



Central Coast Council

**Ordinary Council Meeting**

**Attachments Provided  
Under Separate Cover**

**Tuesday, 13 April, 2021**

**Central Coast Council**  
**Attachments Provided Under Separate Cover to the**  
**Ordinary Council Meeting**  
 to be held in the Council Chamber,  
 2 Hely Street, Wyong  
 on Tuesday, 13 April 2021,  
 commencing at 6.30pm

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Central Coast Council

## Ordinary Council Meeting

Held in the Council Chamber  
2 Hely Street, Wyong

23 March 2021

# MINUTES

### Present

Dick Persson AM

### In Attendance

Rik Hart	Acting Chief Executive Officer
Malcolm Ryan	Chief Operating Officer
Natalia Cowley	Director Corporate Affairs
Boris Bolgoff	Director Infrastructure Services
Julie Vaughan	Director Community and Recreation Services
Scott Cox	Director Environment and Planning
Jamie Loader	Director Water and Sewer

### Notes

The Administrator, Dick Persson AM, declared the meeting open at 6.32pm and advised in accordance with the Code of Meeting Practice that the meeting is being recorded.

The Administrator, Dick Persson AM acknowledged the traditional custodians of the land on which the meeting was being held, and paid respect to Elders past, present and emerging.

The Administrator, Dick Persson AM advised the following organisations received the following awards and recognition at the recent Keep Australia Beautiful NSW 2020 Sustainable Communities Tidy Town Awards;

- Central Coast Council - Won – Coastal & Waterways Protection Award for the Brisbane Water Estuary Education Program
- Central Coast Council - Named Finalist – Overall Award for the 2020 Sustainable Communities Tidy Towns
- Terrigal Public School – Won – Schools Environmental Achievement Award for the Waste Reduction Program (which Central Coast Council funded through the Wiping Our Waste program)
- Plate to Paddock – Received two awards
- Take 3 – Received one award in the environmental communications category

The Administrator, Dick Persson AM advised that no requests to speak at the Open Forum had been received. However, he noted that Ms Vicki Scott wished to address Council on Item 3.6 - Proposed Changes to Advisory Groups and Committees and that he was happy to accommodate the request.

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**1.1 Disclosures of Interest**

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Time commenced: 6.36pm

**3.7 Waterfront Addressing**

Mr Malcolm Ryan, Chief Operating Officer, declared a less than significant non pecuniary interest in the matter as his property will receive a formal address and will be affected by this report. Mr Ryan remained in the chamber and did not participate in discussion or voting on this matter.

Moved: Mr Dick Persson AM

**67/21 Resolved**

*That the Administrator receive the report on Disclosure of Interest and note advice of disclosures.*

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**1.2 Confirmation of Minutes of Previous Meeting**

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Time commenced: 6.37pm

Moved: Mr Dick Persson AM

**68/21 Resolved**

*That Council confirm the minutes of the Ordinary Meeting of Council held on the 9 March 2021.*

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**1.3 Notice of Intention to Deal with Matters in Confidential Session**

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Time commenced: 6.37pm

Moved: Mr Dick Persson AM

**69/21 Resolved**

*That Council note that no matters have been tabled to deal with in a closed session.*

**1.4 Administrator's Minute - End of Councillor Suspension Period**

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Time commenced: 6.37pm

Moved: Mr Persson AM

**70/21 Resolved**

*That the suspended Central Coast Councillors be invited as set out in this Administrator's Minute to two briefings: Financial Briefing and Meeting with Chief Executive Officer.*

**1.5 Administrator's Minute - Question for Referendum**

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Time commenced: 6.41pm

Moved: Mr Persson AM

**71/21 Resolved**

1 *That Council resolve to conduct a Constitutional Referendum in conjunction with the conduct of the 2021 Local Government Election as follows:*

*Do you favour a reduction in the number of Central Coast Councillors, from fifteen to nine, and the removal of wards? This will result in nine Councillors with all electors voting for all nine Councillors, and all nine Councillors representing the whole Central Coast.*

2 *That Council advise the NSW Electoral Commission of the Referendum question.*

**1.6 Administrator's Minute - Managing the Channel**

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Time commenced: 6.47pm

Moved: Mr Persson AM

**72/21 Resolved**

1 *That Council engage Mr Angus Gordon, Australia's leading coastal engineering expert to undertake a peer review of Council's policy and approach in managing floods, particularly looking at the February 2020 flood event and flooding experienced in the past four days.*

2 *That Council note this review will be undertaken immediately and a report will be released publicly when it arrives.*

**1.7 Administrator's Minute - Council Structure**

Time commenced: 6.52pm

Moved: Mr Persson AM

**73/21 Resolved**

*That Council determine, pursuant to section 333 of the Local Government Act 1993, that the position of Director, Corporate Affairs will be retitled to Director, Corporate Affairs and Chief Financial Officer.*

**2.1 Central Coast Council Financial Plan**

Time commenced: 6.54pm

Moved: Mr Persson AM

**74/21 Resolved**

1 *That Council adopts the following Long Term Financial Plan (LTFP)*

	1	2	3	4	5	6	7	8	9	10
	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
<b>Operating Income</b>										
Rates	179,357	183,841	188,437	193,148	197,977	202,926	207,999	213,199	218,529	223,9
SRV	22,859	23,431	24,016	24,617	25,232	25,863	26,510	27,172	27,852	28,5
Annual and User Charges and Other Income	415,084	437,160	439,345	441,542	443,750	445,969	448,198	450,439	452,692	454,9
Operating Grants	34,856	34,856	34,856	34,856	34,856	34,856	34,856	34,856	34,856	34,8
Operating Contributions	14,635	14,635	14,635	14,635	14,635	14,635	14,635	14,635	14,635	14,6
<b>Total Income attributable to Operations</b>	<b>666,792</b>	<b>693,922</b>	<b>701,290</b>	<b>708,798</b>	<b>716,450</b>	<b>724,249</b>	<b>732,198</b>	<b>740,302</b>	<b>748,564</b>	<b>756,9</b>
<b>Operating Expenses</b>										
Employee Costs	175,832	180,228	184,733	189,352	194,086	197,967	201,927	205,965	210,084	214,2
Borrowing Costs	17,471	17,351	17,231	17,111	16,991	16,871	16,751	16,631	16,511	16,3
Materials and Contracts	188,517	189,460	190,407	191,359	192,316	193,277	194,244	195,215	196,191	197,1
Depreciation	177,106	182,606	188,106	193,606	199,106	204,606	210,106	215,606	221,106	226,6
Other Expenses	100,822	100,822	100,822	100,822	100,822	100,822	100,822	100,822	100,822	100,8
<b>Total Expenses attributable to Operations</b>	<b>659,748</b>	<b>670,467</b>	<b>681,300</b>	<b>692,250</b>	<b>703,321</b>	<b>713,544</b>	<b>723,850</b>	<b>734,239</b>	<b>744,715</b>	<b>755,2</b>
<b>Operating Result</b>	<b>7,043</b>	<b>23,456</b>	<b>19,990</b>	<b>16,548</b>	<b>13,129</b>	<b>10,705</b>	<b>8,349</b>	<b>6,063</b>	<b>3,849</b>	<b>1,7</b>

2 *That Council uses this LTFP as the basis for the preparation of the draft Operational Plan for the 2021/2022 financial year.*

**3.1 Consideration of Submissions and Adoption of the Long Term Financial Plan and Debt Recovery and Hardship Policy**

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Time commenced: 7.28pm

Moved: Mr Persson AM

**75/21 Resolved**

- 1 *That Council note the submissions received and write to each submission maker thanking them for their submission and advising of the outcome as per Attachment 1.*
- 2 *That Council adopt the General Fund Long Term Financial Plan as per Attachment 2.*
- 3 *That Council adopt the Debt Recovery and Hardship Policy as per Attachment 3.*

**3.2 Investment Report for February 2021**

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Time commenced: 7.29pm

Moved: Mr Persson AM

**76/21 Resolved**

*That Council receive the Investment Report for February 2021.*

**3.3 Restriction Reserves Write-Off**

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Time commenced: 7.30pm

Moved: Mr Persson AM

**77/21 Resolved**

- 1 *That Council provide approval for the write-off totalling \$10,000,000 pertaining to the Land Development Reserve.*
- 2 *That Council provide approval for the write-off totalling \$4,701,646 pertaining to the Infrastructure Reserve.*
- 3 *That Council provide approval for the write-off totalling \$316,223 pertaining to the Water Safety and Surf Clubs Reserve.*
- 4 *That Council provide approval for the write-off totalling \$182,662 pertaining to the Kibble Park Café Reserve.*



- 5 That Council provide approval for the write-off totalling \$4,499,469 pertaining to the Waste Disposal Facility Reserve.

### 3.4 Draft 2019-20 Financial Reports for Central Coast Council and Central Coast Council Water Supply Authority

Time commenced: 7.32pm

Moved: Mr Persson AM

#### 78/21 Resolved

- 1 That Council note that the draft Consolidated Financial Reports for Central Coast Council for the period from 1 July 2019 to 30 June 2020 are presented to Council. The Consolidated Financial Report includes the General Purpose financial report, Special Purpose financial report and Special Schedules, which is Attachment 1 to the business paper.
- 2 That Council also note that the draft Consolidated Financial Reports have been prepared in accordance with the requirements of the Local Government Act 1993 ("LG Act"), the Local Government (General) Regulation 2005 ("LG Reg") and the relevant accounting and reporting requirements of the Office of Local Government prescribed Code of Accounting Practice and Financial Reporting - Update No. 28 and Australian Accounting Standards.
- 3 That Council note that the draft Financial Reports for Central Coast Council Water Supply Authority for the period from 1 July 2019 to 30 June 2020 is presented to Council, which is Attachment 2 to the business paper.
- 4 That Council note that the draft Financial Reports for Central Coast Council Water Supply Authority as presented in accordance with section 41B of the Public Finance and Audit Act 1983 (PF&A Act) and the Public Finance, the Australian Accounting Standards and other pronouncements of the Australian Accounting Standards Board, the Local Government Act 1993 (NSW) and the relevant accounting and reporting requirements of the Office of Local Government prescribed Code of Accounting Practice and Financial Reporting - Update No. 28 and Australian Accounting Standards.
- 5 That Council authorise, the Interim Administrator, given the suspension of the Mayor, to execute all documents related to the draft Consolidated Financial Reports in accordance with s413(2)(c) of the LG Act, and cl. 215(1)(b)(i) of the LG Reg.
- 6 That Council authorise, the Chief Executive Officer to execute all documents related to the draft Consolidated Financial Reports in accordance with s413(2)(c) of the LG Act, and cl. 215(1)(b)(iv) of the LG Reg.

- 7 That Council authorise, the Responsible Accounting Officer of the Council, to execute all documents related to the draft Consolidated Financial Reports with s413(2)(c) of the LG Act, and cl. 215(1)(b)(iii) of the LG Reg.
- 8 That Council authorise, for the purposes of s. 41C(1C) of the Public Finance and Audit Act 1983, its Interim Administrator (given the suspension of the Mayor), Chief Executive Officer and Responsible Accounting Officer to execute all documents related to the draft Financial Reports for Central Coast Council Water Supply Authority.
- 9 That Council resolve, for the purposes of s. 413(1) of the LG Act, to refer the Consolidated Financial Reports for Central Coast Council and the Financial Reports for Central Coast Council Water Supply Authority for the period from 1 July 2019 to 30 June 2020 to the Audit Office of New South Wales, for external audit.
- 10 That Council delegate to the Chief Executive Officer to set the date for the meeting to present the audited 2019-20 financial reports, together with the auditor's reports, to the public in accordance with s418(1)(a), (b) of the LG Act.

### 3.5 Councillor and Staff Interaction Policy

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Time commenced: 7.33pm

Moved: Mr Persson AM

#### **79/21 Resolved**

*That the attached Councillor and Staff Interaction Policy be adopted.*

### 3.6 Proposed Changes to Advisory Groups and Committees

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Time commenced: 7.34pm

Ms Vicki Scott addressed the meeting at 7.35pm

Moved: Mr Persson AM

#### **80/21 Resolved**

- 1 That Council implements the revised Advisory Group formats as detailed in Attachment 1 for the remainder of the current Council term with the following exception:

*Status of Women Advisory Group and the Social Inclusion Advisory Committee remain unchanged.*

- 2 *That Council invites existing Advisory Group members to confirm their membership for the remaining Council term, thanks them for their contribution to date and updates the Terms of References as required.*
- 3 *That Council develops a framework for management of Advisory Groups, Working Groups and Networking Groups for consideration by the new Council following the conduct of the 2021 Local Government election.*

### **3.7 Waterfront Addressing**

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Time commenced: 7.47pm

Mr Malcolm Ryan, Chief Operating Officer, declared a less than significant non pecuniary interest in the matter as his property will receive a formal address and will be affected by this report. Mr Ryan remained in the chamber and did not participate in discussion or voting on this matter.

Moved: Mr Persson AM

#### **81/21 Resolved**

- 1 *That Council resolve to adopt waterfront addressing for properties along the Hawkesbury River and its tributaries in accordance with Australian/New Zealand Standard 4819:2011 - Rural and Urban Addressing; NSW Address Policy and NSW Retrospective Address Policy for the purpose of public exhibition.*
- 2 *That Council commence 28-day consultation period and seek comment from all affected property owners and other government departments.*
- 3 *That following the consultation period, a further report be provided to Council for the purpose of considering submissions received.*

### **3.8 Update on Soap in Public Toilets**

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Time commenced: 7.48pm

Moved: Mr Persson AM

#### **82/21 Resolved**

*That Council receive the report on Update on Soap in Public Toilets.*

**3.9 Central Coast Stadium Final Strategy Report**

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Time commenced: 7.49pm

Moved: Mr Persson AM

**83/21 Resolved**

- 1 *That Council note the consultation report and the findings from the public consultation (Attachment 1).*
- 2 *That Council adopt the Stadium Implementation Plan and make it available on Council's website (Attachment 2).*
- 3 *That Council delegate authority to the Chief Executive Officer to make final editorial amendments to the Stadium Implementation Plan document (Attachment 1) without changing its intent.*
- 4 *That Council delegate authority to the Chief Executive Officer to authorise approval of a selective tender to engage a suitable partner for the Management Rights for the Central Coast Stadium in accordance with the Local Government (General) Regulation 2005 – 166(b) with the candidates contained in Confidential Attachment 3.*
- 5 *That Council approve a separate approach to be determined by a specialist consultant to bring to market the Naming Rights to the Central Coast Stadium.*
- 6 *That Council approve the direct engagement of a specialist consultant from the Local Government Procurement (LGP218) Panel for Management Consultancy Services to assist in informing the procurement processes and commercial outcomes for the Management Rights and Naming Rights of the Central Coast Stadium.*
- 7 *That Council delegate authority to the Chief Executive Officer to authorise direct negotiations with one or more tenderers for the Management Rights and for the Naming Rights of the Central Coast Stadium prior to an award of contract for either service, to ensure that the most advantageous outcome is achieved.*
- 8 *The Council recognise that proceeding with the award of a contract for the Management Rights of the Central Coast Stadium has the potential to impact roles of existing Council staff.*
- 9 *That Council resolve, pursuant to section 11(3) of the Local Government Act 1993, that Attachment 3 remain confidential in accordance with section 10A(2)(d)(i) of the Local Government Act as it contains commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it and because consideration of the matter in open Council would on balance be contrary to the public interest as it would affect Council's ability to obtain value for money services for the Central Coast community.*

**3.10 Response to Administrator's Minute - Beach Parking**

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Time commenced: 7.50pm

Moved: Mr Persson AM

**84/21 Resolved**

- 1 *That Council receive the report "Response to Administrator's Minute - Beach Parking".*
- 2 *That Council resolve to go to the market and call for expressions of interest from external providers to determine willingness to partner with Council to develop and deliver a Beach parking scheme at foreshore areas at no cost to Council, and which provides free parking to ratepayers.*

**The Meeting** closed at 7.54pm.



## Central Coast Council Internal Ombudsman Charter

### 1. Mission and Purpose

- 1.1 This Charter and the operation of the Internal Ombudsman reflect the commitment of Council in operating to a high standard of ethical conduct and decision-making, administrative conduct, corporate governance and being corruption free.
- 1.2 The Internal Ombudsman provides residents, community members, ratepayers, local businesses, staff, Councillors and other Council stakeholders with an 'independent ear' regarding complaints about: administrative conduct; corrupt conduct; misconduct; or maladministration.
- 1.3 The Internal Ombudsman conducts independent and impartial investigations and reviews of administrative processes and services provided by the Council.
- 1.4 The Internal Ombudsman will investigate matters detailed below at paragraph 3 and provide the Council and affected parties with the results of the investigation and make recommendations regarding required corrective action and process improvements where relevant.
- 1.5 The Internal Ombudsman may provide, or recommend, guidance and assistance to staff and proactive education regarding continuous improvement in administrative processes, good governance and ethical decision-making.
- 1.6 The Internal Ombudsman will provide procedural fairness, accountability, transparency and fairness when investigating complaints.
- 1.7 This Charter has been agreed upon and adopted by Council and provides a framework for the operation of the office and relevant delegations. This Charter details the functions and powers of the Internal Ombudsman and these are subject to change. The Internal Ombudsman Charter will be reviewed annually.
- 1.8 The Internal Ombudsman will abide by Council's Code of Conduct and relevant policies and procedures in relation to any work conducted for, in relation to, or on behalf of the Council.

### 2. Scope

- 2.1 The operations of the Internal Ombudsman apply to all Council functions and activities, staff, Councillors, and other delegates of Council.



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**Gosford Office:** 49 Mann St / PO Box 21 Gosford NSW 2250

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- 2.2 The Internal Ombudsman will report to the Chief Executive Officer
- 2.3 All staff, Councillors, and other delegates of Council are to cooperate fully with the Internal Ombudsman in any investigation to be carried out and must comply with any lawful direction given by the Internal Ombudsman or associated staff in connection with any investigation undertaken or any recommendation made by the Internal Ombudsman pursuant to this Charter.
- 2.4 All staff, Councillors, and other delegates of Council shall be bound by the Internal Ombudsman recommendations, once, as relevant to the circumstances, the Chief Executive Officer, Mayor, or the elected Council or Council's Audit, Risk and Improvement Committee has accepted them.

### **3. What the Internal Ombudsman will investigate**

- 3.1 The Internal Ombudsman will review and investigate the following types of matters including, but not limited to:
- a) All Council administrative processes, Council Committees, and other staff matters as determined by the Chief Executive Officer pursuant to Council's Code of Conduct and Complaints and Feedback Management Policy.
  - b) Any failure to comply with Council's Code of Conduct or policies or procedures including but not limited to conflict of interests, tender processes, release of confidential information, secondary employment and gifts and benefits.
  - c) Council's lack of attention to matters or review of Council's complaint handling procedures.
  - d) Anonymous matters will be considered for review or investigation, but only if adequate detail is provided to allow the matter to be reviewed or investigated.
  - e) Receipt and referral of allegations of poor administration, maladministration, corruption, breach of privacy or other alleged improper conduct by Council or Council Officials from external agencies including, but not limited to, NSW Independent Commission for Corruption (ICAC), the NSW Ombudsman, NSW Anti-Discrimination Board, Human Rights Commission or the Office of the Local Government.
  - f) Referral of internal matters from the Chief Executive Officer, Mayor, Internal Audit and Council's Audit, Risk and Improvement Committee.
  - g) Public Interest Disclosures and, including, breaches of disclosure obligations.
- 3.2 The Internal Ombudsman may also provide ad-hoc or verbal or written probity advice to staff, Councillors, or Council delegates.

#### 4. What the Internal Ombudsman will not investigate

- 4.1 The Internal Ombudsman will not review and investigate, or will cease to investigate the following types of matters including, but not limited to:
- a) That concerns a review of a decision of the elected Council, or committee of Council or decisions made by the Regional Planning Panel and the Local Planning Panel, or matters awaiting determination, such as Development Applications before Council.
  - b) That are not part of Council's functions or businesses.
  - c) That relate to the conduct of staff or Councillors or delegates, where the complainant has had knowledge of the matter for more than three (3) months before making the complaint (refer to the Procedures of the Administration of the Model Code of Conduct for Local Councils in NSW).
  - d) That require initial referral to external agencies including but not limited to: the NSW Independent Commission for Corruption (ICAC), the Office of the Local Government, the NSW Ombudsman or the NSW Police.
  - e) The merits of Development Applications and/or planning decisions made by Council or the Regional Planning Panel or the Local Planning Panel.
  - f) That adequate details of the complaint are not available to allow proper investigation.
  - g) That are frivolous, vexatious or not made in good faith or concern a trivial matter.
  - h) That adequate remedy of right of appeal already exists, whether or not the complainant uses that remedy or right of appeal.
  - i) Where legal proceedings have commenced or they are already before or under investigation by a court, coroner or other tribunal or government agency.
  - j) That relate to the appointment or dismissal of an employee or any industrial or disciplinary issue, other than in relation to the administrative process of the appointment, dismissal or disciplinary issue.
  - k) That concern a private individual.
  - l) That concern a staff member in their capacity as a private citizen.
  - m) The complainant declines or refuses to provide further information to allow investigation and/or there are threats made against Council.
  - n) The Internal Ombudsman does not conduct Council audits.



- 4.2 However, any matters that are listed above but are considered systemic, reflect a pattern of conduct and/or are serious and significant may be investigated immediately, or reviewed by the Internal Ombudsman upon direction by the Chief Executive Officer.
- 4.3 The Internal Ombudsman may refer matters as appropriate to any other internal Council departments or senior person to investigate or to any external government agency to investigate as appropriate.
- 4.4 The Internal Ombudsman will not act as a community advocate, nor support any organisation or body or defend Council.
- 4.5 The Internal Ombudsman will not provide legal advice to staff, councillors or complainants.
- 4.6 As the Council is a Water Authority pursuant to s. 285 and Schedule 3 of the Water Management Act 2000, the Internal Ombudsman may review recommendations made by staff in accordance with Council policies.
- 4.7 When the Internal Ombudsman decides not to investigate or ceases to investigate a matter, the Internal Ombudsman will inform the complainant in writing of the decision and provide the reason for the decision.
- 4.8 The Internal Ombudsman will not re-investigate complaints that have been finalised previously unless there are new allegations of wrong doing or the complainant has new information, that was not available at the time of the original decision

## **5. Who can make complaints?**

- 5.1 Anyone can make a complaint to the Internal Ombudsman provided it concerns Council's operations and functions and is within the Internal Ombudsman jurisdiction. Complaints may be received from residents, community members, ratepayers, local businesses, staff, Councillors and other Council stakeholders.
- 5.2 Complaints must be made in writing to either the Council or direct to the Internal Ombudsman.
- 5.3 Internal Ombudsman staff are available in person or by telephone to discuss matters as to whether the Internal Ombudsman is the correct entity to handle the complaint or refer matters appropriately.
- 5.4 Internal Ombudsman staff can provide assistance to persons who wish to make a complaint but are unable to submit a written complaint themselves.

**6. Confidentiality and Privacy**

- 6.1 All parties to a matter investigated by the Internal Ombudsman are required to maintain confidentiality in relation to all correspondence and reports, any conversations or discussions and any interviews conducted. The processes of the Internal Ombudsman are undertaken in private and in a secure location.
- 6.2 Records management and the handling of personal and private information within the Internal Ombudsman unit are in accordance with Council policy.
- 6.3 Staff and Councillors are also bound by the confidentiality and privacy provisions of Council's Code of Conduct.
- 6.4 Complainant's details will not be disclosed unless written consent from the complainant has been provided or it is necessary for procedural fairness to any parties involved.

**7. Access to information**

- 7.1 The Internal Ombudsman will have access to all relevant information upon which to conduct a fair investigation. Any investigation of electronic information held by Council will be undertaken in accordance with relevant legislation and Council policies.

**8. Reviews and Investigations**

- ~~8.1 The Internal Ombudsman is committed to managing people's expectations and will inform them of the progress of the complaint at a minimum on a monthly basis and, if there is any delay, will provide a reason, until the matter has been either resolved or closed.~~
- 8.2 The Internal Ombudsman will advise people as soon as possible when unable to deal with any part of their complaint and provide advice about where such issues and/or complaints may be directed.
- 8.3 The Internal Ombudsman will address each complaint with integrity and in an equitable, objective, professional and unbiased manner and ensure that the person handling a complaint is different from any staff member whose conduct or service is being complained about.
- 8.4 Conflicts of interests, whether actual or perceived, will be managed responsibly.
- 8.5 The process for reviews and investigations conducted by the Internal Ombudsman will operate around the following basic principles, as the Internal Ombudsman considers necessary:
  - a) Review of the matter as to its jurisdiction and priority allocated.
  - b) An acknowledgement letter or email will be sent to the complainant.

- c) Preliminary documentation review of any records or information available in relation to the issues raised including any current policies and procedures applicable to the matter and site inspections where relevant.
  - d) Interviews with the relevant person(s).
  - e) Preparation of a confidential report to the Chief Executive Officer or as appropriate to the Mayor or the Council or the Chairman of the Council's Audit, Risk and Improvement Committee, which will include:
    - i A review of the evidence available to the investigation.
    - ii Determinations on the complaint.
    - iii Appropriate recommendations on the matters investigated.
    - iv Any other issues identified which are not directly associated with the matters under review or investigation will be noted for further review by Council.
  - f) A letter to the complainant detailing the results of the investigation and any actions, if appropriate giving consideration to relevant privacy legislative requirements and industrial instruments. Information provided to the complainant detailing the results of some investigations may therefore be limited.
- 8.6 The procedures adopted and undertaken by the Internal Ombudsman will comply with relevant legislation and Council policies and follow best practice.
- 8.7 The Internal Ombudsman will handle complaints using procedures that are in line with the NSW Ombudsman's Effective Complaint Handling Guidelines (2017); the Internal Ombudsman will keep accurate records and complaint data will be stored as required under the State Records Act 1998.
- 8.8 The Internal Ombudsman will assess and prioritise complaints in accordance with the urgency and/or seriousness of the issues raised. The timeframe for the investigation will be determined by the allocation of the priority of the complaint and other work constraints of the Internal Ombudsman. The Internal Ombudsman will, when required, prioritise investigations as follows – complaints relating to fraud and corruption, complaints referred by an external agency, complaints relating to a breach of legislation, non-urgent complaints about an action taken by Council staff.
- 8.9 The Internal Ombudsman may refer matters to other bodies, internal or external to Council for investigation, due to the nature of the matter or the current resourcing of the Internal Ombudsman or the urgency of the matter.
- 8.10 The Internal Ombudsman may utilise the services of Council's Panel of Code of Conduct Reviewers or other investigators in accordance with the relevant procurement legislative requirements and guidelines.

## 9. Investigation Reports and Recommendations

9.1 Where, after completing an investigation, the Internal Ombudsman is of the opinion that a decision, recommendation, act, omission or procedure of an employee or Councillor or delegate of the Council:

- a) Is contrary to law
- b) Is unjust, oppressive or improperly discriminatory
- c) Is based on a rule of law or practice that is unjust, oppressive or improperly discriminatory
- d) Is based in whole or in part on a mistake of law or fact or on an irrelevant ground or consideration
- e) Is related to the application of arbitrary, unreasonable or unfair procedure
- f) Was made without providing adequate reasons or
- g) involves maladministration or misconduct of any kind,

then the Internal Ombudsman shall provide a confidential written report of the opinion, with reasons, to the Chief Executive Officer, or as appropriate, to the Mayor or the Council or the Chairman of the relevant member Council's Audit, Risk and Improvement Committee.

