



muswellbrook
shire council

Muswellbrook Shire Council

ORDINARY COUNCIL MEETING

BUSINESS PAPER

TUESDAY 28 JANUARY 2025



MUSWELLBROOK SHIRE COUNCIL

P.O Box 122
MUSWELLBROOK
21 January, 2025

Councillors,

You are hereby requested to attend the Ordinary Council Meeting to be held in the Seminar Rooms, Muswellbrook Library, 132 Bridge Street, Muswellbrook on **Tuesday 28 January 2025** commencing at **6:00 pm**.

Derek Finnigan
GENERAL MANAGER



Council Meetings

Meeting Principles

Council and committee meetings should be:

- Transparent:* Decisions are made in a way that is open and accountable.
- Informed:* Decisions are made based on relevant, quality information.
- Inclusive:* Decisions respect the diverse needs and interests of the local community.
- Principled:* Decisions are informed by the principles prescribed under Chapter 3 of the Act.
- Trusted:* The community has confidence that councillors and staff act ethically and make decisions in the interests of the whole community.
- Respectful:* Councillors, staff and meeting attendees treat each other with respect.
- Effective:* Meetings are well organised, effectively run and skilfully chaired.
- Orderly:* Councillors, staff and meeting attendees behave in a way that contributes to the orderly conduct of the meeting.

Public Forums

The council may hold a public forum prior to each ordinary meeting of the council for the purpose of hearing oral submissions from members of the public on items of business to be considered at the meeting. Public forums may also be held prior to extraordinary council meetings and meetings of committees of the council.

To speak at a public forum, a person must first make an application to the council in the approved form. Applications to speak at the public forum must be received by no later than 9.00 am two (2) days prior to the day of the meeting before the date on which the public forum is to be held, and must identify the item of business on the agenda of the council meeting the person wishes to speak on, and whether they wish to speak 'for' or 'against' the item.

Approved speakers at the public forum are to register with the council any written, visual or audio material to be presented in support of their address to the council at the public forum, and to identify any equipment needs no more than 3 days before the public forum. The general manager or their delegate may refuse to allow such material to be presented.

Each speaker will be allowed 2 minutes to address the council. This time is to be strictly enforced by the chairperson.



Declarations of Interest

Statement of Ethical Obligations

Councillors are reminded of their oath or affirmation of office, made under section 233A of the NSW Local Government Act 1993, to undertake the duties of the office of Councillor in the best interests of the people of Muswellbrook Shire and Muswellbrook Shire Council and to faithfully and impartially carry out the functions, powers, authorities and discretions vested in them, under the Local Government Act 1993 or any other Act, to the best of their ability and judgment. Pursuant to the provisions of the Muswellbrook Shire Council Code of Meeting Practice and the Muswellbrook Shire Council Code of Conduct, Councillors are reminded of their obligations to disclose and appropriately manage conflicts of interest.

Section 451 of the Local Government Act requires that if a Councillor or Member of a Council or committee has a pecuniary interest in any matter before the Council or Committee, he/she must disclose the nature of the interest to the meeting as soon as practicable and must not be present at, or in sight of, the meeting, when the matter is being discussed, considered or voted on.

A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of financial gain or loss (see sections 442 and 443 of the Local Government Act).

A non-pecuniary interest can arise as a result of a private or personal interest which does not involve a financial gain or loss to the councillor or staff member (eg friendship, membership of an association, or involvement or interest in an activity). A Councillor must disclose the nature of the interest to the meeting as soon as practicable.

Council's Model Code of Conduct now recognises two forms of non-pecuniary conflict of interests:

- Significant
- Less than significant

A Councillor must make an assessment of the circumstances and determine if the conflict is significant.

If a Councillor determines that a non-pecuniary conflict of interests is less than significant and does not require further action, they must provide an explanation of why it is considered that the conflict does not require further action in the circumstances.

If the Councillor has disclosed the existence of a significant non-pecuniary conflict of interests at a meeting they must not be present at, or in sight of, the meeting, when the matter is being discussed, considered or voted on.



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1. Applications for Attendance via Audio Visual Link

2. Acknowledgement of Country

3. Civic Prayer

4. Apologies and Applications for a Leave of Absence

5. Confirmation of Minutes

Ordinary Council Meeting held in 17 December, 2024

RECOMMENDATION

The Minutes of the Ordinary Council Meeting held on **17 December, 2024** a copy of which has been distributed to all members, be taken as read and confirmed as a true record subject to the following amendment:

Item 17.4 - 2023-2024-0583 – Demolition of 88/108 Bridge Street Buildings

Dot point 2 to read:

“In accordance with clause 178(3)(e) of the Local Government (General) Regulation 2005, enter into negotiations with the preferred tenderer as it is considered most likely to achieve the best value outcome for Council”

Moved: _____ **Seconded:** _____

6. Disclosure of any Pecuniary or Non-Pecuniary Interests

7. Mayoral Minute

Nil

8. Public Participation



9. Business Arising (From Previous Meetings)

9.3. Response to Questions from December Ordinary Council Meeting

Responsible Officer: General Manager

Author: General Manager

Attachments: Nil

PURPOSE

To provide responses to the Questions for Next Meeting raised at the 17 December 2024 Ordinary Council Meeting.

OFFICER'S RECOMMENDATION

Council notes the information contained in the report.

Moved: _____ **Seconded:** _____

REPORT

The following Questions for Next Meeting were raised at the 17 December 2024 Ordinary Council Meeting. Responses have been prepared and are provided below for the information of Councillors:

1. Cr Darryl Marshall asked, "What had happened to the Liberty Swing at Simpson Park?"

Response:

Council was successful in receiving funding from the NSW Government's 2021-2022 Everyone Can Play Grant Programme and provided matched funding from the Bengalla Voluntary Planning Agreement – Community Fund, and a funding allocation for footpaths.

'Everyone Can Play' was an initiative by the NSW Government aimed at creating inclusive play spaces to cater to everyone in the community, regardless of age, ability, or background.

The initiative was built around three core principles:

1. Can I get there? - Ensuring the play space is accessible to everyone.
2. Can I play? - Making sure the play space offers a variety of play opportunities for all abilities.
3. Can I stay? - Creating a welcoming environment where everyone feels comfortable and included.

At the June 2023 Ordinary Council meeting, a tender was awarded for the installation of an Air Jumper - Inclusive Wheelchair Track Trampoline, Spinmee - Inclusive Wheelchair Accessible Carousel, Rain Wheel, Tall Chimes Panel, Bongo Trio, Titan Inclusive swing, along with construction of accessible concrete pathways around the play area and installation of rubberised softfall.

This contract included disassembling and disposal of the existing play equipment, including the Liberty Swing. The new equipment is considered to provide improved accessibility and range of activities.



2. **Cr Max Morris asked, “Whether the lookout located at the top of the Common could be reinstated?”**

Response:

The subject land is not Council land, and is the property of Wanaruah Local Aboriginal Land Council.

3. **Cr Graeme McNeill advised that there were some mature trees in the park on the bottom side of the railway line in Denman that have died, and asked whether these could be assessed and possibly replaced.**

Response:

The trees will be replaced once weather conditions are conducive to support tree planting operations.



10. Business (Specific Reports)

10.1. Planning and Environment

10.1.1. Development Application No. 2023-72 - Child Care Centre, 200 Bridge Street Muswellbrook

Responsible Officer: Director - Planning & Environment

Author: Senior Land Use Planner

Community Strategic Plan: 2 - Social Equity and Inclusion

An inclusive and interconnected community where everyone enjoys full participation

Delivery Program Goal: 1.1.1 - Facilitate the expansion of and establishment of new industries and business.

Operational Plan Action: Not applicable

Attachments:

1. Attachment A - DA 2023/72 Plans [10.1.1.1 - 14 pages]
2. Attachment B - DA 2023/72 Section 4.15 Assessment Report [10.1.1.2 - 34 pages]
3. Attachment C - DA 2023/72 Recommended Conditions of Consent [10.1.1.3 - 17 pages]
4. Attachment D - DA 2023-72 - submissions - redacted [10.1.1.4 - 8 pages]

PURPOSE

The report has been prepared to assist Council in determining DA 2023-72 involving the demolition of four existing dwellings and the construction of a centre based child care facility at 200-206 Bridge Street, Muswellbrook (Lot 7 & 8 DP 37789 and Lot 671 & 672 DP 619443).

The matter has been reported to Council for determination as the proposed development:

- is located within the Muswellbrook Business Centre Heritage Conservation Area and there is an objection from Council's Heritage Advisor;
- The development does not comply with parking requirements of Muswellbrook DCP 2009, being short three spaces; and
- has high public importance due to site's location on the highway and the possible impacts on traffic movement and parking in that street block.

OFFICER'S RECOMMENDATION

Council grant development consent to DA 2023-72 involving the demolition of four existing dwellings and the construction of a centre based child care facility at 200-206 Bridge Street, Muswellbrook (Lot 7 & 8 DP 37789 and Lot 671 & 672 DP 619443), subject to the recommended conditions of consent provided in Attachment C.

Moved: _____ **Seconded:** _____



DESCRIPTION OF THE PROPOSAL

The site proposed for development is 200-206 Bridge Street Muswellbrook (Lot 7 & 8 DP 37789 and Lot 671 & 672 DP 619443).

The site is in the Muswellbrook Business Heritage Conservation Area and adjoins 'Kildonan' a Local Listed heritage item under the Muswellbrook Local Environmental Plan (LEP) 2009.

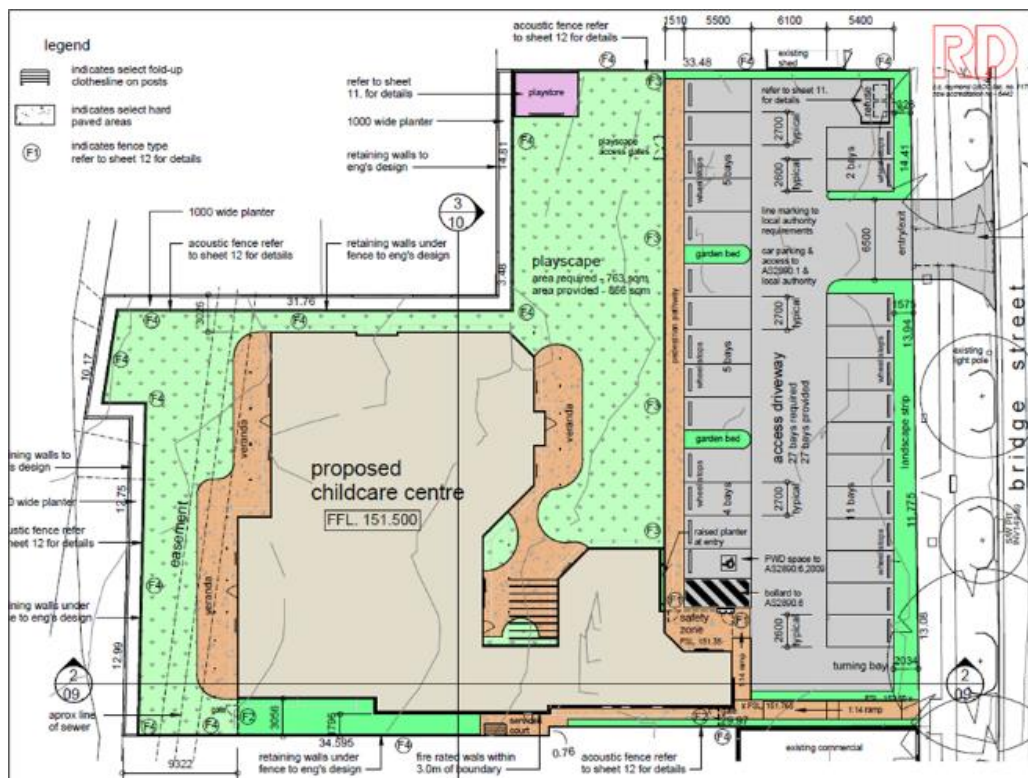
The Site is zoned E2 Commercial Centre under the Muswellbrook LEP 2009, a land use zoning which supports business opportunities.

