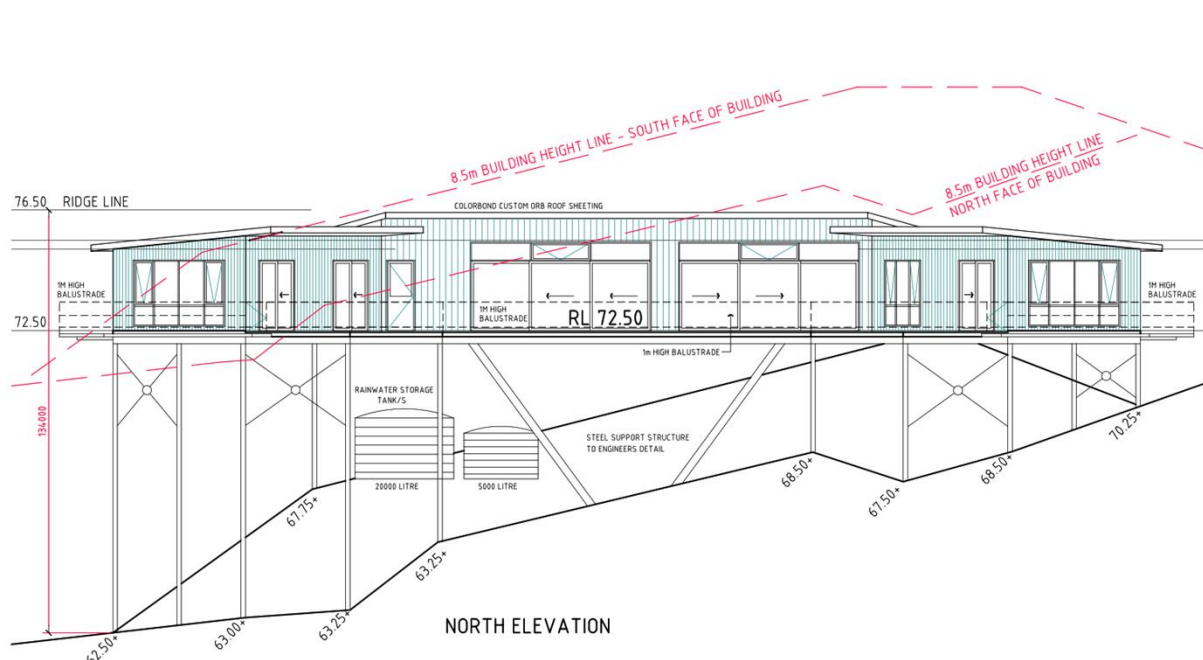
- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
- (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

The underlying purpose of the height of building development standard is to ensure that development preserves the existing character of residential areas and to protect the amenity of existing and future dwellings from adverse impacts on privacy, solar access and on the urban streetscape.

The varying Natural Surface Level (NLS) on the site results in a 12.5m cross fall. The NLS at the northern boundary of the build limit area (as determined by the Bushfire Report) is RL 60.00 and the southern boundary of this area is RL 72.50, resulting in the proposed development exceeding the regulated building height of 8.5m on portions of the site (5.5m at the highest point).

Due to the topography of the site, the proposed development is to be constructed on steel pole support structures to create a single storey dwelling on rural residential land. The dwelling's location on the site will not impact on the amenity, privacy, solar access of existing or future dwellings. The proposed dwelling is setback 150m from the street frontage and will therefore not impact on the streetscape. Adjoining land parcels to the west of the subject site contain dwellings in similar

locations which take advantage of enhanced cross ventilation and ocean views.



In this case, it would be unreasonable to impose strict compliance with the 8.5 metres height of building standard as the proposed building height does not give rise to any adverse impact on the amenity, privacy, solar access of existing or future dwellings or streetscape.

Council is satisfied that the applicant demonstrates the proposed development satisfies clause 4.6(3)(a) and 4.6(3)(b) in that the objectives of the standard are achieved notwithstanding noncompliance with the standard, and that there are sufficient environmental planning grounds to justify departure from the standard in this instance.

Clause 7.4: Koala Habitat

The land is identified as an “Area Subject to Koala Management Plan” on the [Koala Management Plan Map](#).

The proposal is within an area identified as Preferred Koala Habitat Secondary (Class A) pursuant to Council’s Comprehensive Koala Plan of Management. A total of 18 trees are identified as potentially impacted by the development. 10 trees are proposed to be removed to accommodate the development and 8 are to be retained with protection. No Koala food trees are proposed to be removed.

Council is satisfied that the development is in accordance with the *Comprehensive Koala Plan of Management for Eastern Portion of Kempsey Shire LGA Volume I—The CKPoM (Working Provisions)*, published in April 2011.

Clause 7.9: Essential services

The site has access to potable water, sewer, electricity, and telecommunications networks. There is capacity in Council's water supply and sewer drainage systems in the area to cater for the proposal.

Council is satisfied that services that are essential for the development are available or that adequate arrangements have been made to make them available when required.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 Coastal management of the SEPP identifies design criteria to be met for coastal development. The proposal is on a lot partly within the Coastal Environment Area. The proposal will not interfere with any public access or enjoyment of coastal activities or foreshore areas. It is of an appropriate scale and style considering its location in relation to the coastline and foreshore areas and does not detract from the scenic qualities of the New South Wales coastline. It will not significantly impact upon any threatened species or wildlife corridors, marine ecosystems, coastal process, or known aboriginal heritage. The proposal is consistent with Council's Coastal Zone Management Plan.

Council is satisfied that the development is designed, sited, and will be managed to avoid an adverse impact on the coastal environment.

Social Considerations

There are no adverse social impacts envisaged as a result of the development. The proposal will contribute to the provision of residential housing in a rural setting and increase the range of housing options for the area.

Economic Considerations

There will be on-going economic benefit as a result of additional occupants utilising services in the area and providing opportunities to support growth within in the community.

Environmental Considerations

Bushfire

The property is mapped as bush fire prone land. The NSW Rural Fire Service have reviewed the proposal and provided recommended conditions of consent.

Biodiversity

The subject site is burdened by the following 88B restriction:

No development excepting driveways, pathways and the like is to occur within a 25 metre radius of the tree containing the existing White bellied Sea Eagles' nest on the lot until the nest is no longer used by the eagles.

No information was provided on the current presence of the nest. A condition of consent will be applied to ensure the protection of this tree.

The proposal is not on land identified on the Biodiversity Values map. Some native vegetation is proposed to be removed however does not exceed relevant thresholds for land within the RU5 Large Lot Residential Zone.

Council is satisfied that the proposal is not likely to significantly affect threatened species (per the *Biodiversity Conservation Act 2016*) and is not a development or activity likely to significantly affect threatened species, population or ecological community (per the *Fisheries Management Act 1994*).

Strategic Alignment

Nil.

Impact on Financial Sustainability

Nil.

Stakeholder Engagement

The proposal was publicly notified to residential properties within 100 metres of the site in accordance with Council's Customer Service and Notification Policy. There were no submissions received (public or otherwise).

Other Matters

NIL

CONCLUSION

That development consent be granted for a single dwelling house and driveway subject to conditions.

ATTACHMENTS

1. D A 2300773 Recommended Conditions [**10.4.1** - 13 pages]
2. D A 2300773 Development Plans [**10.4.2** - 5 pages]
3. D A 2300773 Clause 4.6 Request [**10.4.3** - 5 pages]

10.5 Prioritisation of Sealing of Unsealed Roads

Officer Grant Dennis, Design and Investigation Manager

File Number F19/1859

PURPOSE

This report outlines the reassessment of Council's priority listing for Bitumen Sealing, aligning with Council resolution 2023.70.

The assessment revisits the ARC Rural Roads Project Assessment Rating model ('ARC') methodology, a road safety risk assessment approach used in Australia, by integrating recent traffic data and property counts. It also introduces a pairwise multi-criterion analysis (P-MCA) to encompass factors beyond the ARC model, such as flood immunity, current population growth, and strategic location, as suggested by Council members. Lastly, catchment forecasted population growth is utilised to validate the findings of the P-MCA.

RECOMMENDATION

That Council:

1. notes that Pipers Creek Road (End of seal to Wirrang Drive) and Spooners Avenue (Chain o Ponds to Collombatti Road) remain the top two priority roads;
2. notes that Spooners Avenue (Chain o Ponds to Collombatti Road) emerges as the top priority through the P-MCA and through the forecasted population growth;
3. That Council endorse the following priority list for the bitumen sealing of gravel roads (in order of priority):
 - a. Spooners Avenue (Chain O Ponds Road to Collombatti Road)
 - b. Piper Creek Road (End of seal to Wirrang Drive)
 - c. Pipers Creek Road (Wirrang Drive to Ballengara Road)
 - d. Collombatti Road (Swan Lane to Hughes Access)
 - e. Smiths Creek Road (Crowther Drive to Crowther Drive)
 - f. First Lane (Gladstone Street to Smith Street)

BACKGROUND

In November 2017 Council resolved (2017.370):

1. That Council undertakes a cost-benefit analysis (CBA) of constructing and sealing each of Council's unsealed roads that have a traffic volume in excess of 150 vehicles per day.
2. That a report be provided to a future Council Meeting, outlining the assessed cost benefit for each road.

A report containing the CBA was presented to the Council in May 2019. The report utilised the ARC model to formulate the proposed prioritised ranking, as presented in Table 1.