9.2 In making an investigation report, the Internal Ombudsman may recommend to the Chief Executive Officer or as appropriate, to the Mayor or the Council or the Chairman of the Council's Audit, Risk and Improvement Committee that:

- a) The matter be referred to the Chief Executive Officer for further consideration, including but not limited to disciplinary proceedings to commence.
- b) An omission or delay be rectified.
- c) A decision or recommendation by an employee or employees of the Council be revoked or varied.
- d) Reasons be given by an employee or employees of the Council for a decision.
- e) A practice or procedure be altered.
- f) A statute, regulation or by law be reconsidered.
- g) The Council pay compensation to a complainant.
- h) The Council provide a particular service.
- i) The Council amend or not impose a charge or condition in relation to a particular service,
- j) The Council supply a good or service or undertake any necessary corrective or other work to resolve a complaint.
- k) The Council make an appropriate correction, deletion or addition to a record.
- l) Such other steps are taken as the Internal Ombudsman considers reasonable and just.

- 9.3 It is the Chief Executive Officer's responsibility to address recommendations made by the Internal Ombudsman and ensure their implementation within the Council. The exception to this is when a conflict of interest may occur by referring the matter to the Chief Executive Officer in which case the matter is referred to the Mayor. If for some reasons both the Chief Executive Officer and the Mayor are perceived to have a conflict of interest then the matter is referred direct to the elected Council to address the recommendations. The Internal Ombudsman may recommend that such recommendation be provided in a confidential meeting with Council.
- 9.4 A complaint about the Mayor, Chief Executive Officer or a Councillor in relation to a Code of Conduct breach is reported in accordance with the Procedures of the Administration of the Model Code of Conduct for Local Councils in NSW.
- 9.5 Council is required to record each recommendation made by the Internal Ombudsman, take appropriate action and record what action has been taken by Council, by whom and when, for each recommendation made by the Internal Ombudsman.
- 9.6 Any concerns that the Internal Ombudsman has regarding the failure of Council to implement the Internal Ombudsman recommendations may be reported to the elected Council, the Chairman of the Council's Audit, Risk and Improvement Committee and/or the relevant government agency as appropriate.
- 9.7 The Internal Ombudsman cannot amend any operational decisions made by Council or Council officers.
- 9.8 The Internal Ombudsman will follow the *NSW Ombudsman's Effective Complaint Handling Guidelines* and may from time to time document and implement its own specific procedures and processes regarding the management and investigation of complaints.
- 10. Review of an Internal Ombudsman Decision**
- 10.1 No proceedings of the Internal Ombudsman is necessarily negated or invalid because of technical defects in the conduct of the investigation. Any such defects in the conduct of an investigation will be considered individually in terms of their impact on the outcome of the investigation.
- 10.2 The Internal Ombudsman's recommendations can only be reviewed by a body external to the Council.

**11. Breach and Penalty**

11.1 A person who wilfully and without justification:

- a) Obstructs, hinders or resists the Internal Ombudsman or any other person in the performance of the functions and duties of the Internal Ombudsman under this Governance Charter
- b) Fails to comply with a request of the Internal Ombudsman or
- c) Makes a false statement to, or misleads or attempts to mislead, the Internal Ombudsman or any other person in the exercise or performance of the functions and duties of the Internal Ombudsman under this Charter,

will be considered in breach of this Charter and may be liable to disciplinary action in accordance with Council's Code of Conduct and other relevant policies.

**12. Reporting**

12.1 The Internal Ombudsman will prepare and submit quarterly reports to the Council by way of a Governance Dashboard.

12.2 The Internal Ombudsman will participate in an internal forum whose purpose is to monitor the Governance Dashboard enhancing communication between key functions across the Council including Governance, People and Culture, Customer Service, Internal Audit and Finance.

12.3 The Internal Ombudsman will prepare and submit an annual report to be included in Council's Annual Report on the operations of the Internal Ombudsman office or as requested by Council.

12.4 The Internal Ombudsman will provide a quarterly report to the Audit, Risk and Improvement Committee and will meet with the members of the Committee annually in camera or as arranged with the Committee without the presence of management.

**13. Resourcing and Reporting Line**

13.1 The Internal Ombudsman shall report to the Chief Executive Officer.

13.2 Resourcing of the Internal Ombudsman office regarding appointed staff, their ongoing performance and other staff related matters are determined by the Chief Executive Officer and implemented in accordance with Council's recruitment policies.

13.3 Other resources required by the Internal Ombudsman will be determined and funded by Council's operational budget and authorised by the Chief Executive Officer.

## 14. Definitions

<b>Best Practice</b>	Means commercial or professional procedures that are accepted or prescribed as being correct or most effective.
<b>Chief Executive Officer</b>	Means the Chief Executive Officer or their delegate or authorised representative as appointed by the elected Council.
<b>Confidentiality</b>	Means the characteristic of information being disclosed only to authorised persons or organisations in the authorised manner.
<b>Corruption</b>	As per the definition in the Independent Commission Against Corruption Act 1988 Section 8:

### 8 General nature of corrupt conduct

- (1) *Corrupt conduct is—*
- (a) *any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or*
  - (b) *any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or*
  - (c) *any conduct of a public official or former public official that constitutes or involves a breach of public trust, or*
  - (d) *any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.*
- (2) *Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which could involve any of the following matters—*
- (a) *official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition),*
  - (b) *bribery,*
  - (c) *blackmail,*
  - (d) *obtaining or offering secret commissions,*
  - (e) *fraud,*
  - (f) *theft,*

- (g) *perverting the course of justice,*
  - (h) *embezzlement,*
  - (i) *election bribery,*
  - (j) *election funding offences,*
  - (k) *election fraud,*
  - (l) *treating,*
  - (m) *tax evasion,*
  - (n) *revenue evasion,*
  - (o) *currency violations,*
  - (p) *illegal drug dealings,*
  - (q) *illegal gambling,*
  - (r) *obtaining financial benefit by vice engaged in by others,*
  - (s) *bankruptcy and company violations,*
  - (t) *harbouring criminals,*
  - (u) *forgery,*
  - (v) *treason or other offences against the Sovereign,*
  - (w) *homicide or violence,*
  - (x) *matters of the same or a similar nature to any listed above,*
  - (y) *any conspiracy or attempt in relation to any of the above.*
- (2A) *Corrupt conduct is also any conduct of any person (whether or not a public official) that impairs, or that could impair, public confidence in public administration and which could involve any of the following matters—*
- (a) *collusive tendering,*
  - (b) *fraud in relation to applications for licences, permits or other authorities under legislation designed to protect health and safety or the environment or designed to facilitate the management and commercial exploitation of resources,*
  - (c) *dishonestly obtaining or assisting in obtaining, or dishonestly benefiting from, the payment or application of public funds for private advantage or the disposition of public assets for private advantage,*
  - (d) *defrauding the public revenue,*
  - (e) *fraudulently obtaining or retaining employment or appointment as a public official.*

**Council**

Means Central Coast Council, being the organisation responsible for the administration of Council affairs and operations and the implementation of Council policy and strategies.



<b>Councillor</b>	Means any person elected or appointed to civic office, including the Mayor and Deputy Mayor.
<b>Council Official</b>	Includes Councillors, members of Staff of Council, Administrators, Council Committee Members, delegates of Council, contractors, community members of wholly advisory committees and volunteers.
<b>Council policy</b>	Means policy created and approved by the elected members of the Central Coast Council.
<b>Delegate of Council</b>	Means a person (other than a Councillor or member of Staff of Council) or body, and the individual members of that body, to whom a function of Council is delegated.
<b>Fraud</b>	<p>As per the definition in the Crimes Act 1900 Section 192(e):</p> <p><b>192(e) Fraud</b></p> <p>(1) <i>A person who, by any deception, dishonestly--</i></p> <p style="padding-left: 40px;">(a) <i>obtains property belonging to another, or</i></p> <p style="padding-left: 40px;">(b) <i>obtains any financial advantage or causes any financial disadvantage,</i></p> <p><i>is guilty of the offence of fraud.</i></p> <p>(2) <i>A person's obtaining of property belonging to another may be dishonest even if the person is willing to pay for the property.</i></p> <p>(3) <i>A person may be convicted of the offence of fraud involving all or any part of a general deficiency in money or other property even though the deficiency is made up of any number of particular sums of money or items of other property that were obtained over a period of time.</i></p>
<b>Internal Ombudsman</b>	Means the person appointed to the position of Internal Ombudsman of the Office of the Internal Ombudsman.
<b>Maladministration</b>	<p>As per the definition in the Public Interest Disclosures Act 1994 Section 11:</p> <p><b>11 Disclosure to Ombudsman concerning maladministration</b></p> <p>...</p> <p>(2) <i>For the purposes of this Act, conduct is of a kind that amounts to maladministration if it involves action or inaction of a serious nature that is—</i></p> <p style="padding-left: 40px;">(a) <i>contrary to law, or</i></p>

- (b) unreasonable, unjust, oppressive or improperly discriminatory, or
- (c) based wholly or partly on improper motives.

**Procedural Fairness** Means acting fairly in administrative decision making. It relates to the fairness of the procedure by which a decision is made.

## 15. References

*Office of Local Government Model Code of Conduct for Local Councils in NSW*

*Office of Local Government Procedures of the Administration of the Model Code of Conduct for Local Councils in NSW*

*Local Government Act 1993*

*Ombudsman Act 1974 NSW*

*NSW Ombudsman's Effective Complaint Handling Guidelines*

*Independent Commission Against Corruption Act 1988*

*Public Interest Disclosures Act 1994*

*Privacy and Personal Information Protection Act 1998*

### Approved:

Gary Murphy, Chief Executive Officer

### Date:

### Next Review Due By:



INDEPENDENT LAND USE ZONING REVIEW  
475-535 Pacific Highway, Crangan Bay  
Project: 20338



**INDEPENDENT REVIEW**  
475-535 PACIFIC HIGHWAY,  
CRANGAN BAY  
LAND USE ZONING

For Central Coast Council

MARCH 2021



INDEPENDENT LAND USE ZONING REVIEW  
475-535 Pacific Highway, Crangan Bay  
Project: 20338

**REPORT REVISION HISTORY**

Revision	Date Issued	Revision Description	
0	03/03/2021	Draft for client review	<b>Prepared by</b> David Ryan <i>Executive Director</i>
1	16/03/2021	Final for client issue	David Ryan <i>Executive Director</i>



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## 1. INTRODUCTION

1. I have been engaged by Central Coast Council to undertake an independent review of the historical, current and future land use zoning of a property at 475-535 Pacific Highway, Crangan Bay, known as Crangan Bay Quarry.
2. According to my instructions, the review is to address the following tasks:

	Review Tasks	Reference in this report
a	Review all recent correspondence from the landowners and their consultants regarding this issue	Refer to schedule of material supplied to me by the landowner on 29 January 2021 at <b>Appendix B</b> . Additional information (legal opinion, tax advice and Departmental correspondence) was also subsequently supplied to me by the landowner. All such material was reviewed and key issues arising from it are identified in <b>Section 5</b> and discussed throughout this report.
b	Understand the history of the current and previous Local Environmental Plan provisions that apply to this property by: <ul style="list-style-type: none"> <li>▫ Reviewing Council documents</li> <li>▫ Interviewing Council staff</li> <li>▫ Interviewing the landowner and their consultants</li> </ul>	Refer to schedule of historical and current planning controls in <b>Section 3</b> . Interview with Council officers, Malcolm Ryan, Scott Duncan & Jenny Mewing at Council's Wyong Administration Building on 29 January 2021. Refer to <b>Section 5</b> for summary. Interview with Sandra Kay and Tony Somerville (Wycob Pty Ltd) & Chris Oliver (Wycob planning consultant), at Crangan Bay Quarry site on 29 January 2021. Refer to <b>Section 5</b> for summary.
c	Carry out a detailed site inspection	Inspection of site and surrounding area undertaken in the company of the landowners on 29 January 2021. Refer to <b>Section 2</b> for description
d	Complete an analysis of the current planning controls	Refer to <b>Section 3</b> for summary and <b>Section 6</b> for analysis.
e	Complete an analysis of the current development approvals being used	Refer to <b>Section 4</b> for summary of approvals and <b>Section 6</b> for analysis.
f	Analysis of the strategic context of the property	Refer to <b>Section 3</b> for summary of Strategic Plans and <b>Section 6</b> for analysis.
g	Determine if Council has made an "error" in its determination of the current zoning for the property	Refer to <b>Section 7</b> for conclusion on whether an error has been made.
h	Regardless of the conclusion in item "g", determine if there is a case for a change in the planning controls covering this land	Refer to <b>Section 8</b> for conclusion on appropriate planning controls for site.



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## 2. DESCRIPTION OF SITE AND LOCALITY

3. The subject site is in the suburb of Crangan Bay, within the Central Coast Local Government Area (LGA). The site adjoins the Lake Macquarie LGA to the north, and is in the vicinity of Lake Munmorah, Wybung, Catherine Hill Bay, Chain Valley Bay, Frazer Park and Munmorah State Conservation Area (refer **Figure 1**).

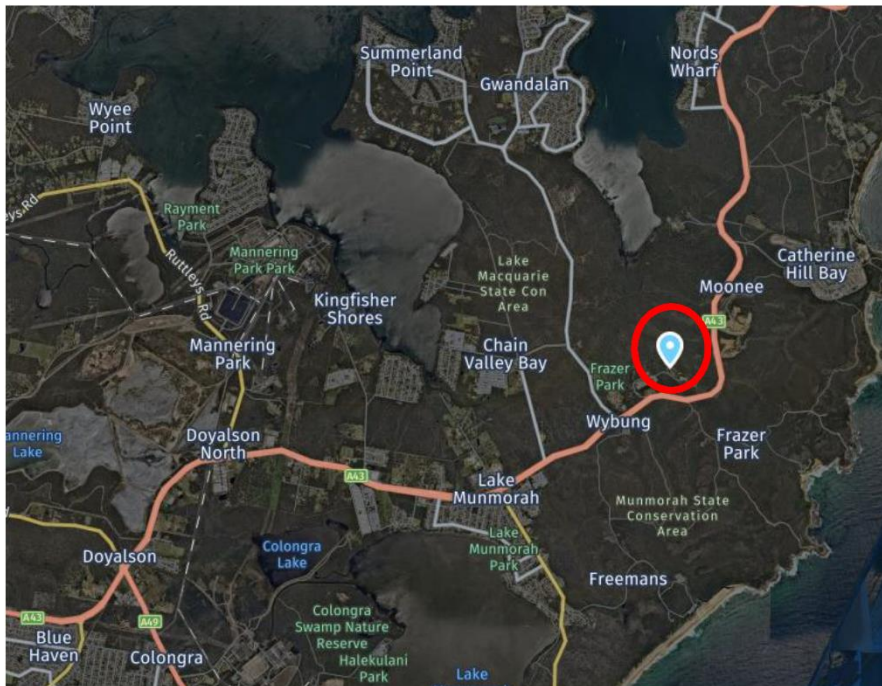


Figure 1: Location Map, subject site identified by blue marker and red circle (Source: NearMaps)

4. Adjoining the site are:
  - To the north: Lake Macquarie State Conservation Area - primarily Zone E1 Public Recreation (LMLEP 2013)
  - To the east: Pacific Highway and Frazer Park and Frazer Park Quarry (zoned SP1 Extractive Industry in LMLEP)
  - To the south: Pacific Highway and Munmorah State Recreation Area
  - To the west: Reservoir and Public Recreation (RE1) zoned land containing Junior Trials Minicycle Club
5. The subject site is located at 475-535 Pacific Highway, Crangan Bay and has a legal description of Lots 1 - 7 DP 249281 and Lot 11 DP 598580. The subject site is zoned E3 Environmental Management with additional permitted uses (APU) for extractive industry under Wyong Local Environmental Plan 2013 (WLEP 2013).
6. **Figure 2** and **3** present a zoning map and cadaster and an aerial view of the subject site.



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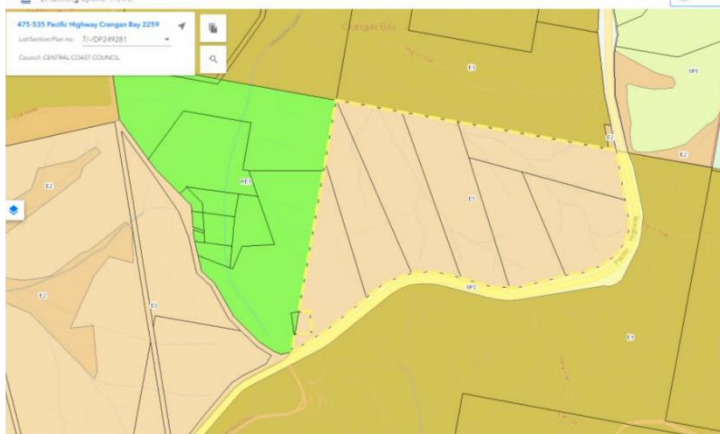


Figure 2: Zoning and Cadaster, subject site identified yellow dashed (Source: ePlanning Spatial Viewer)



Figure 3: Aerial View, subject site is outlined in red (Source: SixMaps)

7. The subject site is irregular in shape and has a site area of 79ha. The site has a frontage to and access from the Pacific Highway.
8. The subject site currently contains an active quarry, recycling and associated facilities. The quarry is owned by Wycob Pty Ltd. **Figures 4, 5 and 6** show the existing development on the subject site.





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Figure 4: View of existing quarry entrance at the subject site, looking north east from Pacific Highway (Source: Google Streetview)



Figure 5: Quarry entrance, looking south west from Pacific Highway (Source: Google Streetview)



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Figure 6: Buildings with separate entrance from Quarry, looking north east from Pacific Highway (Source: Google Streetview)

### 3. HISTORY OF STRATEGIC AND STATUTORY PLANS

9. The following table contains a summary of relevant regional and local strategic planning documents:

Date	Strategic Document	Summary
2008	Central Coast Regional Strategy (CCRS 2008)	Site is identified as 'Rural and Resource Land' as shown by Figure 8 in <b>Appendix A</b> . The Strategy provides the following explanation of "Rural and resource lands are an important element of the Central Coast environment. These lands contribute to employment, tourism, cultural and regional identity, character, biodiversity and catchment protection." (CCRS, pp. 34). Action 6.5 states that the Councils through the LEP should incorporate appropriate land use buffers around environmentally sensitive, rural and resource lands.
October 2012	North Wyong Shire Structure Plan (NWSSP 2012)	Site is identified as 'Green corridor and habitat networks' as shown by Figure 9 in Appendix A. The green corridor is "valuable vegetated areas that contains endangered ecological communities, threatened species and habitats, riparian environments and wetlands." NWSSP identifies



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		objectives ensuring biodiversity protection remains a major priority within the LGA.
November 2013	Wyong Shire Council Settlement Strategy (WSCSS 2013)	Site is identified within the green corridors and as a gravel Resource area. Both identifications are shown in Figures 10 and 11 in Appendix A.
December 2012	Environmental Management Framework (EMF 2012)	EMF provided the basis for the conversion of the Wyong LEP 1991 to draft Wyong LEP 2013. Included recommendations for additional environmental protection zones.
2013	Wyong Development Control Plan (DDCP) - Chapter 3.4 Conservation Areas for Northern Wyong Shire	DCP focused on the creation of green corridor and presents criteria for definition including survey and assessment, biodiversity conservation, connectivity, hydrology, and context. These objectives were applicable to all land impacted by the green corridor.
2016	Central Coast Regional Plan (CCRP 2016)	Site is identified within the biodiversity corridor as shown in Figure 12 in Appendix A. The CCRP states the objectives and goals include the protection of natural environment and management of agricultural and resource lands.  Whilst not directly identifying the subject site for its extraction operations, Action 10.3 is to "ensure development in the north of the region takes account of the extraction of coal, clay and gravel resources."
2020	Draft Central Coast Development Control Plan (CCDCP) - Chapter 5.47 Northern Conservation Areas	CCDCP states the objectives for the zone and updates criteria for green corridor to now include survey and assessment, connectivity, biodiversity conservation and hydrology.
2019	Central Coast Council Biodiversity Strategy 2019	Site identified with conservation properties being high biodiversity conservation value as shown in

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		Figure 13 in Appendix A. Implementing the biodiversity strategy through land use planning has been explored through four additional local provisions and/or development requirements being local environmental plan terrestrial, riparian and environmentally sensitive mapping layers, subdivision of land to support conservation outcomes, subdivision incentives and local policies.
Current (2021)	Proposed Central Coast Strategic Conservation Plan	Department of Planning, Industry and Environment currently investigating strategic conservation planning across the Central Coast region.

10. The following table contains a summary of relevant regional and local environmental planning instruments:

Date	Statutory Document	Summary
1968	Wyong Planning Scheme	Site zoned part Non-Urban (1A) and part Non-Urban (1B) with extractive industries and caravan parks permissible uses.
1977	Interim Development Order 58	Site zoned Scenic Protection 7(b) with permissible uses including extractive industries and caravan parks among others.
1987	Wyong Local Environmental Plan Rural Lands	Entire site zoned Scenic Protection 7(b) with same permissible uses.
1991	Wyong Local Environmental Plan	Retention of zone Scenic Protection 7(b) with extractive industry being an innominate permissible use. .
Gazetted 24 October 1997	WLEP 1991 Amendment No. 93	Retention of Scenic Protection 7(b), but "extractive industries" prohibited.
December 2012	Draft Wyong Local Environmental Plan	Draft WLEP 2012 placed on exhibition. Council proposes site as E3 Environmental Management as zone Scenic Protection 7(b) conversion.
December 2013	Wyong Local Environmental Plan	WLEP 2013 gazetted with site zoned E3 Environmental Management with "extractive industries" as an additional



		permitted use per Clause 2.5 and Schedule 1 Item LEP 2013. Caravan parks are prohibited in zone.
Gazetted 28/10/2019	Major Amendment 1 to Wyong Local Environmental Plan	No change to provisions relevant to subject site.
Gazetted 14/05/2020	Major Amendment 2 to Wyong Local Environmental Plan	No change to provisions relevant to subject site.
March 2021 (current controls)	Wyong Local Environmental Plan 2013	Site currently zoned E3 Environmental Management with additional permitted uses for "extractive industries" - Schedule 1.
March 2021 (proposed controls - adopted 14/12/2020)	Planning Proposal Consolidated Central Coast Local Environmental Plan	Site proposed to be zoned E3 Environmental Management with additional permitted uses for "extractive industries" - Schedule 1

#### 4. DEVELOPMENT CONSENTS

11. The following table contains a summary of relevant development consents over the site:

Development Consent	Summary
<b>Quarry</b> DA 77/171 Consent: 08/06/1977 DA 83/241 Consent: 15/07/1983	DA 77/171 to extend the gravel quarry and erect a crushing plant. DA 83/241 to extend extraction operations from Lot 1 and 2 to Lots 3 -7. Condition requiring 77/171 to be surrendered. Modifications of 83/241 in 1992 and 1994.
<b>Material Recycling Depot</b> DA 11/00 Consent: 13/04/2000	DA lodged as integrated development for material recycling depot (concrete products).

#### 5. SUMMARY OF ISSUES IN DISPUTE

12. The zoning of the site has been disputed by the landowner for several years. In broad terms, the landowner considers that Council (both former Wyong Council and Central Coast Council) has been responsible for errors in procedures and decision making that cause the previous, current and currently proposed zoning of the site to be erroneous. Consequently, the landowner contends that Council should 'correct' the zoning of the land through Council initiated action. A more detailed description of the issues in dispute follow in Section 5.1.



13. I have had the benefit of reviewing several submissions prepared by and on behalf of the landowner that describe the key issues in dispute and associated reasons for the contention that Council should rectify the claimed erroneous zoning. I also have had the benefit of further discussions on these matters during my interview with the landowner. The issues raised are very comprehensive and whilst I have considered them all, I have come to the view that the key determinative matters upon which I should concentrate my analysis (in Section 6) and upon which I should base my findings (in Section 7) are those described in Section 5.1 below. I have not responded in this report to every individual item raised by the landowner where, after review of an item, I consider that it has no bearing on my findings. **Note: All of the statements in Section 5.1 and 5.2 are the landowner's and Council's contentions and comments, not my own.**

#### 5.1. Landowner's contentions

14. The landowner contends that the evolution of planning controls since 1991 has progressively reduced the range of permissible uses on the site. These changes have resulted in an effective 'down-zoning' of the site over time.
15. This contended down-zoning has impacted on the value of the site arising from the reduced potential to expand the current extractive operations and other business opportunities relating to resource recovery, and also in relation to limiting the range of uses permitted on the site following the cessation of the extractive/resource recovery operations.
16. In relation to current ongoing use of the site, extractive industries are permissible via an Additional Permitted Use (APU) clause in the WLEP. However, the landowner's legal counsel's opinion is that the zone objectives for Zone E3, which are antipathetic to extractive industries, are likely to limit further expansion of those activities. The landowner explained to me that prospective operators of extractive and resource management operations on the site had expressed these same concerns and this had diminished their interest in the site. Documentary evidence from a valuer, industrial agent and a potential purchaser was provided to support the contention of the negative impact on land value.
17. The current E3 Environmental Management zoning of the site is not consistent with the zoning of other quarries in the LGA. This is particularly applicable to those quarries within the former Gosford LGA under the Gosford LEP 2014, several of which were rezoned from 7(b) under the previous instrument to RU2 under that Council's Standard Instrument conversion and proposed to be maintained under the draft Consolidated LEP.
18. In relation to potential future post-remediation land uses, the removal of several previously permitted uses in WLEP 2013 devalues the property. Of particular concern to the owner is the current prohibition of caravan parks/mobile home estates (MHE), which had been the subject of in-principle approval in 1965 and indicated as a potential future use in the EIS accompanying DA 83/241. The removal of caravan parks as a permissible use was inconsistent with Ministerial Direction 3.2 under Section 117 (now 9.1) of the Act.
19. Legal interpretations and some procedures adopted by the Council (Wyong and Central Coast) have been flawed and in some cases tainted by potential conflicts of interest to the extent that the current E3 zoning of the site is not only inappropriate but is erroneous.
20. Because of the current zoning is erroneous, it is Council's responsibility to rectify the error by initiating and implementing the required LEP amendment itself, rather than requiring an owner-initiated Planning Proposal to be lodged. A precedent for such an approach is the Old Sydney Town site. This is important to the landowner because of the significant adverse Capital Gains Tax implications if the landowner initiates the rezoning. Advice from a tax expert was provided to me in this regard. Note -



I reiterate advice I provided to the landowner during our interview, that I am not a tax expert and cannot provide Council with an opinion on how this might influence its decision making in relation to the findings of my report, which are based solely on planning considerations.

21. The 'correct' land use zoning is RU2 Rural Landscape, in conjunction with a range of additional permitted uses (under Clause 2.5 of the LEP), including caravan parks.

## 5.2. Council's responses

22. Council has supplied relevant documents (from former Wyong Council and Central Coast Council) that related to responses over time to the landowner's contentions, including those described above.
23. In my interview with Council staff, some of the matters raised by the landowner were specifically addressed as follows:
24. In relation to former Gosford Council's Standard Instrument conversion, Zone RU2 Rural Landscape was more compatible for the quarries within that former Gosford LGA compared to the subject quarry in the former Wyong LGA. There also is significantly more land zoned RU2 Rural Landscape within the former Gosford LGA compared to the Wyong LGA to explain the greater incidence of quarries zoned in that manner.
25. In relation to the landowner's contention that LEP 2013 was made in error, Council's opinion is that there was no error, and I was referred to Department of Planning advice from February 2015 and June 2015 stating that the LEP was not erroneous. The landowner has supplied me with the February correspondence, which I will address later in my report. Neither Council nor the landowner were able to supply me with any Departmental correspondence from June 2015.
26. Council's actions in initiating amendments to permissible land uses for the Old Sydney Town site was explained on the basis that this involved replicating controls in the Gosford LEP 2014. That landowner has submitted a separate Planning Proposal to permit an expanded range of permissible land uses not previously permitted under the Gosford LEP 2014. As such, these circumstances can be distinguished from the Crangan Bay quarry circumstances.
27. In relation to consistency with strategic plans, the Central Coast Regional Plan contains no specific reference to the subject site, however, it does include mapping that identifies the site as being affected by the "biodiversity corridor" as well as general references to the protection of extractive industries.
28. Wyong Council was not constrained by the Department of Planning from making policy changes as part of the Standard Instrument conversion leading to the 2013 WLEP. Council relied on the Environmental Management Framework to guide the conversion.
29. Council staff intend to undertake an Environmental Lands Review. This will aim to identify appropriate future zonings for all land in the Central Coast LGA with an environmental ('E') zone, to inform an amendment to the Consolidated LEP, once gazetted. This is intended to be undertaken in 3 phases: Council owned deferred lands followed by all remaining Crown lands and rural residential lands. The 3rd phase will involve standardising zoning for all environmental lands and will include the subject site. Whilst there is no formal Council resolution to undertake this Review, work is underway on phase 1. It is likely that the 3rd phase will commence in 2022. **Note:** Subsequent to my interview with Council staff, on 9 March Council received a report detailing this review and program and resolved in relation to Phase 1.