The proposed development involves the demolition of four existing dwellings and ancillary structures, and the construction and operation of a new child care facility.

Details of the proposed child care facility include:

- Have a maximum capacity for 109 children aged 0-5.
 - 0-2yrs – 24 children
 - 2 – 3yrs – 45 children
 - 4 – 5yrs – 40 children
- Would employ up to 19 staff
- Proposed operating hours of 7am-6:30pm Monday to Friday.
- Include a car park with twenty-seven (27) off-street parking spaces. All vehicles would be able to exit the site in a forward direction.

Plans for the proposed childcare centre and perspective drawings providing a visual representation of the building design have been included below and in Attachment A.





ASSESSMENT SUMMARY

The proposal has been assessed against the relevant matters prescribed by s4.15 of the *Environmental Planning and Assessment Act 1979*. A copy of the Assessment Report is provided in Attachment B.

A summary of the key issues and findings are provided below:

- The proposed development is situated on land zoned E2 Commercial Centre under the Muswellbrook LEP 2009. Under the related land use table the proposed development is permissible with consent within this land use zone as development for the purpose of a 'centre based child care facility'. The proposed development is compatible with all other provisions of the Muswellbrook LEP 2009.
- The proposed development has been considered against the requirements of the *State Environmental Planning Policy (SEPP) (Transport and Infrastructure) 2021 – Chapter 3 Education Establishments and Child Care Centres*. Council Officers are satisfied that the proposed development would comply with all mandatory requirements of the SEPP and is compatible with the provisions of the planning guideline.
- The proposed development is compatible with the provisions of other relevant State Environmental Planning Policies.
- The site fronts a classified state road under the control of Transport for NSW (TfNSW). The proposed development was referred to TfNSW who raised no objection to the proposed development.
- The proposed development is located adjacent a rail corridor and was referred to the Australian Rail Track Corporation who raised no objection to the proposed development but provided recommended conditions of consent.
- The subject site is located within the Muswellbrook Business Heritage Conservation Area. A Statement of Heritage Impact has been prepared and submitted as part of the development application. The proposed development was referred to Council's Heritage Advisor who objected to the proposed development, and in particular, the demolition of the existing dwellings at the site. An expanded evaluation of heritage assessment considerations is included under the Heritage Assessment Summary sub-heading in this report and the attached Section 4.15 Assessment. The Assessing Officer has recommended approval despite this objection, based on considering the merits of the proposal in entirety.
- The proposed development would comply with the relevant provision of Section 9 of the Muswellbrook Development Control Plan (MDCP 2009) related to development within



the E2 Commercial Centre land use zone.

- The twenty-seven (27) off-street car parking spaces proposed does not comply with Section 16 of the MDCP 2009 – off-street car parking.
- The stormwater management plan prepared for the development demonstrates that it is possible for stormwater to be conveyed safely to Council's stormwater system in the Bridge Street road reserve.
- A noise impact assessment has been prepared in relation to the proposed development. This report considers the potential impacts of noise from the facility as well as intrusive noise from nearby rail and road networks on the facility and demonstrates that there will be no issues provided the facility is constructed in accordance with recommended materials and methodology contained in that document.
- Advice provided by Council Roads and Drainage Engineers has informed the recommended conditions of consent.
- To ensure improved traffic safety in relation to the site and proposed development Council Engineers have recommended conditions which:
 - Restrict right hand turns from or into the proposed development site.
 - Require (subject to Traffic Committee endorsement) the establishment of a no stopping zone along the entirety of the site frontage.
- Cut and fill on the site would be required to establish a flat pad for the construction of the child care facility and outdoor play areas. The extent of cut across the site would be modest but there will be substantial fill, particularly toward the western extent (rear of the site). To mitigate the visual and overbearing impact of retaining walls at site boundaries, retaining walls would be stepped with a 1m wide planted area between walls. Council Officers are satisfied that, where constructed in accordance with this design, they would not result in significant adverse amenity impacts.

HERITAGE ASSESSMENT SUMMARY

A) Relationship with adjoining Kildonan Heritage Item

The Assessing Officer considers that the proposed development would not adversely impact the significance of Kildonan, as:

- The siting of the new building within the site will increase the visual prominence of the Kildonan heritage item within the streetscape and thus positively enforce its heritage significance.
- The architectural style of the proposed child care facility incorporates a gable roof and traditional building elements. The architecture style of the new proposed building would be sympathetic to both the adjoining heritage item and conservation area.
- Council's Heritage Advisor does not raise any objection related to the impact of the proposed development on the Kildonan heritage item.

B) Demolition of existing dwellings and streetscape impact

The existing dwellings located at 200 and 202 were constructed at circa 1915 and the buildings at 204 and 206 circa 1940.

- Council's heritage advisor raised objection to the demolition of these buildings as they contribute aesthetically to the related conservation area.
- The existing dwellings are not listed as heritage items but are located within the Muswellbrook Business Conservation Area.
- The Statement of Heritage Significance for the Muswellbrook Business Conservation



Area says.

This area is significant for the Upper Hunter region as a physical expression of 150 years of commercial activity in the region. It is highly visible from both a major regional highway and the northern railway as well as from outside the area. While the earliest built features of the streetscape have disappeared, existing buildings provide a tangible link to the commercial history of Muswellbrook, particularly to the interwar period of sustained growth. A variety of building styles is represented but, because most buildings date from the first half of this century, their form and materials tend to be in harmony. Many of the more modern buildings are modest rather than brash, and respect the earlier era character of the precinct. Street and private plantings tend to modulate the intrusive effect of other 'modern' buildings.

- The buildings proposed for demolition as part of this development application are residential buildings. While Council's Heritage Advisor indicates the buildings are of a notable age and contain some aesthetic historical building elements they are not a commercial building and do not demonstrate past commercial activity in the town centre.
- Council previously approved a development application (DA 2007-131) for this site that would also have demolished the four dwellings. This approval lapsed as it was not acted on in the 5-year period following the approval. It does, however, demonstrate that in the past Council was supportive of the demolition of the buildings.
- Council has previously approved two further development applications involving the demolition or substantive alteration of historic buildings in the immediate vicinity of the subject site and conservation area at 198 Bridge Street (DA 1999-2146) and 145 Bridge Street (DA 2010-132).
- The site's E2 Commercial Centre zoning seeks to promote/encourage commercial development and disincentivise residential uses, to the extent that dwelling houses are a prohibited land use. There are limited opportunities for the adaptive reuse of the dwellings to support the establishment of a commercial premises due to parking limitations arising from the location of the dwellings.
- After having regard to these key matters, alongside other considerations described in the Section 4.15 Assessment, the Assessing Officer has formed the view that the demolition of the four (4) existing residential dwellings would not have a significant adverse impact on the Muswellbrook Business Conservation Area.

COMMUNITY CONSULTATION

The proposal was publicly notified in accordance with the requirements of the Muswellbrook Community Participation Plan.

Two submissions were received during this notification period. The matters raised by the submissions are summarised and commented on in the attached Section 4.15 assessment report and copies of the redacted submissions attached for Council's consideration in Attachment D.

Key matters raised by the submissions related to:

- Traffic
- Traffic safety
- Safe management of child pick up and drop off.
- Potential impacts from adjoining rail corridor on development.

A Traffic Impact Assessment has been submitted in relation to traffic management and



safety and an Acoustic Impact Assessment related to the potential impact of noise from adjoining road and rail sources on the facility.

After having reviewed the matters raised by submitters, the Assessing Officer has recommended approval as the concerns do not warrant refusal of the development.

OPTIONS

Council may:

- A) Approve the proposed development subject to the recommended conditions of consent.
- B) Approve the proposed development subject to amended conditions of consent.
- C) Refuse the proposed development and, in doing so, provide reasons for refusal.

CONCLUSION

DA 2023-72 requires the demolition of existing structures in the Muswellbrook Business Heritage Conservation Precinct, and Council's Heritage Advisor has objected to the development on this basis.

The matters informing the Heritage Advisor's position have been considered in the context of all the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979* and the Assessing Officer *is* recommending that Council grant development consent to the proposed development subject to recommended conditions of consent set out in Attachment C.

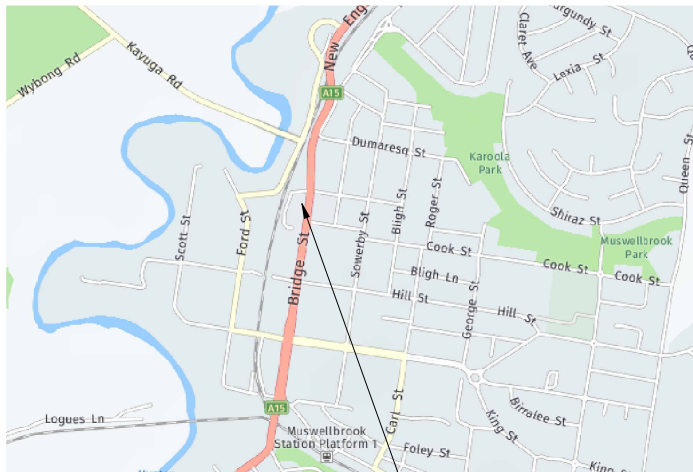
LEGAL IMPLICATIONS

Where the applicant is dissatisfied with the determination of the development application, they have an opportunity, under the provisions of the Environmental Planning and Assessment Act 1979, to appeal that determination through the Land and Environment Court.

proposed 109 place childcare centre 200-206 bridge street, muswellbrook, nsw.



3D perspective



locality plan

site location

site data / analysis

proposal - 109 place childcare centre r.p.d. lot 671, 672, 7, 8 bridge street, muswellbrook, nsw local authority Muswellbrook Shire Council	car parking childcare centre car bays provided - 27 bays inc. disabled bay refer to traffic report
site area 2907 sqm site cover 877.4 sqm (30.1 %) gross floor area - 789.8 sqm	operating hours monday - friday 6:30am - 6:30pm tbc
building area ground floor area - 789.8 sqm veranda area - 41.0 sqm safety zone area - 16.8 sqm playstore area - 21.1 sqm refuse area - 8.7 sqm	index to sheets 01. face sheet/ site data 02. site plan existing condition 03. site context plan 04. site plan 05. floor plan 06. elevations 07. elevations 08. site sections 09. site sections 10. site sections 11. playstore & refuse details 12. fence details 13. shadow diagrams 14. 3D views
childcare centre no. of children - 109 no. of activity rooms - 7 staff - 19 contact playscape required -- 763.0 sq.m. provided -- 866.0 sq.m.	
development statement built environment the development will comply with the requirements of the Muswellbrook Shire Council, the NCC 2019 Vol 1 and the National Quality Framework and standards. car parking all car parking and access shall accord with AS2890.1	area calculations all area calculations are based on design and are subject to final design development. final figures shall accord with minimums or maximums allowed by council and shall not vary by more than 5% of that stated garbage collection garbage is to be collected on site, bins to be stored in screened service area

01.