Priority	Road Name	From	To	Length (km)	Approx cost	ADT	Score
1	Pipers Creek Rd	End of seal	Wirrang Drive	3.9	\$2,150,000	147-233	30.0
2	Spooners Ave	Chain o Ponds Rd	Collombatti Rd	5.3	\$2,500,000	160-174	26.1
3	Pipers Creek Rd	Wirrang Drive	Ballengara Rd	3.8	\$1,900,000	153	24.5
4	Collombatti Rd	Swan Lane	Hughes Access	3.5	\$1,750,000	178	24.2
5	Smiths Creek Rd	Crowther Dr	Crowther Dr	2.6	\$1,235,000	164	22.9
6	First Lane	Gladstone St	Smith St	1.1	\$550,000	169	18.8

Table 1 – 2019 ARC Rural Roads Project Assessment Outcome.

In May 2019, in response to the proposed ranking, Council resolved (2019.455).

That Council endorse the following priority list for the bitumen sealing of gravel roads (in order of priority):

- 1. Piper Creek Road (End of seal to Wirrang Drive)**
- 2. Spooners Avenue (Chain O Ponds Road to Collombatti Road)**
- 3. Pipers Creek Road (Wirrang Drive to Ballengara Road)**
- 4. Collombatti Road (Swan Lane to Hughes Access)**
- 5. Smiths Creek Road (Crowther Drive to Crowther Drive)**
- 6. First Lane (Gladstone Street to Smith Street)**

At the June 2023 Council meeting, Council resolved (2023.73):

That Council review the priority listing for bitumen sealing of gravel roads adopted at the May 2019 Council meeting and bring back a report to a future meeting identifying if there is any change to the previous analysis.

The resolution commentary indicated considerations of flooding, bushfires, population growth and strategic location be included. Indeed, the ARC model, which is primarily a road safety risk assessment methodology, lacks coverage of key variables crucial for understanding the road functionality and safety.

KEY CONSIDERATIONS

A comprehensive review of the priority listing was undertaken, encompassing the following tasks.

- New traffic data was collected for Spooners Avenue (Chain o Ponds Road to Collombatti Road - 2022), Pipers Creek Road (End of Seal to Wirrang Drive - 2023), and Pipers Creek Road (Wirrang Drive to Ballengara Road - 2023).
- Additionally, investigations included a review of traffic growth along Spooners Avenue and Pipers Creek Road, analysis of Spooners Avenue traffic during flood events, flood modelling to assess Spooners Avenue's resilience, and a review of historic traffic counts from the 2013 Flood Event at Spooners Avenue.

Note traffic growth between 2022 and 2023 was determined to be inconsequential to outcome.
Note: ADT = Average Daily Traffic, VPD = Vehicles Per Day, DT = Daily Traffic

Key findings from the assessment include a notable escalation in construction, operation, and maintenance costs since 2019 (between 16.8% and 21.4% depending on the sources), resulting in a reduced benefit-cost ratio (BCR) and underscoring the necessity for external funding support. Pipers Creek Road has seen fewer new residential constructions in the past five years than Spooners Avenue, resulting in a less pronounced traffic increase. Conversely, Spooners Avenue has experienced an approximate yearly ADT increase of 3-5 over the past four years.

An analysis of traffic data from the 2013 flood event revealed a significant surge in traffic, with the ADT increasing from 160 to 302 over a 20-day period and peaking at 1942 vehicles on 28/02/2013 compared to the usual ADT of 160. Spooners Avenue is subject to regional flooding of approximately 1.50m during a 10% flood event (equivalent to a 1 in 10-year event), but it provides flood-free access between the floodplain and Frederickton during frequent flood events with less than a 10% Average Exceedance Probability (AEP).

With consideration of the additional information, two methods were employed including:

1. Revisiting the previous **ARC model** with updated data,
2. Completing a **Pairwise Multi-Criterion-Analysis (P-MCA)** which considers factors outside of the ARC model.

ARC model Revision

An update of the ARC model was completed incorporating updated traffic data, road crash history, cost, and new properties.

Priority	Road Name	From	To	Length (km)	Approx cost	ADT	ARC Score
1	Pipers Creek Rd	End of seal	Wirrang Drive	3.9	\$3,900,000	220	27.7
2	Spooners Ave	Chain o Ponds Rd	Collombatti Rd	5.3	\$5,300,000	180	25.4
3	Pipers Creek Rd	Wirrang Drive	Ballengara Rd	3.8	\$3,800,000	153	22.5
4	Collombatti Rd	Swan Lane	Hughes Access	3.5	\$3,500,000	178	21.5
5	Smiths Creek Rd	Crowther Dr	Crowther Dr	2.6	\$2,600,000	164	20.7
6	First Lane	Gladstone St	Smith St	1.1	\$1,100,000	169	15.2

Table 2 – 2024 ARC Rural Roads Project Assessment Outcome

As indicated in Table 2, the ARC model maintains consistent priority outcomes compared to those identified in the 2019 evaluation. Despite fluctuations in scores, the gap between the top two priority outcomes has diminished from 3.9 to 2.3, suggesting a closer alignment in their relative importance.

However, it is important to note that the ARC model does not account for various factors raised by Councillors, such as flooding, bushfires, and strategic location. To address this limitation, a P-MCA was conducted to compare outcomes. This approach allows for the inclusion of additional factors beyond those considered in the ARC model, providing a more comprehensive assessment of priorities.

Pairwise Multi-Criterion-Analysis (P-MCA)

A P-MCA was completed to incorporate various factors associated with the adjacent sites. The assessment criteria comprised:

- Benefit Cost Ratio,
- Road Usage,
- Road Connectivity and Economic Impact,
- Road Safety (Crash History),
- Road Condition and Geometry,
- Flood Immunity,
- Environmental Impact,
- Social Equity,
- Land Ownership.

These criteria were utilised to evaluate the subject roads, along with additional considerations. The results of this evaluation are outlined in Table 3.

MCA Results	Pipers Creek Road (3.9km)	Spooners Avenue (5.3km)	Pipers Creek Road (3.8km)	Collombatti Road (3.5km)	Smith Creek Road (2.6km)	First Lane (1.1km)
Score/100	75.1	79.6	46.7	50.2	44.4	29.8
Resulting Rank	2	1	4	3	5	6

Table 3 – Pairwise Multi Criterion Analysis Outcome

The outcome indicated Spooners Avenue (Chain o Ponds Rd to Collombatti Road) as the top priority with a score of 79.6, whereas Pipers Creek Road obtained 75.1.

Upon further examination of zoning and forecasted population growth indicators, it supports the prioritisation of Spooners Avenue. Indeed, it is projected that Spooners Avenue will experience a population growth of 9.6% by 2036, whereas Pipers Creek Road is anticipated to have a lower growth rate of 6%.

IMPACT ON FINANCIAL SUSTAINABILITY

In accordance with the 2019 Council resolution, the criteria for implementing the bitumen sealing of a gravel road stipulates that such an application will typically be entertained only if more than 75% of the capital cost can be secured through grants and/or resident contributions. Currently, there is no proposal for the Council to allocate funds for the sealing of these gravel roads.

Considering the rising costs of construction, operation and maintenance, and due to financial sustainability concerns, priority should be given to resealing and maintaining existing assets to maintain the level of service to the community without extra financial strain.

STAKEHOLDER ENGAGEMENT

During the public forum held in June 2023, residents from Spooners Avenue and Pipers Creek Road actively engaged with the Notice of Motion. Speakers from both neighbourhoods articulated compelling reasons advocating for their road's prioritisation.

Other Matters

Nil

CONCLUSION

In response to the June 2023 Council resolution, a review of gravel road bitumen sealing priority listing was conducted, focusing on Spooners Avenue and Pipers Creek Road. The review highlighted increased construction costs impacting feasibility. It reiterated the need for grant funding due to the Council's financial position. Upon revisiting the ARC model, Pipers Creek Road retained its position as the top priority. However, the more detailed P-MCA analysis favoured Spooners Avenue for prioritisation. This decision was further supported by the projected population growth, which confirmed Spooners Avenue as the preferred choice over Pipers Creek Road for infrastructure improvements.

ATTACHMENTS

1. Flood Modelling- Spooners Avenue Flood Immunity REVC [10.5.1 - 4 pages]

10.6 Slim Dusty Centre - Council application to become Crown Land Manager

Officer Peter Allen, Group Manager Commercial Business

File Number F22/3031

PURPOSE

Seek Council's endorsement to apply to become the Crown Land Manager of the site of the Slim Dusty Centre, Macleay Valley Way, South Kempsey.

RECOMMENDATION

That Council applies to Crown Lands, Department of Planning, Housing and Infrastructure, to become Crown Land Manager of the Slim Dusty Centre Crown Land, Lot 299, DP 729768.

BACKGROUND

The site of the Slim Dusty Centre, on Macleay Valley Way, South Kempsey is split across two lots: the Crown Land site containing the building and car park, being Lot 299, DP 729768 (*highlighted in purple below*) and the front portion of the block owned by the Slim Dusty Foundation Limited, being Lot 7, DP737376 (*highlighted in orange below*).

Council is required to pay rent on the Crown Land lot. We have recently received a 50% rental rebate from Crown Land but are still required to pay \$18,000 per year.

Noting that Council is already managing and investing in this asset, it is prudent to apply to become the Crown Land Manager (CLM). As CLM, Council would no longer be required to pay rent on this site and could also draw on the Macleay Valley Coast Holiday Park revenue for site maintenance and improvements, if required.

In becoming CLM, Council would be required to develop a Plan of Management and manage the site going forward.

Alternatively, Council could continue to pay rent, or could acquire the land. Acquiring the land would cost Council the market value (unless a concession was granted by NSW Treasury), would limit alternative funding options and take time to progress. Council could always revisit the acquisition in the future, if desired.