## 6. ANALYSIS OF ISSUES IN DISPUTE

30. I have distilled the disputed issues outlined in Section 5 down to a series of questions that I will analyse in this section.
- 31. Do purported procedural failings and errors in the making of the earlier EPIs 'infect' the current planning controls to such an extent that they invalidate the current zoning?**
32. The first identified procedural concern raised by the landowner relates to their lack of prior knowledge of Amendment No. 93 to LEP 1991, which removed extractive industries from the 7(b) zone applying to the site. From my experience, it was not uncommon at that time for public consultation to be somewhat limited in its engagement of landowners potentially impacted by zoning and other proposed changes to planning controls. I do not consider it necessary to form a view as to whether Wyong Council's engagement was of a reasonable standard, since, whilst I do not condone ineffective engagement, I do not believe that this represents such a failure of process that it would invalidate the instrument or elements of its contents. The alternative conclusion would render a very large number of LEPs open to challenge and create tremendous uncertainty and dysfunction in the planning system. Even if the process was suboptimal, because it occurred 23 years ago and because I do not consider it represents a clear procedural error, in my opinion it has not 'infected' the ongoing evolution of planning controls on the site to the extent that it should be a factor determinative of the appropriate zoning for the site in 2021.
33. Whilst I note the many instances cited by the landowner of failures or purported failures by Council staff in their reporting of matters to the Council, I have formed the view that, whilst some may not reflect 'best practice', they do not invalidate the decision making of the elected Council in relation to the relevant planning instruments. In some cases it appears the very diligent actions of the landowner ensured that the Council was alerted to the shortcomings and action was taken to address them.
34. I cannot put myself in the shoes of the elected Councillors at the times in question, to confidently state that they were likely to have made different decisions in relation to the zoning of the subject site if they had possessed all the information I have now been supplied by the landowner and its representatives. However, based on my conclusions later in this report that I do not consider those historical decisions inexplicable or unreasonable, I have no basis upon which to conclude that their decisions were anything other than properly considered.
35. As such, I conclude that any shortcomings that there may have been, did not result in Council's decision on the zoning of the site being 'in error'. Also, for the purposes of my own review, I do not consider any such procedural shortcomings are relevant to the current question of determining the appropriate zoning for the site.
36. I also note correspondence from the (then) Secretary of the Department of Planning and Environment to the landowner, dated 2 February 2015. In a detailed response to a number of the contentions similar to those I am now considering, the Secretary states that - *"none of the matters raised in your letters would have resulted in the Department approving different zones or permissible land uses on your land, had these matters been reported by Council to the Department in the way you suggest."*
37. I also note that former Section 35 (current Section 3.27) of the EPA Act stated that *"the validity of an environmental planning instrument shall not be questioned in any legal proceedings except those commenced in the Court by any person within 3 months of the date of its publication on the NSW legislation website"*. There is therefore no opportunity to challenge the validity of any former or current LEP applying to the site.





38. Finally, in response to certain statements by the respondent that allude to Wyong Council's potential conflicts of interest, I do not consider it appropriate, within the scope of my review, to investigate or express any opinions on such matters. Such issues are the province of other statutory bodies.
39. I conclude therefore, that any purported procedural errors that may have occurred over the period in question do not invalidate current planning controls applying to the site.
- 40. In the 'conversion' to the Standard Instrument LEP, was Council limited only to converting pre-existing zones to 'equivalent zones' and proscribed from making other policy or zoning changes?**
41. I have seen no evidence to support the landowner's representatives' assertion that it was 'impermissible' (Fraser submission to Central Coast Council January 2020, paragraphs 55 & 56) for Council to apply "wider public policy considerations" to the task of implementing the Standard Instrument in 2012/13. Whilst Councils were required to implement the Standard Instrument and provided with instructions/guidelines on converting existing to equivalent standard zones, I have seen no evidence of government guidelines that forbade Councils from implementing other policy changes as part of the conversion process. Indeed, I note that Department of Planning Circular PS 06-008 Local Planning, states that "Councils can prepare additional local provisions that address local planning issues and which reflect the outcomes of local and regional strategies". Whilst the matter under review does not involve a "local provision", this statement clearly enables Councils to include provisions in their Standard LEPs that evolve from local or regional strategies (i.e., relate to policy issues).
42. I therefore conclude that Council's actions in incorporating policy changes into the Standard Instrument did not represent an 'error' in the plan making process.
- 43. Could Council have reasonably reached the conclusion that standard Zone E3 was an 'equivalent zone' to Zone 7(b) in the former LEP based on NSW government guidelines, a comparison of permitted uses, and other relevant factors?**
44. Yes. Department of Planning LEP practice note PN 07-001 Standard Instrument for LEP dated 26 March 2007 states as follows:
- Where land has particular environmental qualities that need to be addressed through zoning controls, an appropriate zone is to be selected from the eight Standard Instrument zones that specifically provide for environmental protection as part of their core objectives, i.e. RU2, RE1, RE2, E1, E2, E3, E4 or W1. The choice of zone should reflect the primary intended use of the land.*
45. This note could reasonably be taken to apply to '7 zones' under former instruments, which were imposed on land deemed to have a broad range of "particular environmental qualities". It demonstrates that discretion was available to Councils to convert to a range of standard zones (including RU2 and E3), not one specific zone. The Department's guidance in how to exercise that discretion related to consideration of "the primary intended use of the land."
46. Whilst it is arguable that the 'primary' intended use of the subject site was for extractive industry, there were nonetheless circumstances that meant that Zone E3 was not an entirely inappropriate zone for the site. There is sufficient evidence of the site having particular environmental qualities, as I will discuss later in this report.
47. I note that on Page 8 of Department of Planning practice note PN 09-002 Environmental Protection Zones dated 30 April, 2009, it is contemplated that extractive industry may be included as a permissible use in Zone E3 zone in certain circumstances. From this it can be inferred that the



Department considered that there are at least some circumstances in which extractive industries can potentially exist within the ambit of an environmental management zone.

48. I accept the landowner's submission that it was open to Wyong Council to have converted the 7(b) zone to Zone RU1 or RU2 based on the presence of an operational quarry on the site. However, Council's decision to do otherwise was discretionary, not mandatory. There were sufficient, and not unreasonable grounds for making that decision.
- 49. Is it appropriate and reasonable for Council to change (reduce) the range of uses permissible on a site?**
50. The landowner has demonstrated that the range of permissible uses on the site has reduced from when it was zoned 7(b) prior to 2013, compared to the current LEP (and as proposed to be amended under the consolidated instrument).
51. There can be no assumption that permissible land uses will not change over time, beneficially or detrimentally. This can occur for a myriad of reasons, including policy changes, changes to site conditions or other circumstances. Usually, these changes positively or negatively affect development opportunities and land values without triggering compensation to or contributions from landowners.
52. There are exceptions where major value uplifts are involved (levies and other 'value capture' mechanisms) or where major value downgrade results from the land being identified for a 'public purpose.' In the latter situation, the land should be reserved for public acquisition, reflecting that the 'burden' of the public purpose should not be imposed on the private owner. In this regard, Department of Planning practice note PN 09-002 Environmental Protection Zones dated 30 April, 2009 states that - *"The range of uses proposed to be permitted in the E zones is a consideration for council in consultation with the Department of Planning. In determining uses, council should be aware that the range of uses should not be drawn too restrictively as they may, depending on circumstances, invoke the Land Acquisition (Just Terms Compensation) Act 1991 and the need for the Minister to designate a relevant acquiring authority"*.
53. I consider there to be no inherent reason to expect that permissible land uses will remain static over time or that adverse (but not too restrictive) changes to land uses and associated values will necessarily be compensated.
54. In my opinion, in the current circumstances, a zone and APU that permits a range of uses, including the current approved use of extractive industry, is not "drawn too restrictively" and does not meet the threshold for acquisition for a public purpose. The threshold is not met simply because the EPI may prohibit some previously permissible uses or increase restrictions or limitations on the development potential of land for permissible land uses.
55. In relation to future uses, the landowner identifies several land uses that were permissible on the site prior to 2013 and are no longer permissible. Of greatest concern appears to be caravan parks and mobile home parks. I am not persuaded by the landowner's propositions that the 1965 approval in principle or references to post remediation potential caravan park use of the site in the EIS to DA 83/241, provide support for the maintenance of this as a permissible use in subsequent planning instruments. I also note that in response to concerns raised by the landowner that Council's action was inconsistent with Ministerial Direction 3.2, the Department administering those Directions replied on 2 February 2015 that it considered the Direction was met for reasons outlined in the correspondence.
56. In relation to the current approved uses on the site, Council reinstated extractive industries as permissible on the site via the APU provisions of the WLEP 2013, enabling the ongoing use of the



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site for that purpose (subject to matters I will raise later in this report). The approved concrete recycling facility, having been approved on the basis of being ancillary to the extractive industry use on the site, will be similarly able to continue on that basis, despite being prohibited.

57. **Has Council appropriately considered the relevant factors in the determination of the appropriate zone for the site, including for example, applicable consents, environmental values, resource values?**
58. I consider key elements in determining the appropriate zone for the site include its environmental and resource values, its surrounding context, existing uses and consents.
59. There is ample evidence to confirm that the site contains important gravel reserves (identified in various Department of Primary Industry correspondence (e.g., DPI letter to Council dated 11 December 2015 stating, "the site was included in the Wyong Shire Mineral Resource Audit as an Identified Resource and that "the material remaining onsite is considered an important possible source of course aggregate for the Wyong Shire area.") I also note the findings of Mr. Peter Walsh who undertook an independent report for Wyong Council following public hearings into the draft 2012 WLEP. Mr. Walsh recommended "the retention of the capacity for this resource (the subject quarry) to be extracted into the future." Current consents allow the continuing use of the site for extractive industry and recycling activities.
60. There is also evidence that, whilst partially degraded due to the extractive activities, the site contains substantial vegetation that connects to significant, conservation and biodiversity areas. Those parts of the site not currently affected by quarrying activity are identified in the NSW Government's Biodiversity Values Map as threatened species or communities with potential for serious or irreversible impacts. The site is also identified in the Central Coast Biodiversity Strategy 2019 (Map 3) as having 'high to highest' conservation priority.



Figure 7: NSW Government's Biodiversity Values Map (site circled). Purple shading indicated Biodiversity Values

61. There is evidence from my review demonstrating that the above factors have been identified and considered in the determination of the zoning of the site.



62. In response to the landowner's contention in relation to the lack of consistency between the zoning of quarries in the former Gosford and Wyong LGAs, I have received information from the Council (**Appendix C**) that confirms that quarries zoned (in part or in whole 7(b), were generally converted to RU2 (at least in part) under the GLEP 2014.
63. I consider that this had little relevance in 2012/13 since Councils were not required to adopt the practices of other neighbouring Councils in relation to Standard LEP preparation. I accept that this has more relevance to the Consolidated Central Coast LEP, however, I consider that site specific and contextual issues must be considered rather than applying a 'one-size-fits-all' approach to all quarries in the amalgamated LGA. It is beyond my scope to undertake a detailed comparative analysis of all quarries in the LGA and this is better dealt with following comprehensive strategic analysis by the Council.
64. In response to the landowner's request for consistency with Council's approach to the zoning of the Old Sydney Town (OST) site, I accept its proposition that Council could have applied a similar approach to the zoning of the subject site under the Consolidated LEP if it were so minded. However, the circumstances are distinguishable for reasons described by Council in paragraph 26 of this report. Council has discretion to consider each situation based on its circumstances and the fact it may reach different conclusions in relation to similar, but distinguishable, circumstances, is not, of itself, reason for me to suggest that Council was wrong in its decision or that it is compelled to follow suit for the subject site.
65. **Could Council have reasonably reached the conclusion that the E3 zone was an appropriate zone for the site based on consistency with relevant strategic plans, NSW government guidelines and directions and other relevant factors?**
66. The fact that Council's LEP 2013 was informed by its Environmental Management Framework (EMF) and the North Wyong Shire Structure Plan (NWSSP) was, in my view, proper and appropriate.
67. In my view, it was proper for the zoning of the site to be informed by its identification as part of the "Green Corridor" in the NWSSP. In this regard, I note the following statements within the NWSSP:
- The gravel resource has regional significance. Planning for these areas and the surrounding areas needs to ensure that: • Mining and quarrying remains a permissible use, with development consent, in the resource areas; • Appropriate landuse buffers are provided between these areas and future development; and • **These areas contribute to the longer-term formation of a green corridor, both during extraction (e.g. by maintaining existing vegetation links and/or restoration on areas not being quarried or mined) and on completion of resource extraction** (my emphasis).*
- The green corridor also includes areas that have been disturbed and degraded as a result of past landuse, however are also strategically located in terms of conservation connectivity and which can potentially be revegetated in the future.*
68. I note comments in the landowner's representatives' submissions relating to a purported lack of analysis and detail supporting the green corridor within the NWSSP as a reason as to why Council should not rely on it to support its decision on the appropriate zoning of the subject site. Whilst I agree that site specific, detailed analysis is often lacking from broad scale strategic planning documents prepared by State Government such as the NWSSP, to suggest that this is reason to discount or ignore them when preparing local plans is an overstep.
69. Similarly, it was appropriate and necessary for the zoning of the site to be informed by the Central Coast Regional Strategy 2008. The land was identified in the Strategy as Rural and Resource Lands, which were described as follows:



*Rural and resource lands are an important element of the Central Coast environment. These lands contribute to employment, tourism, cultural and regional identity, character, biodiversity, and catchment protection.*

70. Under the heading of 'Outcomes' it states the following:

*The Region's valuable rural and resource lands will be maintained for their agricultural, water supply, environmental, mineral and extractive resources and recreation and tourism opportunities.*

71. Under the heading of 'Actions', there are various references to rural and resource lands that are not specific to the site, but rather, non-specific actions such as the following are identified:

*6.3 LEPs are to appropriately zone land with high state or regional environmental, agricultural, resource, vegetation, habitat, waterways, wetland or coastline values.*

72. I consider that Council's E3 zoning of the site was not inconsistent with the Regional Strategy, which provided high level rather than highly specific guidance in relation to responding to the resource and environmental attributes of the site.

73. Wyong Council's Settlement Strategy was endorsed by the Department of Planning on 17 September 2013. It follows the pattern of recognising both the environmental and resource attributes of the site, identifying it as part of a "green corridor" in Figure 15 and as a "gravel resource" in Figure 17.

74. In this report I have cited various Planning Circulars and Practice Notes from the NSW Department of Planning that provide support for Council's decision to zone the site E3 in WLEP 2013.

75. Finally, in response to the applicant's contention that Chapter 3.4 of Wyong DCP 2013 and Clause 5.47 of draft Central Coast DCP provide adequate assessment requirements in relation to the site's 'green corridor' designation and render the "downzoning" of the site to Zone E3 unnecessary and unjustified (Fraser Further Submission to Council October 2020). Whilst I accept that a DCP has an important function in development assessment under the Act, it is nonetheless subordinate to an LEP, (their provisions are "not statutory requirements" under Section 3.42(1) of the Act). It is therefore not unreasonable for a Council to prefer to include key planning provisions relating to development assessment in a statutory instrument (LEP) rather than rely principally on a DCP.

76. For the above reasons, in my opinion, Council's decision to zone the site E3 under the WLEP 2013, notwithstanding its identified resource potential, was not unreasonable based on the relevant strategic plans, government directions and guidelines and other factors.

- 77. Could Council have reasonably reached the conclusion that another zone was an appropriate zone for the site based on relevant factors?**

78. Yes. Some reasons for this are as follows. Department of Planning LEP practice note PN 07-001 Standard Instrument for LEP dated 26 March 2007 provides a range of alternative zones for sites previously zoned 7(b). These included RU1 and RU2 amongst others. Based on the identification by DPI of the quarry as an important gravel resource and its request for the quarry be zoned RU1, Council could reasonably have concluded this to be the primary use of the land and selected an RU1 or RU2 zone based on PN 07-001. These rural zones explicitly permit extractive industries. Several quarries in the former Gosford Council area were zoned to RU1 (noting, however, that this was not particularly relevant prior to the Council amalgamation).

79. Notwithstanding my conclusion that the site could reasonably have been zoned RU1, it does not necessarily follow that the decision to instead zone the site E3 was unreasonable or wrong. As stated in my previous comments, I believe that decision was indeed reasonable.



**80. Are the identified environmental and resource values of the land appropriately addressed in the current zoning of the site? Do the objectives of Zone E3 compromise exploitation of the resource values of the site?**

81. Based only on the permissible uses on the site, I am satisfied that its identified environmental values are appropriately addressed by the E3 zoning. I understand that the environmental values of the site are compromised to at least some extent by the existing approved extractive and recycling activities and that these may be exacerbated by future expansion of those activities. However, an objective of the E3 zone is *"to protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values"* (**my emphasis**). Given the site conditions and context described in my previous comments, it is appropriate to manage the progressive restoration of the natural environment of the site during and post extractive and resource management activities.
82. I am also satisfied that the inclusion of "extractive industries" as an APU is appropriate to recognise the resource values of the site (subject to what I say below).
83. I note that the approved concrete recycling use on the site is prohibited and relies on being ancillary to the extractive industry use of the site. I will provide further observations and comments on this situation later in my report.
84. As described earlier in my report, an important legal issue has been raised by the landowner's experienced legal counsel, Mr. Fraser, in relation to the claimed adverse implications of the zone objectives of the E3 zone on the future expansion of the extractive operations on the site. If this is a correct legal interpretation, it could have the effect of limiting the ongoing extraction of the important gravel resources on the site beyond the limitations of the current consent.
85. I note that under State Environmental Planning Policy (Mining, Petroleum and Extractive Industries) 2007, extractive industries are permissible on the site and co-location of industries such as processing of construction and demolition waste may also be carried out where there is a development consent for extractive industry. I further note Mr. Fraser's opinion (at paragraph 101 of his representation to DPIE of 20 February 2020, that this does not obviate the duty of the consent authority to have regard to the objectives of the E3 zone under the LEP.
86. I have prepared my report in my capacity as a town planner and my opinion on this issue is not a legal opinion. However, having examined the case law cited by Mr. Fraser, I am sufficiently persuaded by his opinion that the objectives of the zone may at least increase the risk of not obtaining or limiting future consents for any significant expansion of the approved extractive and resource management activities on the site.
87. It follows that the current APU in isolation, may not adequately facilitate future expansion of the extraction of gravel resources from the site. I acknowledge that such an interpretation may have implications beyond this site and this LGA which may warrant further consideration beyond the scope of my current review.

**7. CONCLUSION - HAS COUNCIL MADE AN ERROR?**

88. Based on my assessment and conclusions above, I consider that Council has not made an "error" in its determination of the current zoning for the site under the WLEP 2013.
89. Whilst there may have been some shortcomings in Wyong Council's administrative actions, I do not consider that they have led to any fundamental procedural failure or error that would invalidate the LEP. No action to invalidate any of the previous or current LEPs under Section 3.27 of the Act has been initiated.



90. My conclusions on the appropriateness of the current LEP provisions for the site are that whilst it is arguable that Council could have applied different provisions in the circumstances, the controls that were arrived at were based on considered reasoning and were not unreasonable in the circumstances of the site and its context. As such, I consider that they cannot be described as being erroneous.

## 8. CONCLUSIONS ON APPROPRIATE FUTURE SITE ZONING

91. There is clear evidence of the importance of extractive resources on the site that should be recognised in the future planning for the site. This is consistent with current consents for the site, with permissible uses under the WLEP 2013, with its identification in current Strategic Plans, endorsed strategies and with identification by the DPI as a significant gravel resource. The statements in the independent report on public hearings for the draft LEP 2012 by Mr. Peter Walsh also support the importance of extractive industry on the site.
92. I consider that the use of the site for extractive industry represents a favourable short to medium term use of the site from a planning perspective.
93. I have been persuaded by the landowner's counsel that the objectives of Zone E3 are at least unhelpful to facilitating approvals for the further expansion of extractive uses on the site. If that is indeed the case, I consider that a legal drafting mechanism for any future LEP amendment should be adopted to ensure that this outcome is avoided.
94. I consider that there are potential benefits in maintaining a resource recovery facility on the site in conjunction with the extractive use. The use appears to have some economic and environmental benefits in terms of extending the productive life of the quarry and broader benefits associated with material recycling.
95. The concrete recycling facility approved by Council in 2000 would be now defined as a "resource recovery facility", which is prohibited in the E3 zone. The use was granted consent in 2000 on the basis of existing use rights (associated with the quarry) at that time. I have not reviewed the details of the existing use rights attached to the approval, nor the implications of the current permissibility of extractive industries on those rights. However, my understanding is that the operation of concrete recycling can be lawfully continued under the terms of the consent. I also have not sought to examine whether or not a resource recovery facility handling a broader range of materials, could be lawfully granted consent through a modification of the consent or via the mechanism of existing use rights. To avoid any uncertainty, I consider that if Council accepts the worthiness of the continuation of such a use on the site, its permissibility should be expressly stated in the LEP. However, without the benefit of a detailed assessment of all strategic, social, environmental and economic issues associated with such a proposal, I prefer to leave this matter to the Council's discretion.
96. Notwithstanding all of the above, based on the assessment and conclusions in my report, the site has environmental qualities that should be recognised and managed. I consider it appropriate to facilitate the progressive restoration of the natural ecology of the site, as part of a wider biodiversity corridor, in its future planning. The E3 zone is consistent with achieving this outcome.
97. Unless it is to be acquired for a public purpose, the site should not be sterilised from productive use or redevelopment at the completion of the extractive operations. I consider it appropriate to permit a reasonable range of land uses that are not antipathetic to the objectives of the E3 zone. I note that there is a limited range of permissible uses in the zone, including some residential uses.
98. Whilst I note the landowner's desire to permit caravan parks/MHE on the site, I am not persuaded to recommend this based on my review. I consider that a decision on any additional uses including



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caravan parks in the zone generally or the site specifically, requires further strategic and site specific assessment.

99. During my interview with Council staff, I was advised that it is their intention to program a review of the Environmental Zones within the LGA, which will inform a future PP to amend the Consolidated LEP. It is a matter for Council to decide whether my recommendations are to be given further consideration during this review. The benefit of this approach would be to provide a comprehensive framework within which to consider the most appropriate planning outcomes and strategic mechanisms for the site instead of a site specific approach. The problem with this approach is that there is no certainty as to if or when Council will proceed with such an LEP amendment and consequently, the current limitations and disincentive to further invest in extractive and resource management on the site will remain for an indeterminate period.
100. My conclusions on appropriate planning provisions for the site and how they are implemented are therefore as follows:
101. The E3 zoning of the site should be retained at least until any wider review of Environmental Zones within the LGA is completed.
102. A new local provision should be incorporated into the LEP that permits extractive industry on the site with consent despite any other provision within the LEP that may restrict or limit that use, including the objectives of the Zone. This should be subject to the requirement for the progressive rehabilitation of the site during and following extractive operations. Such a clause (or other relevant provision) will be subject to appropriate legal drafting to ensure its intent is achieved.
103. Council should give consideration to permitting resource recovery facilities on the site on the same basis as described for extractive industry. If Council accepts this as an appropriate use for the site, I recommend that it is required to maintain a direct physical and operational connection to the quarry, rather than being a 'stand alone' permitted use.
104. Since I have concluded that the current planning controls for the site were not made in 'error' and do not require 'correction', I will leave it to Council to determine how it wishes to implement any amendments to those planning controls arising from my conclusions.
105. In this regard, I note that the landowner has stated that significant adverse taxation consequences flow from an owner-initiated Planning Proposal compared to a Council initiated Planning Proposal. I am not qualified to comment on this matter and I leave this to Council's discretion whether to take this into consideration in determining how any LEP amendments should be implemented.