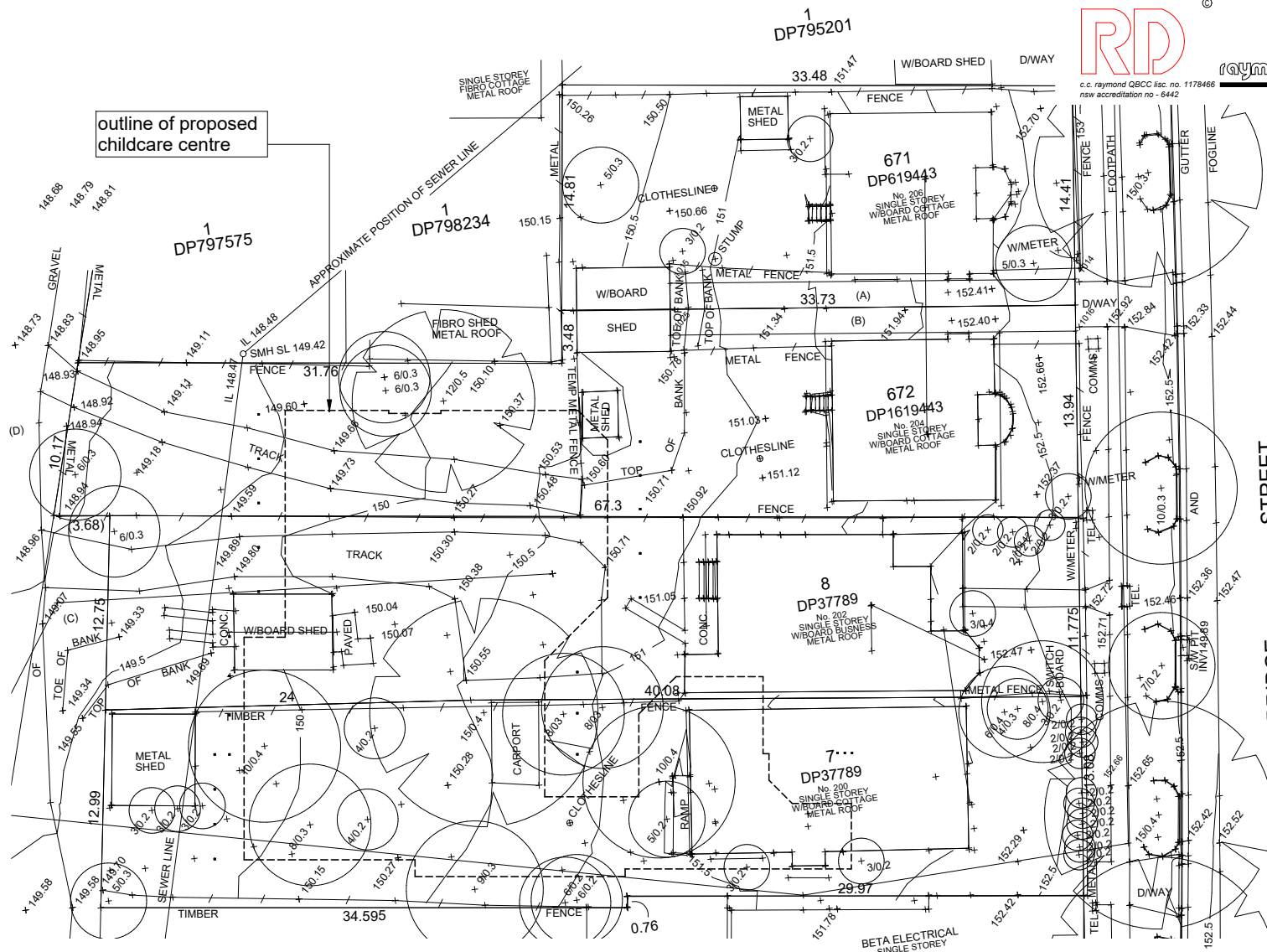
face sheet/ site data

proposed childcare centre, 200-206 bridge Street, muswellbrook, n.s.w.

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note: this proposal is subject to site survey and development approval(s) from the relevant authority.
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RD21026 : october_2021
issue P3 - 16/10/24
drawn - c. c. r.



site plan existing condition

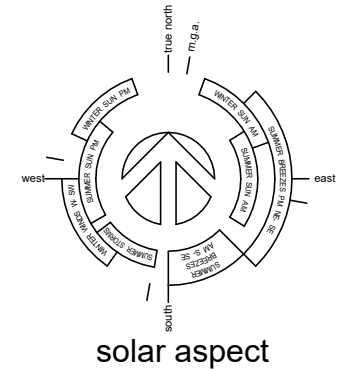
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02.



03.



site context plan

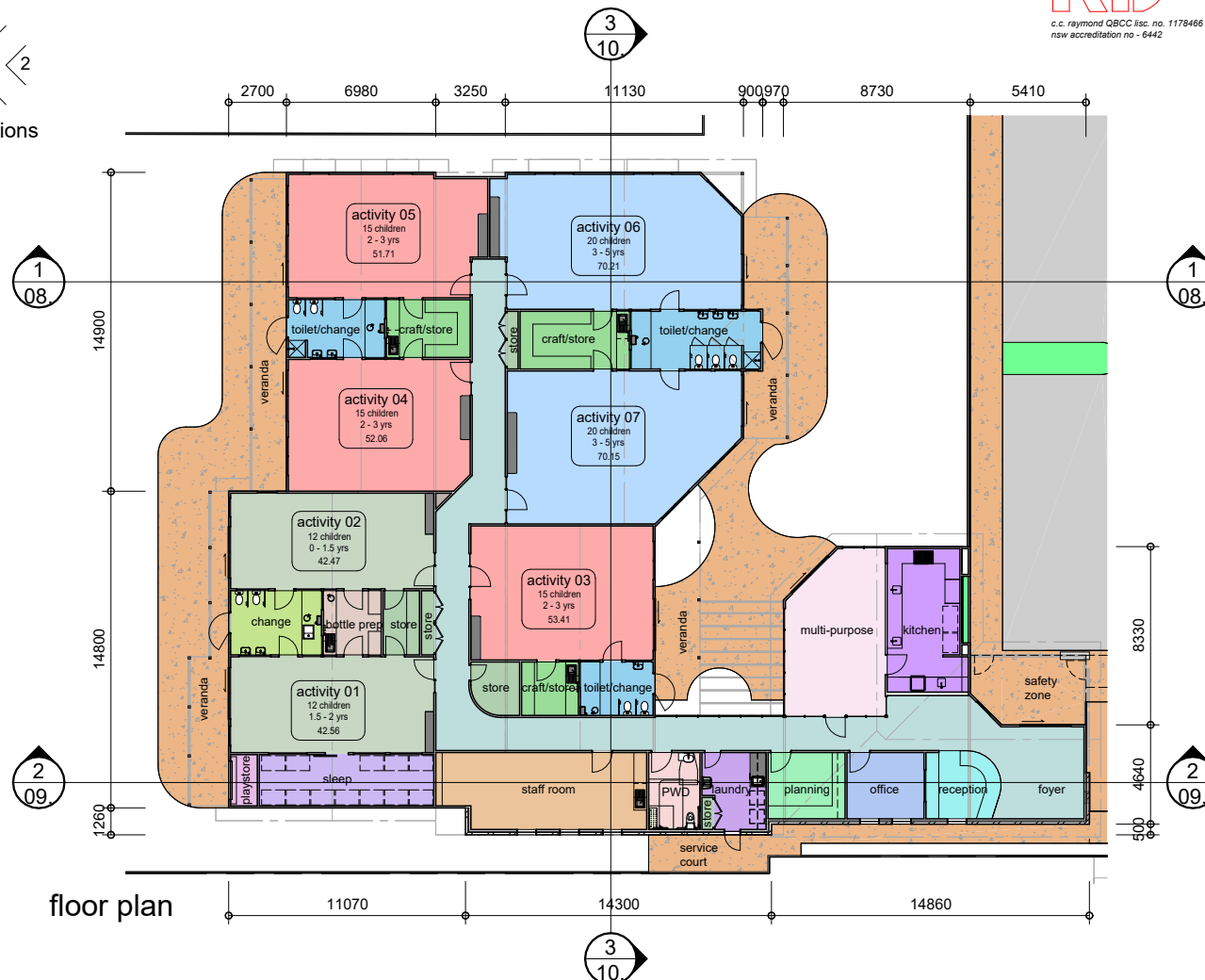
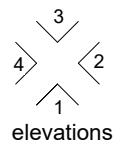
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05.



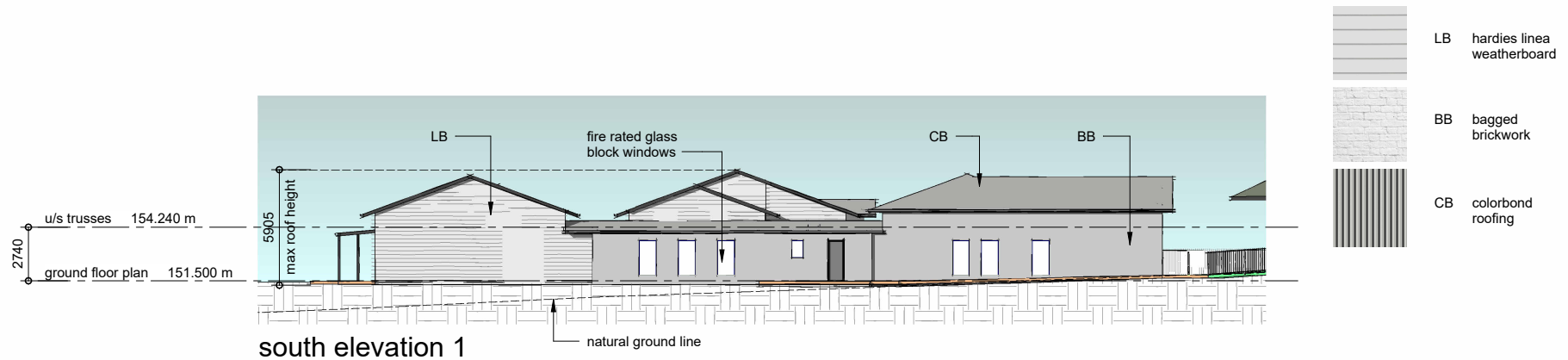
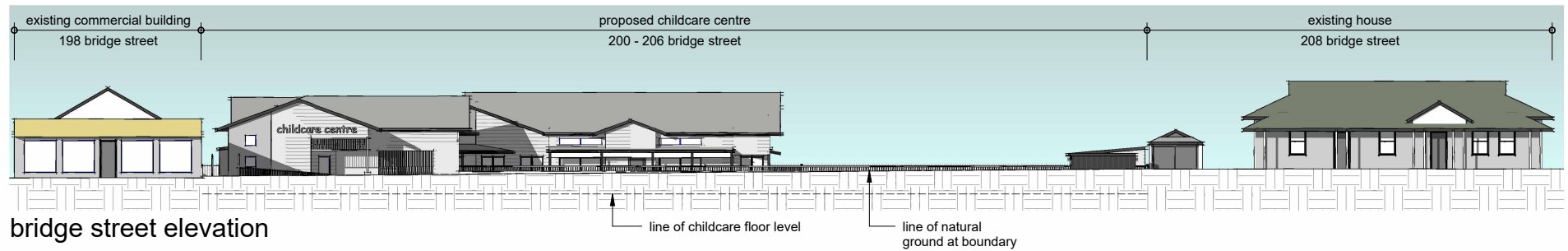
floor plan

proposed childcare centre, 200-206 bridge Street, muswellbrook, n.s.w.