Image: Slim Dusty Centre Site

KEY CONSIDERATIONS

Policy and Legislation

CLM application complies with the *Crown Land Management Act 2016*.

Strategic Alignment

This report addresses the following 2023-24 Operational Plan action items:

- EC.OP4 - Manage Slim Dusty Centre operations and capital improvements to maximise utilisation and performance of the centre.
- LE.OP26 - Implement financial sustainability strategies, initiatives and actions as detailed within the adopted Long Term Financial Plan.

Impact on Financial Sustainability

Becoming CLM would reduce our rent payable to Crown Land by \$18,000 p.a. and provide future access to funding for the Centre from the Macleay Valley Coast Holiday Park revenue, if required. It would also mean that the site would be eligible to apply for grant funding through the annual Crown Reserves Improvement Fund (CRIF).

Stakeholder Engagement

Council has been in discussion with Crown Lands on this issue and have flagged our interest to become CLM. Crown Lands staff have indicated that they are budgeting for the transfer in the 2024-25 financial year.

Other Matters

It is worth noting that under the transfer arrangements of the Slim Dusty Centre to Council, Council has committed to purchasing the front lot from The Slim Dusty Foundation Limited at an independently valued price, prior to 14 December 2027.

CONCLUSION

Noting that Council is already managing and investing in the Slim Dusty Centre Crown Land, and the financial benefits outlined above, it is recommended that an application be submitted to the Department of Planning, Housing and Infrastructure, Crown Lands, to become Crown Land Manager of the Slim Dusty Centre Crown Land, Lot 299, DP 729768.

ATTACHMENTS

Nil

10.7 Road Safety Strategy

Officer Cliff Toms, Investigations Engineer

File Number F21/3051/01

PURPOSE

Council has, in partnership with Transport for NSW (TfNSW), funded development of a Road Safety Strategy (RSS). The strategy has been developed on Council's behalf by specialist consultants, Safe Systems Solutions Pty Ltd.

Progress of the strategy was reported to the Executive Leadership Team during September 2023 with a recommendation to support exhibition of the draft final plan. The plan was exhibited during October 2023 via various mediums including Council's website "have your say", online survey and local media adverts. The draft final strategy was reviewed considering feedback received for the exhibition of the strategy. A final strategy has been developed and Council endorsement of the strategy is now recommended to enable the strategy to proceed towards its implementation.

A copy of the final Road Safety Strategy is attached to this report.

RECOMMENDATION

That Council:

- 1. endorses the Road Safety Strategy 2024-2034 attached to this report and**
- 2. supports implementation of the plan as part of Council's future delivery and operational plans noting opportunities for external funding of the identified actions are to be pursued through relevant state and federal government programs.**

BACKGROUND

The RSS is a key strategy that aligns with Federal and NSW Government plans for improving road safety with the principal aim of reducing road accidents and related trauma. The NSW Institute of Public Works Engineering Australia (IPWEA) have in collaboration with TfNSW encouraged Councils to develop a RSS to better plan and deliver road safety outcomes for their respective LGA's.

Council's internal audits 2023 supported the need for the RSS, specifically with the undertaking of road safety audits as a key action to better manage road related risks.

In the five years from 2017 to 2021, 107 people were seriously injured and 14 people lost their lives on the roads in Kempsey Shire. On average 19 serious injury crashes and 2 fatal crashes are occurring every year, which cause an immeasurable amount of grief, loss, and tragedy for our community.

The RSS aims to achieve the Transport for NSW Road Safety Action Plan (2026) target of halving the number of road deaths on our roads and reducing the number of serious injuries by 30% by 2030. We aim through the implementation of the RSS to play our part in reaching these targets and making our roads and streets safer.

KEY CONSIDERATIONS

To understand road safety issues within our Shire crash data for our local roads was examined together with feedback from our community and working with road safety experts. Some key findings from the available crash data for the Kempsey Shire are as follows.

- Approximately 88% fatal and serious injuries occurred on Council controlled roads with the remaining 12% on State controlled roads.
- Over the past five years, 13 fatal crashes and 97 serious injury crashes have occurred, resulting in the tragic loss of 14 lives and a further 107 individuals who have been seriously injured in our community.
- Of the 22 Local Government Areas (LGAs) that make up the Northern Region of NSW, Kempsey sits below the average for fatal and serious injuries per population.
- Over the past five years, on average, there is one road fatality per 4,898 people in NSW and one fatality per 2360 people in Kempsey Shire, double the average compared to that of the state's average. There is one road fatality per 2783 people in the Northern region.
- For serious injuries, there is one injury per 343 people in NSW, one per 327 people in Kempsey Shire and one per 296 people in the Northern region.

Development of the RSS included feedback on road safety from the community. Key findings from the community feedback are as follows.

- The participants in the community survey expressed that rural areas and arterial roads were the primary focus of their concern regarding road safety.
- Survey respondents rated road conditions and speeding as their main road safety concerns followed by concerns to safe cycling paths, insufficient footpaths and mixing of cyclists and vehicles on roads.
- The feedback shows the community believes speed limits are appropriate around schools with many stating speeds are “about right” in rural areas and around towns and village

The RSS has been developed with the overarching vision to achieve zero fatalities within our Shire by the year 2050 and, by 2030 halve the number of road deaths on our roads and reduce the number of serious injuries by 30%. The RSS aims to achieve our vision and targets through the implementation of the recommended road safety actions designed to respond to the data findings, research, and community feedback.

The RSS does not include actions to for undertaking of road work improvements, however, many of the actions once implemented will support and inform Councils planning, design, and construction activities as endorsed through the annual adoption of Council's Operational Plans.

Policy and Legislation

Councils as road authorities have the full range of responsibilities in relation to public roads as required of all road authorities. This is specified under Section 7 of The NSW Roads Act 1993.

Councils also have a duty of care under the Civil Liberties Act 2002 to take precautions against any risk of harm. Together with TfNSW, Councils owe a duty of care to all road users by maintaining the highest safety standard that is practical for the road network under its care. The RSS schedules sustainable actions aimed to reduce road user risks within our Shire.

Strategic Alignment

The RSS is a key strategy that aligns with Federal and NSW Government plans for improving road safety with the common aim of reducing road accidents and related trauma.

The RSS aligns with Council's Community Strategic Plan objectives for improving safety for our community. The RSS supports and informs other key strategies and plans such as Councils Asset Management Strategy, Transport Asset Management Plan, Bike plan, and Pedestrian Access Mobility Plan.

Council's internal audits 2023 identified the need for the RSS, specifically with the undertaking of road safety audits as a key action to better manage road related risks. The results of audits will provide another data source to assist preparation of future transport infrastructure designs and scheduling of transport works as part of Council's future Operational Plans.

Impact on Financial Sustainability

Implementation of the RSS is reliant upon future funding by Council and/or external funding sources as provided by State & Federal governments. The RSS Action plan has identified 40 key actions planned to be delivered over the next 10 years. The action plan schedules 20 actions identified as "ongoing", expected to be delivered and funded as part of Council's annual operational budgets. The remaining 20 actions are scheduled to be delivered in short (1-2 years), medium (3-5 years) and long (6+ years) periods with an estimated capital cost in the vicinity of \$500K. This amount is currently reflected in the LTFP. There is expected to be opportunities for external funding of these actions eligible for funding under NSW & Federal Government Road Safety programs. Any funding offers provided under these programs will reduce capital funding required by Council.

Community Engagement

Development of the RSS has involved community and stakeholder engagement generally in accordance with an Engagement Plan developed for the project. Community feedback on road safety issues was initially gathered by an on-line survey. Key stakeholders were invited to provide feedback via on-line meetings and emails. Council staff have been engaged to provide feedback with Managers invited to comment via a face-to-face meeting or respond to email invites for comments. The draft final RSS was exhibited for comment during October 2023 with comments received considered as part of the development of the final RSS. Limited feedback from the exhibition has been received, possibly due to the strategic nature of the project involving strategic planning and education road safety actions.

Details of the community feedback are provided in the "Our Community Engagement Section" of the RSS. Copies of the engagement surveys and results are attached to this report.

Other Matters

Nil

CONCLUSION

Council is committed through the adoption of the Community Strategic Plan 2042 to build a "safe, sustainable and welcoming community". The Road Safety Strategy objectives and recommended actions aligns with this vision. Adoption of the RSS demonstrates Councils commitment to road safety as a shared responsibility with State and Federal Governments. Adoption of the RSS will also provide for a clear direction in provision of its road safety services for the community with the common aim of reducing road accidents and trauma.

ATTACHMENTS

1. Roads & Safety Strategy v FINAL [10.7.1 - 40 pages]
2. Road Safety Engagement- Initial Surveys Report.docx [10.7.2 - 62 pages]

3. Road Safety Strategy Exhibition Survey Report [**10.7.3** - 17 pages]

10.8 Write-off of Outstanding Debt

Officer Nicole Poe, Revenue Officer

File Number F22/1198

PURPOSE

In accordance with Clause 213 of the *Local Government (General) Regulation 2005*, approval is sought to write off debts due to Council as they are not considered cost effective to recover.

RECOMMENDATION

That Council approves the write-off of outstanding debts totalling \$24,567.09 as detailed in this report as at 30 June 2024.

BACKGROUND

Good management practice dictates that outstanding debtors are reviewed at least annually to determine amounts considered doubtful in terms of recovery. This is consistent with accounting practice and standards and ensures receivables are not overstated in Council's annual financial statements.

Only the accounts where all practical avenues have been pursued and further action is not considered cost effective are considered for write off purposes. These accounts are detailed below. Significant effort has been expended in pursuing the recovery of these outstanding debtor accounts, however these efforts have been unsuccessful.