**David Ryan**

BTP(Hons), Dip Law, Grad Dip Leg Prac, Registered Planner, FPIA, MAICD

Executive Director

City Plan Strategy and Development

**16 March 2021**





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# APPENDIX A

## Figures 8 - 13



Figure 8: Abstract from CCRS 2008 identifying subject site as highlighted by blue circle (Source: CCRS 2008)



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Figure 9: Extract from NWSSP Structure Plan, site identified within Green Corridor (Source: NWSSP 2012)

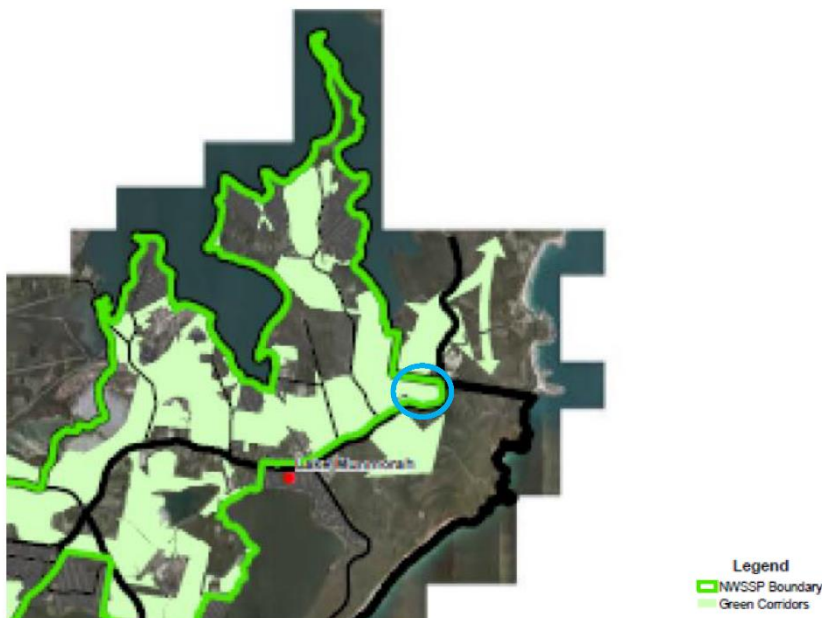


Figure 10: Site identified within Green corridors (Source: NWSSP 2013)



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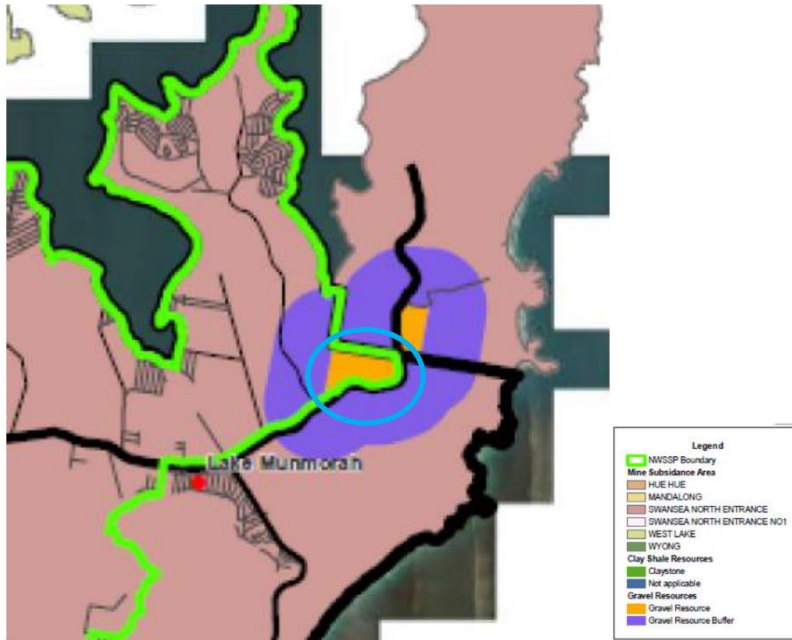


Figure 11: Site identified as gravel resource (Source: NWSSP 2013)



Figure 12: Extract from CCRP showing the site located within the biodiversity corridor (Source: CCRP 2016)



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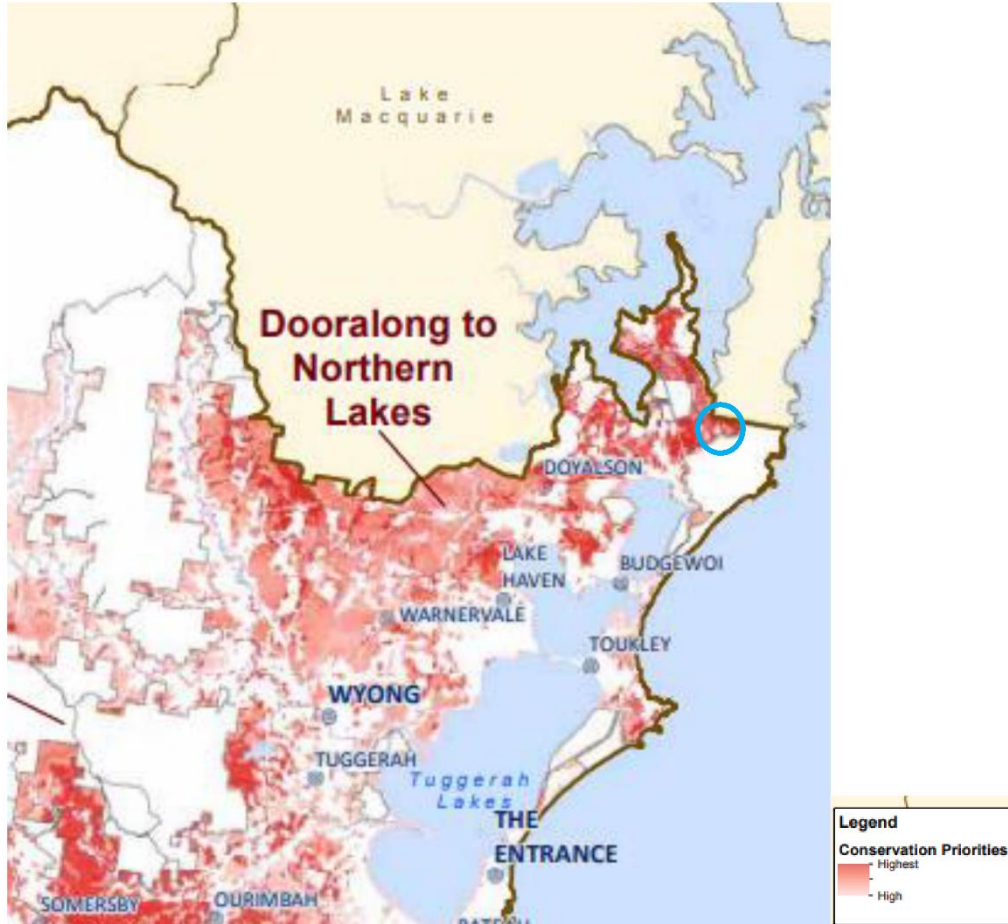


Figure 13: Site identified as high biodiversity conservation (Source: Central Coast Council Biodiversity Strategy 2019)



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## **APPENDIX B**

Landowner supplied document (29 January, 2021)

2

WYCOB PTY LTD CRANGAN BAY QUARRY - 475-535 PACIFIC HWY CRANGAN BAY.  
SITE VISIT 29 JANUARY 2021 3-4PM.

IN ATTENDANCE: David Ryan (City Plan); <sup>Jerry Mearns</sup> Malcolm Ryan & Scott Duncan (CCC); Sandra Kay & Tony Somerville (Wycob P/L); Chris Oliver (Optima Planning & Development - Wycob's Consultant).

Documents given to Mr David Ryan ( Council already have these documents):

1. Aerial photograph of site showing neighbouring properties and their zoning; current & proposed development in the area.
2. Briefing Note May 2020 .
3. Three Submissions by Matthew Fraser Independent Planning Barrister dated 13 October 2020, 20 February 2020 and January 2020.
4. Letter from Wycob's registered valuer dated 29 March 2016.
5. Letter from Wycob's industrial property agent dated 25 February 2019.
6. Letters from Wycob to Council dated 4 April 2012, 22 June 2012, 17 September 2012.
7. Letters from Council to Wycob dated 12 September 2012, 8 October 2012 and 30 October 2012.
8. Excerpt page 120 EIS 1983.
9. Letter from Council to A T Somerville 2 July 1965.
10. Excerpts Council Business Paper 27 January 2021 Item 5.2, pages 57-69; Council Business Paper 9 December 2019 pages 33-35, Attachment 2; Attachment 5 page 303 (not dated ); pages 51- 56 draft 2012 Wyong LEP Macleay Drive Halekulani.
11. Excerpt - Page 13 Central Coast Regional Strategy.
12. Agency Submissions dated 14 September 2012 & 11 December 2015.
13. Excerpt page 114 Rural Land Study Council Business Paper 28 June 2017.
14. GIPA documents Council Business Paper 1996.
15. Advertisement Central Coast Express Advocate 9 October 1996.
16. Department of Planning Practice Note PN 11-002 page 4.

Sandra Kay  
Mobile 0408 763 88



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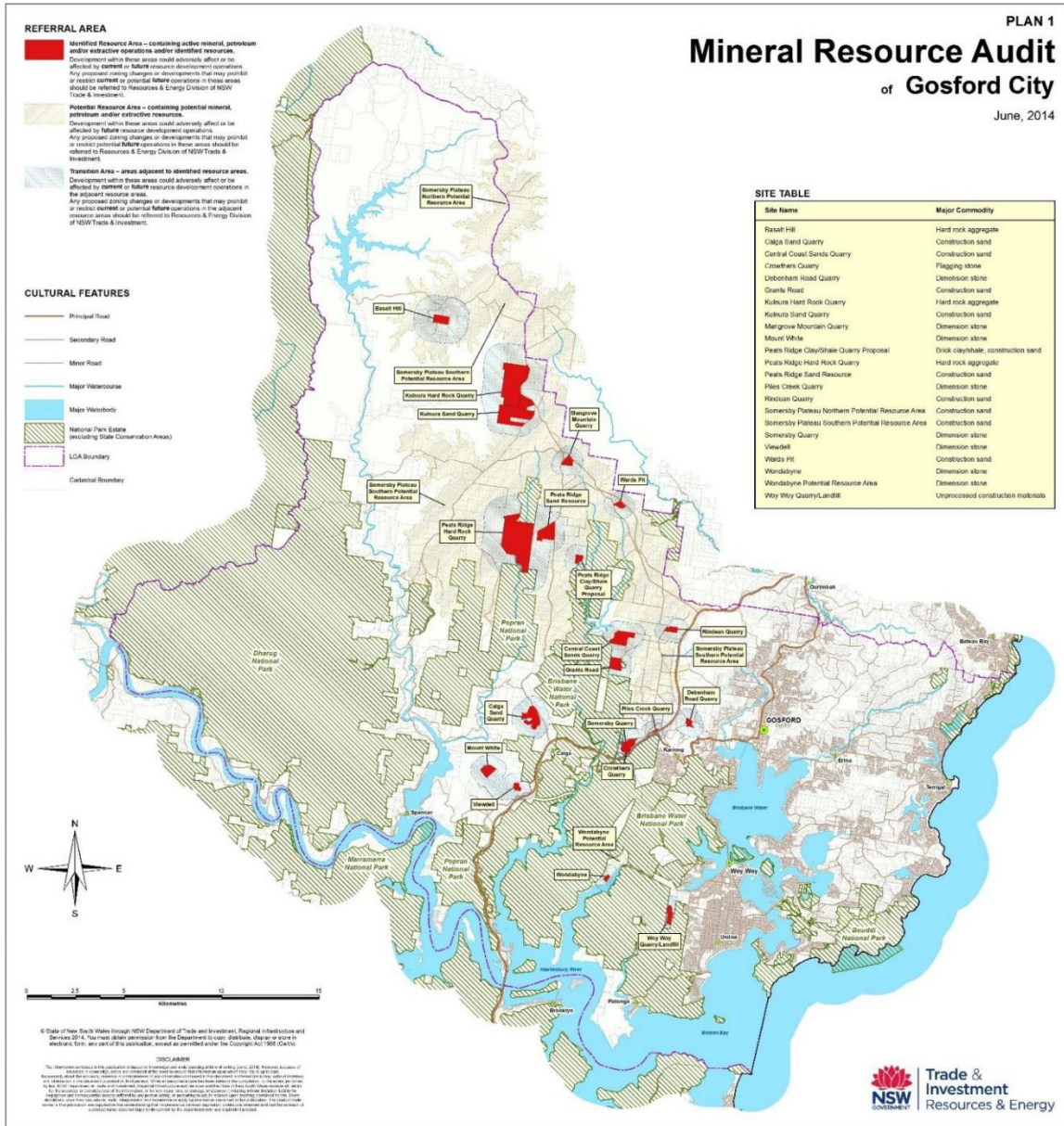
## **APPENDIX C**

Extractive Industry sites (former Gosford Council area)

Extractive Industries Review

Former Gosford LGA

– Gosford Mineral Resource Audit June 2014



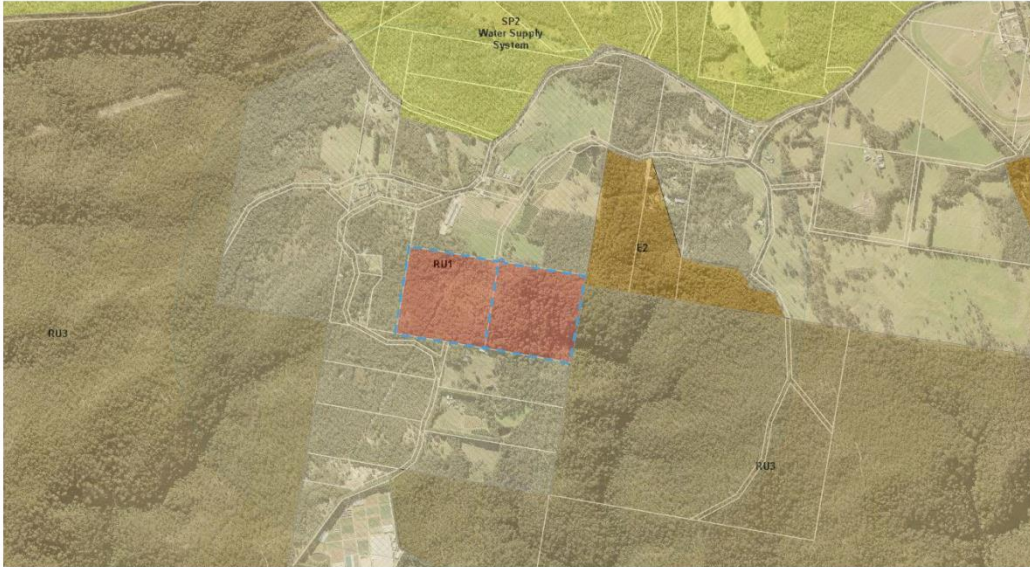


Site Name	Address	Parcel Lot/Sec/DP	Owner	Major Commodity	Pre GLEP 2014 Zone	GLEP 2014 Zone	Note
Basalt Hill	423-425 Kyola Rd Kulnura	1//755235 1//527102	Hanson Construction Material Pty Ltd	Hard rock aggregate	1(a)	RU1	Adjoins other RU1 and RU3 land appears to be mostly undisturbed.
Calga Sand Quarry	2256, 2306 & 2308 Peats Ridge Rd, Calga	2//229889 1//805358 2//805358	Calga Sands	Construction sand	7(b) 1(b) 7(a)	RU2 E2	Surrounded by heavy veg. to south and west. Adjoins RU2 and E2 zoned land
Central Coast Sands Quarry	24 Reservoir Rd, Somersby  Mooney Mooney Ck, Somersby	2//1208119 118//755246	Hanson Construction Materials Pty Ltd – Parramatta Central Coast Sands	Construction sand	1(a)	RU1 RU1 E1	Surrounded by Water Supply System SP2 and National Parks and Nature Reserve E1
Crowthers Quarry	74,78 Quarry Rd, Somersby	1//264006 7010//1030389	J H Crowther	Flagging Stone	7(a)	E2	
Debenham Road Quarry	183 Debenham Rd, Somersby 5,25 Acacia Rd Somersby	13//618324 1//522099 11/618324 3//550062 12//618324	Gosford Quarries Pty Ltd	Dimension stone	4(c)	RU1	
Grants Road	270 Grants Rd, Somersby	1//358717	A K & G R Jones	Construction sand	1(a)	RU1	
Kulnura Hard Rock Quarry	557, 605 and 725 George Downes Dr, KULNURA	2//233808 3//620901 1//233808 1//1115853 71//755235 3//755235 81//755235 4//755235	Hanson Construction Materials Pty Ltd	Hard rock aggregate	7(b) 7(a)	RU2 E2	RU2 portion partially undisturbed and adjoins other RU2 land

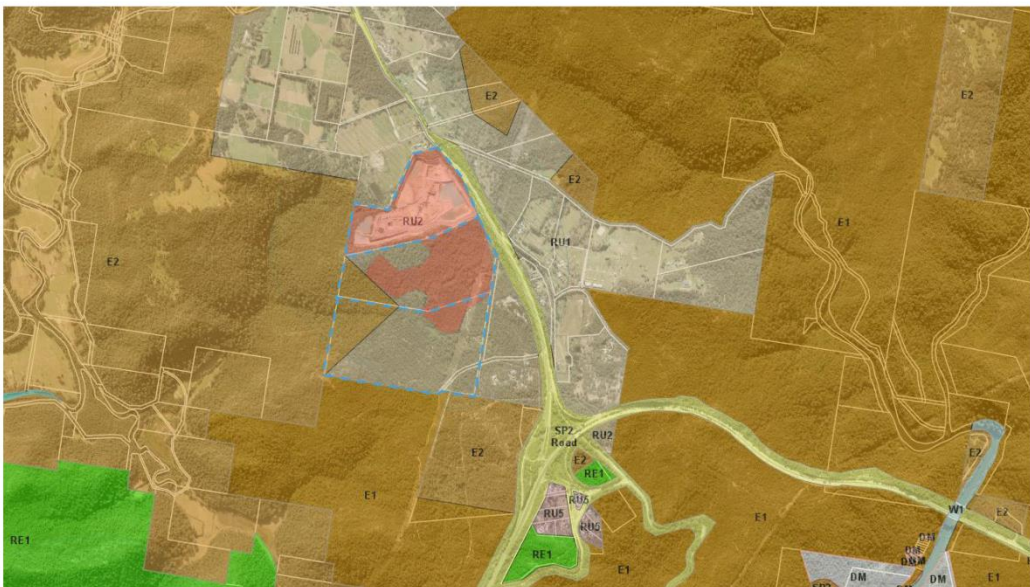
Site Name	Address	Parcel Lot/Sec/DP	Owner	Major Commodity	Pre GLEP 2014 Zone	GLEP 2014 Zone	Note
Kulnura Sand Quarry	557 George Downes Dr, Kulnura 221 Bloodtree Rd, Mangrove Mountain	1//569057 1//392219 68//661673	Hanson Construction Materials Pty Ltd	Construction sand	1(a) 7(a) 7(b)	RU1 E2 RU2	E2 and RU2 portion appears to be undisturbed. Adjoins other RU2, RU1 and RU3 land
Mangrove Mountain Quarry	1739 Wisemans Ferry Rd, Central Mangrove	108//755246	CMQ Nominees Pty Ltd	Dimension stone	1(b)	RU1	
Mount White	Pacific Hwy, Mount White	1//1100501	Gosford Quarries Pty Ltd	Dimension stone	7(a)	E2	
Peats Ridge Clay/Shale Quarry Proposal	169 Euloo Rd, Peats Ridge	201//1215625	L E & M Knutson	Brick clayshale, construction sand	1(a)	RU1	
Peats Ridge Hard Rock Quarry	151 Goolara Rd, Mangrove Mountain 15,131 Bushells Rd Mangrove Mountain	4//869539 158//755253 3//755253 4//755253 143//755253 49//755253	Boral Resources NSW Pty Ltd	Hard Rock aggregate	7(b) 7(a)	RU2 E2	
Peats Ridge Sand Resource	15 Bushells Rd Peats Ridge	A//372283	Boral Resources NSW Pty Ltd	Construction sand	1(b)	RU1	
Piles Creek Quarry	Old Pacific Hwy and Central Coast Hwy Somersby	7017//1023226, 7016//1023226, 7300//1154124	Gosford Quarries Pty Ltd/ Unknown	Dimension Stone	1(a)	RU1	
Rindean Quarry	620 Wisemans Ferry Rd, Somersby	2//362339	Lawson Quarries Pty Ltd & Philmar Investments Pty Ltd	Construction sand	1(a)	RU1	Adjoins RU1 & RU2 zones
Somersby Plateau Northern Potential				Construction sand	1(a)	RU1	Indicative site only - not operational

Site Name	Address	Parcel Lot/Sec/DP	Owner	Major Commodity	Pre GLEP 2014 Zone	GLEP 2014 Zone	Note
Resource Area							
Somersby Plateau Southern Potential Resource Area				Construction sand	1(a)	RU1	Indicative site only - not operational
Somersby Quarry	66,70 Quarry Rd, Somersby	193//727759 1//1102430	Gosford Quarries Pty Ltd	Dimension stone	7(a)	E2	
Viewdell	483 Pacific Hwy, Mount White	3//1230083		Dimension stone	7(a)	E2	Surrounded by RU2, E1
Wards Pit	700 Peats Ridge Rd Somersby	22//777700	Stajet Pty Ltd	Construction sand	1(a) 1(b)	RU1	
Wondabyne	Hawkesbury River, Hawkesbury River	177//755251 7314//1167335	N/A	Dimension stone	SP2 7(a)	SP2 E2	
Wondabyne Potential Resource Area	Hawkesbury River, Hawkesbury Rive	7314//1167335	N/A	Dimension stone	7(a)	E2	
Woy Woy Quarry/Landfill	154,157 Nagari Rd Woy Woy	1//654885 1//126813	Central Coast Council	Unprocessed construction materials	SP1	SP1	