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 issue P2 - 09/05/23
 drawn - c. c. r.



elevations

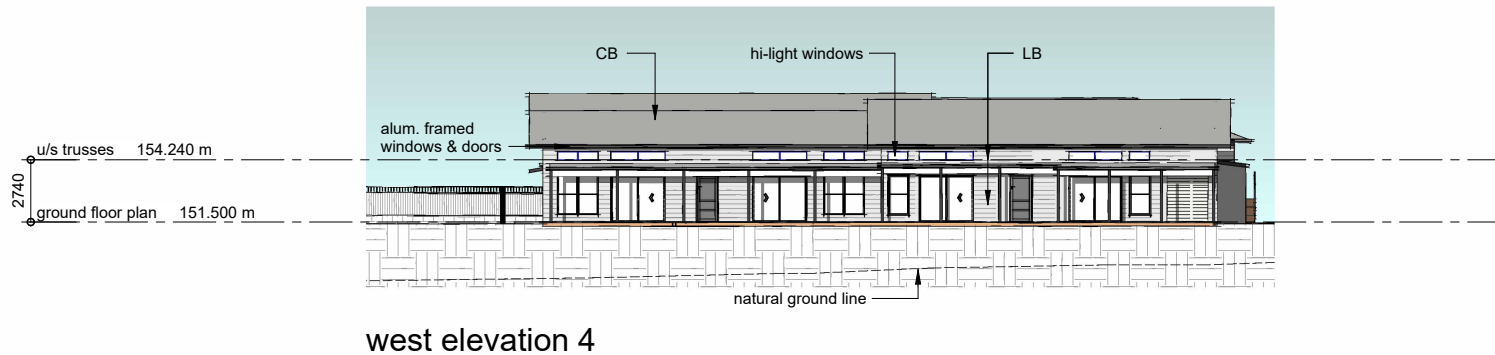
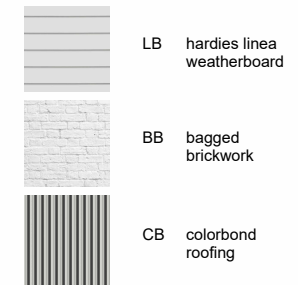
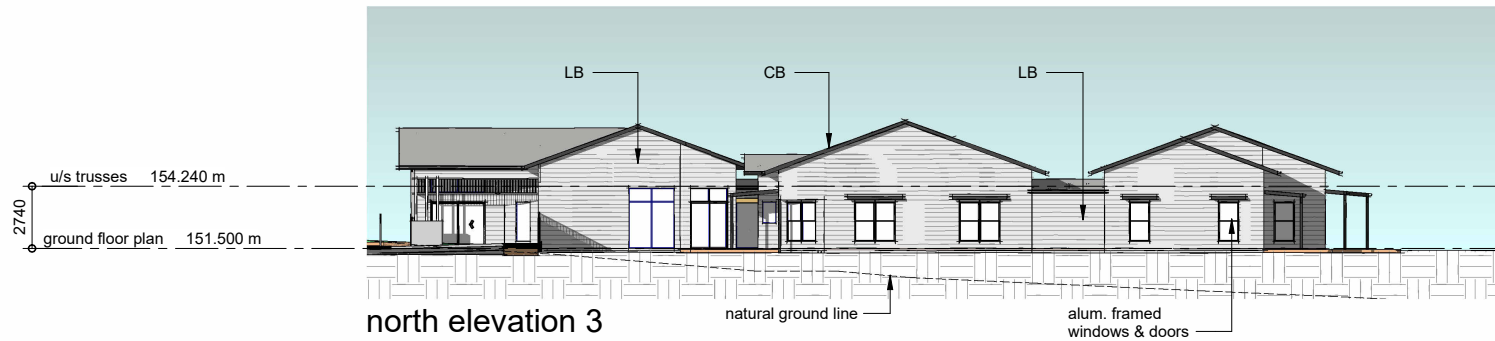
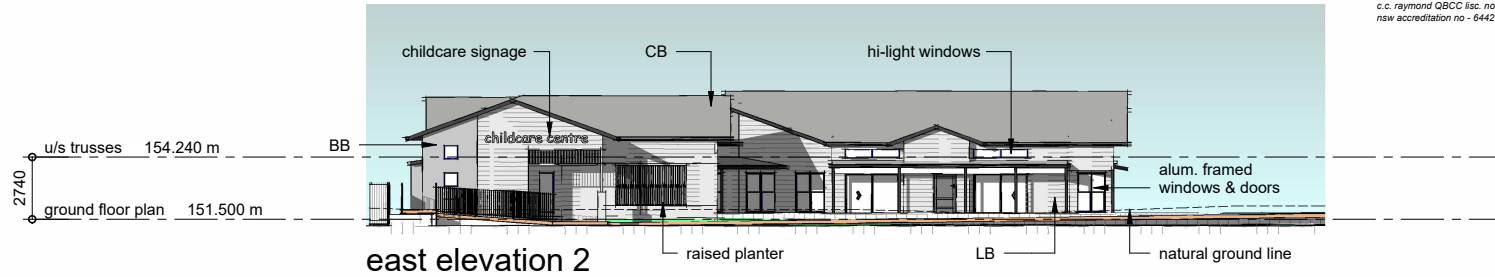
proposed childcare centre, 200-206 bridge Street, muswellbrook, n.s.w.

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drawn - c. c. r.

06.



elevations

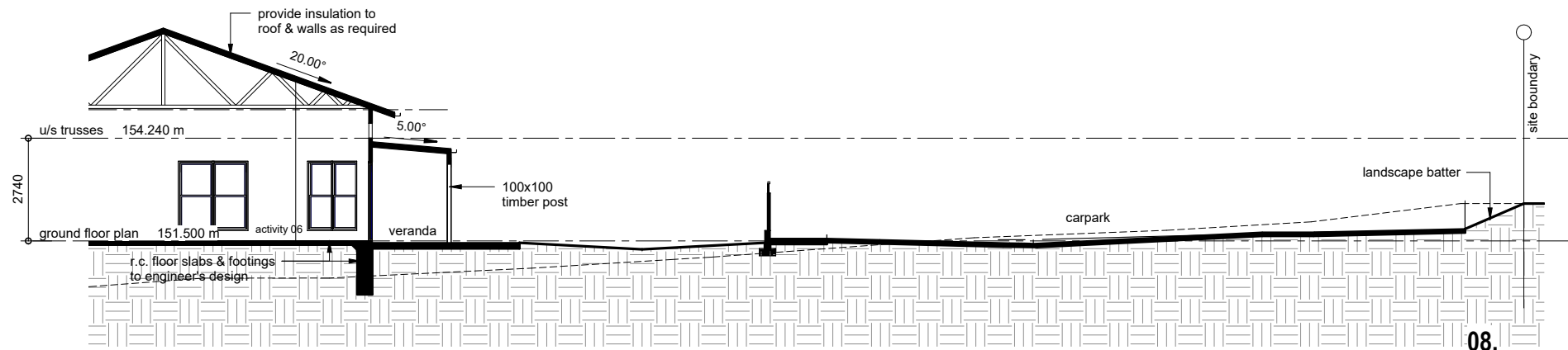
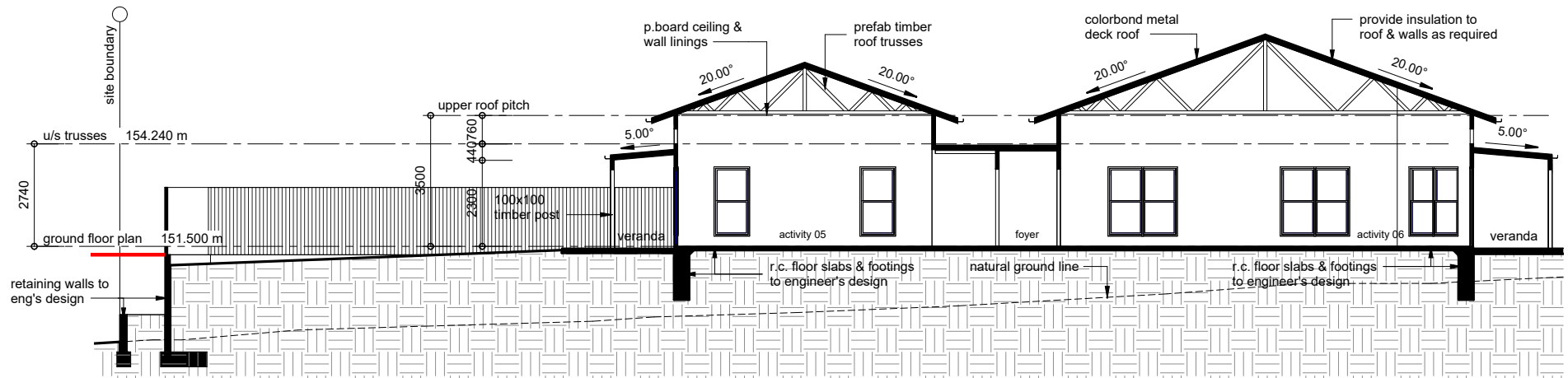
proposed childcare centre, 200-206 bridge Street, muswellbrook, n.s.w.

0 1:200 (A3) 10m

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 issue P3 - 07/06/23
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07.