Account	Name	Year	Amount	Comment(s)
3488	North Coast Towing	2020	\$17,236.94	Traffic controls expenses relating to three motor vehicle accidents that were unable to be invoiced prior to finalisation of the relevant insurance claim.
4259	WARREN TRICKER	2020	\$7,330.15	Unable to locate, RTS mail and not a ratepayer
TOTAL			\$24,567.09	

Debtor: 3488 – North Coast Towing

North Coast Towing are a heavy vehicle towing and salvage service. There were three truck rollover accidents that occurred in our Shire on the Pacific Highway between June 2019 and 2020. KSC was seeking reimbursement of costs for KSC to attend these truck roller overs for clean up as well as any landfill charges.

It's important to note that these debts were not incurred by North Coast Towing, however in ordinary circumstances, they assist Council with recovery against the vehicle's insurer when recovering their own costs.

Unfortunately, there was a delay with staff collating the information and costs to lodge with North Coast Towing who subsequently lodge any invoices with the respective insurance company, and unfortunately, the insurers had already settled and closed off the insurance claim by the time the invoices were sent to North Coast Towing.

This delay was caused due the implementation of Council's new finance system at this time and the additional manual effort that was required to reconcile wage costs during this process.

At this time, it not considered economical to undertake further recovery action in relation to these debts as the cost of recovery of the individual debts would quickly exceed the value of the debt.

Debtor: 4259 – Warren Tricker

This invoice was also issued seeking reimbursement of costs incurred by Council in relation to a motor vehicle accident that occurred in 2020. Council attended undertaking traffic control etc. Invoices posted to Mr Tricker were returned to sender. The debtor is not a ratepayer, and Council was unable to locate a new forwarding address. The vehicle was uninsured at the time of the accident.

Similar to above the likelihood of locating the debtor and receiving payment is low and the cost of further recovery action will quickly exceed the value of the debt.

KEY CONSIDERATIONS

Policy and Legislation

In accordance with section 213 *Local Government (General) Regulation 2021* a Council resolution is required to write-off these debts.

Strategic Alignment

Nil.

Impact on Financial Sustainability

Good management practice dictates that outstanding debtors are reviewed at least annually to determine amounts considered doubtful in terms of recovery. This is consistent with accounting practice and standards and ensures receivables are not overstated in Council's annual financial statements.

Stakeholder Engagement

As per above in the Background section, revenue department have advised of actions taken to recovery the outstanding debt.

Other Matters

Nil.

CONCLUSION

An annual assessment of debts for write-off is encouraged by Council's auditors as it provides a more realistic picture of Accounts Receivable that will be achieved in Council's Annual Financial Statements. This does not preclude Council from recovering the outstanding monies in the future should circumstances change.

It is recommended that the debts as listed within this report be written off.

ATTACHMENTS

Nil

10.9 Completion of Works on Private Land

Officer Michael Jackson, Director Operations & Planning

File Number T6-21-22

PURPOSE

As resolved by Council at the June 2023 meeting, the following information is required to be reported back to Council and the Community after completion of authorised works on private land.

“upon completion of the works report back to Council and the Community as per s67(3) and s67(4) of the Local Government Act 1993”

A report of work to which subsection (2)(b) applies must be given to the next meeting of the Council after the work is carried out specifying--

- 1. the person for whom the work was carried out*
- 2. the nature of the work*
- 3. the type and quantity of materials used*
- 4. the charge made for those materials*
- 5. the total of the number of hours taken by each person who carried out the work*
- 6. the total amount charged for carrying out the work (including the charge made for materials)*
- 7. the reason for carrying out the work.*

The works completed were in accordance with s67(2)(b) of the *Local Government Act 1993* to complete the Right of Way (roadworks) required under Consent T6-21-22 for the land owner of DP1265394 (now known as DP1289926) due to an error issuing a Subdivision Certificate prior to receiving an application and necessary inspections being carried out.

RECOMMENDATION

That Council notes the information provided as a requirement in accordance with s67(3) and s67(4) of the *Local Government Act 1993*.

BACKGROUND

In November 2021, Council granted Development Consent T6-21-22 (the Consent) for a three lot subdivision in Kundabung. This Consent was conditional, requiring the proponent to obtain a Subdivision Works Certificate and carry out roadworks for a right of way (the RoW) to access the proposed lots. Condition 8 of the Consent in particular provides specific construction standards for the RoW, and the NSW Rural Fire Service’s General Terms of Approval provide additional roadworks required to comply with bushfire standards.

The incomplete roadworks were necessary to provide legal and practical access to the newly created lots. Council would not typically issue a Subdivision Certificate without all the required works being completed, however have done so on this occasion.

In our view, Council was liable for issuing the subdivision certificate in breach of section 6.15 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Regrettably because section 6.4 of the EP&A Act provides that a subdivision certificate is taken to be part of the development consent that authorised the carrying out of the subdivision, and the certificate issued by Council in this case is to the effect that the provisions of section 6.15 of the EP&A Act were satisfied in relation to the proposed subdivision, the certificate effectively overrides the conditions of the Consent to the extent of any inconsistency.

The result of the Subdivision Certificate being taken to be part of the Consent is that Council is potentially liable to purchasers of lots in the approved subdivision if they are required to bear or contribute to the cost of upgrading roads which the Consent required to be carried out but, despite the issuance of the Subdivision Certificate, were not.

The Applicant was made aware of the error in issuing the Subdivision Certificate and indicated they believe they now have no obligation to provide the required RoW. Whilst that position may be ethically questionable, it is considered legally factual.

Council's Infrastructure Delivery team costed the works required to complete the RoW at \$125,000.

The information regarding the completed works is as follows:

1. *the person for whom the work was carried out*

Gavin Landini

2. *the nature of the work*

To complete the Right of Way (roadworks) required under Consent T6-21-22

3. *the type and quantity of materials used*

Materials

Description	Quantity	Unit
900 dia Concrete headwalls	2	each
600 dia Concrete headwall	4	each
900 dia Precast concrete pipes	4	each
600 dia Precast concrete pipes	8	each
Concrete	6	m3
Aggregate	12	tonne
Uncrushed gravel (roadbase)	2400	tonne
Select rock	72	tonne

4. *the charge made for those materials*

Landowner Charge = \$0.

Cost to Council = \$69,140.

5. *the total of the number of hours taken by each person who carried out the work*

Position	Hours
Team Leader Civil Works	65
Backhoe Operator	19
Team Leader Construction	48
General Labourer	6
Team Leader Road Works	114
General Labourer	85
Backhoe Operator	82
General Labourer	71

A/Team Leader Construction	9
Coordinator Works	16
Plant Operator Roller	35
General Labourer/Operator	22
Low Loader Truck Operator	4
Truck Driver	8.5
Backhoe Operator	9
General Labourer/Operator	5

6. *the total amount charged for carrying out the work (including the charge made for materials)*

Landowner Charge = \$0. Cost to Council = \$123,224.

7. *the reason for carrying out the work.*

To avoid potential litigation arising from an error.

KEY CONSIDERATIONS

Policy and Legislation

This report is with reference to section 67(2)(b) of the *Local Government Act 1993* and has resolved Council's liability under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Strategic Alignment

The previous recommendation has minimised litigation related costs.

Impact on Financial Sustainability

The cost of \$125,000 was unbudgeted. Funds were bought forward from future years road related allocations.

Stakeholder Engagement

Two of the three lots had been on-sold by the developer and all owners were contacted prior to the works.

Other Matters

Nil

CONCLUSION

Council note the information provided as a requirement in accordance with s67(3) and s67(4) of the *Local Government Act 1993*.

ATTACHMENTS

Nil

10.10 Internal Audit Charters

Officer Matthew Bentley, Internal Auditor

File Number F23/2510

PURPOSE

Recommend the adoption of revised Audit, Risk and Improvement Committee (ARIC) and Internal Audit Charters.

RECOMMENDATION

That Council adopt the revised:

- 1. Audit, Risk and Improvement Committee Charter; and**
- 2. Internal Audit Charter.**

BACKGROUND

Council adopted the current versions of the Audit, Risk and Improvement Committee and Internal Audit Charters at its 15 March 2022 meeting. At that time, the charters underwent several key changes to ensure alignment with the new Office of Local Government (OLG) guidelines for risk management and internal audit. Key changes included expanding functional responsibilities of the Committee, revised composition of the Committee and the renaming of the Committee. The charters are based on model charters developed by the OLG. The internal audit charters need to be reviewed every two years.

The internal audit charters have been revised with some minor modifications incorporated including changes to reflect the new Executive Leadership Team structure and references to the new OLG internal audit guidelines.

The revised charters were endorsed by the ARIC at its 7 February 2024 meeting.

The revised charters have been provided to Council for adoption with changes tracked in the documents to enable easy identification of the proposed changes.

KEY CONSIDERATIONS

Policy and Legislation

The revised charters have been developed in accordance with the model OLG charters and the new OLG guidelines for risk management and internal audit for local councils in NSW.

Strategic Alignment

The revised charters support the effective operation of the ARIC and Internal Audit function which is a key action of Councils delivery program and operational plan 2023-2024.

Impact on Financial Sustainability

Nil.

Stakeholder Engagement

The revised draft charters have been approved by the Executive Leadership Team and endorsed by the ARIC at its 7 February 2024 meeting.

Other Matters

Nil.

CONCLUSION

The revised charters have been endorsed by the ARIC and are recommended for adoption by Council.