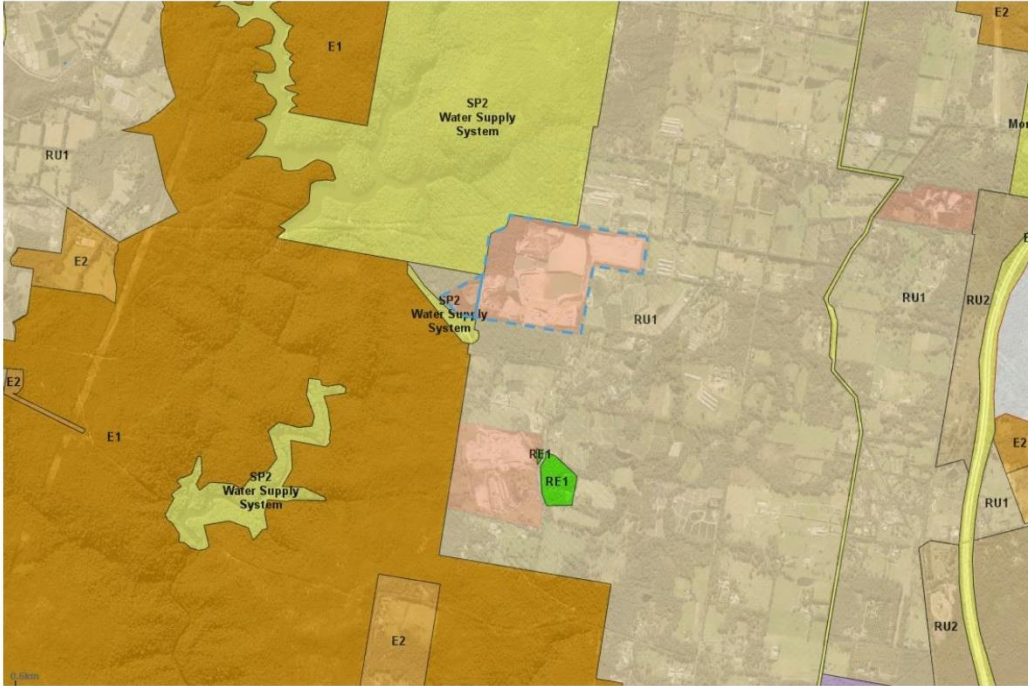
Basalt Hill



Calga Sand Quarry



Central Coast Sands Quarry



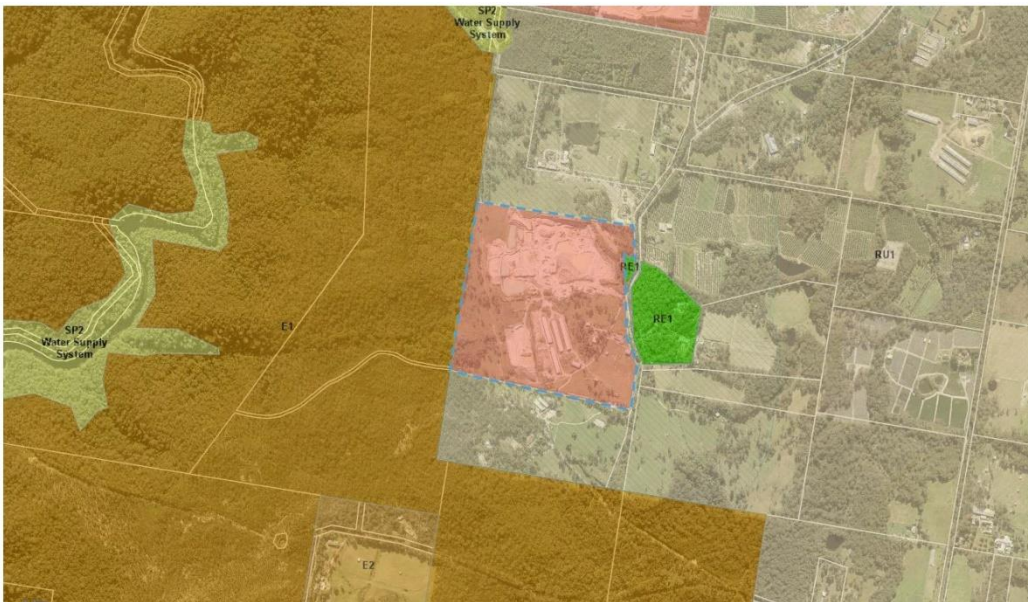
Crowthers Quarry



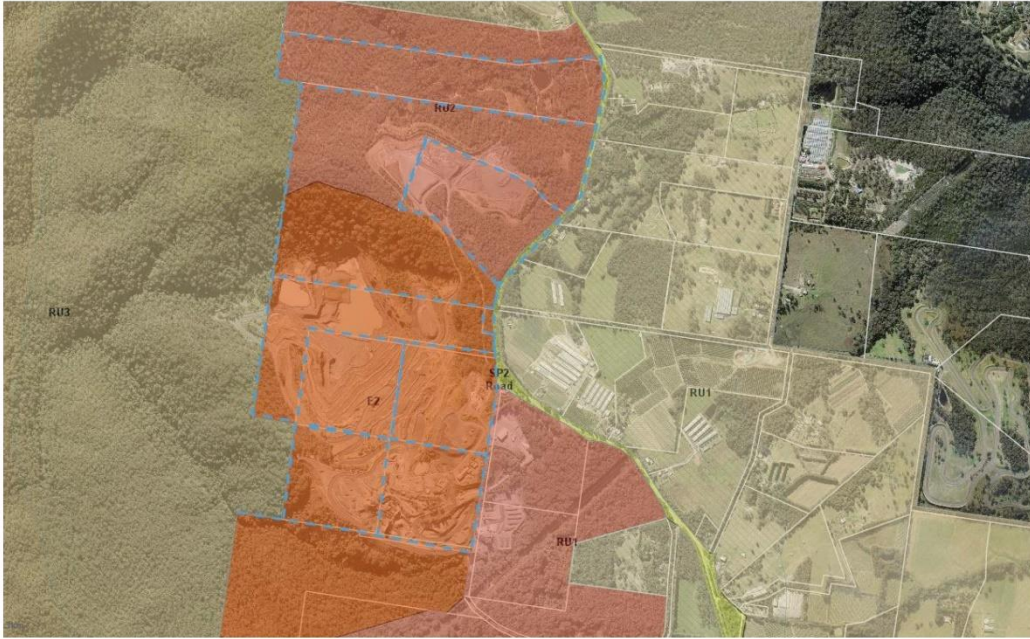
Debenham Road Quarry



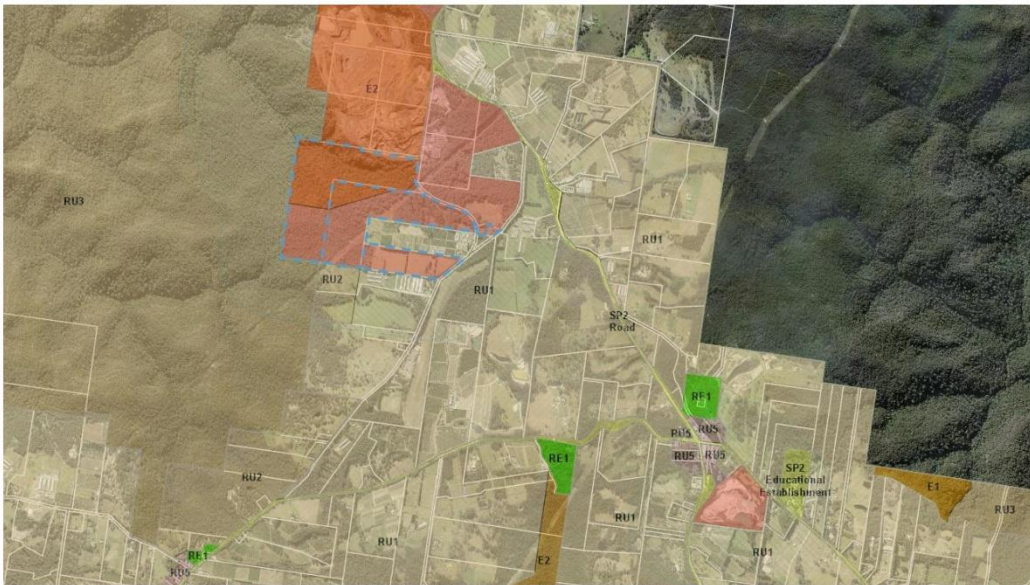
Grants Road



Kulnura Hard Rock Quarry



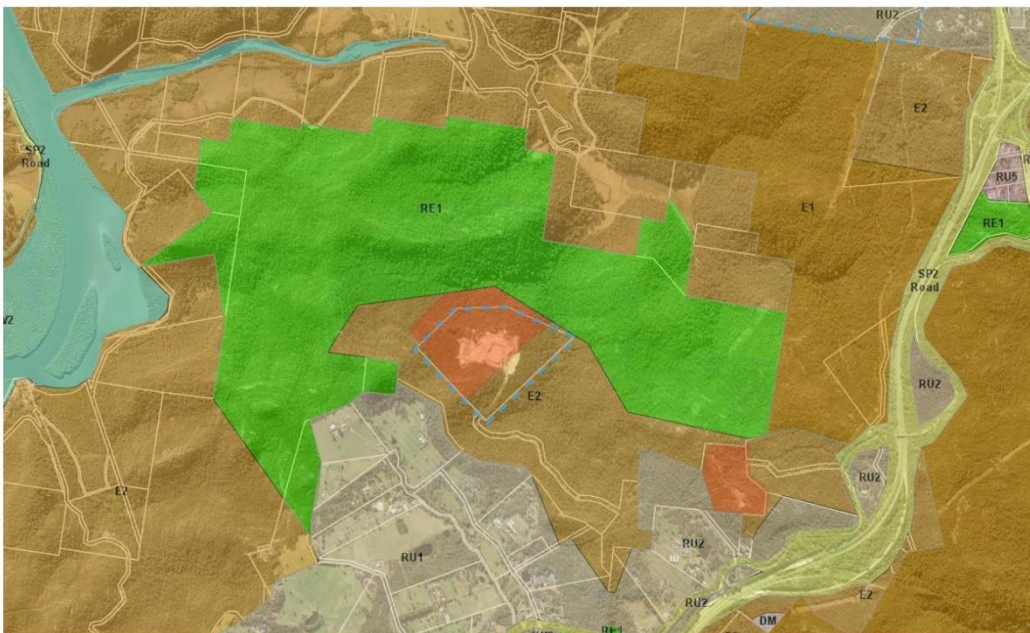
Kulnura Sand Quarry



Mangrove Mountain Quarry

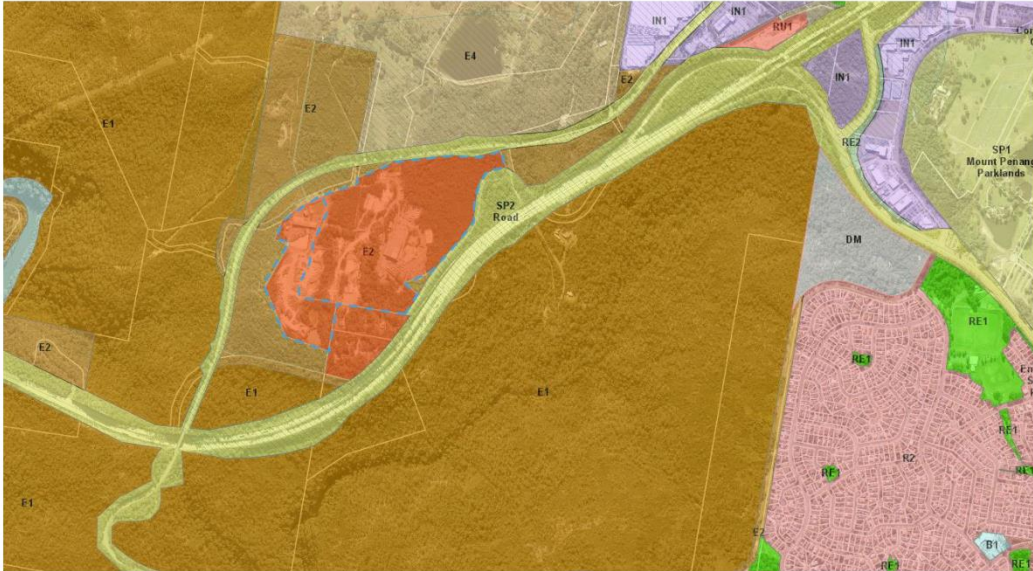


Mount White

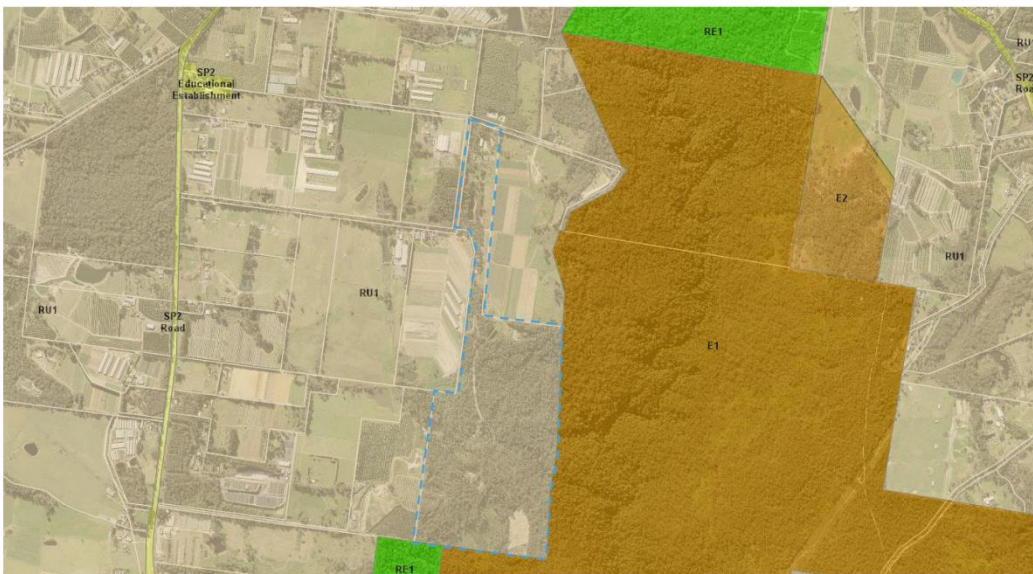




Somersby Quarry



Peats Ridge Clay/Shale Quarry Proposal/Resource



Peats Ridge Hard Rock Quarry



Peats Ridge Sand Resource



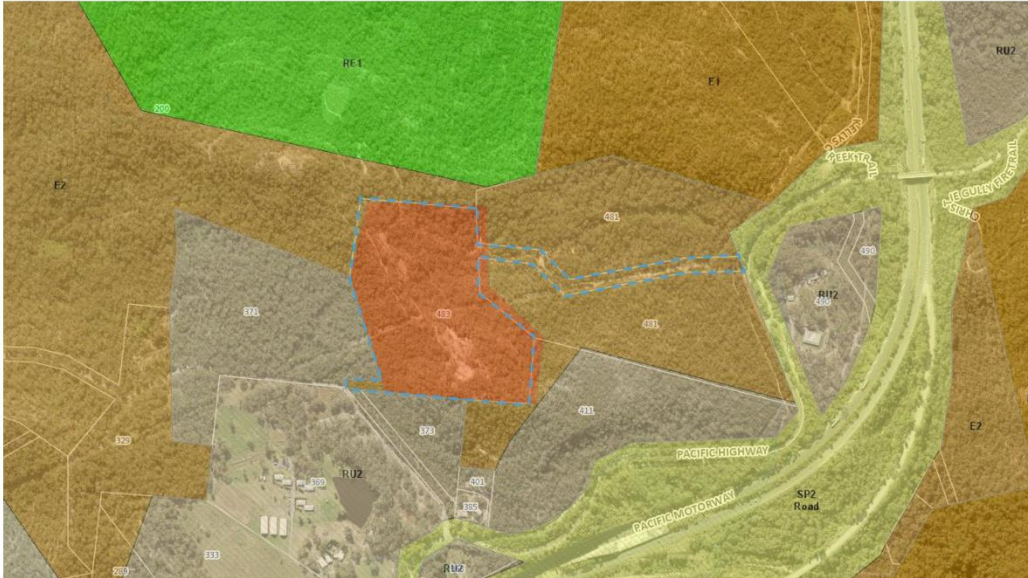
Piles Creek Quarry



Rindean Quarry



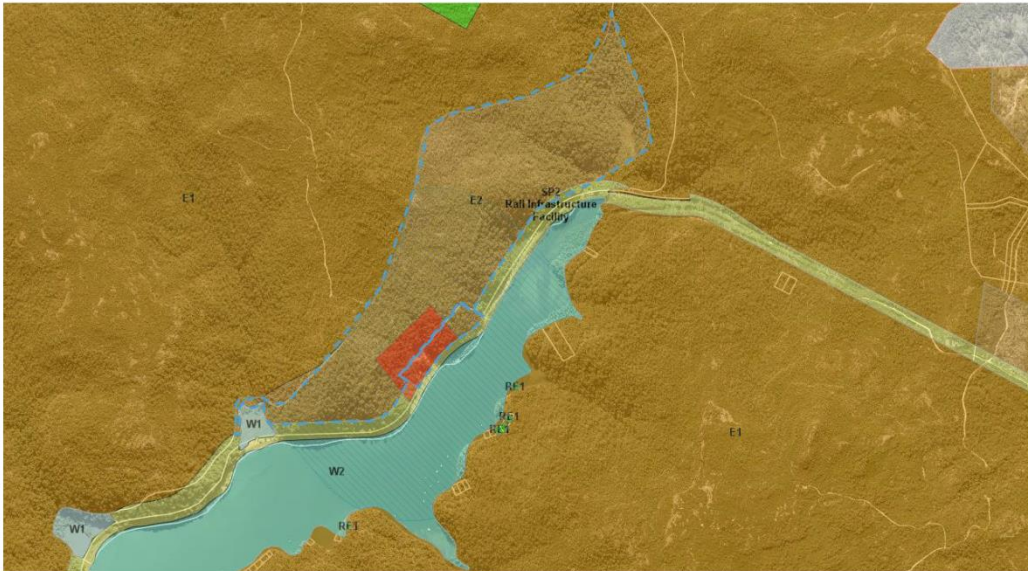
Viewdell



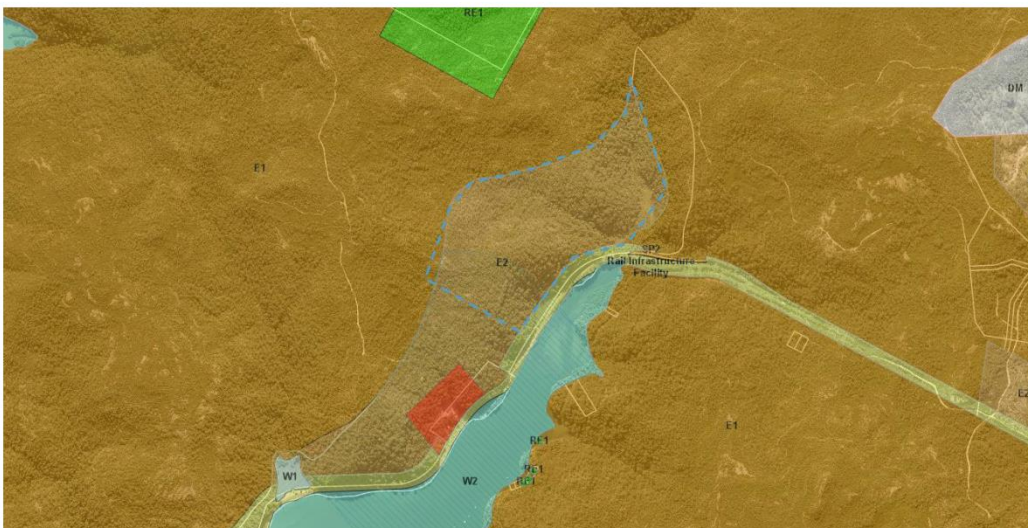
Wards Pit



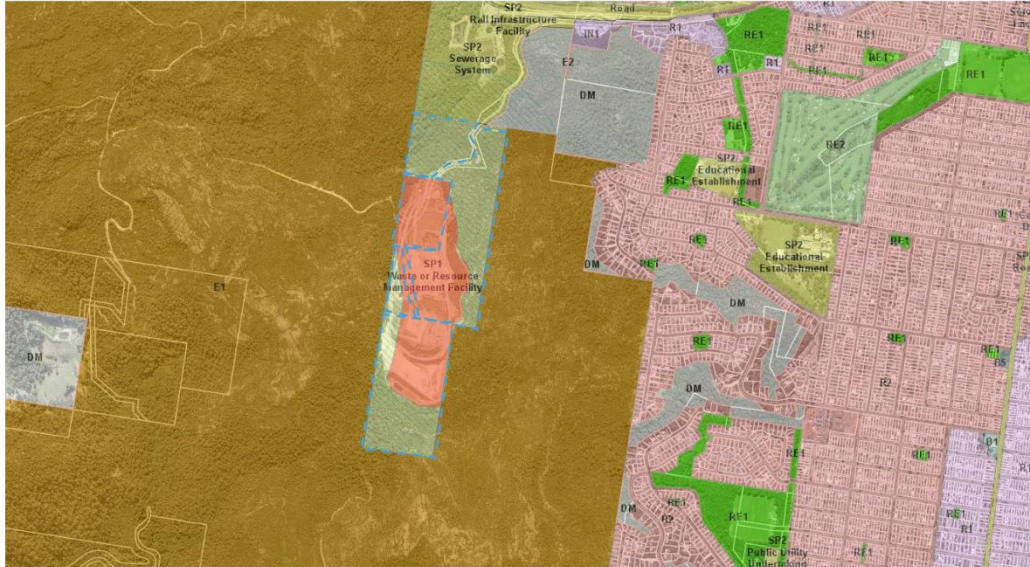
Wondabyne



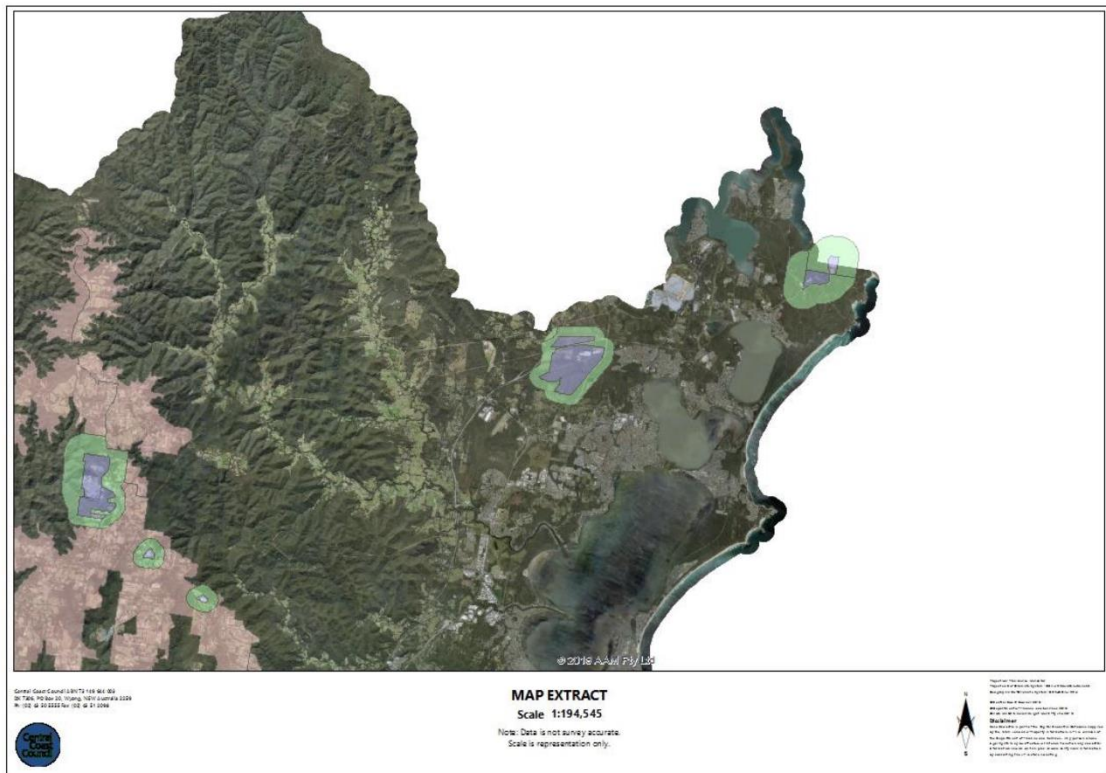
Wondabyne Potential Resource Area



Woy Woy Quarry/Landfill



## Wyong Mineral Resource Map Layer



Site Name	Address	Parcel Lot/Sec/DP	Owner	Major Commodity	WLEP 2013 Zone	Note
Bushells Rd	77, 84,288	2//1156997	Wyong Coal Pty Ltd		IN1,E2,RU6	Indicative site – not operational
Bushells Ridge	Tooheys Rd & 85,425	124//755245	Darkinjung LALC			
	Bushells Ridge Rd	126//755245	Crown Land			
	Bushells Ridge Rd	128//658436	Mr H Weber and Mrs S M Weber			
	Bushells Ridge 380	3//260217				
	Motorway	1//260217				
	Wallahah 203,353	102//755245				
	Mountain Rd, Wallarah	103//755245				
		127//755245				
		188//48813				
		195//1032847				
		194//1032847				
		168//705480				
		1//56997				
Crangan Bay	475 Pacific Highway,	11//598580	Wycob Pty Ltd		E3	
		2//249281				
		3//249281				
		4//249281				

	Crangan Bay	5//248281 6//249281 7//249281					
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Bushells Ridge (previously zoned 4(e) Regional Industrial and Employment Development Zone and 4(a) General Industrial Zone under WLEP 1991)



Crangan Bay





**Observations on  
draft Ryan Review**

from

**MATTHEW FRASER**

Independent Planning Law Barrister

**11 March 2021**

Prepared in respect of Wycob Pty Ltd

## Observations arising from Ryan Review 3 March 2021

### Draft Review

1. Mr Ryan's draft Review has been provided to Wycob for the purpose of checking for any errors.
2. I have seen a draft Table of Errors which officers of Wycob have prepared with careful attention to detail. The Table of Errors expresses concern about what Wycob perceives to be up to 30 errors of fact and omissions from the draft Review. The draft Table of Errors provides extensive detail on what is identified by Wycob as an error, the problem that the error generates and its significance to the reasoning in the draft Review and Wycob's concerns about zoning and permissibility.
3. I have had no input into the Table of Errors.
4. The matters addressed in these Observations are matters which I think are important rather than anything raised by Wycob.

### Terms of Reference

5. The key terms of reference within the council letter 17 December 2020 and as recorded by Mr Ryan's report in the Table at para 2 are:
  1. Council will engage a suitably experienced independent planning consultant to carry out the following study to determine if there was an "error" in Council's decision-making processes that have arrived at the current zoning for this property. To do this, the following tasks should be completed:
    - ...
    - g. Determine if Council has made an "error" in its determination of the current zoning for the property
    - h. Regardless of the conclusion in item "g", determine if there is a case for a change in the planning controls covering this land
6. In respect of item 1h of the terms of reference, this required the referee to *determine if there is a case for changing planning controls covering this land*. That term of reference does not require a particular error, but allows the referee to determine whether on any basis there is a "case for change in the planning controls". Inferentially that must be on the basis of planning considerations.
7. Thus it can be seen that the obligations of the referee included:
  - identify any "error" of any kind (1g), and then
  - regardless of whether there was an error, determine if there is a case for the change to the planning controls applied to the Wycob land (1h).

**Conclusions of the draft Review**

8. At para 103 the draft Review states:

Since I have concluded that the current planning controls for the site were not made in 'error' and do not require 'correction', I will leave it to Council to determine how it wishes to implement any amendments to those planning controls arising from my conclusions.

9. This statement clearly answers terms of reference 1g.

10. However, in leaving it "to the Council to determine how it wishes to implement any amendments" arising from conclusions does not seem to me to directly answer terms of reference 1h. Terms of reference 1h call upon the referee to look at the circumstances generally, including errors, and then determine if there is a case for changes to planning controls.

11. That task has not been expressly undertaken by the referee.

12. I would understand that the relevant conclusions which amount to a determination that there is a case for changing planning controls (item 1h) are:

- (1) The site could reasonably have been zoned RU1, it does not necessarily follow that the decision to instead zone the site E3 was unreasonable or wrong: [79].
- (2) The current APU in isolation may not adequately facilitate future expansion of the extraction of gravel resources from the site: [86].
- (3) The objectives of Zone E3 are at least unhelpful to facilitating approvals for the further expansion of extractive uses on the site. ... a legal drafting mechanism for any future LEP amendment should be adopted to ensure that this outcome is avoided: [92].
- (4) Unless it is to be acquired for a public purpose, the site should not be sterilised from productive use or redevelopment at the completion of the extractive operations. I consider it appropriate to permit a reasonable range of land uses that are not antipathetic to the objectives of the E3 zone. I note that there is a limited range of permissible uses in the zone, including some residential uses: [96]. ... a decision on any additional uses including caravan parks in the zone generally or the site specifically, requires further strategic and site specific assessment: [97]
- (5) A new local provision should be incorporated into the LEP that permits extractive industry on the site with consent despite any other provision within the LEP that may restrict or limit that use, including the objectives of the Zone: [101].
- (6) Council should give consideration to permitting resource recovery facilities on the site on the same basis as described for extractive industry. If Council accepts this as an appropriate use for the site, I recommend that it is required to maintain a direct physical and operational connection to the quarry, rather than being a 'stand alone' permitted use: [102]
- (7) I will leave it to Council to determine how it wishes to implement any amendments to those planning controls arising from my conclusions: [103]

13. Consistent with terms of reference 1h, the Review has found that an adjustment to the terms of the draft CCLEP is warranted to reflect the conflict between the RU2 and the zone objectives for E3, to overcome that conflict: [92] [96] [101].

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**Are there any errors in the Review?**

14. Apart from the numerous errors identified by Wycob in the draft Table of Errors previously referred to, Wycob also asked me to identify any errors in the draft Review.
15. In section 6 of the draft Review a series of questions emboldened have each been addressed. These questions formulated by the author of the Review arise from the various documentation that has been examined. The questions and the commentary explain how the conclusions have been reached.
16. One aspect which requires comment on is the kind of observation made at paras 87-89 of the draft:
- 7. CONCLUSION - HAS COUNCIL MADE AN ERROR?**
87. Based on my assessment and conclusions above, I consider that Council has not made an "error" in its determination of the current zoning for the site under the WLEP 2013.
88. Whilst there may have been some shortcomings in Wyong Council's administrative actions, I do not consider that they have led to any fundamental procedural failure or error that would invalidate the LEP. No action to invalidate any of the previous or current LEPs under Section 3.27 of the Act has been initiated.
89. My conclusions on the appropriateness of the current LEP provisions for the site are that whilst it is arguable that Council could have applied different provisions in the circumstances, the controls that were arrived at were based on considered reasoning and were not unreasonable in the circumstances of the site and its context. As such, I consider that they cannot be described as being erroneous.
17. Mr Ryan was not asked to identify legal error. If legal error was that which was to be identified by any review, then that would need to be carried out by an appropriately qualified lawyer of considerable seniority, such as eminent Senior Counsel or a retired judge.
- As inferred by this passage from the draft Review, that kind of legal error can be grounds for judicial challenge as to the validity of either a decision of a Council or the whole instrument made such as the various planning instruments which have impact upon the Wycob property.
  - A determination of legal error of that kind is made by a judge of a court of appropriate jurisdiction, usually the NSW Land & Environment Court.
18. Determining that there has not been "any fundamental procedural failure or error that would invalidate the LEP", and noting that "No action to invalidate any of the previous or current LEPs under Section 3.27 of the Act has been initiated" does not cover all kinds of error that might occur, and that warrant correction.
19. The terms of reference 1g makes no reference to an "error of law" or similar but rather was in respect of any error. Errors include such things as:
- errors of judgement,
  - errors of reasoning,
  - error in application of planning principles,
  - errors of law, and
  - other error.
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20. The Submissions that I have made on behalf of Wycob have never alleged that the errors and problems identified amounted to a legal error of the kind which might lead to proceedings to invalidate an LEP or other instruments or decisions. What was sought to be identified was illogical, unjustifiable and legally questionable reasoning utilised by the Council to achieve a particular outcome.

- That Wycob has not brought proceedings seeking declarations of invalidity or other legal proceedings,
- and/or Mr Ryan's judgement that there has not been an error of a kind that would lead to invalidity

are observations which go to only one kind of error. The Review was not constrained and indeed was required to look at all of the kinds of errors identified above.

21. In consequence of those observations it is respectfully suggested that Mr Ryan ought not be constrained in his final Review by searching only for legal error.

22. There are three areas discussed in the draft Review which identify errors which warrant further observations on behalf of Wycob.

(1) The fundamental error by the Council: Amendment 93

23. In my *Submission to Central Coast Council January 2020* the circumstances in which Amendment 93 was made and the effect of prohibiting *extractive industries* on the subject land (and all zone 7(b) land) was exposed and discussed at paras 19 to 28. The ultimate Submission at para 28 was:

28. Whether or not a legal challenge was or could be made, the Council needs to be aware that its own processes, as the former WSC, affecting the Wycob Property (and others) has been of an unacceptable standard. The unjust prohibition on extractive industries and other uses needs to be corrected because of the substance of the change as well as the manner in which the change occurred. It remains within the province of the amalgamated CCC to correct the circumstances of making and consequences caused by Amendment 93.

24. Mr Ryan's draft Review deals with the circumstances and submission at para 19-28 in this way:

32. The first identified procedural concern raised by the landowner relates to their lack of prior knowledge of Amendment No. 93 to LEP 1991, which removed extractive industries from the 7(b) zone applying to the site. From my experience, it was not uncommon at that time for public consultation to be somewhat limited in its engagement of landowners potentially impacted by zoning and other proposed changes to planning controls. I do not consider it necessary to form a view as to whether Wyong Council's engagement was of a reasonable standard, since, whilst I do not condone ineffective engagement, I do not believe that this represents such a failure of process that it would invalidate the instrument or elements of its contents. The alternative conclusion would render a very large number of LEPs open to challenge and create tremendous uncertainty and disfunction in the planning system. Even if the process was suboptimal, because it occurred 23 years ago and because I do not consider it represents a clear procedural error, in my opinion it has not 'infected' the ongoing evolution of planning controls on the site to the extent that it should be a factor determinative of the appropriate zoning for the site in 2021.

33. Whilst I note the many instances cited by the landowner of failures or purported failures by Council staff in their reporting of matters to the Council, I have formed the view that, whilst

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some may not reflect 'best practice', they do not invalidate the decision making of the elected Council in relation to the relevant planning instruments. In some cases it appears the very diligent actions of the landowner ensured that the Council was alerted to the shortcomings and action was taken to address them.

25. Mr Ryan has unnecessarily constrained the basis upon which he can recommend a correction to the zoning and permissibility on the Wycob land. Permissibility of extractive industries was first removed from the Wycob property by Amendment 93. The circumstances in which that occurred are acknowledged to have fault by Mr Ryan in the passage extracted above.
- The question is not whether or what occurred 23 years ago would have invalidated Amendment 93,
  - the question for the Review is whether the circumstances should be corrected now.
26. In the final form of the Review Wycob would request that this error in approach to what is able to be recommended to be addressed directly. My *Further Submission to Council 13 October 2020* under the heading "Intransigence of opinion of Council officers" at para 65ff provided evidence of that original decision being defended intransigently by Council officers.
27. The individual events which have been examined in my Submissions to Council and have cumulative effect. Examining each event in isolation needs to be undertaken, but the cumulative effect is something which Mr Ryan should incorporate into the final Review.
28. It is unpleasant to have to call out this conduct, especially when often it is not consciously undertaken nor maliciously pursued, but rather is a matter of corporate culture and natural defence of decision-making by a public authority. Once permissibility was stripped in questionable circumstances it was never given back in appropriate form. This wrongful conduct seems to me to have infected Council decision-making over a long period.

#### Role of DCP

29. With respect there is difficulty in accepting that what is stated at para 75 of the draft Review reflects either the Submissions made on behalf of Wycob<sup>1</sup> or the law applicable to the operation of DCP's.
- The point made on behalf of Wycob on the operation of the relevant chapter of the DCP was in the context that there was an assumption that the constricted zoning applied to the Wycob land that it must be preserved in the form of a zone control as E3 zone to land. The submission was that, when one looks at the DCP's role in the planning regime and its particular content, there was ample and appropriate protection for the environmental qualities of the land by the operation of the DCP chapter. But that operation was not reported at all in the EMF.