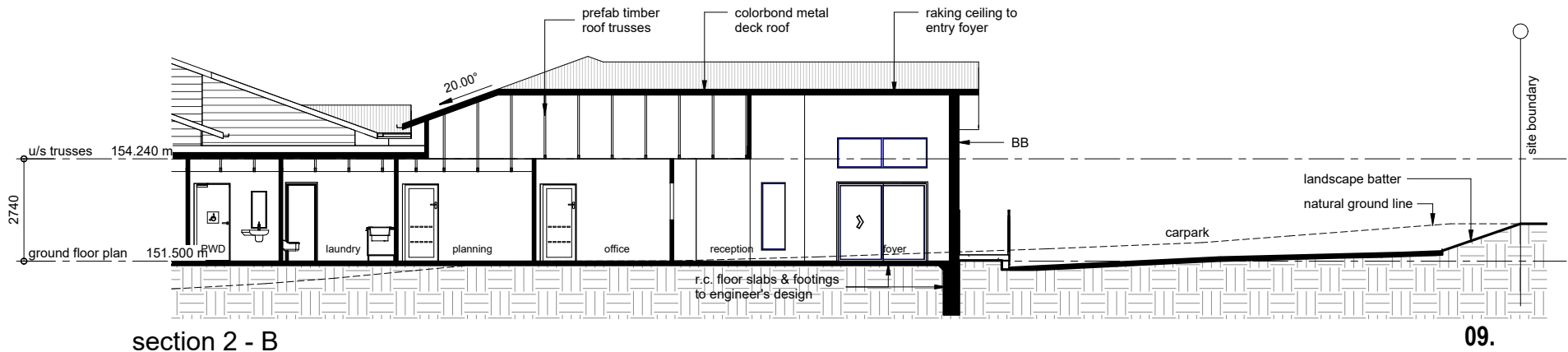
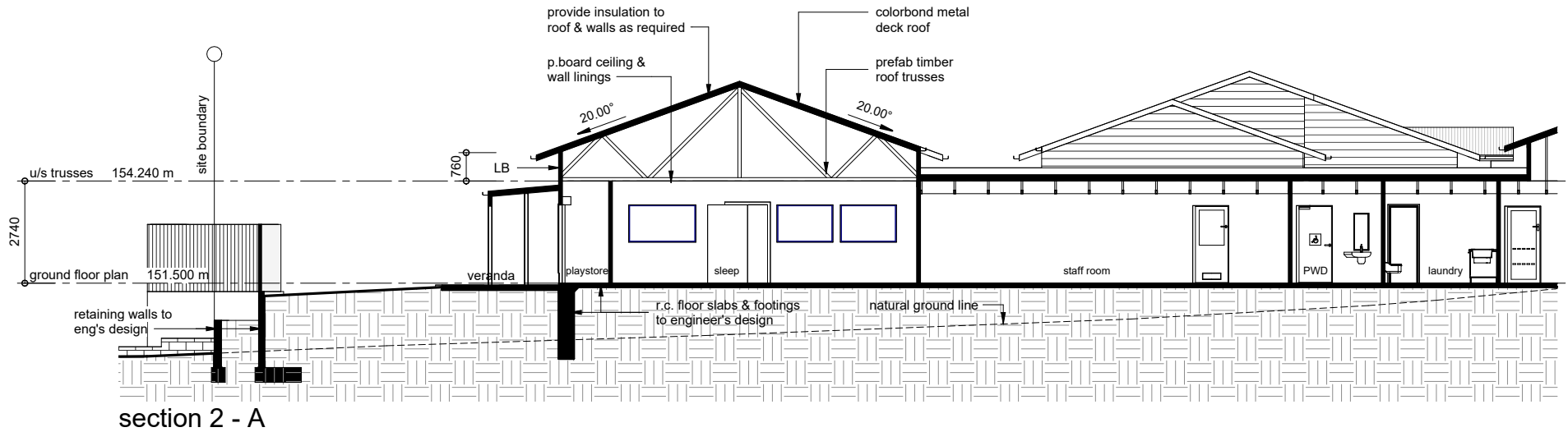
section 1 - B
 site sections

proposed childcare centre, 200-206 bridge Street, muswellbrook, n.s.w.

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 issue P3 - 16/10/24
 drawn - c. c. r.



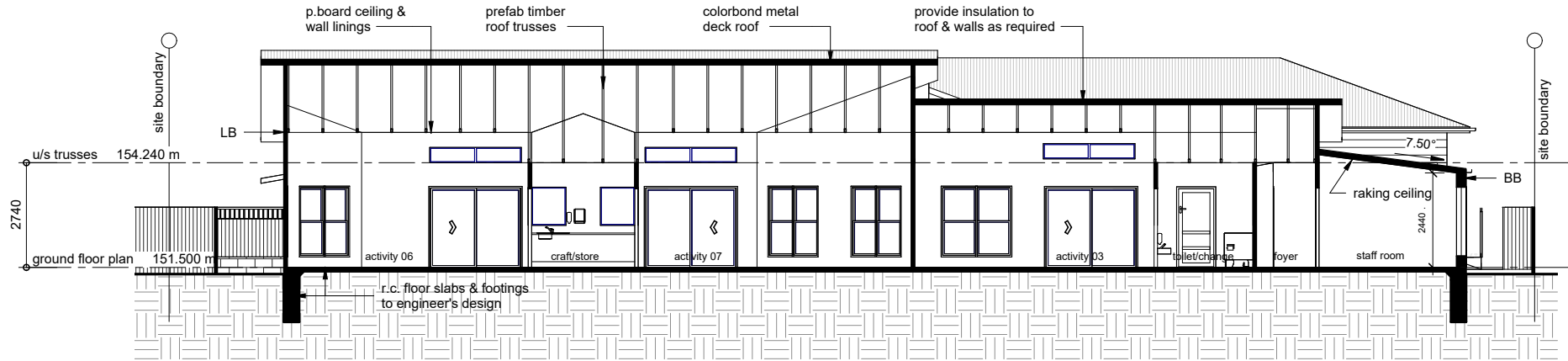
site sections

proposed childcare centre, 200-206 bridge Street, muswellbrook, n.s.w.

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note: this proposal is subject to site survey and development approval(s) from the relevant authority.
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section 3

10.

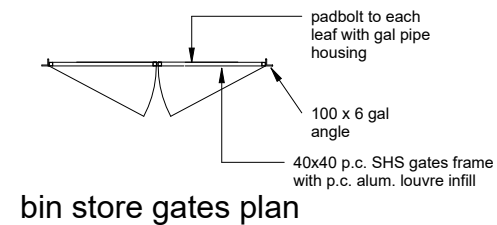
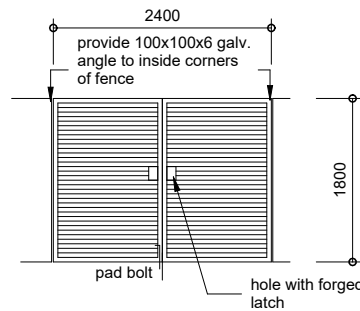
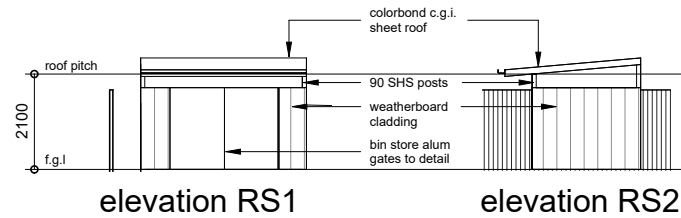
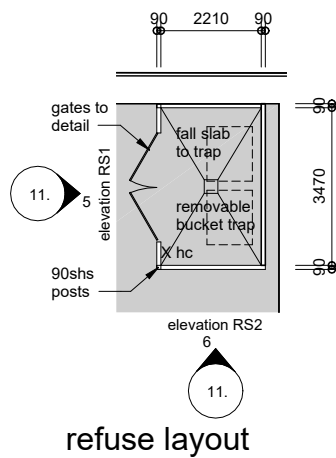
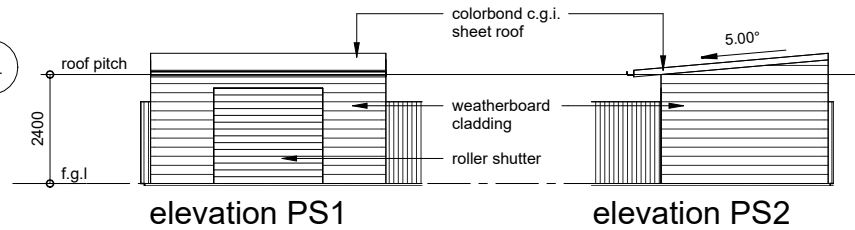
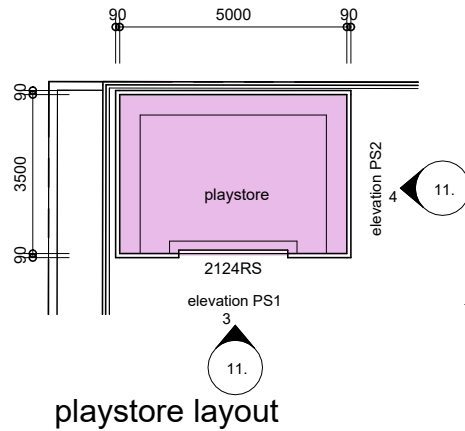
site sections

proposed childcare centre, 200-206 bridge Street, muswellbrook, n.s.w.

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drawn - c. c. r.



playstore & refuse details

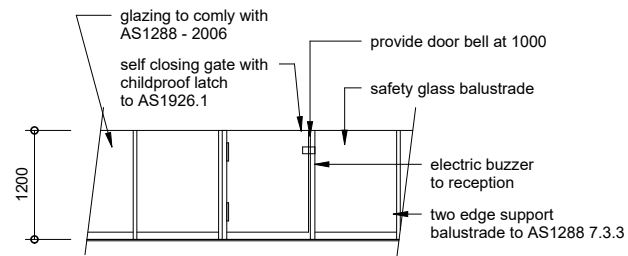
proposed childcare centre, 200-206 bridge Street, muswellbrook, n.s.w.

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note: this proposal is subject to site survey and development approval(s) from the relevant authority.
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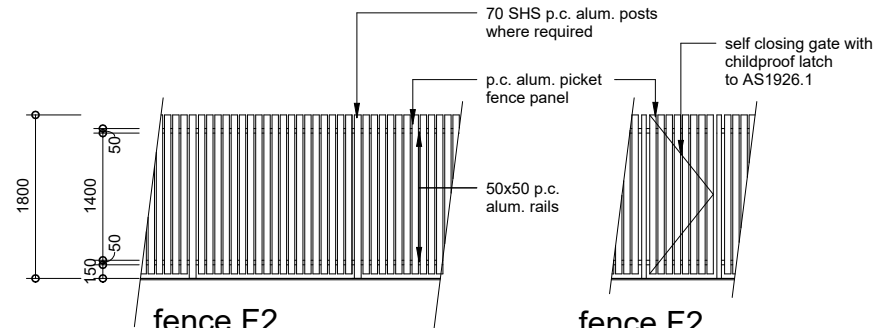
RD21026 : october_2021
 issue P1 - 27/04/23
 drawn - c. c. r.

11.