ATTACHMENTS

1. Audit, Risk and Improvement Committee Charter- Jan 24- Final Draft [**10.10.1** - 10 pages]
2. Internal Audit Charter- Jan 24- Final Draft [**10.10.2** - 5 pages]

10.11 Crescent Head Holiday Park - Shed Relocation

Officer Harry Tory, Commercial Assets Coordinator

File Number F23/3447

PURPOSE

Provide information regarding the full project cost for the Crescent Head Holiday Park maintenance shed, including relocation of the shed and installation of the disability-accessible footpath.

RECOMMENDATION

That Council notes the final cost of the Crescent Head Holiday Park maintenance shed project.

BACKGROUND

In June 2023 Council completed construction of a new maintenance shed at the Crescent Head Holiday Park, funded by the profits generated from the operations of the Macleay Valley Coast Holiday Parks. In response to the community's concerns regarding access and visual amenity, Council undertook further investigation and community consultation and on 19 September 2023, Council resolved:

That Council:

1. *thank Crescent Head Ratepayers and Residents Association (CHRARA), Crescent Head Country Club and Australian Tourist Park Managers (APTM) for their positive contribution to the on-site meeting on Thursday, 24 August 2023;*
2. *relocate the maintenance shed to the proposed location in sites 100-102, adjacent to the current site;*
3. *reinstate a 1.5 metre wide, disability-accessible footpath to the east of the current shed location;*
4. *retain the vacated shed slab for holiday park use, such as storage of garbage bins; and*
5. *request a report to a future meeting on the full cost of the project after completion.*

In accordance with resolution part two and three, works were delivered on schedule, reopening the area to the public prior to the 2023 Christmas holidays.

The total project cost was \$273,291, which included an estimated \$97,900 to relocate the shed and create the bin storage area. A breakdown of the full project cost following completion is attached, in accordance with resolution part 5.

We note that Council intends to undertake further landscaping to the area to improve the environment and visual amenity.

KEY CONSIDERATIONS

Policy and Legislation

The following policies, legislation and regulations are relevant to the items considered within this report:

- *Crown Land Management Act 2016*
- *Local Government Act 1993*

- *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005*
- *Holiday Parks (Long Term Casual Occupation) Act 2002*

The recommendations in this report, as detailed above, comply with these policies, legislation, and regulations.

Strategic Alignment

This report addresses the following 2023-24 Operational Plan action items:

- EC.OP13: Management of Macleay Valley Coast Holiday Parks

Impact on Financial Sustainability

The Crescent Head Maintenance Shed project was funded via the Macleay Valley Coast Holiday Parks.

Stakeholder Engagement

Council received significant feedback on the original location of the shed and responded to this feedback, working with the community to find a suitable resolution that meets the community's expectations and supports Council's financial and operational objectives. Council has provided ongoing updates to the community via social media, email and Council reports and held a further stakeholder meeting on 24 August 2023, to provide the Crescent Head Country Club and CHRARA an opportunity to hear Council's views on the shed and raise its views and concerns.

CONCLUSION

Council has worked with the community to deliver an outcome that addresses the needs of both the Crescent Head Holiday Park and the concerns of the broader community.

ATTACHMENTS

1. Crescent Head Maintenance Shed Project Costs [**10.11.1** - 1 page]

10.12 Statement of Cash and Investments - February 2024

Officer Stacey Milligan, A/Finance Manager

File No F22/3106

PURPOSE

In accordance with the *Local Government (General) Regulation 2021* (the Regulation), a report on investments is to be provided monthly to Council.

RECOMMENDATION

That Council receives and notes the report.

BACKGROUND

Section 212 of the Regulation states:

Local Government (General) Regulation 2021

Part 9 Division 5 Section 212

212 Reports on Council investments

- (1) The responsible accounting officer of a Council:
 - (a) must provide the Council with a written report (setting out details of all money that the Council has invested under section 625 of the Act) to be presented:
 - (i) if only one ordinary meeting of the Council is held in a month, at that meeting, or
 - (ii) if more than one such meeting is held in a month, at whichever of those meetings the Council by resolution determines, and
 - (b) must include in the report a certificate as to whether or not the investment has been made in accordance with the Act, the regulations and the Council's investment policies.
 - (2) The report must be made up to the last day of the month immediately preceding the meeting.
- Note: Section 625 of the Act specifies the way in which a Council may invest its surplus funds.

KEY CONSIDERATIONS

Policy and Legislation

The *Local Government (General) Regulation 2021*, Part 9 Division 5 Section 212 requires the responsible accounting officer of a Council to provide the Council with a written report setting out details of all money that the Council has invested under section 625 of the Act to be presented. This report satisfies that requirement.

Council's investments are in accordance with the *Local Government Act (1993)* and Council's investment policy.

Strategic Alignment

Robust investment and cash management aligns with Council's objective to be financially sustainable.

Impact on Financial Sustainability

The effective management of cash and investments is a key contributor to Council's financial operating result and consequently, financial sustainability.

Stakeholder Engagement

Nil.

Other Matters

Council held \$105.8M of cash and investments as of 29 February 2024, comprising \$9M of cash at bank and \$96.8M of investments.

The market valuation of Council's investments is reported in section 5 of the attached Investment Report Pack.

In February, the weighted average running investment yield was 4.77%, which is a slight improvement on the yield reported in January (4.76%).

Investment income for the financial year-to-date is \$3,205,751 which is above the year-to-date budget of \$3,112,870.

As previously advised to Council, a review of the investment strategy in light of the current economic environment and cash holding of Council, is planned to be conducted. The intention is to ensure best practice management of cash and investments to optimise returns while maintaining required operational funds. This review has been delayed as resources have been diverted to completing the 2022-23 annual financial statements.

CONCLUSION

Council held \$105.8M in cash and investments on 29 February 2024.

Details of investments, investment performance and market commentary are included in the attachment to this report.

ATTACHMENTS

1. Statement of Cash & Investments - February 2024 [**10.12.1** - 41 pages]

11 REPORTS FROM COUNCILLORS

11.1 Notice of Motion - Public Forum - Non-agenda Items

Councillor Cr Bain, Councillor

File Number F22/1930

PURPOSE

In the past the Code of Meeting Practice allowed community members to raise issues at a Public Forum that were not on the agenda. In May 2019 Council adopted a code that changed the timing of the Public Forum, and their ability to raise issues. The current Code of Meeting Practice limits community members to only speak on items listed in the business paper. I consider that this limits the democratic process, and results in community frustration, reinforcing a perception that Council does not listen to the cXommunity. I consider that amending the code to allow community driven issues to be raised at the Public Forum will result in an improved relationship between Council and the community.

RECOMMENDATION

That Council amend the Code of Meeting Practice as follows:

Council will allow members of the public to address Council during the public forum on matters not on the meeting agenda subject to the following:

- 1. Priority shall be given to speakers addressing matters on the agenda.**
- 2. A précis of the address will be provided in writing to the General Manager at least two working days prior to the meeting.**
- 3. Council has the right to refuse permission if the matter is one which will be the subject of a report to a subsequent Council meeting or a matter where a speaker has addressed a previous Council meeting in the public forum.**

BACKGROUND

The Local Government Act 1993 clearly outlines the role of Councillors, this proposal addresses Section 232 (1)

- (b) to make considered and well-informed decisions as a member of the governing body
- (d) to represent the collective interests of residents, ratepayers, and the local community,
- (e) to facilitate communication between the local community and the governing body.

To support the above roles, it is important that we, as Councillors, can hear the issues that are important to the community. To make informed decisions, to represent the collective interests of the community we must facilitate direct communication, the proposal meets these requirements. There is potential for the process to become unwieldy, therefore there are three criteria in the proposal to enable streamlining of the process.

This proposal adds to the Office of Local Government Model Code of Meeting Practice. The OLG code provides a minimum standard, it allows the governing body to add to the code.

KEY CONSIDERATIONS

Policy and Legislation

Local Government Act

Office of Local Govt Model Code of Meeting Practice

Strategic Alignment

EC.DP1 - Work with business and community to build economic and employment capacity

CO.DP5 - Inspire connection, equality, and inclusion in our community.

LE.DP1 - Meet community needs and expectations and fulfill Council's responsibilities.

Impact on Financial Sustainability

Limited to some staff time to rewrite a section of the Code of Meeting Practice

Stakeholder Engagement

Proposal was suggested by community members and needs to be put on Public Exhibition for 42 days.

Other Matters

Nil.

CONCLUSION

That Council support the proposal to increase community participation by being able to address the Public Forum on issues not on the agenda.

ATTACHMENTS

Nil

GENERAL MANAGER'S COMMENT

The Office of Local Government last reviewed the Code of Meeting Practice for Local Council's in New South Wales in 2018.

At that time the Office published a Circular, 18-45 Commencement of the new Model Code of Meeting Practice for Local Councils in NSW, that stated among other things that the provisions recommended by the Office and adopted by Council represent "what OLG sees to be best practice".

The relevant section is reproduced below (emphasis added).

Are councils required to adopt the provisions of the Model Meeting Code relating to public forums?

No. These have not been made mandatory in recognition of the fact that there will be a need for some variation in practice to suit local needs. Councils are able to adopt them, adapt or supplement them to meet local need, or to adopt their own provisions governing public forums. However, OLG would strongly recommend that councils make provision in their codes of meeting practice for some form of public access or input into council decision making.

The provisions governing public forums contained in the Model Meeting Code reflect what OLG sees to be best practice and have been informed by the following considerations:

Councils should have a comprehensive community engagement strategy in place to ensure that the views of affected persons and (where relevant) the community as a whole are considered in council decision making. This will soon be a statutory requirement. Public forums at council meetings are not an appropriate substitute for effective community consultation and councils need to be mindful that the views expressed at public forums will not necessarily be representative of the views of other affected parties or the broader community.