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<sup>1</sup> See my documents:

- *Submission to DPIE 20 February 2020* at Executive Summary (4) and (5), paras 23 to 45
- *Further Submission to Council 13 October 2020* at paras 44 to 64.  
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- It is not sufficient response to that Submission that it is *not unreasonable for a Council to prefer to include key planning provisions relating to development assessment in a statutory instrument (LEP) rather than rely principally on a DCP*, because:
    - It is well established in planning law that provisions of the DCP must be a focal point of any merits assessment: *Zhang v Canterbury City Council* (2001) 51 NSWLR 589.
    - The E3 zoning prejudged the merits assessment that could and would occur in any development application for the range of permissible uses that would have applied in the RU1 or RU2 zones.
30. To some extent this problem is inferentially acknowledged by the ultimate conclusion of the draft Review that something must be done by the Council about the zoning objectives being in conflict with expansion or intensification of the existing nonconforming uses.

(2) Zone objectives for E3 and extractive industries

31. My *Explanation re Zone Objectives to CCC 16 February 2021* drew attention to the decision of *North Sydney Council v North Sydney Leagues Club Ltd* [2017] NSWLEC 69 at [34] per Moore J. The effect of that decision is that the zone objectives of the zone in which a permissible use via an APU must be applied in the usual way to the proposed development. Objectives are not irrelevant as being “contrary” to the permissible use.
32. That position at law renders statements such as that made by Lynda Hirst in the email to Andrew Hellman on 21 March 2017 at 4:45 PM a clear error, and one of significance. Ms Hirst states:
- I just wanted to clarify that whilst the site did not change zone upon the notification of the Wyong LEP 2013, extractive industries remain a permissible use on the site.*
- As such, the enabling clause achieves the same outcome that has been sought for the property by the Department through the requested RU1 zone - that being the continued operation of the existing quarry and the ability to expand the quarry with development consent...*
33. Those statements within that email reflect a common misunderstanding within the Council<sup>2</sup>, apparent from such correspondence and continued reporting by Council officers in relation to Wycob’s request for rectification of its permissibility. The concept that the zoning and its objectives are “contrary” to the spot zoning via an APU can be ignored is incorrect because of the *North Sydney Council* case. That is an error of law and an error of planning principle which has continued within the Council since that mechanism was first imposed. With respect that error infects all the Council decision-making since.
34. Mr Ryan has addressed the *Explanation* document at paras 84 to 86 of the draft Review, and within the draft Conclusions advises that some rectification is required, stating:

<sup>2</sup> and the wider planning community across NSW. Ms Hirst’s statement was made in 2017, the same year the decision in *North Sydney Council* found that such reasoning proceeded upon an incorrect assumption of law. Liability limited by a scheme approved under Professional Standards Legislation

92. I have been persuaded by the landowner's counsel that the objectives of Zone E3 are at least unhelpful to facilitating approvals for the further expansion of extractive uses on the site. If that is indeed the case, I consider that a legal drafting mechanism for any future LEP amendment should be adopted to ensure that this outcome is avoided.

35. My point in relation to the DCP is one further factor which makes the draft conclusion at 92 appropriate.

(3) CGT complications

36. At para 20 the draft Review states:

20 Because of the current zoning is erroneous, it is Council's responsibility to rectify the error by initiating and implementing the required LEP amendment itself, rather than requiring an owner-initiated Planning Proposal to be lodged. A precedent for such an approach is the Old Sydney Town site. This is important to the landowner because of the significant adverse Capital Gains Tax implications if the landowner initiates the rezoning. Advice from a tax expert was provided to me in this regard. Note - I reiterate advice I provided to the landowner during our interview, that I am not a tax expert and cannot provide Council with an opinion on how this might influence its decision making in relation to the findings of my report, which are based solely on planning considerations.

37. It is to be acknowledged that the CGT is a complex and difficult area, and, even with the Evolution accountant advice 16 February 2021 summarising an expert tax barrister's advice, the CGT implications are hard to appreciate properly. But with respect, it is the Council's obligation to take into account the social and economic impacts of its decision-making. The impact of down zoning on value and correction of zoning on CGT obligations is something which the Council must grapple with.

38. Further, Councils, planners, courts and other authorities all need to take advice from experts in other areas and incorporate that advice into the decision-making process.

39. Consequently with respect it will be necessary for CGT to be properly addressed in the final Review. To assist in the final Review, the essence of the Evolution accountants summary advice 16 February 2021 is now addressed.

40. The essential elements to understand about CGT implications<sup>3</sup> can be shortly explained:

- If the Council reinstates zoning permissibility without the need for a Planning Proposal then there will be no possibility of the cost base for improvement threshold of \$155,849 being exceeded: Refer to the 4<sup>th</sup> and 8<sup>th</sup> dot points of the 9 dot points in the Evolution letter 16 February 2021.
- If that threshold is not exceeded then there will be no CGT implications of the kind described in the rest of the dot points in the Evolution letter.
- A Planning Proposal will run up costs exceeding that some by vast amounts, triggering the serious CGT consequences.
- All the Council as to do is implement rectification of zoning permissibility itself.

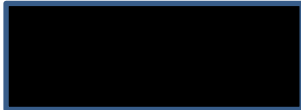
<sup>3</sup> Set out in the Evolution accountant's letter 16 February 2021  
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41. The CGT implications are just one additional point made on behalf of Wycob as to why it is the Council who should rectify as far as it can be unintended and unappreciated consequences of its conduct over a long period of time.

**How is the recommendation to be implemented?**

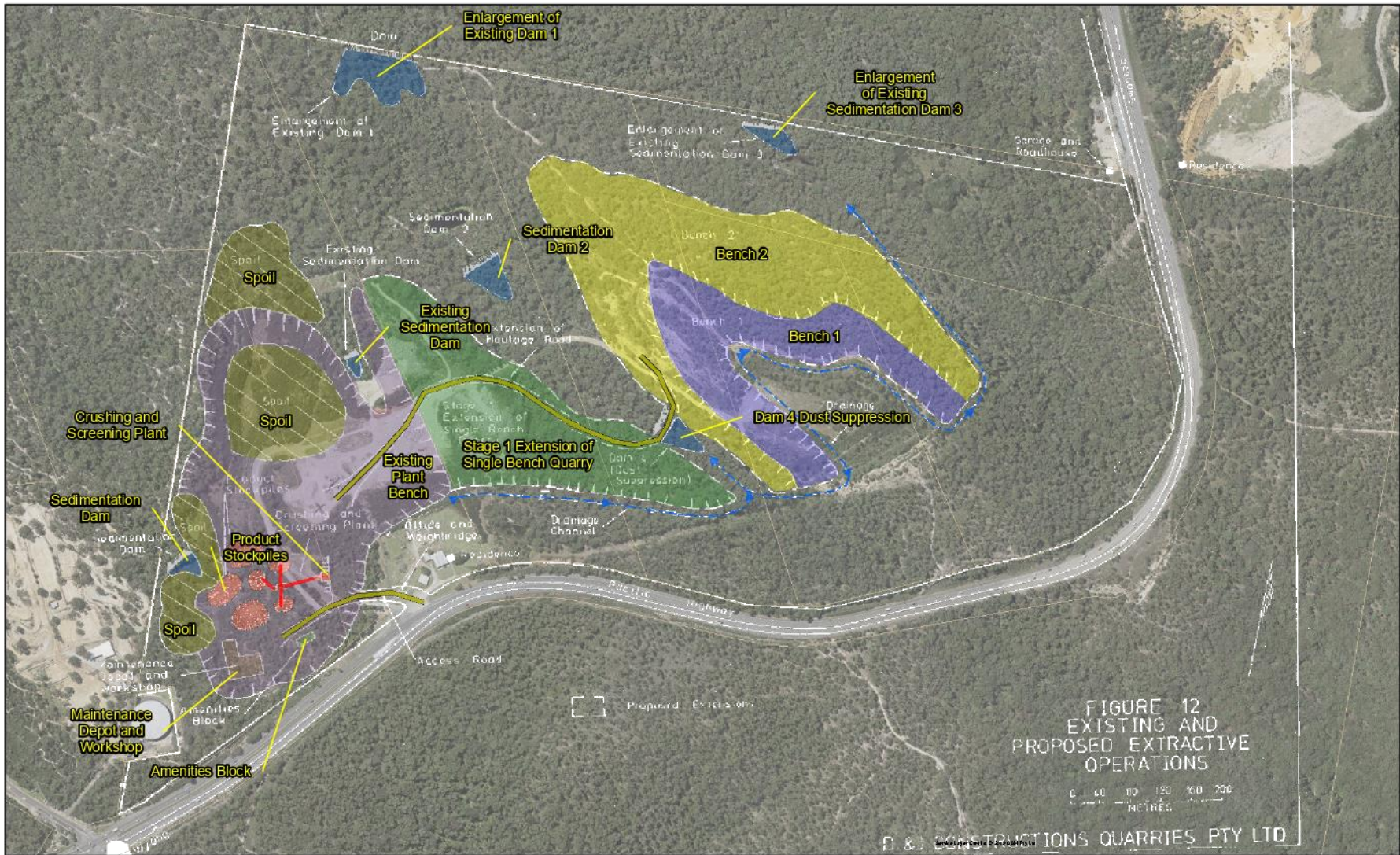
42. The manner in which the conclusion at draft Review para 92 (and the other recommendations) is then implemented is not so easy:
- Where in the draft LEP does one put the words which overcome the zone objectives for E3 when considering a development application for continuation, expansion or intensification of the quarry?
  - What is the formulation of words to be used?
  - Is there more convenient or practical method available to achieve the outcome recommended?
43. It is to be accepted that it is not the province of the Review (unless requested) to deal with those difficulties. But the Council and Wycob need to sort out how the recommendation is to be implemented.



**Matthew Fraser**

**Independent Planning Law Barrister**

12 March 2021



**Legend**

**Description**

- Access Road; Extension of Haulage Road
- Crushing and Screening Plant
- Drainage Channel

**CENTRAL COAST COUNCIL**  
 475 Pacific Highway Crangan Bay

N  
 Meters

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Date: 16/03/21  
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**Item No:** 2.7  
**Title:** Terrigal Trojans Rugby Club - Outstanding Loan Repayment  
**Department:** Connected Communities



22 June 2020 Ordinary Council Meeting

Reference: F2020/01641 - D13984737  
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### Summary

This report provides an update on the outstanding loan between the former Gosford City Council ('fGCC') and Terrigal Trojans Rugby Club Inc ('Terrigal Trojans').

### Recommendation

- 1 That Council receive the report on Terrigal Trojans Rugby Club – Outstanding Loan Repayment.**
- 2 That Council acknowledge that Terrigal Trojans Rugby Club Pty Ltd have contributed a total amount of \$727,854, by way of cash and capital grants contributions directly toward the building.**
- 3 That Council apply the total contribution of \$727,854, to the current outstanding amount owed by Terrigal Trojans (\$554,014.45) to Central Coast Council, and it be determined that the loan has been satisfied entirely, superseding any previous resolution relating to the loan repayment.**

### Background

In 1998, Terrigal Trojans were granted Development Consent to construct a toilet/amenity block and Clubhouse. At that time, discussions commenced regarding design concepts, building requirements and cost estimates for the build. Those discussions took place over a number of years between fGCC and Terrigal Trojans. The matter first went to Council on 5 October 2004.

At its meeting held 5 October 2004, the fGCC resolved as follows:

*2004/239:*

- A *If the approval of the Department of Lands is obtained to the erection and lease of the premises proposed to be constructed at Terrigal Haven, Council agree to a loan of \$700,000 to the Terrigal Trojan Rugby Club Inc, subject to:*
- 1 *The payment of two instalments per annum (to include principal and interest) for the term of the loan.*
  - 2 *Interest payable in line with the Commonwealth Treasury 15 year Bond Rate (currently 6.3%) and reviewed annually.*
  - 3 *Interest on late payments being charged at 0.525% per month (6.3% pa).*
  - 4 *The loan being guaranteed as indicated in the Terrigal Trojan Rugby Club's letter dated 18 August 2004.*
- B *Consideration be given to \$200,000 being funded in a future Capital Works Program towards construction (thereby reducing the loan to \$500,000).*
- C *Consideration be given to \$100,000 being funded from the current Capital Works Program and the project or projects postponed be funded in a future Capital Works Program.*
- D *\$200,000 be released from Financial Strategy account F2110.002 towards the cost of the public amenity/toilet facility.*
- E *Council defer consideration of the lease arrangement to ensure consistency with other such assets.*

The fGCC and Terrigal Trojans agreed to build a Community Facility in The Haven at Terrigal, that would provide both a Council facility and a clubhouse for the Terrigal Trojans, which would enable the original clubhouse to be demolished as part of the Terrigal Haven Plan of Management (1989).

## **2005**

These matters returned to Council for consideration on two occasions in 2005, to finalise discussions in relation to annual rent and lease terms:

At its meeting held 22 February 2005, the fGCC resolved as follows:

*2005/150:*

- A *The initial rent be \$2,210 subject to an annual review equal to the CPI index. The rental be subject to market review (discounted to 3.4%) each 5 (five) years.*
- B *The difference between market rent and rent required be recorded as a donation to Terrigal Trojan Rugby Club Incorporated.*
- C *The rent of \$2,210 be paid into a reserve account for major maintenance works and eventual replacement of the building.*

At its meeting held 26 April 2005, the fGCC resolved as follows:

*2005/355:*

*Council agree to a 10 year lease with a 10 year option for the proposed clubhouse to be developed at Terrigal Haven, Terrigal by Terrigal Trojans Rugby Football Club Inc.*

The Terrigal Trojans Clubhouse build was completed in July 2005.

## **2006**

In 2006, Terrigal Trojans were granted a 10 year lease with a 10 year option. The lease was signed on 20 April 2006 ('the 2006 lease').

- The lease was specifically for the upstairs area of the clubhouse.
- The fGCC provided Terrigal Trojans with a \$700,000 loan toward the construction of a toilet/amenity block and clubhouse, repayable within 15 years (2021).
- The fGCC contributed \$300,000 toward the 'Council Facility' aspects of the build.
- The fGCC provided Terrigal Trojans with reduced rent, being 3.4% of the market rate.

Terrigal Trojans proposed a further contribution from fGCC from future budgets, to the amount of \$200,000, which would result in a total repayment amount for Trojans of \$500,000. This was rejected in the first instance.

After the signing of the 2006 lease, Terrigal Trojans requested the lease be altered to combine rent and loan repayments, subject to agreement from the Department of Lands.

**2008**

As fGCC had not accepted the original request for a further \$200,000 contribution from future fGCC budgets, Terrigal Trojans raised this matter again in correspondence in 2008, which resulted in a Council Report being drafted for consideration.

At its meeting held 27 May 2008, the fGCC resolved in part:

*2008/374:*

- E Council agrees to the Terrigal Trojan Rugby Inc's proposal to restructure the annual fee for the premises in accordance with the schedule submitted by the club which includes all payments and any outstanding interest and capitalizes the \$39,199.45 in interest arrears subject to Council's costs to redraft the lease. (This agreement is subject to the concurrence of the Minister for Lands.)*
- F Any outstanding amount is to be paid before the end of the lease unless the option is taken up, in which case the outstanding debt must be paid before the end of the second lease.*
- G The annual fee from 20 April 2006, to the commencement date of the new arrangement will remain at \$2,210 pa CPI adjusted. (If the period is less than one year, the amount applicable is \$184.17 per month.)*
- H The interest component is to be a fixed rate of 6.24%.*
- I Portion of the new annual fee for the Terrigal Trojans Rugby Club Inc, currently \$2,210, is to be retained in the reserve account.*
- J If at any time money owed to Council or the Trust by the Terrigal Trojans Rugby Club Inc. is in arrears for 60 days, appropriate action to recover the money owed be taken.*
- K Council and the Crown Reserve Trust execute a deed that requires the Crown Reserve Trust to transfer the loan, principal and interest component to Council.*
- L The common seal be affixed to the documents, if required.*
- M Council give consideration to a grant of \$200,000 towards the works already completed, subject to a qualified quantity surveyors report and confirmation by an independent auditor, and a report be brought back to Council.*

As part of the Resolution, the final repayment date for the loan was extended to 2026 (which is the end of the Lease Option period).

In accordance with Part 'M' of the Resolution, a further Report went to Council outlining information relating to construction costs, and recommendations as to the \$200,000 Grant Funding request from Trojans. That Council Report recommended refusal of the \$200,000 Grant request, and alternatively proposed a lesser figure be provided to Trojans. A further Supplementary Report was put forward in the same week, with updated information based on surveyors reports on the value of each component of the build.

At its meeting held 4 November 2008, the fGCC resolved as follows:

*2008/732: This matter be deferred for one week to allow sought discussions to be held between the Terrigal Trojan Rugby Club Inc and Council staff.*

The matter was then taken to Council on 11 November 2008.

At its meeting held 11 November 2008, the fGCC resolved as follows:

*2008/743:*

- A Council inform Terrigal Trojans Rugby Club Inc that their request for an additional grant of \$200,000 is refused.*
- B Council approve additional grant funding to the Terrigal Trojans Rugby Club Inc of \$127,185 ex GST.*
- C Council waive any accumulated interest associated with the additional grant paid.*
- D The additional grant be applied in the first instance to any outstanding monies owed to Council by the Terrigal Trojans Rugby Club Inc, as a result of the Amended Repayment Schedule.*
- E Funding for the additional grant be addressed through Council's budget review process.*
- F Terrigal Trojans Rugby Club Inc be advised of Council's Resolution.*

## **2009**

Throughout 2009, as the Terrigal Haven is Crown Land, The Lands Department requested further information prior to granting consent. Specifically, they required evidence of market rent, justification as to the reduced rent being provided and a facility maintenance plan

outlining the short, mid, and long-term maintenance of the clubhouse. The rent information was provided to the Lands Department on 14 September 2009. However, the facility maintenance plan caused considerable delay.

## 2010

On 8 February 2010, The Crown adopted an updated Plan of Management ('POM') for the whole Terrigal Haven Reserve site. The POM is still in effect for the site.

## 2011

During this time fGCC became aware of unlawful use of the café operations within the clubhouse and there were lengthy discussions relating to the commercial use of the café, and the issues with terminology/definitions, such as café, restaurant, and kiosk. Terrigal Trojans were instructed to down scale the commercial operations to a kiosk style operation at this time, which was originally intended under the Development Application approval as a community facility and with the permissible uses within the then Gosford Local Environment Plan No22 (LEP) zoning.

At its meeting held 27 September 2011, and following a Mayoral Minute, the fGCC resolved as follows:

*2011/487:*

- A Council agree to defer principal and interest payable by the Terrigal Trojan Rugby Club Inc until a LEP is made to allow commercial activities, and development consent granted for the use of the premises for commercial activities in accordance with an approved sub-lease.*
- B Council note that Terrigal Trojan Rugby Club Inc will scale down its facility to a kiosk style operation.*
- C Council note that seating will be permitted in accordance with the scale of Club functions being run.*
- D Council determine the definition of a 'kiosk style' operation.*

On 14 December 2011 ('the 2011 Deed'), a Loan Repayment Deed was entered into between fGCC, Terrigal Trojans and the Reserve Trust. That Deed expressed –

- The deferment of principal and interest payments until the LEP is made.
- The agreement that Terrigal Trojans will commence repayment of the loan within 3 months of the date of the LEP conditions being met.



- The agreement that Terrigal Trojans will scale down the commercial use of the premises in line with a kiosk style operation ancillary to the use of the premises as a community facility.
- The agreement that Terrigal Trojans would repay the whole of the outstanding principal prior to the end of the current lease period, being 2026.
- A new loan repayment schedule was attached providing for the loan to be repaid (principal and interest) by 19 April 2026.
  - A note that Council may reconsider the deferment of the loan if no LEP has been made within 12 months of the date of the Deed or the Terrigal Trojans fails to submit a DA or have not submitted a sublease or licence for lessor's consent within 3 months of the making of a LEP.

The balance of principal outstanding at the date of the 2011 Deed was \$612,014.45.

## 2012

It was determined that the Gosford LEP 2014 (that was in draft at the time), would permit the commercial activities within the permissibility of RE1 zoning. Accordingly, fGCC agreed to defer payment of principal and interest until the LEP was enforced.

At its meeting held 3 April 2012, the fGCC resolved as follows:

*2012/169:*

- A *Council initiate the Local Environmental Plan (LEP) 'Gateway' process pursuant to Section 55 Environmental Planning and Assessment Act by endorsing the preparation of a Planning Proposal to amend the land use table for the 6(a) zone in the Gosford Planning Scheme Ordinance and Interim Development Order No 122 to allow kiosks and restaurants, together with inserting the definition of kiosk (from the SI LEP 2011) as follows:*

*"'kiosk' means premises that are used for the purposes of selling food, light refreshments and other small convenience items such as newspapers, films and the like with a floor area of less than 50 square metres"*

*Council then forward the LEP to the Department of Planning and Infrastructure requesting a 'Gateway' determination pursuant to Section 56(1) Environmental Planning and Assessment Act and that Council staff prepare all necessary documentation and process the matter according to the Department of Planning and Infrastructure directives and this report.*

- B *After public exhibition of the Planning Proposal, should the Minister for*

*Planning and Infrastructure support it, if no submissions are received, the Planning Proposal is to be sent to the Department of Planning and Infrastructure in order to make the plan.*

## 2015

In September 2015, Terrigal Trojans, proposed an amended payment schedule. The fGCC staff were satisfied with the proposal, and that was taken to Council for consideration and adoption. This was the last occasion that Terrigal Trojans matters were presented to Council.

At its meeting held 27 October 2015, the fGCC resolved as follows:

- A *Council accepts the repayment plan and associate conditions outlined in this report.*
- B *The position and obligations of the parties are recorded in a Deed or such other legal instrument as recommended by Council's General Counsel.*
- C *That appropriate legal or other mechanisms are included to ensure Council has maximum ability to recover the loan proceeds, or enforce payment, should the club default on its obligations.*

### **Outstanding Resolution – 27 October 2015**

Despite, the Resolution of 27 October 2015, the actions from the Resolution are still outstanding. Specifically –

- Terrigal Trojans were to pay to fGCC \$180,000 on 22 October 2015 (in accordance with the schedule attached to the 27 October 2015 Resolution), and regular repayments thereafter;
- It was expressed in the Resolution that the initial payment should be made within 14 days of the signing of the lease;
- As the lease negotiations continued, but were not resolved, Terrigal Trojans did not pay the \$180,000 in accordance with the Resolution;
- On 27 July 2016, Trojans made a one-off payment of \$58,000 toward the outstanding loan amount, to continue lease negotiations. This reduced the total amount outstanding to \$554,014.45.

In 2016, fGCC's Property and Economic Manager arranged for external lawyers Moray & Agnew to prepare a Payment Deed which comprehensively covered the loan repayment obligations, default and enforcement and links the loan to the lease.

The Deed was sent to the Club's solicitor in April 2016 but despite numerous requests for comments, fGCC did not receive any formal response from the solicitor as the club

committee were concerned that they would be personally liable for the loan of a community facility, which they raised with Council staff.

Following the formation of Central Coast Council ('CCC') on 12 May 2016, all matters relating to Terrigal Trojans became part of the Assets, Infrastructure and Business (AIB) Directorate.

## **2017**

In 2017, despite negotiations not being resolved, Terrigal Trojans applied for Development Consent to extend the clubhouse. On 4 September 2017, Terrigal Trojans received a letter from Crown Lands, granting consent to lodge the DA. Further, on 16 November 2017, Terrigal Trojans were granted approval to lodge Development Application over Part Lot 6 DP 805477 The Haven, Terrigal.

## **2018**

In October 2018, the Development Application to expand the restaurant/café area was approved. This permitted use of the restaurant/café with a deferment clause, noting that the lease plan with Council was amended to include the waste storage bin enclosure.

In November 2018, upon a re-structure of CCC, those matters then remained under the Leasing and Asset Management Unit, which was moved to the Connected Communities Directorate.

The terms of the current lease, including the permitted use clause, have not been expressly waived or varied by Council.

## **Café Operations**

The club had commenced a sub-lease for a commercial café operation at the facility, with all income going to the club. At the commencement of the sub-lease, Council had not yet authorised the sub-lease under the head-lease. The DA does now permit café/restaurant, however, the lease itself is vague in allowing a purpose that is ancillary to the purpose of the reserve, which is defined under the Crown Lands Act 1993 or Crown Lands Management Act 2016, and as determined by the Minister.

The sub-lease has been by way of a Catering Agreement, given the uncertainty of bookings over the winter months, hence only being able to enter an agreement for a six month period at a time. The rugby season runs from April through to October, and during that time the clubhouse is used for every home game, finals matches, as well as, for presentation days, registration days, meetings and training, which prevents considerable options for other events and operations during the rugby season.

Terrigal Trojans have entered into three Catering Agreements since 2012, all of which have operated for only six months per year, and all of which have unfortunately proven unsustainable. The income to the club as a result has varied, and in total the total income from 2012 through to 2019 is \$35,282.

On 30 July 2019, Terrigal Trojans advised CCC that the café operations have now ceased. However, it is intended that they will reopen in the future, upon the completion of improvements to the building in accordance with the scope of works for the Stronger Communities Funding Agreement.

### **Community Use of the Clubhouse**

The clubroom of the clubhouse is deemed a community facility of Council, which Terrigal Trojans acknowledge and support the use of.

Community Groups and users can currently book the Terrigal Trojans Clubhouse via an online link on their website: <https://terrighalrugby.com/clubhouse-bookings/how-to-book-the-terrighal-rugby-clubhouse>

Council Staff and Terrigal Trojans representatives are in discussions relating to future booking options and logistics for general community use. Terrigal Trojans intend to continue to encourage external users to utilise the facility. The Club are in the process of employing an Events/Functions Manager, to support them in increasing utilisation of the facility for larger functions.

The southern Clubroom area will feature memorabilia from the history of the Trojans and this area will be available for community use and private functions. This area also can be open and extended into the larger function area when required. This facility provides a unique function room for the community, with the capacity to seat approximately 160 people.

The downstairs 'canteen and can bar area' will be included in the usage of the oval, and will be available to any substantial use of The Haven Oval.

In addition to providing sporting activities, it is worthy to note Terrigal Trojans significant contribution to the local community, which again provides an additional unaccounted return of investment directly to the Central Coast community. Some examples of those contributions are as follows:

- Developing and running a Disability Rugby Programme
- Developing and running an Inclusive Rugby Programme
- Establishing Portugal Pathway Programme
- Annual Fiji Tour
- Assisting other smaller local Clubs with Grants
- Funding the installation of Public Defibrillator for The Haven

- 
- The Bay Vikings Club contributions / Fundraising Days
  - Hay Bale Deliveries to Farmers
  - Club facility as an Emergency Response Centre
  - Ongoing Charity Support
  - Hosting and sponsoring Mental Health Awareness Forum and ongoing involvement with Mental Health organisations
  - Hosting First Aid courses for community members
  - Women in Sport promotion and support
  - Supported community access to extended club house facility

### **Loan Repayment**

The current outstanding loan balance is \$554,014.45.

From 2006 to 2011, Terrigal Trojans paid interest repayments, and Crown rent. The interest rate was the 15 year Corporate Bond rate (approx. 2.5%).

To summarise the history of repayments:

- The principal loan amount as agreed in 2006 was \$700 000.
- In 2008, a Grant of \$127,185 from fGCC was applied to the outstanding loan balance, following Resolution 11 November 2008 (Council Report 4 November 2008 and Supplementary Report).

As a result, the balance of the loan as at the end of 2008 was \$572,815.

Between 2008 and 2011, a total of \$39,199 interest had been applied to the loan, bringing the total outstanding loan amount as at 2011, to \$612,014.

In 2016, Terrigal Trojans paid a one-off lump sum of \$58,000 toward the outstanding loan amount, bringing the total outstanding amount in 2016, and remaining, to \$554,014.45.