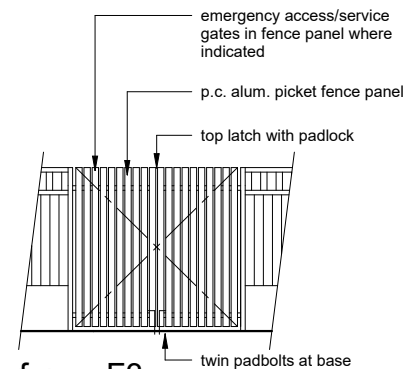
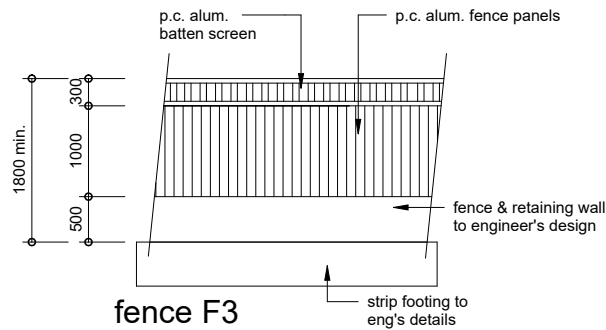


safety zone fence F1

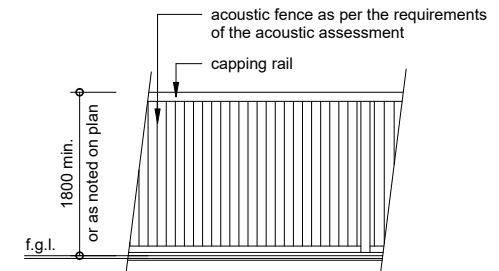
note : all fencing to child play areas to be in accordance with AS1926



fence F2
single entry gate



fence F3
playscape service/
emergency access gates



cladding to accord with construction requirements in the acoustic assessment

12.

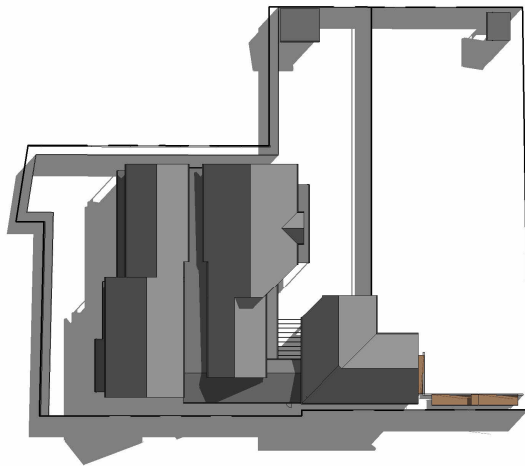
fence details

proposed childcare centre, 200-206 bridge Street, muswellbrook, n.s.w.

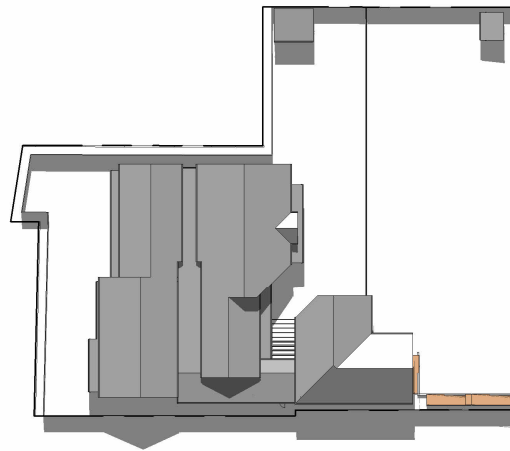
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issue P1 - 27/04/23
drawn - c. c. r.



shadow diagram - june 21st, 9.00am.



shadow diagram - june 21st, 12.00pm.



shadow diagram - june 21st, 3.00pm.

13.



shadow diagrams

proposed childcare centre, 200-206 bridge Street, muswellbrook, n.s.w.

0 1 2 m
 not to scale

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3D View 1



3D View 2



3D View 3

14.

3D views

proposed childcare centre, 200-206 bridge Street, muswellbrook, n.s.w.



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RD21026 : october_2021
 issue P2 - 09/05/23
 drawn - c. c. r.

Extended
DEVELOPMENT ASSESSMENT REPORT

ADDRESS:	LOT 7 DP 37789, 200 Bridge Street MUSWELLBROOK LOT 8 DP 37789, 202 Bridge Street MUSWELLBROOK LOT 672 DP 619443, 204 Bridge Street MUSWELLBROOK LOT 671 DP 619443, 206 Bridge Street MUSWELLBROOK
APPLICATION No:	2023-72
PROPOSAL:	Demolition of 4 dwellings and structures & construction of a centre based child care facility
OWNER:	Kbim Pty Ltd & Mak Corp Mb Pty Ltd
APPLICANT:	Mrs L Densley Po Box 1088 MUDGEE NSW 2850
AUTHOR:	Donna Watson
DATE LODGED:	27/06/2023
DATE OF REPORT:	13/01/2025

1. RECOMMENDATION

It is recommended that development consent be granted to DA 2023-72 for demolition of existing Structures & Construction of a centre based child care Facility subject to the recommended conditions of consent.

2. SITE LOCALITY AND DESCRIPTION

The site subject to this development application is comprised of four parcels of land identified as Lot 7 & 8 DP 37789 and Lot 671 & 672 DP 619443. The street address of the site is 200 - 206 Bridge Street Muswellbrook.

The image below identifies the subject site and local setting.



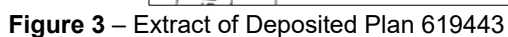
Figure 1. – Site Aerial Image (Source: Council GIS Mapping System)

Key site attributes relevant to the proposed development are detailed in the dot points below:

- All four (4) of the properties have a current residential use. Each contain an existing dwelling house and associated structures.
- The subject site is in the Muswellbrook Business Heritage Conservation Area. The site is in the northern most section of this heritage conservation area, which concludes on the southern side of Wilkins Street approximately 30m north of the subject site.
- The subject site directly adjoins a local listed heritage, item Kildonan. Kildonan is situated immediately north of the site at the corner of Bridge and Wilkins Streets.
- Eatons Hotel, a State listed heritage item is situated approximately 35m south of the site. Three (3) properties located between the site and Eatons Hotel.
- The subject site and adjoining land is zoned E2 Commercial Centre under the Muswellbrook Local Environmental Plan 2009.
- The site has frontage to Bridge Street, a Classified State Road for which Transport for NSW is the roads authority.
- An unsealed access track is located at the rear of the subject site. This access track provides access from Wilkinson Street to the Retravision commercial premises south of the site, Eatons Hotel and other adjoining properties. The access track is held in two private ownerships. The part of the access track that adjoins the proposed development is comprised into Lot 1 DP 1159308 – Council records list the address of

➤ The subject site has a total area of approximately 2,907m².

3. DEPOSITED PLAN AND SECTION 88B



4. SITE INSPECTION

A site inspection was carried out on 2 December 2024. Images of the existing residential dwellings proposed for demolition have been included below.



Front of 200 Bridge Street



Decorative metal finials and timberwork to gable ends



Front of 202 Bridge Street



204 Bridge Street



Porch to 206 Bridge Street



Rear of 204 Bridge Street



Rear of 206 Bridge Street

5. DESCRIPTION OF PROPOSAL

The proposal seeks development approval for demolition of four dwellings and associated structures and construction of a centre based child care facility.

Details of the proposed child care facility include:

- Have a maximum capacity for 109 children aged 0-5.
 - 0-2yrs – 24 children
 - 2 – 3yrs – 45 children
 - 4 – 5yrs – 40 children
- Would employ up to 19 staff
- Proposed operating hours of 7am-6:30pm Monday to Friday.
- Include a car park comprising twenty-seven (27) off-street parking spaces, a turning bay and waste storage bin enclosure.

Plans showing the site plan arrangement of the proposed child care centre and perspective drawings providing a visual representation of the building design have been included below.

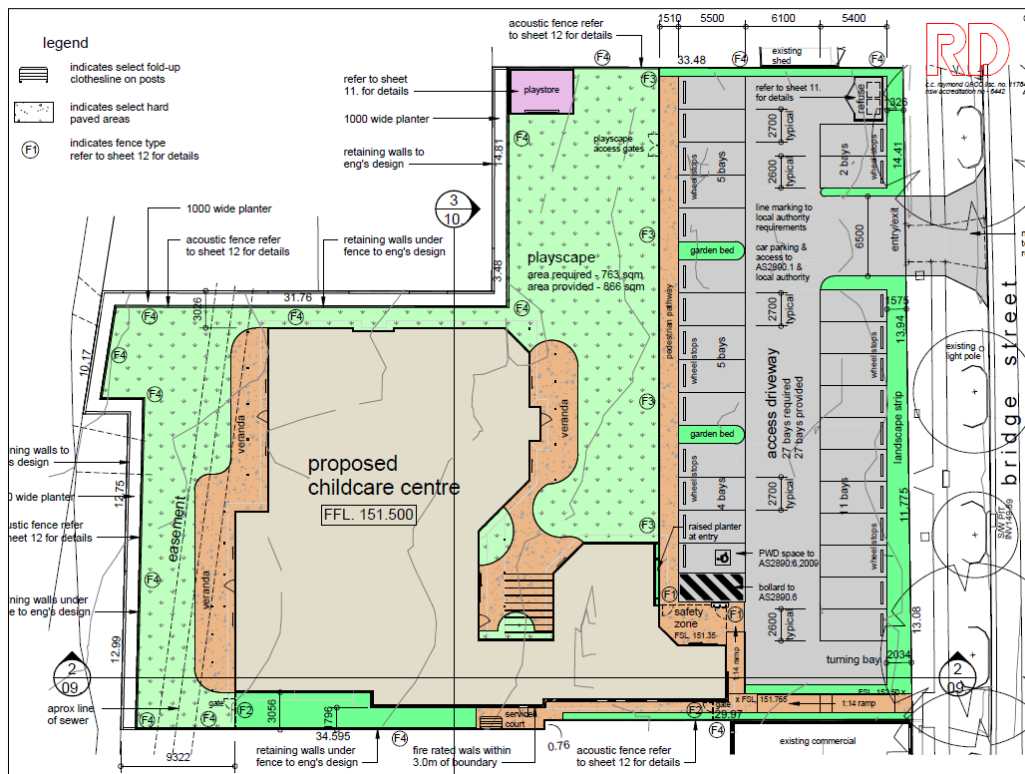


Figure 10 (applicant proposed plans)



Figure 11 - Elevations

6. RELEVANT HISTORY

Council Officers reviewed Council's record system for information relevant to the subject site and the development of adjoining properties within the general precinct. The following historical information is available:

- **Existing Dwellings** – Four dwellings and outbuildings are located on the subject land. Council Officers have not located the approvals related to these existing dwellings. Heritage investigations undertaken in relation to the proposed development suggest that the dwellings at 200 and 202 Bridge Street were built around 1915 in the Federation period and the buildings at 204 and 206 were built around 1940 in the inter-war period.
- **DA 2007-131** – At its 28 November 2007 ordinary Council Meeting, Council approved a development application (DA 2007-131) that granted consent to the demolition of all dwellings (that same dwellings proposed for demolition under this application), and the demolition of additional dwellings on Wilkinson Street, to enable construction of a supermarket (Aldi). At the time, Council formed the view that the impact of the demolition of the dwellings at 200 – 206 Bridge would not be significant.
- **Retravision (DA 1999- 2146)** – the property adjoining the site to the south at 198 Bridge Street is developed for a commercial retail business and is currently operated by Betta Electrical. This business, extensions and works to the existing building at that property was approved by Council in 1999 under DA 1999 -2146. Prior to the construction of the commercial building, the original building located at 200 Bridge Street was a Californian Bungalow. It was viewed as having a similar distinctive form as the two properties immediately south of the site which remain to this date.