Public forums should operate as an input into Council decision-making at meetings. This means that they should be focussed on the matters under consideration at a Council meeting and not permit free ranging discussion of other matters that are not being dealt with at the meeting.

In the interests of ensuring informed decision making, there should be a gap between the public forum and the meeting to allow Councillors the time to properly consider matters raised at the public forum and, if necessary, to seek further input and guidance from staff before being required to make a decision on those matters.

Council meetings should operate as a forum for debate and decision making by the community's elected representatives. Public forums should not operate in a way that displaces this as the principal purpose of Council meetings nor operate as a platform for others to participate in debate with elected officials on matters under consideration at a meeting.

Participation in a public forum is a privilege not a right. It should be within the discretion of a Council to withdraw this privilege where a person fails to respect meeting rules or engages in disorderly conduct.

A key role of Councillors is to raise issues with the Council that they have been approached about by members of the community. Councillors have a number of ways to undertake this responsibility. They can email/phone questions to the General Manager which will then be responded to by the relevant staff member. This is often the most efficient manner to respond to such questions. The other avenue for Councillors to respond is to ask a Question on Notice or to place a Notice of Motion on the Council meeting agenda. This process allows for the Councillor to undertake a process of understanding the question/issues being raised by the community member and to determine if it is more of an individual matter or something that may be of interest to the wider community. This allows the Councillor to make an assessment of the relevance, priority and value of the questions/issue and to determine the most appropriate course of action to take.

If the above processes are followed, then there is no need for what is being proposed in this NoM.

Should Council wish to consider additional opportunities for members of the public to ask questions or address Council on any topic it may wish to establish a new forum for such opportunities. There would be many issues that would need to be worked through if this was to be considered not the least of which is how it would be resourced.

11.2 Notice of Motion - Public Forum and Question Time

Councillor Cr Wyatt, Councillor

File Number F22/1930

PURPOSE

Residents, ratepayers, and visitors to Kempsey Shire may address Council and Councillors via the Public Forum process outlined in Section 4.1 of the Kempsey Shire Council Meeting Code of Practice 2022.

The public forum allows no more than one speaker to speak 'for' or 'against' an item of business on the agenda for the Council meeting. The General Manager or their delegate in consultation with the Mayor may determine that additional speakers will be permitted where there are additional applications, complex or contentious matters.

The purpose of this notice of motion to amend Kempsey Shire Council Meeting Code of Practice 2022 to diversify the methods and expand the opportunities in which residents, ratepayers, and visitors to Kempsey Shire can access Councillors and Councils to improve communication, increase mutual understanding of issues awareness and appreciation.

RECOMMENDATION

That Council:

- 1. amends Section 4.7 of the Kempsey Shire Council Meeting Code of Practice 2022 by way of the General Manager or their delegate and the Mayor or Mayor's nominated Chairperson may refuse an application to speak at a public forum. The General Manager or their delegate must give reasons in writing for a decision to refuse an applicant.**
- 2. amends the Kempsey Shire Council Meeting Code of Practice 2022 by way of:**
 - a. changes Section 4 heading to Public Access;**
 - b. adds a new subsection 4.1.1 Public Forum;**
 - c. replaces 4.1 to 4.23 with 4.1.1 to 4.1.23;**
 - d. replaces Section 4.7 with "no more than four (4) speakers are to be permitted to speak 'for' and no more than four (4) are allowed to speak 'against' each item of business on the agenda for the council meeting"; and**
 - e. adds new subsection 4.1.2 Public Question Time**
- 3. amends the Kempsey Shire Council Meeting Code of Practice 2022 to allow a public question time at the completion of the public forum;**
- 4. requests that the General Manager drafts procedures of engagement for Section 4.1.2 to allow for public question time following the public forum; and**
- 5. places the amended Kempsey Shire Council Meeting Code of Practice 2022 on public exhibition in April 2024 to be brought to the June 2024 ordinary meeting; and**
- 6. requests the General Manager to provide a suggested process for providing access for community organisations, clubs and groups to make presentations to Council and Councillors outside of the ordinary Council meeting; to be considered at the July 2024 ordinary meeting.**

BACKGROUND

During the first few months of being elected Councillors in 2021; an induction training session was delivered on community engagement (6 July 2022). The training session provided some key take-home messages:

- We engage to encourage and empower the community to be involved connected and contribute the betterment of Kempsey Shire
- We increase the communities understanding of Council process and limitations
- Engagement is a core part of council's work
- Engage before decision making
- We involve by working directly with community to ensure concerns are understood and considered.

There are numerous methods by which residents, ratepayers and visitors can communicate Council and Councillors. These are outlined in various policies, procedures, and strategic plans such as the Community Engagement Strategy 2023 and Community Participation Plan 2023. We experience this type of communication through a variety of formal and informal processes.

Access to the decision-making body of the Council and Councillors is fundamental to an inclusive, transparent and accessible Council. However, the only mechanism available to address the full Council body and the leadership team (and in real time) is via the public forum process.

Kempsey Shire Council Meeting Code of Practice 2022

The Local Government Act requires the Councils must adopt not later than 12 months after an ordinary election of councillors. This occurs early in a Councillors first term, where they may or may not be fully adept in understanding the implications and consequences.

The Kempsey Shire Council Meeting Code of Practice 2022 was adopted in November 2022. Adopting the meeting code is an extremely important function because it sets the method that residents, ratepayers and visitors can address the Council body and leadership team for the elected period.

Public Forum

Section 4.7 of the Kempsey Shire Council Meeting Code of Practice only allows one speaker to speak for and one speaker to speak against an item on the business agenda. This is quite limiting in terms of providing an open and accessible Council.

The Code does provide discretion to the General Manager or their delegate (and in consultation with the Mayor) to allow additional speakers. This provision was enacted for the November 2023 meeting that permitted 12 speakers on the special rate variation. However, that same provision was not extended to the December meeting where several people wishing to speak on Gladston pool were denied a speaking place because the quota had been exhausted.

There is a board interpretation of community access to Council and Councillors amongst the 26 local councils in the group 4 of the Office of Local Government councils. As shown on the attachment and the summary below; the amount of speakers permitted the address Council via the public forum ranges from 1 to 10.

Summary Number of Councils and speakers
4 councils allow 1 speaker
4 councils allow 2 speakers
5 councils allow 3 speakers
4 councils allow 4 speakers
1 council allows 5 speakers
2 councils allow 10 speakers
5 Councils have no limit

Other access opportunities

Several Councillors receive regular feedback from our residents, ratepayers and visitors on improving community engagement and access to address Council and Councillors (in real time). They have expressed that they want:

- an opportunity to ask questions from the public gallery
- the ability to make presentation outside of an ordinary meeting
- an increased number of speakers allowed to address the public forum.

This notice of motion is addressing specific representations made to Councillors during our two-year term, and most recently feedback received from the special rate variation process.

Public Question Time

It is recommended that Council staff draft the public question time procedures, that will be added to the meeting code of practice; and to seek input from Councillors via email.

Points to consider in drafting the procedure may include, but not limited to;

- Public question time will commence after the public forum.
- Public question time is set at 30 minutes which may be extended on the determination of the Council for an additional maximum 30 minutes.
- Questions may be on any topic not restricted to matters on the ordinary meeting agenda, although these may need to be taken on notice.
- Priority will be given the people who have submitted a question/s and that were received by a specified timeframe like the public forum registration process.
- Questions may be asked from the position in the public gallery if time permits.
- There will be no public question time if there are no electronically submitted questions.
- The period is set aside for questions not statements and set a time limit for each question of up to 1:30 minutes.

- People with multiple questions will be able to ask just one question before other persons with a question will be invited to ask and so on until single questions are all asked and, time permitting, multiple questions can be invited and considered.
- Questions are to be addressed to the Chairperson and directed to Council not individual Councillors.
- Council has the right to refuse permission if the matter is one which will be the subject of a report to a subsequent Council meeting or a matter where a speaker has addressed a previous Council meeting in the public forum.

KEY CONSIDERATIONS

Policy and Legislation

The statutory requirements for a Model Code of Meeting Practice for Local Councils in NSW is outlined in Part 2 Division 1 of the Local Government Act 1993 (the Act).

The Code applies to all meetings of councils and committees of councils of which all the members are councillors (committees of council). Council committees whose members include persons other than councillors may adopt their own rules for meetings unless the council determines otherwise.

Councils must adopt a code of meeting practice that incorporates the mandatory provisions of the Model Meeting Code and may include non-mandatory provisions. Non-mandatory provisions in Kempsey Shire Council Meeting Code of Practice 2022 include those in Section 4 Public Forum.

The Act requires the Councils must adopt not later than 12 months after an ordinary election of councillors. The Kempsey Shire Council Meeting Code of Practice 2022 was adopted in November 2022.

Section 363 of the Act allows for the meeting code to be amended.

Strategic Alignment

Engaging with the community is an integral component of every part of Council operations; specifically referenced in the:

The 2042 Your Future Community Strategy

The Delivery Program 2022 – 2026 and Operational Plan 2023 – 2024

Impact on Financial Sustainability

Nil impact on Councils financial sustainability.

There will be staff costs and lost opportunity costs to other work commitments associated with delivering this recommendation.

Stakeholder Engagement

The draft Kempsey Shire Council Meeting Code of Practice 2024 is required to be placed on public exhibition, in accordance with statutory provisions of the NSW Local Government Act and Office of Local Government procedures.

Other Matters

Nil

CONCLUSION

There is a board interpretation of community access to council and Councillors amongst the 26 local councils in the group 4 of the Office of Local Government councils. Our community has been critical of the current methods of community access used by Kempsey Shire Council, especially following the special rate variation community engagement process of 2023 and 2024.