On 3 March 2019 Terrigal Trojans put forward a proposal , which included a revised payment plan.

- A loan term of 10 years, with a start date of 22/4/2016 and finish date of 22/4/2026;
- The total principle would be \$554,014.45, with interest calculated at 3% adjusted to a 10 year government bond rate (\$28,911.89);
- Indicative interest rates are at 2.09%. The total to be paid including interest is \$582,926;

- Terrigal Trojans also offered to provide Council with the NSW Government grant for roof upgrades of \$227,000 to be off set against the loan;
- That Terrigal Trojans place 50% of any future net commercial income from the café into a sinking fund for maintenance of the building and surrounds, upon the payment of the outstanding loan;
- Terrigal Trojans noted that they have provided the current catering agreement that is place with the tenant, with an annual fee of \$70,000.
  - CCC confirms that on 17 April 2019, CCC received the formal catering contract on that is currently in place between Terrigal Trojans and the Caterer (Terrigal Hospitality Services – Splash Café);
  - The hours of operation are Monday – Saturday 6am-12am, and Sunday 6am-10pm;
  - The area used is specified in the agreement;
  - The agreement commenced from 1/10/2014, for an initial three year period, and is currently operating on holdover provisions; and
  - The annual catering fee is \$70,000 plus indexation.

Terrigal Trojans requested that their *"equity, in-kind and grants secured for the building to be taken into consideration and off set against the loan balance"*. Terrigal Trojans also noted that *"no other community organisation has had to take a loan out from Council to upgrade a community building"*.

Following assessment of Terrigal Trojans contributions, it has been determined that they have contributed –

- Cash contributions - \$318,054.00
  - Painting (two occasions in 2016 and 2018) – total \$12,000
  - Reshaping oval bank in 2013 - \$1,500
  - Anti-Graffiti Paint protection in 2006 - \$5,000
  - Concrete extensions in 2013 - \$1,225
  - Drainage in 2013 - \$5,000
  - Drainage (second stage) - \$2,457
  - Scoreboard installation - \$15,872
  - Matching \$275,000 Grant with a cash contribution, due to be finalised by 30 June 2020.

In total, Terrigal Trojans have been successful in acquiring a total of \$846,344 in Grants from a number of funding sources. Those sources include a number of grants from the fGCC, NSW Government incl Gaming & Liquor, and Federal Government. Two of those grants in particular were applied directly to the maintenance and improvement of the building. For the

purpose of assessing Terrigal Trojans contribution to the building, to potentially offset against the loan, it has been determined that Council include those two grants that were directly applied to the building. Those two grants total \$409,000 by way of –

- \$275,000 Grant in 2016 through the National Stronger Regions Fund which was contributed to club house extensions and maintenance (some of which were Council’s maintenance responsibilities); and
- \$134,800 Women in Sport Grant in 2020 which was used toward the upgrade and refurbishment of the club house

Therefore, it is evident that whilst Terrigal Trojans have an outstanding loan of \$554,014.45, they have contributed a total of \$727,854 in cash and grant contributions, directly to the improvement of the building.

Therefore, staff believe it is reasonable that the contributions made by Terrigal Trojans be applied to the remaining balance of the outstanding loan, and as a result would resolve the debt entirely. Terrigal Trojans will then continue to pay rent in accordance with the current agreement.

- Terrigal Trojans are required to pay \$2,210 per year, paid annually in accordance with the current lease. This fee is subject to increase annually in accordance with CPI. In 2019/2020 the rental fee was \$2,689.
- Terrigal Trojans are required to pay all outgoings, utilities, and waste in accordance with the current lease. An external rental valuation of the site was undertaken in July 2018, MJD valuers identified that an indicative market rent assessment of the café would be in the range of \$15,000 to \$25,000 per year. As noted under ‘Café Operations’ above, the Café operations have currently ceased.
- The new Facilities Leasing and Licensing Policy includes provision for dealing with sub-leasing, which will ultimately trigger further market rent review upon entering a new lease with the Terrigal Trojans. The new Policy will indicate any appropriate arrangement and subsidy based on the category that the group fall under, in accordance with the Policy criteria, which includes consideration of income.

### **Length of Tenure and Plan of Management for Terrigal Haven**

The 2006 Lease was for a term of 10 years, with a 10 year option, with an end date of 20 April 2026. During previous negotiations, Terrigal Trojans have requested extended tenure due to their contributions to the building. Council’s position is that any new lease will be required to be entered in accordance with Council’s new Facilities Leasing and Licencing Policy that went to Council on 9 March 2020, and is currently on Public Exhibition for comment, and in accordance with the new Plan of Management (‘POM’) which will be adopted by 30 June 2021.

New legislation has arisen which requires a new adopted POM -

- The *Crown Land Management Act* 2016 (CLM) has now commenced. The CLM Act prohibits the renewal or grant of a new lease for an additional use until a POM has been adopted by Council under the *Local Government Act*, which expressly authorises the lease.
- The POM process may require a public hearing and approval by Council resolution. The unlawful commercial use may come under public scrutiny.

### Options

- 1 Council to support the recommendations, that Terrigal Trojan's cash and grant contributions towards Council's asset are utilised to satisfy the loan in full. **This is the recommended option.**
- 2 Council could decide that Terrigal Trojan's cash contributions only (\$318,504.00) be used toward the loan and exclude any grant contributions. Terrigal Trojan's would have an outstanding loan balance of \$235,960.45, which would need to be reflected in a new Loan Repayment Deed. **Not recommended.**
- 3 Council could decide that Terrigal Trojan's cash and grant contributions towards Council's asset are not to be used towards the loan and the current debt remains. **Not recommended.**

It is recommended to progress Option 1.

### Financial Impact

That the current outstanding debt owed to Central Coast Council be reduced from \$554,014.45 to Nil.

### Link to Community Strategic Plan

Theme 5: Liveable

#### Goal L: Healthy lifestyle for a growing community

L-L1: Promote healthy living and ensure sport, leisure, recreation and aquatic facilities and open spaces are well maintained and activated.

### Risk Management

Council staff have spent considerable due diligence and time reviewing all received documentations and evidence from the club in providing the proposed recommendations.



**Critical Dates or Timeframes**

A resolution from Council by 30 June 2020 will allow this transaction to be reflected in the annual financial statements for the 2020 financial year.

**Attachments**

Nil



# AUDIT, RISK AND IMPROVEMENT COMMITTEE CHARTER

~~June 2020~~ *April 2021*



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#### History of Revisions:

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1	24 January 2017	Creation	D12590987
2	26 July 2017	Updated given feedback	D12758021
3	4 December 2019	Updated given NSW Audit Office guidelines and feedback from ARIC	D13488251
4	24 February 2020	Updated given feedback from ARIC for Council approval	D13776908
5	30 March 2020	Updated following resolutions from the 17 March 2020 ARIC meeting and adopted at the 17 June 2020 ARIC meeting	D14056881
<b>6</b>	<b>13 April 2021</b>	<b>Updated to make membership Independent members only</b>	<b>D14546515</b>

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## Introduction

Good corporate governance of Central Coast Council ("Council") promotes effective and efficient delivery of services to the Central Coast community with honesty and integrity.

The Audit, Risk and Improvement Committee ("Committee") has an important role in the governance framework of Council by providing Council with independent oversight, objective assurance and monitoring of Council's audit processes, internal controls, external reporting, risk management activities, compliance of and with Council's policies and procedures, and performance improvement activities.

This Charter, which is based on the guidelines issued by the Chief Executive of the Office of Local Government pursuant to s. 23A of the [Local Government Act 1993](#), the NSW Audit Office guidelines for [Local Government in Risk Management](#) and is consistent with best practice, is intended to add value and drive the qualities of effective local government; being openness, transparency and accountability. The Committee helps Council accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

~~Gary Murphy~~ **Rik Hart**  
Chief Executive  
Officer Central Coast  
Council

## Committee Objectives

1. The objective of the Committee is to provide independent assurance and assistance to the Council on risk management, control, governance, internal audits, organisational performance and external accountability responsibilities.
2. Part 4A of the *Local Government Act 1993* ("the LG Act") will commence after the adoption of this Charter. When Part 4A of the *LG Act* commences the Committee will be under a statutory obligation to keep under review the following aspects of the Council's operations:
  - a) compliance,
  - b) risk management,
  - c) fraud control,
  - d) financial management,
  - e) governance,
  - f) implementation of the strategic plan, delivery program and strategies,
  - g) service reviews,
  - h) collection of performance measurement data by the Council, and
  - i) any other matters prescribed by the regulations.
3. This Charter imposes those obligations on the Committee from the date the Committee commences, prior to the commencement of Part 4A of the *LG Act*. The Committee is also to provide information to the Council for the purpose of improving the Council's performance of its functions.

## Authority

4. The Committee is established in accordance with Council's authority granted by section 355 of the *LG Act*.
5. The Committee has no executive powers, except those expressly provided by the Council.
6. In carrying out its responsibilities, the Committee must at all times recognise that primary responsibility for management of Council rests with the Council and the Chief Executive Officer as defined by the Local Government Act.
7. The Council authorises the Committee as a whole (but not individual members of the Committee) within the scope of its role and responsibilities as follows and to report any action undertaken in the meeting minutes:
  - a) obtain any information it needs from any employee or external party (subject to their legal obligations to protect information).
  - b) discuss any matters with the Auditor-General (or contracted agent) and/or external auditor and/or other external parties (subject to confidentiality considerations).
  - c) request the attendance of any employee or Councillor at Committee meetings.
  - d) obtain external legal or other professional advice considered necessary to meet its responsibilities. The engagement and payment of costs for that advice is subject to

the prior approval by the Chief Executive Officer.

8. This Charter is required to be reviewed and endorsed by the Committee each year. Any substantive changes to this Charter need to be approved by the Council.
9. Council must review, amend as required and adopt this Charter at least once during each term of Council at an open meeting of Council.

## Composition and Tenure

### **Members (voting)**

10. The Committee will consist of: ~~five voting members.~~
  - a) ~~Two Councillors;~~
  - b) Three Independent external members (one of whom to be the Chairperson)
11. Voting at a Committee meeting is to be by open means (such as by voice or by show of hands).
12. The members of the Committee, taken collectively, will have a broad range of skills and experience relevant to the operations of Council. At least one member of the Committee shall have accounting or related financial management experience, with understanding of accounting and auditing standards in a public sector environment.

### **Councillors**

13. ~~The two Councillor members (excluding the Mayor) of the Committee will be appointed by resolution of the Council at the start of each Council Term for the length of the Council Term.~~
14. ~~The Council may also resolve to appoint alternative Councillor members to the Committee for the same period to attend meetings in the absence of one or both of the appointed Councillor members. The alternative Councillor members will have the same voting rights as the Councillor member being replaced.~~

### **Independent External Members**

15. The three Independent External Members will be appointed, by resolution of the Council for up to an initial period no less than three years and not exceeding five years, after which they will be eligible for extension or re-appointment following a formal review of their performance by Council (noting that the total term on the Committee will not exceed eight years).
16. Any of the three Independent External Members seeking an extension or re-appointment will be required to notify the Chief Executive Officer in writing six months before their

appointed is set to end.

17. The three Independent External Members are eligible for extension or re-appointment up to a maximum of eight years of continual service. Appointments must be made so that phased replacement of each of the three Independent external members is required to ensure continuity in the Committee.
18. The Independent External Members can also be removed by resolution of Council.
19. The Independent External Members, in aggregate, will have recent and relevant knowledge and experience of:
  - a) Accounting or related Financial management
  - b) Risk management experience
  - c) Auditing experience in a public sector environment
  - d) Performance improvement
  - e) The local government framework
  - f) Council services, activities and operations
  - g) Governance, risk and compliance
  - h) Community services.

### **The Chair**

20. The Chair will be elected by the majority of the Committee's voting members and must be one of the Independent External Members.
21. The Chair must be appointed for one term only for a period of at least three years, with a maximum period of five years. The term of appointment for the Chair can be extended but any extension must not cause the total term to exceed five years as a Chair of the Committee.
22. Whenever the voting on a motion put to a meeting of the Committee is equal, the Chair of the Committee is to have a casting vote as well as an original vote.
23. If the elected Chair is not present at a meeting of the Committee, the first business of that meeting is for the Committee's voting members to elect a Chair from the Independent External Members present.

### **Attendees (non-voting) for all agenda items**

24. Meetings of the Committee may, at the discretion of the Committee and with the consent of the Chief Executive Officer, be attended by the following Councilstaff:
  - a) Chief Executive Officer or nominated delegate;
  - b) Chief Financial Officer or nominated delegate;
  - c) Director **Corporate Affairs and Chief Financial Officer** Governance or nominated delegate;
  - d) Chief Internal Auditor or nominated delegate; and
  - e) Senior Internal Ombudsman or nominated delegate.



**Invitees (non-voting) for specific agenda items**

25. Representatives of Council's external auditor and other Council Officials may attend Committee meetings by invitation as requested by the Committee.
26. Other Councillors may attend as observers at the discretion of the Chair. Such request should be placed in writing to the Chair prior to the meeting.

**Role and Responsibilities**

27. In carrying out its responsibilities, the Committee must at all times recognise that primary responsibility for financial and other reporting, for internal controls, for compliance with laws, for ethical behaviour, for the management of Council, for risk management and for organisational improvements, rests with the elected Council and the Chief Executive Officer in accordance with the [LG Act](#).
28. Members of the Committee must not act in a way that contravenes the [LG Act](#) (which includes compliance with Council's adopted Code of Conduct and Code of Meeting Practice) or any other Act. Members of the Committee are also required to comply with other relevant Policies and Procedures of Council.
29. The Chief Executive Officer will ensure that adequate resources are available to allow for the proper functioning of the Committee, including provision of a Committee Support Officer for administrative support.
30. The Committee may also, at Council's expense, request the Chief Executive Officer to obtain such legal, accounting or other professional advice as it reasonably considers necessary for the performance of its duties. The Chief Executive Officer will give appropriate consideration to all such requests.
31. The responsibilities of the Committee may be revised or expanded by the Council from time to time. The Committees responsibilities are in accordance with Part 4A of the [LG Act](#), even if that Part 4A has not commenced operation:
  - a) compliance,
  - b) risk management,
  - c) fraud control,
  - d) financial management,
  - e) governance,
  - f) implementation of the strategic plan, delivery program and strategies,
  - g) service reviews,
  - h) collection of performance measurement data by the Council,
  - i) any other matters prescribed by the regulations.
32. The Committee is also to provide information to the Council for the purpose of improving

the Council's performance of its functions.

33. The following defined responsibilities are in accordance with the OLG model charter for Audit Committees as set out in the Internal Audit Guidelines issued by the Chief Executive of OLG in September 2010 and to meet the future requirement that will be imposed by Part 4A of the [LG Act](#).

### **Risk Management**

34. Risk management is an essential part of effective corporate governance. It is defined as "the culture, processes and structures that are directed towards realising potential opportunities whilst managing adverse effects." (Risk Management – Principles and Guidelines" ISO 31000:2009(E)). Enterprise Risk Management is the holistic management of all risks within Council, not just insurable risks or work health and safety.
35. The Committee is responsible for:
- a) reviewing whether management has in place a current and comprehensive risk management framework, and associated procedures for effective identification and management of business and financial risks, including fraud, that is consistent with AS/NZS ISO 31000:2009;
  - b) reviewing whether a sound and effective approach has been followed in developing strategic risk management plans for major projects or undertakings;
  - c) reviewing the impact of the risk management framework on its control environment and insurance arrangements;
  - d) reviewing whether a sound and effective approach has been followed in establishing business continuity planning arrangements, including whether plans have been tested periodically;
  - e) reviewing whether a sound and effective approach has been established in relation to technological related risks issues that present a threat to the operations of Council;
  - f) considering, and recommending to the Chief Executive Officer, improvements in relation to Council activities, systems and processes; and
  - g) reviewing whether Council processes and procedures result in an efficient and effective allocation of resources, and accountability and transparency.

### **Control Framework**

36. The Committee is responsible for:
- a) reviewing whether management has adequate internal controls in place, including over external parties such as contractors and advisors;
  - b) reviewing whether management has in place relevant policies and procedures, and these are periodically reviewed and updated;
  - c) progressively reviewing whether appropriate processes are in place to assess compliance with policies and procedures;
  - d) reviewing the annual performance of Council against the key performance indicators documented in the Operational Plan, and providing advice to the Chief Executive Officer on the adequacy of Council's performance against these indicators;

- e) reviewing whether appropriate policies and procedures are in place for the management and exercise of delegations; and
- f) reviewing whether management has taken steps to embed a culture which is committed to ethical and lawful behaviour.

### **External Accountability**

37. The Committee is responsible for:

- a) satisfying itself that the annual financial reports comply with applicable Australian Accounting Standards and are supported by appropriate management sign-off on the statements and the adequacy of internal controls;
- b) reviewing the external audit opinion, including whether appropriate action has been taken in response to audit recommendations and adjustments;
- c) considering contentious financial reporting matters in conjunction with Council's management and external auditors;
- d) reviewing the processes in place designed to ensure financial information included in the annual report is consistent with the signed financial statements;
- e) satisfying itself there are appropriate mechanisms in place to review and implement, where appropriate, relevant State Government reports and recommendations;
- f) reviewing cash management policies and procedures;
- g) reviewing policies and procedures for collection, management and disbursement of grants and tied funding; and
- h) satisfying itself there is a performance management framework linked to organisational objectives and outcomes.

### **Legislative Compliance**

38. The Committee is responsible for:

- a) determining whether management has appropriately considered legal and compliance risks as part of risk assessment and management arrangements; and
- b) reviewing the effectiveness of the system for monitoring compliance with relevant laws, regulations and associated government policies.

### **Internal Audit**

39. The Committee is responsible for:

- a) acting as a forum for communication between the Council, Chief Executive Officer, Senior Management, Internal Audit, External Audit and Internal Ombudsman;
- b) reviewing the internal audit coverage and Internal Audit Plan, ensuring the plan has considered the Risk Management Plan, and approving the plan;
- c) considering the adequacy of internal audit resources to carry out its responsibilities, including completion of the approved Internal Audit Plan;
- d) reviewing all audit reports and considering significant issues identified in audit reports and action taken on issues raised, including identification and dissemination of better practices;
- e) monitoring the implementation of internal audit recommendations by

- management;
- f) periodically reviewing the Internal Audit Charter to ensure appropriate organisational structures, authority, access and reporting arrangements are in place;
- g) periodically reviewing the performance of Internal Audit;
- h) meeting at least annually, with the Chief Internal Auditor "in-camera" without the presence of management;
- i) meeting at least annually, with the Internal Ombudsman "in-camera" or as arranged with the Committee without the presence of management. The Internal Ombudsman will provide a quarterly report to the Audit, Risk and Improvement Committee; and
- j) giving advice to the Chief Executive Officer on the appointment and remuneration of the Chief Internal Auditor and the Internal Audit team (if applicable).

### **External Audit**

40. The Committee is responsible for:

- a) acting as a forum for communication between Council, senior management and internal and external audit;
- b) providing input and feedback on the financial statement and performance audit coverage proposed by external audit, and providing feedback on the external audit services provided;
- c) reviewing all external plans and reports in respect of planned or completed external audits, and monitoring the implementation of audit recommendations by management;
- d) providing advice to Council on action taken on significant issues raised in relevant external audit reports and better practice guides;
- e) meeting at least annually, with the NSW Auditor General (or contract agent) "in-camera" without the presence of management; and
- f) considering significant issues raised in relevant external audit reports and better practice guides, and ensuring appropriate action is taken.

### **Responsibilities of Members**

41. All members of the Committee are expected to:

- a) have a high level of personal integrity and ethics, as well as acting honestly and in good faith;
- b) make themselves available as required to attend and participate in meetings;
- c) perform their duties in a manner that engenders public trust in the integrity, objectivity, and impartiality of the Committee;
- d) comply with this Charter;
- e) have strong interpersonal skills;
- f) have strong skills in oral and written communication;
- g) understand the relevant legislative and regulatory environment of Audit and Risk Management in NSW Local Government and any requirements appropriate to Central Coast Council, particularly as these pertain to individual matters under consideration by the Committee;

- h) contribute the time needed to study and understand the papers provided, and to devote to their responsibilities as a Committee Member;
  - i) apply good analytical skills, objectivity and with good judgment;
  - j) express opinions frankly and ask questions that go to the fundamental core of issues;
  - k) pursue independent lines of enquiry when required;
  - l) review the risks, progress, controls, finances and performance surrounding major projects;
  - m) have an understanding of management principles required recognising and evaluating the materiality and significance of deviations from good business practices;
  - n) have an appreciation of fundamental concepts in areas such as accounting, economics, commercial law, taxation, finance, quantitative methods and IT; and
  - o) assist the Council and the Chief Operating Officer with the formulation of Finance, Audit and related policies and procedures.
42. Expressions of Interest appointment as an independent member of the Committee are to be invited by public advertisement and/or written invitation from persons eligible to be members of the Committee as outlined by this Charter.
43. Any such nominations will be received and reviewed by the Chief Executive Officer who will prepare a report for Council's consideration.
44. The recruitment of those members of the Committee is to be based on merit, and it is important that the selection process used is transparent and accountable.
45. All Committee members will be appointed by Council. Once the Independent External Member(s) is/are appointed, they will receive a letter of appointment clearly detailing the terms of their appointment and their award remuneration rates, as well as a copy of this Charter.
46. Committee members must also decline any request to act as referee to any applicants for vacant positions on the Committee.

## Reporting

47. At the first Committee meeting post 30 October each year, a performance report will be provided to the Committee dealing with:
- a) an overall assessment of Council's risk, control and compliance framework, including details of any significant emerging risks or legislative changes impacting Council;
  - b) a summary of the work the Committee performed to fully discharge its responsibilities during the preceding year;
  - c) details of meetings, including the number of meetings held during the relevant period, and the number of meetings each member attended;
  - d) a summary of Council's progress in addressing the findings and recommendations made in internal and external audit reports;

- e) the performance of Internal Audit for the financial year as measured against agreed key performance indicators; and
  - f) the approved Internal Audit Plan of work for the previous financial year showing the current status of each audit.
  - g) any other matters deemed to be of sufficient importance.
48. The Committee should report regularly to Council on the internal audit function, on the management of risk and on internal controls as and when required. The Committee may also make recommendations to Council and the Chief Executive Officer.
49. At a minimum the Committee will report to Council on its activities at least yearly coinciding with the financial year and the annual statement time.
50. The Annual and Three-Year Audit Plans will also be submitted to Council as part of the Committee's report to Council.
51. Council may request the Chair of the Committee to address Council and to answer any enquiries about the operation of the Committee. In consultation with the Chair some or all of the Committee's annual report will form part of Council's Annual Report.

## **Administrative arrangements**

### **Meetings of the Committee**

52. The Committee is bound by Council's adopted [Code of Conduct](#).
53. All Committee meetings must be run fairly, and the procedures used should improve decision making and not be used for personal or political advantage.
54. All matters should be considered consistently, fairly, promptly, and on their individual merits.
55. A forward meeting plan for the following year, including meeting dates and agenda items, will be agreed by the Committee in December of each year. The forward meeting plan will cover all Committee responsibilities as detailed in this Charter.
56. The Committee will meet at least four times per year. A special additional meeting may be held for the review and endorsement of the annual audited financial reports and external audit opinion.
57. The need for any additional meetings will be determined by resolution of the Committee. Such resolutions do not bind the Council to commit additional resources to the conduct of those meetings unless the Chief Executive Officer or the Council, by resolution, agrees to those additional meetings.
58. It is expected that Committee meetings will be attended by each voting Committee member in person. However, if there is a valid reason and with the prior approval of the

Chair, a voting Committee member may attend by telephone or by video conference.

59. Non-voting participants at Committee meetings will also be expected to attend in person, however where this is not practical and with the prior approval of the Chair, they may attend by telephone or by video conference.

60. Committee meetings are closed to the public.

### **Attendance at meetings and quorums**

61. The quorum for a meeting of the Committee will be the majority of the voting members of the Committee. A quorum must include at least two Independent External Members.

62. If it is determined two days prior to the Committee meeting that a quorum will not be achieved, the Committee meeting is to be reconvened to a later date. If for any reason a quorum is not present within half an hour of the scheduled commencement of the meeting, the meeting shall be rescheduled.

63. A Committee member will be deemed to have relinquished their membership of the Committee if they do not attend two consecutive meetings of the Committee without notice or satisfactory (as determined by the Chair – or in the case of the Chair the majority of the Committee) explanation.

64. Section 376 of the [LG Act](#) relevantly provides:

*(2) The general manager is entitled to attend a meeting of any other committee of the council and may, if a member of the committee, exercise a vote.*

*(3) However, the general manager may be excluded from a meeting of the council or a committee while the council or committee deals with a matter relating to the standard of performance of the general manager or the terms of the employment of the general manager.*

65. The Chief Executive Officer (Council's General Manager) may only be excluded from the meeting as set out above or while the Committee deals with a matter relating to the standard of performance of the Chief Executive Officer or the terms of the employment of the Chief Executive Officer.

66. The Chief Executive Officer will permit the Committee to meet separately with the Chief Internal Auditor and any External Auditor(s) in the absence of management on at least one occasion per year, should the Committee resolve that such meetings are appropriate and necessary.

67. The Committee may also request any other Council Official to participate in meetings should the Committee deem this necessary.

68. All employees of Council are subject to the direction of the Chief Executive Officer and

not the Committee or any of its members. In this regard all correspondence or contact with staff is to be through the Chair of the Committee addressed to the Chief Executive Officer.

### **Secretariat**

69. The Director, **Corporate Affairs Governance** is to ensure adequate Secretariat support to the Committee is provided.
70. The Committee Secretariat will ensure the agenda for each meeting and supporting papers are circulated, at least one week before the meeting, and ensure minutes of the meetings are prepared, maintained, approved and distributed as required.

### **Agendas, Minutes, Internal Audit Reports and Supporting Papers**

71. The agenda for meetings of the Committee will be set by the Chair (in consultation with the Chief Executive Officer and the Chief Internal Auditor) at least two weeks before a meeting.
72. The agenda must specify the time and place at which, and the date on which, the meeting is to be held and the business proposed to be transacted at the meeting.
73. If a Committee member wishes to raise an urgent/late item that is not on the agenda, the Chair shall determine the appropriate manner for dealing with the matter in accordance with Council's adopted Code of Meeting Practice.
74. The Committee must ensure that full and accurate minutes of the proceedings of its meetings are kept. In particular, the Committee Secretariat must ensure that the following matters are recorded (at a minimum) in the minutes:
- a) a date and time of meetings, attendees and any apologies;
  - b) the endorsement (or otherwise) of the minutes from previous the meeting;
  - c) whether there was business arising from previous minutes;
  - d) notation of reports or correspondence;
  - e) details of each motion moved at a meeting and of any amendments moved to it;
  - f) whether the motion or amendment is passed or lost;
  - g) Committee recommendations;
  - h) items of general business; and
  - i) the time meeting closed, date and venue for next meeting.
75. Minutes shall be approved by the Chair and circulated to all Committee members ~~and Councillors~~ within three weeks of the meeting being held and are to be confirmed at the next Committee meeting.
76. All meeting minutes that are approved by the Committee will be reported to the next available Council Meeting for information purposes
77. All Committee Agendas set by the Chair and Minutes confirmed by the Committee will



be recorded in Council's electronic document management system and made publicly available on Council's website.