Comments from the heritage advisor at the time recognised the building as being contributory to the heritage conservation area and that the alterations would diminish that significance. This development application was approved on the 16 March 2000 subject to amendments to the proposed building fascia. Reviewing the application file and assessment report it appears that the site's commercial zoning was a key consideration for Council in its determination to permit the works.

- **145 Bridge Street, takeaway restaurant demolition (DA 2010-132)** – this development application relates to a site directly opposite Eatons Hotel which now comprises the Hungary Jacks restaurant and car parking. DA 2010-132 approved in

October 2010 and related to the demolition of existing buildings, construction of an extended car park and the establishment of Hungary Jacks at the former KFC restaurant. The site is in the heritage conservation area. The existing buildings approved for demolition under that development application included two residences and a small shop constructed during the interwar period and/or immediately after World War II. These demolition works and the former structures are commented on in the submitted Heritage Impact Assessment.

7. REFERRAL COMMENTS

5.1 External Referrals

The proposed development was referred to the following external Government Agencies whose responses have informed the assessment of the proposed development.

Transport for NSW (TfNSW)

A referral was provided to Transport for NSW pursuant to Section 138 of the Roads Act 1993. TfNSW are the Roads Authority for the New England Highway. TfNSW provided referral comments dated 3 August 2023 which raised no objection to the proposed development.

In addition to their formal advice referenced above, Council Officers received informal advice through consultation with TfNSW at a Traffic Committee meeting where traffic mitigating measures for the proposed development were discussed. The recommended measures put forward by Council Officers were acceptable to TfNSW as the relevant Roads Authority for the New England Highway.

Australian Rail Track Corporation (ARTC)

The proposed development was referred to ARTC as development adjacent a rail corridor under section 2.98 of State Environmental Planning Policy (Transport and Infrastructure) 2021. Correspondence received by the ARTC, dated 26 July 2023 raised no objection to the proposed development and made recommendations for Council's consideration and the adoption into conditions of consent.

The ARTC comments have informed the recommended conditions of consent.

Internal Referrals

The proposed development was referred to the following internal Council Officers and Sections

Heritage Advisor

The application was referred to Council's Heritage Advisor for consideration and comment due to the subject site being located within a heritage conservation area and adjacent to a Local Heritage Item.

Heritage Conservation Area –The subject site is located within a heritage conservation area. The statement of significance related to this heritage conservation area largely attributes the heritage importance of that conservation area to historic commercial buildings. An extract of the Statement of Significance taken from the Muswellbrook Development Control Plan has been included below:

This area is significant for the Upper Hunter region as a physical expression of 150 years of commercial activity in the region. It is highly visible from both a major regional highway and the northern railway as well as from outside the area. While the earliest

built features of the streetscape have disappeared, existing buildings provide a tangible link to the commercial history of Muswellbrook, particularly to the interwar period of sustained growth. A variety of building styles is represented but, because most buildings date from the first half of this century, their form and materials tend to be in harmony. Many of the more modern buildings are modest rather than brash, and respect the earlier era character of the precinct. Street and private plantings tend to modulate the intrusive effect of other 'modern' buildings.

The buildings proposed for demolition as part of this development application are residential buildings. While Council's Heritage Advisor indicates the buildings are of a notable age and contain some aesthetic historical building elements they are not a commercial building and do not demonstrate past commercial activity in the town centre.

Comments from Council's Heritage Advisor include:

This project involves demolition of 4 early twentieth-century houses and construction of a childcare centre over the site. The demolition of 4 early twentieth-century houses is not appropriate inside a conservation area. These four houses contribute to the historical values of the conservation area, and to the scale and rhythm of buildings, patterns of solid and void, and landscape. These buildings have aesthetic value representing Federation and inter-war architectural styles, materials selection and characteristic detailing.

Assessing Officer's response

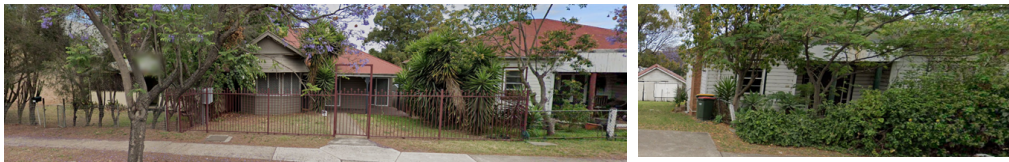


Figure 12 – street view extract of 200 – 206 Bridge Street Muswellbrook

The proposed child care facility is designed primarily with weatherboard cladding with some bagged brickwork and a colourbond roofing. The new building would have a similar roof line to adjoining properties.

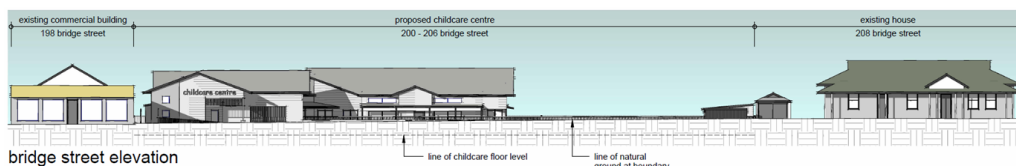


Figure 13 – proposed Bridge street elevation

In addition to the materials, the applicant has also considered the Local heritage item located at 208 Bridge Street by designing the child care facility closer to the boundary with the existing commercial building at 198 Bridge Street. By doing this, the impact on the Kildonan, a listed heritage item, will be reduced and allow it to have a larger visual curtilage free of structures, so it will appear as the predominate structure when approaching this intersection.

Further, the proposed child care facility is proposed to be setback over 15m from Bridge Street with the carparking area located immediately off Bridge Street. The applicant has submitted a landscaping plan which identifies a hedge to be planted along the Bridge Street property boundary. This will further soften the bulk of the building and the expanse of the parking area when viewed from Bridge Street.

The site's E2 Commercial Centre zoning seeks to promote/encourage commercial development and disincentivise residential uses, to the extent that dwelling houses are a prohibited land use. There are limited opportunities for the adaptive reuse of the dwellings to

support the establishment of a commercial premises due to parking limitations arising from the location of the dwellings on their respective lots.

After having regard to these key matters, alongside other considerations described in the Section 4.15 Assessment, the Assessing Officer has formed the view that the demolition of the four (4) existing residential dwellings would not have a significant adverse impact on the Muswellbrook Business Conservation Area.

Roads and Drainage

The proposed development was referred to Council Roads and Drainage Officers.

Council's Roads and Drainage Team reported the development application through Council's Traffic Committee – the remit of the Traffic Committee largely relates to decisions regarding the implementation of regulatory signage. The application / implications related to street signage were considered at the December 2023 Traffic Committee Meeting where the matter was deferred. The application has not been re-reported to the Traffic Committee. However, informal advice received through this process has informed the examination of site access and related signage considerations moving forward, alongside additional consultation with Transport for NSW stimulated through Transport traffic committee representatives.

Council Engineers advised that support for the proposed development would be contingent on additional design considerations for the site access and for an updated access to be provided to achieve the following:

- a. Across the extent of the properties forming part of the footprint for the proposed childcare centre, the current signage for timed parking is to be changed to "No Stopping" along the frontage*
- b. A no-right hand turn sign for entry from south-bound vehicles along Bridge St is to be proposed in a prominent and safe location near the proposed shared access driveway*
- c. A left-hand only turn sign is to be proposed, preferably for both a safe location near to the proposed shared access driveway as well as across the road to be installed on the retaining wall facing drivers leaving the childcare development*
- d. The provision of the "no stopping zone" across the full frontage of the development can also facilitate informal slip-lane or turning lane movements adjacent to the main road lane thoroughfare of traffic along Bridge St to assist reducing risks to drivers*
- e. Shared driveway area is to be suitably sized to allow for the largest expected vehicle (10.8m length vehicle was proposed). Confirmation required if this would also suit a fire-fighting vehicle if required. Service vehicle for waste management is compliant with this size. Turning circles should be provided for turning movements into and out of the road shoulder in the "No stopping" area proposed by the updated regulatory signage.*
- f. Consideration of the shared driveway width may consider a triangular/shaped wedge split arrangement where safe to do so, to direct traffic entering and exiting*
- g. All signage and access considerations shall be in accordance with the relevant Australian Standards*
- h. Comment from the Traffic Engineer on your team should inform how these measures will work to improve the safety and accessibility of the Childcare Centre*

Assessing Officer's response

The applicant agreed that they would accept these requirements. Related conditions of consent have been put forward in accordance with relevant requirements of Council

Engineers.

Council Engineers also put forward conditions of consent related to stormwater management and the carrying out of works in the Road Reserve. These recommendations have informed the drafting of the recommended conditions of consent.

Water and Waste

Council Water and Waste Engineers provided referral advice which raised no issues in relation to the proposed development and recommended standard conditions consent related to:

- Requirement for a Notice of Requirements and payment of headworks contributions related to the proposed development. The total value of headworks contributions for a facility with 109 child places are:

	No of Child	ET/Child	Total ET	Exiting ET for 4 lots	Additional ET to be paid	Headworks charges/ET	Headworks charges
Water	109	0.06	6.54	4	2.54	\$9,317.00	\$23,665.18
Sewer	109	0.1	10.9	4	6.0	\$7,233.50	\$43,401.00
Total							\$67,066.18

- Requirement for a Liquid Trade Waste Agreement

8. ASSESSMENT - Section 4.15 Matters for Consideration

This report provides an assessment of the documentation submitted with the Application against the relevant State and local planning legislation and policy.

Section 4.15(1)(a)(i) The provisions of any Environmental Planning Instrument (EPI)

A. Muswellbrook Local Environmental Plan 2009 (MLEP 2009)

Land Use Zoning and permissibility

The subject site is zoned E2 Commercial Centre under the Muswellbrook LEP 2009.

The development is defined as a **Centre based child care facility** which is permissible with consent under the E2 Commercial Centre zone.

The Muswellbrook Local Environmental Plan defines **centre-based child care facility** as:

- (a) *a building or place used for the education and care of children that provides any one or more of the following—*
 - (i) *long day care,*
 - (ii) *occasional child care,*
 - (iii) *out-of-school-hours care (including vacation care),*
 - (iv) *preschool care, or*
- (b) *an approved family day care venue (within the meaning of the Children (Education and Care Services) National Law (NSW)).*

Note— *An approved family day care venue is a place, other than a residence, where an approved family day care service (within the meaning of the [Children \(Education and Care Services\) National Law \(NSW\)](#)) is provided.*

but does not include—

- (c) *a building or place used for home-based child care or school-based child care, or*
- (d) *an office of a family day care service (within the meanings of the Children (Education and Care Services) National Law (NSW)), or*
- (e) *a babysitting, playgroup or child-minding service that is organised informally by the parents of the children concerned, or*

- (f) *a child-minding service that is provided in connection with a recreational or commercial facility (such as a gymnasium) to care for children while the children's parents are using the facility, or*
- (g) *a service that is concerned primarily with providing lessons or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity, or providing private tutoring, or*
- (h) *a child-minding service that is provided by or in a health services facility, but only if the service is established, registered or licensed as part of the institution operating in the facility.*

Note— Centre-based child care facilities are a type of **early education and care facility**—see the definition of that term in this Dictionary.