It is recommended that Councillors endorse this recommendation to amend the Kempsey Shire Council Meeting Code of Practice 2022 and to increase the opportunities for access; as being responsive to community feedback and need.

ATTACHMENTS

1. COP OLG Councils 4 240304 [11.2.1 - 1 page]

GENERAL MANAGER'S COMMENT

It is acknowledged that members of the community continually seek information from Council. Seeking to improve ways in which this can occur is important. In looking at this Notice of Motion, the following comments are provided for consideration by Councillors.

The Office of Local Government last reviewed the Code of Meeting Practice for Local Council's in New South Wales in 2018.

At that time the Office published a Circular, 18-45 Commencement of the new Model Code of Meeting Practice for Local Councils in NSW, that stated among other things that the provisions recommended by the Office and adopted by Council represent "what OLG sees to be best practice".

The relevant section is reproduced below (emphasis added).

Are councils required to adopt the provisions of the Model Meeting Code relating to public forums?

No. These have not been made mandatory in recognition of the fact that there will be a need for some variation in practice to suit local needs. Councils are able to adopt them, adapt or supplement them to meet local need, or to adopt their own provisions governing public forums. However, OLG would strongly recommend that councils make provision in their codes of meeting practice for some form of public access or input into council decision making.

The provisions governing public forums contained in the Model Meeting Code reflect what OLG sees to be best practice and have been informed by the following considerations:

- Councils should have a comprehensive community engagement strategy in place to ensure that the views of affected persons and (where relevant) the community as a whole are considered in council decision making. This will soon be a statutory requirement. Public forums at council meetings are not an appropriate substitute for effective community consultation and councils need to be mindful that the views expressed at public forums will not necessarily be representative of the views of other affected parties or the broader community.
- **Public forums should operate as an input into council decision-making at meetings. This means that they should be focussed on the matters under consideration at a council meeting and not permit free ranging discussion of other matters that are not being dealt with at the meeting.**

- In the interests of ensuring informed decision making, there should be a gap between the public forum and the meeting to allow councillors the time to properly consider matters raised at the public forum and, if necessary, to seek further input and guidance from staff before being required to make a decision on those matters.
- Council meetings should operate as a forum for debate and decision making by the community's elected representatives. Public forums should not operate in a way that displaces this as the principal purpose of council meetings nor operate as a platform for others to participate in debate with elected officials on matters under consideration at a meeting.
- Participation in a public forum is a privilege not a right. It should be within the discretion of a council to withdraw this privilege where a person fails to respect meeting rules or engages in disorderly conduct.

This approach (Business being considered at a Council meeting must be published with the Business Paper) would eliminate open questions that have not been received prior to the Business Paper being published. If questions from the public were to be sent in writing and included in the Business Paper then the answers would also be provided in the Business Paper in the same manner that Questions on Notice from Councillors are provided. This then eliminates the need for the questions to be presented from the floor of the Chamber during the Public Forum.

Taking one step further back, a key role of Councillors is to raise issues with the Council that they have been approached about by members of the community. Councillors have a number of ways to undertake this responsibility. They can email/phone questions to the General Manager which will then be responded to by the relevant staff member. This is often the most efficient manner to respond to such questions. The other key way for Councillors to seek a response is to ask a Question on Notice or to place a Notice of Motion on the Council meeting agenda. This process allows for the Councillor to undertake a process of understanding the question/issues being raised by the community member and to determine if it is more of an individual matter or something that may be of interest to the wider community. This allows the Councillor to make an assessment of the relevance, priority and value of the questions/issue and to determine the most appropriate course of action to take.

If the above processes are followed, then there is no need for what is being proposed in this Notice of Motion.

Council needs to be cognisant of how this proposal may be "mis-used". For instance, this proposal gives unfettered access for any member of the community to stand at the lectern and ask questions of any Councillor on any subject without any notice being given. This exposes the Councillors, staff and the organisation to the potential of unfounded accusations being made, questions being raised that have no basis in fact and inuendo being used to paint Council in a poor light. If Questions are asked from the floor without any prior notice Council is exposing itself to risks that at times will be unacceptable.

The Notice of Motion is putting forward a process that does provide an increased level and service and requires resourcing. The key parties that would be required to resource it would be Governance, ELT and SLT. These groups have no additional capacity, and the Notice of Motion does not propose a reduction of any service that would make capacity available.

The current Public Forum process requires a minimum of approximately 0.5 day per month of time from Governance to deliver. The large number of speakers in November for example included notifying speakers on Saturday of their applications as they could not all be contacted on the Friday afternoon.

The implementation of a revised Code of Meeting Practice will require:

- Drafting of the revised Code
- Development of the rules for Public Access
- Obtaining legal or governance advice externally if necessary
- Approval via ELT
- Consultation with Councillors
- Exhibition
- Compilation of a report to Council
- Design and testing of new application forms and processes

This is estimated to be at least at 5 days effort.

Current Governance workload includes:

- Policy and Procedure Review (High-risk Audit Action)
- Delegations Implementation (already committed to with Software vendor and behind schedule)
- 2024 Local Government Election including Candidate Information Sessions, Election, and Induction
- Risk Management Framework Review and Establishment of Operational Risk Registers
- Governance Internal Audit
- Implementation of new PID Act

Councillors have already raised that there is insufficient time in the pre-meeting briefing sessions to raise all their questions. This proposal would extend the public forum.

Questions not addressed in the Notice of Motion include - What is the upper cap on this time? Are Councillors willing to accept lower quality briefings to accommodate this? How much time should be allocated to the public forum?

The closing date for public forum applications would need to be brought forward to Thursday evening at close of business to accommodate the additional processing necessary and ongoing administration would require an estimated minimum of an additional 6 days per year of Governance staffing to process applications.

General comments regarding the Notice of Motion:

A speaker may only be refused where the General Manager and the Chairperson agree.

- What is the process to resolve disputes between the General Manager and the Mayor?
- There is a risk that this could politicise access to the Public Forum. Even if the risk does not materialise now it needs to be considered that it could with a different membership of a future Council.

- Prior to 2018 Public Forum applications were determined by the Mayor. OLGs review of the Code of Meeting Practice found that approvals to speak are an operational concern, not a strategic or political one, and the decision on who speaks on the public forum has been designated to be the role of the General Manager.

The Notice of Motion proposes that at least eight speaker would have to be accepted on each item if they apply. The reason for the current limit of one for and one against with an option to permit more is because this number must be accepted if applications are made. For example, under the current code if there are 10 items on the agenda Council may be compelled to accept 20 speakers; under the proposed change Council may be compelled to accept 80 speakers in the same circumstance.

There is already a process for community organisations, clubs and groups to make presentation to the Councillors and staff outside of the meeting. Anybody may write to the General Manager or Mayor seeking an opportunity to present at any time.

The notice of motion raises the number of speakers permitted by other Council's in isolation of other restrictions they have in place such as caps on time etc. A review of these Council's Code of Meeting Practice would reveal they often put in place other restrictions such as an upper limit on the amount of time the Public Forum may occupy.

A fixed time limit should be provided for Question Time rather than an opportunity to extend. It is not foreseeable that if questions remained Councillors would vote against an extension.

1.5 minutes is a long time to ask succinct question. Concise questions should be a single sentence with no conjunctions and should not require a time limit.

There is significant overlap between the objectives of this Notice of Motion and the proposed changes to Council's engagement activities which have already ben canvassed with Councillors and that are planned to commence in May.

This Notice of Motion does have an impact on financial sustainability. There are resourcing impacts, immediately in the work required to have this to a point of being placed on public exhibition and then ongoing should it be implemented.

Given the work involved in what is being proposed and the current resourcing commitments of the staff there is very little likelihood that the staff can meet the timeframes requested in the Notice of Motion.

After the Local Government Election in September this year the Code of Meeting Practice will need to be reviewed by the nearly elected Council, and this resourcing has already been forecast.

Should council wish to consider additional opportunities for members of the public to ask questions or address council on any topic it may wish to establish a new forum for such opportunities in order to keep this separate from the formal meeting of Council.

11.3 Delegates Report - Social Media for Councillors

Councillor Cr Bain, Councillor

File Number F12/253

PURPOSE

Report to Council on my attendance at LGNSW Training entitled Social Media for Councillors.

RECOMMENDATION

That Council receives and notes this report.

BACKGROUND

On Monday 29 January I participated in online training “Social Media for Councillors” delivered by Local Government NSW, participants were a Mayor, a Mayoral Executive Assistant, a Community Engagement Officer, and myself as the only Councillor.

Social media includes a wide range of electronic and technological platforms, designed for socialising, networking, and communicating. It is comparable to “word of mouth” communication with the important difference being that it is very public and permanent, even when hidden, comments and posts are never deleted.

A Councillor may use social media for engaging with the community, explaining Council decisions and policies, and to share information, enabling the Councillor to fulfill their role as outlined in the *Local Government Act 1993*.

Model policies and procedures are informed by a number of agencies, including the Independent Commission Against Corruption, Information and Privacy Commission, State Archives and Records Authority, and Resilience NSW.

The Office of Local Government has issued a best practice model social media Policy, with a range of options Councils can adopt. Model policies are not mandatory. Councils can choose whether to use them or to vary them. When a social media policy is adopted, it will operate to supplement the provisions of Councils’ adopted codes of conduct.

A Councillor can comment on Council decisions on social media, and on traditional media, as long as they comply with the legislation requiring them to uphold and represent accurately the policies and decisions of the governing body. For example, a Councillor can state that they disagree with a decision, if they opposed it in Council, however they cannot state that the decision was wrong.