78. Supporting papers to the agenda considered by the Committee will be made publicly available on Council's website unless the business is of the following kind:
- a) Personnel matters concerning particular individuals;
  - b) Personal hardship of any resident or ratepayer;
  - c) Information that would, if disclosed, confer a commercial advantage on a person with whom 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 a person who supplied it; or
    - ii. confer a commercial advantage on a competitor of Council; or
    - iii. reveal a trade secret; or
    - iv. prejudice the position or activities of Council;
  - e) Information that would, if disclosed, prejudice the maintenance of law;
  - f) Matters affecting the security of Council, Council Officials and 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 that is determined by the Committee or the Chief Executive Officer (or their delegate) to be confidential or unsuitable to be published; or
  - i) Information concerning the nature and location of a place or an item of Aboriginal significance on community land.
79. If the subject business is of a kind listed above, then those documents will be issued under separate cover to the Agenda and are to be treated as confidential.
80. The grounds for restricting public access to documents will be stated in the Agenda along with an explanation provided as to why public access would be, on balance, contrary to the public interest.

### ***Confidential matters received outside the Charter***

81. When the Committee receives confidential referrals/requests that do not fall within the ambit of this Charter or the Committee's responsibilities, the Committee will refer such matters (with any suitable recommendations) to the Chief Executive Officer to deal with appropriately.
82. The Chief Executive Officer will advise the Committee of the outcome of any matters referred to the Chief Executive Officer for action under Clause 81 at the next available Committee Meeting.

### ***Privacy and Conflicts of Interest***

83. The Committee Charter will comply with Council Policies and the LG Act in relation to confidentiality, privacy and reporting.
84. Members of the Committee will not disclose matters dealt with by the Committee to third parties except with the express approval of the Committee.

85. A conflict of interest exists where a reasonable and informed person would perceive that members of the Committee could be influenced by a private interest when carrying out their public duty.
86. All members of the Committee must avoid or appropriately manage any conflict of interests. The onus is on members of the Committee to identify a conflict of interest and take the appropriate action to manage the conflict in favour of their public duty. All members of the Committee must comply with Council's Code of Conduct at all times.
87. Committee members, attendees, invitees, observers and Council Officials must declare any conflicts of interest at the start of each meeting or before discussion of a relevant agenda item or topic. Details of any conflicts of interest should be appropriately minuted and be dealt with in accordance with Council's adopted Code of Conduct.
88. Where Committee members, attendees, invitees, observers or Council Officials at Committee meetings are deemed by the Chair (or in the case of the Chair by the majority of the Committee) to have a real or perceived conflict of interest, they will be excused from Committee deliberations and leave the meeting on the issue where the conflict of interest may exist in accordance with Council's adopted Code of Conduct.

### ***Health and Safety***

89. Council is responsible for providing a safe work environment and gives priority to the health, safety and welfare of Council Officials and of Committee members. Committee members should protect their safety and that of others in the work environment and public areas as required. All safety concerns should be reported immediately to Council Officials.
90. No one should take part in activities or attend Committee meetings while under the influence of alcohol or other drugs which could impair abilities or cause danger to themselves or others.

### ***Public comment and media statements***

91. All public comments and media statements representing Central Coast Council must be approved by the Chief Executive Officer.

### ***Induction***

92. It is a condition of Committee membership that all members undertake Code of Conduct and Protected Disclosure training.
93. The Director, **Corporate Affairs Governance** will ensure that all new Committee members receive all relevant information, training and briefings on their appointment to assist them to meet their Committee responsibilities.

### ***Assessment Arrangements***

94. In consultation with the Committee members and the Council, the Chief Executive Officer will establish performance measures for the Committee and implement measurement, feedback, reporting and review mechanisms relating to those measures.
95. Additionally, the Chair will initiate a review of the performance of the Committee at least once every two years. The review will be conducted on a self-assessment basis (unless otherwise determined by the Chair), with appropriate input from Council's Senior Management and any other relevant stakeholders, as determined by the Chair.
96. The review will also consider and report to Council on this Charter and the Internal Audit Charter, and it is to be included in the Committee's annual report to Council.

***Vacancy***

97. If for any reason a vacancy in the Committee membership occurs, the position(s) shall be filled in accordance with this Charter.

Endorsed by the Committee

**Date:** 17 June 2020

**5.1 Update on Notice of Motion - Protection of Porters Creek Wetland**

**Moved: Councillor Smith**

**Seconded: Councillor MacGregor**

**Resolved**

- 333/20 That Council note the report of Council highlighting the complexity of the process in protecting Porters Creek wetland, the level of consultation required, delays due to the diversion of staff resources to significant events facing our community and the need for consideration of other resolutions of Council.**
- 334/20 That Council note the expected impact of the COVID-19 will have a significant impact on unemployment and the economy of the Central Coast.**
- 335/20 That Council form a working group to;**
- a Oversee the activities to permanently protect Porters Creek wetland in keeping with the resolutions of 25 November, 2019 (Resolutions 1213/19, 1214/19, 1215/19, 1216/19, 1217/19, 1219/19)**
  - b Progress the development of cleared land currently available and zoned Industrial or Business in the Warnervale area as an employment precinct focused around the following sectors: health, manufacturing, food production, renewable energy and/or waste.**
  - c Engage the following;**
    - a a Project Manager with a proven track record, for an initial period of 18 months, to oversee the development of the employment lands**
    - b a consultant to progress the activities required to put in place a Conservation Agreement on Porters Creek Wetland**
- 336/20 That Council appoint the following as members of the working group;**
- Mayor**
  - Deputy Mayor**
  - Wyong Ward Councillors**
  - CEO, Gary Murphy**
  - Invited representatives from relevant State agencies and focus sectors, as appropriate**
  - Support Staff as follows: Administration support, Governance staff member and Legal Counsel**
- 337/20 As per resolution 844/19, reserve the balance of funds from savings from the Emergency Services Levy increase for the implementation of actions to protect Porters Creek Wetland including;**

- *Funds adjusted to a project budget (24866) to progress the conservation agreement (\$100,000).*
- *Porters Creek Wetland and Catchment Restoration and Monitoring Planning Project is being scoped (delivery by June 2019) to also be funded from these savings.*
- *\$345,000 for the establishment of a Conservation Agreement.*

*338/20 That Council in keeping with resolution 761/17, that Council reserve funds to progress employment generating projects.*

*339/20 That Council note that the Working Group initially meet on a fortnightly basis for 3 months to progress these initiatives.*

*340/20 That Council provide a further report to Council no later than the first Ordinary Council meeting in September, 2020.*

***For:***

***Mayor Matthews, Councillors Burke,  
Greenaway, Hogan, Holstein, MacGregor,  
Mehrtens, Smith, Sundstrom and Vincent***

***Against:***

***Councillors Best, Gale, Marquart,  
McLachlan and Pilon***

**AMENDED ITEM**

**Item No:** 5.4  
**Title:** Deferred item - Proposal to Purchase Land known as the Davistown Wetland  
**Department:** Innovation and Futures



30 November 2020 Ordinary Council Meeting

Reference: F2020/00878 - D14117624  
 Author: Joe O'Connor, Property Development Manager  
 Manager: Jamie Barclay, Unit Manager, Economic Development and Project Delivery  
 Executive: Ricardo Martello, Executive Manager Innovation and Futures

**Report purpose**

To recommend that Council cease efforts to acquire land known as the Davistown Wetland.

**Executive Summary**

In response to growing community concern, Council made resolution 1204/19 at the Ordinary meeting of 25 November 2019, to commence negotiations to purchase by agreement, eight lots in Davistown having an area of 19.26ha, being wetlands for environmental protection purposes. However, the vendor's asking price was considerably higher than Council's two market valuations, and as such Council's offer was not accepted.

There was a sum of \$1,436,049 specifically allocated by the former Gosford City Council to purchase wetland parcels. This was to be held in restricted funds under the name of "Davistown Wetlands." These funds were to be used to purchase this land, however it is unclear if these funds are still available. It is also unclear if Council has the financial capacity to manage these lands in perpetuity.

Given the stalemate between Council and the vendor, Council considered compulsory acquisition. Council is required to justify how compulsory acquisition is legally sound to the Minister for Local Government.

The risk of the land being developed is extremely low due to the current planning restrictions including ecology and flooding that severely constrain this land.

Due to the low risk of it being developed, the uncertainty of available funds, and the legislative compliance for compulsory acquisition, it is recommended to discontinue any acquisition (by agreed price or compulsory acquisition) for the present time.

#### 5.4 Deferred item - Proposal to Purchase Land known as the Davistown Wetland (cont.)

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##### Innovation and Futures Recommendation

*That Council note that this report will not be considered at the Council Meeting of 30 November 2020, to allow the land owners of Davistown Wetlands further time to discuss an alternative proposal with Council staff.*

##### Background

The Davistown Wetlands (the land) includes the following lots:

- 11 Lilli Pilli Street Davistown - Lot 1 DP547660
- 51 Pine Avenue Davistown - Lot 30 DP 456234
- 1 Cross Road Davistown - Lot 31 DP 5820
- 3 Cross Road Davistown - Lot 32 DP 5820
- 10-20 Kincumber Crescent - Lot 52 DP 6014
- 11-29 Kincumber Crescent Davistown - Lot 53 DP 6014
- 108A Malinya Road Davistown - Lot 92 DP 12206
- 83 Malinya Road Davistown - Lot 93 DP 12206

The vendor, being *Illoura Waters Pty Ltd*, has had the land on the market since October 2017. The community became concerned that the land could become developed and approached Council to acquire the land for environmental protection and to "keep it out of the hands of developers."

The land appears to be severely constrained by environmental protection legislation and flood affectation, making the land difficult to develop. Council refused a development application lodged in 1991 for construction of 16 residential lots on one of the lots due to unresolved environmental and flooding issues.

Community groups have been petitioning Council to acquire the land for environmental protection and management. There are opportunities for the land to be managed as a natural asset, protected (from introduced flora and fauna pest species) and the ecological value of the land improved.

While previously there was a sum of \$1,436,049 allocated in restricted funds under the name of "Davistown Wetlands," considering the current financial audit, it is unclear if these funds are still available. Further, this fund was established for *all* the wetlands in the Davistown area, not just these eight (8) lots. While Council has considered what these costs may include, currently the management and the further protection of the land has not been appropriately costed.

#### 5.4 Deferred item - Proposal to Purchase Land known as the Davistown Wetland (cont.)



Figure 1: The land, being eight lots considered for purchase by Council

#### Current Status

The land is still "on the market," and the vendor is determined that Council increase its offer in line with their asking price. In accordance with the Land Transaction Policy, Council is unable to agree to a purchase price higher than the independent valuations received. Should Council wish to acquire the land for its purposes pursuant to the Local Government Act 1993 and Land Acquisition (Just Terms Compensation) Act 1991, then Council could commence compulsory acquisition.

Refer to Attachment 1 and 2 which provides the two independent valuations which Council has commissioned. Attachment 3 provides a copy of the offer which Council has submitted to the vendor and Attachments 4 and 5 provides details of the failed negotiations with the vendor of the land.

#### Report

At Council's Ordinary Meeting of 10 August 2020, it was resolved:

- 727/20 *That the Chief Executive Officer continue to pursue an acquisition by agreement of the land known as Davistown Wetlands.*
- 728/20 *That the Chief Executive Officer initiate investigations regarding the eligibility of the land known as Davistown Wetlands for a compulsory acquisition process and provide a report back to Council with the outcome of these investigations.*



#### 5.4 Deferred item - Proposal to Purchase Land known as the Davistown Wetland (cont.)

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729/20 *That Council reopen dialogue with the land owner/representatives during the 12-week period.*

Regarding resolutions 727/20 and 729/20, Council has been unsuccessful in negotiating a price by agreement. The current stalemate suggests that Council should discontinue any further negotiations. Refer to Attachment 5 for the latest correspondence received from the vendor rejecting Council's offer.

Regarding resolution 728/20, Council can commence the process of compulsory acquisition, however the eligibility is determined by the Minister for Local Government and/or the Governor. The application would require Council's Environmental Management Unit (as the future asset manager) to develop a case for the potential purpose of the land, being a natural reserve. For example, Council could create a public environmental reserve over the Land, "The Davistown Wetland Environmental Reserve" contributing to tourism and conservation of the natural area.

#### Consultation

The following areas of Council have been consulted in the writing of this report:

- Legal;
- Property Information Services;
- Environment Management;
- Natural Assets and Biodiversity;
- Finance.

Additional discussions have occurred with the vendor and vendor's representative, *Illoura Waters Pty Ltd* and Council's consultant property valuer.

#### Financial Considerations

At its meeting held 19 October 2020, Council resolved the following:

1036/20 *That any motions put before Council for the remainder of this term of Council that have financial implications require the Chief Executive Officer to provide a report on how those additional costs will be met.*

The following statement is provided in response to this resolution of Council.

There was a sum of \$1,436,049 specifically allocated by the former Gosford City Council to purchase wetland parcels. This was to be held in restricted funds under the name of "Davistown Wetlands." These funds were to be used to purchase this land, however it is unclear if these funds are still available. It is also unclear if Council has the financial capacity to manage these lands in perpetuity.

#### 5.4 Deferred item - Proposal to Purchase Land known as the Davistown Wetland (cont.)

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##### Link to Community Strategic Plan

Theme 4: Responsible

##### Goal I: Balanced and sustainable development

R-G4: Serve the community by providing great customer experience, value for money and quality services.

##### Risk Management

There is considerable reputational risk should Council proceed to acquire the Davistown Wetlands given Council's financial situation and it may be considered unnecessary by the community. This is given:

- the unsuccessful negotiations to date;
- the uncertainty as to whether Council can demonstrate a valid purpose for the land in exercising its functions;
- the existing environmental and planning legislation that regulates the development of the site.

##### Options

*Option 1:* That Council discontinue any acquisition of the land known as Davistown Wetlands for the time being. This is the preferred option.

On the basis that negotiations have failed to date, Council is left with the option of doing nothing and not proceeding with the acquisition. Council has indicated that the land could be acquired for environmental protection and not be developed. At the present time, it is unclear whether the land has much development potential. The current planning legislation affords the land various protection mechanisms against much, if any development. Further, the acquisition would come at a cost to Council and require on-going maintenance costs. Given the current financial uncertainty of Council and perception in the community, any forced compulsory acquisition would further compromise Council's reputation.

*Option 2:* Council compulsorily acquire the land.

Should Council wish to compulsorily acquire the land, the following recommendations are provided:

- 1 *That Council commission a further valuation in line with Land Acquisition (Just Terms Compensation) Act 1991 (JTC Act) requirements, and provide a budget for the on-going*

#### 5.4 Deferred item - Proposal to Purchase Land known as the Davistown Wetland (cont.)

*maintenance, to ascertain that Council has sufficient funds for the purchase (including associated transaction fees), and maintenance costs;*

- 2 *That Council develop a 'Purpose of acquisition' statement and confirm details of any proposed environmental reserve;*
- 3 *That Council resolve to compulsorily acquire the land known as Davistown Wetlands including:*
  - *11 Lilli Pilli Street Davistown - Lot 1 DP547660*
  - *51 Pine Avenue Davistown - Lot 30 DP 456234*
  - *1 Cross Road Davistown - Lot 31 DP 5820*
  - *3 Cross Road Davistown - Lot 32 DP 5820*
  - *10-20 Kincumber Crescent - Lot 52 DP 6014*
  - *11-29 Kincumber Crescent Davistown - Lot 53 DP 6014*
  - *108A Malinya Road Davistown - Lot 92 DP 12206*
  - *83 Malinya Road Davistown - Lot 93 DP 12206*
- 4 *That Council issue an Opening Letter to Illoura Waters Pty Ltd pursuant to the JTC Act, to commence the required six (6) month negotiation period;*
- 5 *That Council authorise the necessary applications to the Minister and/or the Governor to approve the compulsory acquisition of the Davistown Wetlands;*
- 6 *Should the Minister approve the application for compulsory acquisition, that pursuant to the JTC Act, Council follow the required processes for acquisition of this land.*

#### Critical Dates or Timeframes

The acquisition of the Davistown Wetlands is not considered time critical given the land has been on the market since October 2017 and no willing buyer apart from Council has come forth to date. The process for compulsory acquisition may take between 18 months and 2 years to complete.


#### Attachments

- |   |  |           |
|---|--|-----------|
| 1 | Confidential - Valuation 1 (dated 20-02-2019) -                    | D14000335 |
| 2 | Confidential - Valuation 2 (dated 05-02-2020) -                    | D13837202 |
| 3 | Confidential - Letter of offer to Illoura Waters P/L -             | D13994050 |
| 4 | Confidential - Summary of Response from Illoura Waters P/L -       | D14017691 |
| 5 | Confidential - Email to Illoura Waters and confirmation of price - | D14310688 |

# Coastal Open Space System (COSS) Committee Meeting Record 2 March 2021



Central  
Coast  
Council

Location:	Zoom Meeting	
Date:	2 March 2021	
Time	Started at: 3.31pm	Closed at: 5.40pm
Chair	Luke Sulkowski – Unit Manager Environmental Management	
File Ref	F2018/00099	

**Present:**

John Andrews, David Holland, Deb Holloman, Paul Links, Douglas Williamson, Barbara Wills

**External Representatives present:**

Steve Atkins – NPWS Central Coast Area Manager, Leah De Bastos – DPIE (left 4.16pm), Jesse Gollan – Hunter Local Land Services (left 4.16pm), David Green – Local Land Services (Greater Sydney), Joe Thompson – Director Hunter Central Coast Environment Energy and Science DPIE (left 4.16pm)

**Guests present:**

Leif Arnebeck, Jackie Pearson - CEN

**Council Staff present:**

Luke Sulkowski – Unit Manager Environmental Management, Larry Melican – Section Manager Natural Assets and Biodiversity, Dr Anumitra Mirti – Section Manager Environmental Strategies (left 5.08pm), Rochelle Lawson – Senior Ecologist, Kelly Drover – Advisory Group Support Officer

**Item 1 Welcome, Apologies and Acknowledgement of Country**

Apologies received: Gary Chestnut

The Chairperson declared the meeting open and completed an Acknowledgement of Country and Connection to Land Statement.

**Item 2 Disclosures of Interest**

The Chair called for any declarations of interest. No disclosures were received.

**Item 3 Confirmation of Previous Meeting Records**

The Advisory Group confirmed the Meeting Record from 1 December 2020.

The Advisory Group discussed the Action log.

Coastal Open Space System (COSS) Committee Meeting Record  
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#### Item 4 Compliance Matters regarding vegetation removal on deferred matters lands in Central Coast LGA (Action 119)

Joe Thompson (Director Hunter Central Coast Environment Energy and Science DPIE), Leah De Bastos (Senior Operations Leader Compliance DPIE) and Jesse Gollan (Team Leader Land Services Local Land Services) attended the meeting to discuss compliance matters regarding vegetation removal on deferred matters lands.

Jesse advised that the Local Land Services Land Management Unit performs a regulatory role under the *Local Land Services Act* and provided details of allowable activities such as clearing for boundary fences, access tracks and maintaining farm infrastructure on deferred matters lands and sensitive and vulnerable lands.

Deferred Matters lands will be regulated by the *Local Land Services Act* unless approval is required under the *EP&A Act*. In regard to the use of allowable activities, the guidance in the legislation is "till the minimum extent necessary". The *Local Land Services Act* does apply to the property of concern and these allowable activities can be utilised. Joe and Leah confirmed that a number of inspections have been carried out and no breaches of the legislation have been found.

Leah provided a presentation on the Department of Planning, Industry, and Environment Biodiversity Conservation Division including:

- Compliance Responsibilities
- Hunter Central Coast Compliance Team
- Reporting Illegal Clearing
- Compliance Procedures
- Flowchart Project

**Action:** The Wollondilly Native Vegetation Clearing Flowchart to be distributed to Advisory Group members.

**Action:** The Advisory Group request advice from Council's Compliance and Regulatory Unit regarding opportunities to utilise the *EP&A Act* to regulate issues with native vegetation clearing at properties of concern. Advice is also sought on the difference in compliance approaches on Deferred Matters zoned lands vs lands zoned in accordance with the standard LEP.

**Action:** The Advisory Group seek clarification from DPIE and LLS on opportunities for strengthening of policy and legislation to enable better regulation of tree and vegetation removal and clearing activities on Deferred Matters zoned land in order to avoid the unregulated significant impacts as has been experienced in locations on the Central Coast.

**Recommendation:** The Advisory Group recommends to Council that the Administrator write to the NSW Premier requesting strengthening of legislation to allow prosecution of tree removal and land clearing on deferred matters lands.

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#### **Item 5 Land Acquisition and Prioritisation (Standing Agenda Item)**

Larry Melican (Section Manager Natural Assets and Biodiversity) advised that Environmental Land Acquisitions are currently on hold given Council's current financial situation.

The question was raised as to why it's on hold as we shouldn't be constrained by Council's current financial situation because it has nothing to do with Council's mismanaged funds. Luke Sulkowski advised that the most recent information provided by Finance is that we do have just over \$10million in the COSS restricted reserve and former Wyong Clause 14 restricted reserve, however we don't have capacity to buy land or spend the money at this stage due to Council's current financial situation. Staff will continue to work with Finance to pursue opportunities for environmental land acquisitions as they arise, and when Council's financial position can facilitate those purchases.

Transfer of Department of Planning, Industry and Environment (DPIE) land at Green Point and Erina to Council's ownership is proceeding.

#### **Item 6 Update on Porters Creek Wetland Conservation Agreement (Action 121)**

Rochelle Lawson (Senior Ecologist) advised that Council is seeking feedback on a proposed Conservation Agreement for the Porters Creek Wetland Conservation Area.

Internal stakeholder consultation and a risk assessment was undertaken during November/December. External agency consultation occurred during December/January to ensure that existing and planned infrastructure was incorporated into the agreement or excluded, as appropriate.

Community consultation is scheduled to run from 1 March to 29 March on the [Your Voice Our Coast website](#).

The agreement is anticipated to be ready for the CEO to sign in May 2021.

#### **Item 7 Action Plan from Biodiversity Strategy (Standing Agenda Item)**

Rochelle Lawson (Senior Ecologist) provided an update on the 54 actions from the Biodiversity Strategy as to whether they are complete, ongoing or not completed/not commenced.

#### **Item 8 Update from External Representatives (Standing Agenda Item)**

David Green – Local Land Services (Greater Sydney)

- Local Land Services are planning a cultural burn for 7/8 April at Calga. This event is funded by Central Coast Council Bushfire Recovery funding that came from the State Government. It will be a public function for 50 – 70 people and the target audience will be rural land holders who may be considering cultural burning rather than a hazard reduction burn.
- Currently running a deer control program at Peats Ridge with Council with another shoot planned for Thursday night. There are significant numbers of deer throughout the Central Coast that are

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difficult to manage including near Sparks Road at Wyong with significant risk that they are very close to the freeway.

- Dog baiting program kicking off again in April and will run for a few months. Slight reduction in number of enquiries regarding wild dogs.
- Released RHDV virus for rabbits 2 weeks ago.
- A number of projects on the go including a project with Council involving the grey headed flying fox community at Everglades. The project involves the automation of the watering system that is on the site for that colony.
- Fox and wild dog trapping workshop held late last year, and a pastures workshop and soils workshop to be held in the next few weeks.
- David acknowledged the great relationship over the years with Council's former Senior Planner – Emergency Protection and Natural Assets David Lemcke who will be greatly missed by LLS.

**Action:** Once details of the cultural burn go live, David Green to send details to Advisory Group Support Officer who will pass on to the Advisory Group members.

Steve Atkins – NPWS Central Coast

- Steve echoed David's sentiments about David Lemcke who has been a great support to NPWS and will be missed.
- The busy summer period is coming to an end. Throughout the COVID pandemic levels of visitation to all parks and reserves increased significantly. With this also came an increase in compliance and management issues to be dealt with.
- Capital works update – government funding on the coast for improving access to National Parks program for high visitation precinct areas including Somersby Falls and Crackneck lookout. About to go out for consultation on Somersby falls works to work towards finalised design on that project.
- Track renewal program – the first 2 stages of the Bouddi Coastal Walk are completed. About to go out to tender for stage 3 with works continuing over the next 12 – 18 months.
- About to go out to tender for upgrade of Piles Creek walking track and Coast Track in Wyrabalong National Park.
- Fox control program currently happening in Bouddi National Park with plans to undertake work in Popran, Brisbane Waters and Palm Grove after the April school holidays.
- Post bushfire recovery funds – successful in getting funding in refuge areas of the brush tail rock wallaby for pest control and weed control works.
- NPWS are revising their cycling policy as well as the mountain biking and cycling strategy.
- Bouddi Plan of Management was recently adopted back in December and there are discussions about preparing a mountain biking plan for Bouddi.
- Currently working on the Bushfire plan for the upcoming autumn season.
- The question was asked about an Aerial spray being required in Bouddi. Steve advised that there are no current plans in place for this but will take the question on notice.

#### **Item 9 Findings of COSS Report undertaken by CEN**

Jackie Pearson – Community Environment Network provided the Advisory Group with a presentation on COSS with the following objectives:

- to explore the strengths, weaknesses, challenges and opportunities of the Coastal Open Space System (COSS)

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- To present a recommendation on the possibility of expanding the COSS into the former Wyong local government area.
- To present a recommendation on establishment of a Regional Park for the existing COSS.

Luke Sulkowski raised a number of questions about the identified differences between the COSS Report and the Biodiversity Strategy that Council adopted in September 2020 following extensive community consultation as it appeared that all of the concerns and opportunities raised within the COSS report are already addressed in the Biodiversity Strategy. Luke also confirmed that the matter of expansion of COSS into former Wyong LGA has also been addressed in the Advisory Group before, through reports provided to Council and within the Biodiversity Strategy itself, and that the Biodiversity Strategy is consistent with the objectives of the Central Coast Regional Plan and the Community Strategic Plan.

Luke Sulkowski also advised the Advisory Group that the Biobanking funding mechanism referenced in the COSS report is no longer a scheme supported by the Biodiversity Conservation Trust or the legislation, and that the new process is via Biodiversity Stewardship Agreements. Luke advised that a Biodiversity Stewardship Agreement is being considered by Council over 2 reserves at Glenning Valley at the next meeting of Council.

**Action:** Gary Chestnut to liaise with Luke Sulkowski to clarify the points of difference in the COSS report compared to the Biodiversity Strategy.

**Action:** Jackie Pearson to arrange for the COSS report to be sent to the Advisory Group Support Officer for distribution to Advisory Group members.

#### **Item 11            General Business and Close**

- a) Larry Melican provided information on Thompson Vale Road Doyalson that has been listed for sale (Action 117) and provided a map of operational land north of Link Road Doyalson, a map of where the endangered local ecological community is, examples of threatened species and a map of the Biodiversity Corridor.

Jackie advised that in a meeting with CEN, in regard to the Biodiversity Corridor land at Thompson Vale Road, the Administrator did say he would look at withdrawing it from sale.

The Committee noted that whilst this is not currently COSS land, it was on the radar to be future COSS and it is unsuitable for any future development and should be rezoned to E2 zone.

**Action:** The Committee would like to reinforce to Council the conservation values of the land at Thompson Vale Road Doyalson and request the Administrator consider retaining it in Council ownership.

- b) **Action:** Staff to follow up on the James Norton Road vehicle access crossing with relevant Council departments.
- c) Larry advised that the Biodiversity Stewardship report is going to Council on 9 March seeking the Administrators endorsement on the proposed Biodiversity Stewardship Agreement.



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The Mountain Bike Feasibility Study discussion paper is out for consultation till 22 March on the [YourVoiceOurCoast website](#).

Winney bay plans were put on public exhibition and closed 15 December. Report expected to go to Council in April.

The Central Coast Bushfire Management Committee have prepared and had authorised the Bushfire Risk Management Plan and Fire Access/Fire Trail plan (FAFT). The FAFT is yet to go through the final endorsements so is not yet publicly available.

- d) Leif Arnebeck advised he is involved with the Central Coast Trail Alliance and is Secretary for Central Coast Mountain Biking Club. If anyone wants to contact him to discuss Mountain Biking, he is more than happy to provide his details.

The meeting closed at 5.40pm

**Next Meeting:            May 2021 (following return of Councillors)  
Date, Time and Location TBC**