Some guidelines for using social media, being aware that if it goes online, it stays online:

- If you wouldn’t say it, don’t write it.
- Wait before responding.
- Your social media activities must comply with Council’s policies, regulations and legislation
- Defamation applies online, including for liking and sharing posts
- Expect feedback and comments on social media to sometimes be personal and challenging. You don’t need to respond to every comment.
- When responding to comments on social media be honest, stick to the facts, take time to reflect on the tone of your response and your choice of words.

When a Councillor's term of office concludes they must contact the Council's records manager and General Manager to manage/transfer records of social media content created during their term of office and comply with the requirements of the *State Records Act 1998*.

Posting on social media presents a number of risks, risk can be managed using the following principles:

- Keep your communications positive, polite, plain and professional.
- Avoid being sarcastic.
- Delete/hide comments which are inappropriate - timing is important here.
- Block people who make offensive or inappropriate comments.
- You are responsible for all on your social media, website, and group emails.
- Don't argue online.

A post can be considered to be defamatory if, in the eyes of ordinary reasonable like-minded members of the public, it:

- Has the tendency to lower that person's reputation.
- Exposes that person to hatred, ridicule, or contempt.
- May cause that person to be shunned or avoided

Defamation proceedings are costly and high risk, a potential response is to send a "Cease & Desist" letter from a solicitor.

Social media posts can have a significant impact on the mental health of Councillors and Council staff, use with care.

KEY CONSIDERATIONS

Policy and Legislation

Nil.

Strategic Alignment

Nil.

Impact on Financial Sustainability

Nil.

Stakeholder Engagement

Nil.

Other Matters

Nil.

CONCLUSION

I recommend that this report be received and noted by Council.

ATTACHMENTS

Nil

11.4 Delegates Report - Bush Fire Management Committee - 14 February 2024

Councillor Cr Bain, Councillor

File Number F18/1959

PURPOSE

Reporting on the Bushfire Management Committee meeting held 14 February 2024

RECOMMENDATION

That Council receives and notes the report.

BACKGROUND

Location: NSW Rural Fire Service, FCC South, Kempsey

Chairperson: Cr Arthur Bain

Meeting Overview

The Bush Fire Management Committee convened on February 14, 2024, to deliberate on matters pertaining to bush fire management and to furnish updates on ongoing initiatives.

Correspondence

Bush Fire Risk Management Plan has been submitted to the Bush Fire Coordinating Committee for ratification.

Other Business

Bush Fire Risk Management & Fire Trails Subcommittees

- Quiet over Christmas
- Requested agencies confirm who will be their representative on the sub-committee in order to set meeting dates for 2024.

General Business

Agency Reports

Crown Lands

- Can the BFMC see agency funding in Guardian? Answer – XO has visibility, Hunter Area has no visibility. Discussion about openness and transparency.

Forestry Corporation

- Finding their feet after the restructure.
- Agency report to be provided 15 or 16 Feb.
- Hazard reductions are being planned.

Local Land Services:

- Please advise if any travelling stock route will be impacted by hazard reductions.
- Reminder of the fire ant concerns.

NPWS

- FAFT signage is being completed – working to align it when works are completed.

- Finding it dry in places.
- Hazard reductions planned from April/May weather conditions allowing.

NSW Farmers

- Happy that we are already looking forward at the next fire season.
- Highlighted that continued landowner engagement is required.

RFS

- Spoke to the ground conditions across the Lower North Coast district.
- 8 hazard reductions planned, 30+ in the planning stage liaising with local brigades and landowners.

TfNSW

- New delegates as advised.
- Business as usual.

Transgrid

- Working on repairs from fire

Bush Fire Risk Management Plan

The Lower North Coast Plan will be discussed at the upcoming BFCC meeting in March. Once authorised this will then result in the annual works program and community engagement strategy being developed and actioned.

RFS Hotspots Program

Jamie Betram spoke to the success of last year's hotspot program at Goolawah. This was really positive, received well, and is still ongoing. The Goolawah workshop final report is attached with these minutes.

This year the focus is going to Utungun. This will involve multiple agencies and local brigades. Jamie Laws (RFS) is doing preparation work. Landowner registration will be open in the coming days.

Workshop dates:

1. 14 March 2024
2. 04 April 2024

Farm Fire Fighting Vehicle Trial

The nominated Farm Fire Fighting Vehicle:

- must have firefighting equipment permanently attached (questioned, clarification equipment must be securely attached)
- can only be used in connection with emergency bush fire incidents
- can only be used on road or road related areas within 100km radius of the storage address
- must be in a safe operating condition

Council has a role in educating the land holders and the general public regarding this trial.

Section 44 After Action Review & Make Safe Plan

After Action Review has been completed and forwarded to Area Operations prior to general dissemination.

Make Safe Plan has been authorised. Currently investigating how purchase orders and payment will be completed. It was highlighted that recent rain may delay works.

Bush Fire Management Committee Handbook

A review of the BFMC handbook has been conducted and subsequently approved by the BFCC. This will be disseminated shortly to all agencies. As part of this review it was highlighted that training needs to be considered so all BFMC members are aware of their role and responsibilities.

Hat Head Draft Community Protection Plan

Hat Head Community Protection Plan maps were on display at the meeting. The preparation map had two versions – the first one showed what has been approved during the BFRMP process whilst the second one showed some recommendations for minor changes to the Fire Management Zones. Further discussion held with agencies following the meeting with review of maps.

Seasonal Update

Rain has been hit and miss across the district. The long-range forecast is indicating a weakening El Nino tending to neutral over the next 3 months. This same period is indicating that rainfall is likely to be below median, and max/min temps are likely to be above median.

Other Business

Bush Fire Danger Period

The meeting discussed the current conditions and fire behaviour noted at recent incidents. It was noted that the Mid Coast District are leaving their BFDP at the statutory end on 31 March. FCNSW and NPWS both recommended to leave the Lower North Coast District as per the statutory end on 31 March. Concerns were raised regarding not ending the period earlier, after the recent wet weather. Agreed for BFDP to remain as is up until 31 March.

Meeting closed: 11:54 am

Next Meeting: Wednesday 1 May 10:30 RFS FCC North - Macksville

KEY CONSIDERATIONS

Policy and Legislation

Nil.

Strategic Alignment

Nil.

Impact on Financial Sustainability

Nil.

Stakeholder Engagement

Nil.

Other Matters

Nil.

CONCLUSION

Nil.

ATTACHMENTS

Nil

12 CONFIDENTIAL MATTERS

MOTION FOR CONFIDENTIAL SESSION

In accordance with the *Local Government Act 1993* (the Act) and the *Local Government (General) Regulation 2021*, in the opinion of the General Manager, the following business is of a kind as referred to in section 10A(2) of the Act and should be dealt with in a part of the meeting closed to the media and public.

Set out below is section 10A(2) of the Act in relation to matters which can be dealt with in the closed part of a meeting.

The matters and information are the following:

- (a) personnel matters concerning particular individuals (other than Councillors)
- (b) the personal hardship of any resident or ratepayer
- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business
- (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
- (f) matters affecting the security of the Council, Councillors, Council staff or Council property
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege
- (h) information concerning the nature and location of a place or an item of Aboriginal significance on community land.
- (i) alleged contraventions of any code of conduct requirements applicable under section 440.

Councillors are reminded of their statutory obligations in relation to the non-disclosure to any outside person of matters included in this section.

That Council form itself into the Confidential Session, and at this stage, the meeting be closed to the public to permit discussion of the confidential business items listed for the reasons as stated in the agenda.

12.1 Legal Matters

Officer	Daniel Thoroughgood, Group Manager Governance and Information Services
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File Number	F22/1960
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Section 10A(2)(g) – Legal Proceedings

This report is submitted on a confidential basis as it involves advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege. (*Local Government Act 1993*, section 10A(2)(g))

On balance, the public interest in preserving the confidentiality of the advice, outweighs the public interest in openness and transparency in Council decision making by discussing the matter in open meeting.

12.2 Audit, Risk & Improvement Committee - February 2024 Meeting Minutes and Annual Activity Report

Officer	Matthew Bentley, Internal Auditor
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File Number	F23/2510
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Section 10A(2)(e) – Maintenance of Law

This report is submitted on a confidential basis as it involves information that would, if disclosed, prejudice the maintenance of law. (*Local Government Act 1993*, section 10A(2)(e))

On balance, the public interest in preserving the confidentiality of the information which relates to matters of law outweighs the public interest in openness and transparency in Council decision-making by discussing the matter in an open meeting.

12.3 Land Acquisition - Lot 1 DP1263874

Officer	Michael Jackson, Director Operations & Planning
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File Number	F22/1983
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Section 10A(2)(c) – Commercial Advantage in Business Dealing

This report is submitted on a confidential basis as it involves information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business. (*Local Government Act 1993*, section 10A(2)(c))

On balance, the public interest in preserving the confidentiality of the commercial information supplied, outweighs the public interest in openness and transparency in Council decision-making by discussing the matter in an open meeting.

12.4 Confidential Mayoral Minute - General Manager's Interim Performance Review

Councillor	Cr Hauville, Mayor
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File Number	MIL/23552/01
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Section 10A(2)(a) – Personnel Matters

This report is submitted on a confidential basis as it involves personnel matters concerning particular individuals (other than Councillors). (*Local Government Act 1993*, section 10A(2)(a))

On balance, the public interest in preserving the confidentiality of personal information outweighs the public interest in openness and transparency in Council decision-making by discussing the matter in an open meeting.

13 CONCLUSION OF THE MEETING