In this regard, the proposal is consistent with the related land use definition and thereby is **permissible with consent in the E2 Commercial Centre land use zone**.

Objectives of the E2 Commercial Centre land use zone

The land use zone objectives for the E2 Commercial Centre zone have been referenced below alongside commentary from the Assessing Officer considering their relationship to the proposed development.

E2 Commercial Centre land use zone objectives:

- *To strengthen the role of the commercial centre as the centre of business, retail, community and cultural activity.*
- *To encourage investment in commercial development that generates employment opportunities and economic growth.*
- *To encourage development that has a high level of accessibility and amenity, particularly for pedestrians.*
- *To enable residential development only if it is consistent with the Council's strategic planning for residential development in the area.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To maintain the status and encourage the future growth of the existing Muswellbrook business centre as a retail, service, commercial and administrative centre while maintaining the centre's compact form.*
- *To maintain the heritage character and values of the business centre of Muswellbrook.*
- *To support business development by providing parking and other civic facilities.*

Planning Comment:

Most of the land use zone objectives relate to the strengthening the commercial activity and enterprise within the zone and central business area. This proposal would achieve these land use zone objectives. The proposal would establish an economic use of land that is not currently used for a commercial purpose.

The objectives also include the maintenance of the heritage character and values of the business centre. Council's Heritage Advisor has objected to the proposed development and the demolition of the existing residential buildings on the site. It is the view of Council's Heritage Advisor that the proposal would have an unacceptable impact on the heritage values of the locality.

While Council's Assessing Officers respect this position, they have formed a different view that the proposed development would not have an unacceptable impact on the 'character and values of the business centre of Muswellbrook'. A detailed commentary on the review of heritage impacts by the Assessing Officer is included in this report. The Assessing Officer is satisfied that the proposed development would not contravene this objective given:

- the buildings proposed for demolition are residential dwellings,
- provide limited aesthetic values and direct contribution to the CBD character; and
- are not representations of the type of buildings attributed heritage significance within the heritage conservation area statement of significance.

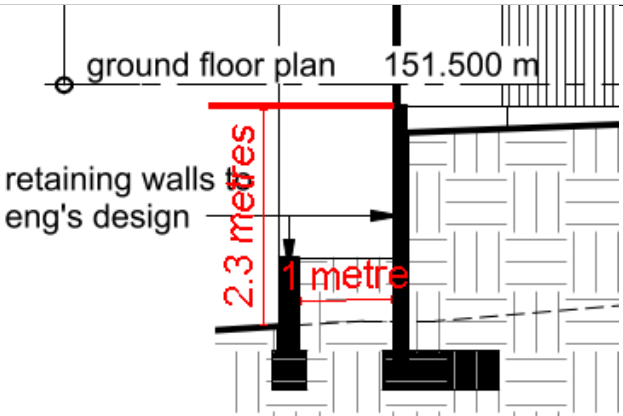
Council Officers are satisfied that the proposed development directly compliments economic related land use zone objectives and remains compatible with the land use zone objective related to the heritage value of the business area.

Relevant Clauses applicable under the Muswellbrook Local Environmental Plan 2009

Other relevant provisions of the Muswellbrook LEP 2009 are considered in the table below:

<i>Part 1 Preliminary</i>	
<i>Part 2 Permitted or prohibited development</i>	
<i>2.3 Zone objectives and Land Use Table</i>	<p>The proposed development is compatible with the relevant land use objectives and thereby can be supported under the provisions of this Clause.</p> <p>Complies</p>
<i>2.7 Demolition requires development consent</i>	<p>In addition to the new proposed child care centre the application is seeking consent for the demolition of four existing dwellings and the related structures. Should the application be supported, conditions will be imposed regarding demolition.</p> <p>Complies</p>
<i>Part 4 Principal development standards</i>	
<i>4.1 Minimum subdivision lot size</i>	<p>The proposed development does not involve the subdivision of land.</p> <p>Not relevant</p>
<i>4.3 Height of buildings</i>	<p>The maximum building height applicable to the land and proposed development under the provisions of the Muswellbrook LEP 2009 is 13m.</p> <p>The proposed development involves a single storey child care facility. The maximum height of this structure would be below the 13m.</p> <p>Complies</p>
<i>4.4 Floor space ratio</i>	<p>The accompanying Floor Space Ratio Map prescribes a maximum FSR for the development site of 2:1, this being 2m² of floor area for every 1m² of site area.</p> <p>The development proposes to have a floor space ratio of 0.3:1 and would not exceed the prescribed maximum FSR.</p> <p>Complies</p>
<i>Part 5 Miscellaneous provisions</i>	
<i>5.10 Heritage conservation</i>	<p>Objectives The objectives of this clause are as follows—</p> <ul style="list-style-type: none"> (a) to conserve the environmental heritage of Muswellbrook, (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views, (c) to conserve archaeological sites, (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

	<p>The Council must, before granting consent under this clause, consider the effect of the proposed development on the heritage significance of the item or area concerned.</p> <p>A Statement of Heritage Impact was submitted with the application. This Report supports the demolition of the four dwellings located on the subject lots as it is considered impractical to adapt these buildings for the child care facility, and the design of the new facility minimises any adverse impacts.</p> <p>Council's Heritage Advisor raised an objection to the proposed development from a heritage impact perspective. The Assessing Officer has explored that objection referring to available heritage significance statements and contextual information and are of the view that the proposed development would not have a significant adverse impact on the conservation area.</p> <p>An expanded assessment of heritage impacts is provided under the 'Likely Environmental Impacts', 'Heritage' sub-heading of this report.</p> <p>Complies</p>
Part 6 Urban release areas	Not applicable
Part 7 Additional local provisions	
7.6 Earthworks	<p>The objectives of this clause are as follows—</p> <p>(a) <i>to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land,</i></p> <p>(b) <i>to allow earthworks of a minor nature without requiring separate development consent</i></p> <p>This clause requires a consent authority to take the following matters into consideration before granting development consent to development involving earthworks:</p> <p>a) <i>the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,</i></p> <p>b) <i>the effect of the proposed development on the likely future use or redevelopment of the land,</i></p> <p>c) <i>the quality of the fill or of the soil to be excavated, or both,</i></p> <p>d) <i>the effect of the proposed development on the existing and likely amenity of adjoining properties,</i></p> <p>e) <i>the source of any fill material or the destination of any excavated material,</i></p> <p>f) <i>the likelihood of disturbing relics,</i></p> <p>g) <i>the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.</i></p> <p>The proposed development would involve some minor cutting of the site along the Bridge Street frontage to allow for the construction of the carparking area. There will be substantial fill required across the site to balance out the site slope and provide a level pad for the construction of the proposed child care building and establishment of outdoor play area.</p> <p>This will result in a maximum 2.3m change of ground level which will require a two-tiered retaining wall at the rear of the site. A condition is recommended requiring detailed retaining wall plans to be provided with the Construction Certificate.</p>

	 <p>The following are recommended to be included as conditions of consent:</p> <ul style="list-style-type: none"> • preparation of a Stormwater Management Plan which is to include a stormwater drainage plan. This is to ensure the development does not have an adverse impact on stormwater drainage. • all fill imported to the site is appropriately sourced clean fill • the site is to be suitably compacted to allow slab on ground construction. <p>Complies</p>
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B. State Environmental Planning Policies Relevant to Muswellbrook Shire

SEPP (Transport and Infrastructure (2021))

Satisfactory: ☒ Yes ☐ No ☐ NA

Chapter 2 – Infrastructure

The subject site is located adjacent to a railway line and therefore, section 2.98 of this SEPP applies to the proposal. The application was referred to Australia Rail and Track Authority for consideration and they have raised no objection to the development subject to the inclusion of several conditions.

The applicant submitted a Noise Impact Assessment with the development. This Assessment provided several recommended construction improvements to achieve the minimum noise requirements. A condition is recommended requiring the development to comply with the Noise Impact Assessment report with details to be provided with the Construction Certificate.

Chapter 3 Education and Care Facilities

Chapter 3 Part 3.33 of this SEPP prescribes matters related to Centre based child care facilities and is relevant to the assessment of this application.

S3.3 requires a consent authority to have regard to the provisions of the *Child Care Planning Guideline* in determining an application for this type of development. Council Officers have had regard to the provisions of the guideline and included comments related to their consideration below.

Matters for consideration	Planning Comment
Site Selection C1 Objective: To ensure that appropriate zone considerations are assessed when selecting a site.	The land is zoned E2 Commercial Centre. MLEP permits centre based child care facilities in the E2 zone with consent.
C2 Objective: To ensure that the	A Noise Impact Assessment has been undertaken in relation to the

<p>site selected for a proposed child care facility is suitable for the use.</p> <p>C3 Objective: To ensure that sites for child care facilities are appropriately located.</p> <p>C4 Objective: To ensure that sites for child care facilities do not incur risks from environmental, health or safety hazards.</p>	<p>potential of noise from nearby noise sources (Highway and Rail Corridor) to impact on the development and found that the site is suitable to proceed.</p> <p>Consideration has been given to traffic and access considerations in context with the site Highway location and it has been determined that any related issue would not cause the site to be manifestly unsuitable to the land use proposed.</p> <p>Consideration has been given to the sites existing development, history and likelihood of being subject to any hazards or contamination that may limit the opportunity for the carrying out of the development.</p> <p>A preliminary site investigation will be prepared post demolition to confirm the the level of contamination that may affect the site and whether further specialist input/action is required to prepare the site for the new use. Mangement of asbestos will be requirement in the demolition phase in accordance with Australian Standards.</p> <p>Council Officers raise no objection with the relationship of the proposed development with the related Planning Guideline Principles</p>
<p>Local character, streetscape and the public domain interface</p> <p>C5 Objective: To ensure that the child care facility is compatible with the local character and surrounding streetscape.</p> <p>C6/C7/C8 Objective: To ensure clear delineation between the child care facility and public spaces.</p> <p>C9/C10 Objective: To ensure that front fences and retaining walls respond to and complement the context and character of the area and do not dominate the public domain.</p>	<p>The building design incorporates a pitched roof form and weather board cladding. Council Officers are satisfied that the physical form of the proposed building is in keeping with the heritage conservation area.</p> <p>A considered review of the comments provided by Council's Heritage Advisor in context with the planning assessment framework has been provided under the related heritage impact heading of this report. While the Assessing Officer recognises the comments provided by the Heritage Advisor, confirming the existing structures have heritage contributory elements, the sites commercial zoning, that statement of heritage significance relevant to the conservation area and previous Council decisions related to their demolition have also been considered. The Assessing Officer has the view that the demolition of the existing structures and their replacement with the structure proposed would not significantly detract from the character of the heritage conservation area or its significance.</p> <p>Regarding retaining walls and fencing – retaining walls would be installed in the rear of the site with minimal impact on the streetscape and character with fencing setback behind the front car park to provide security to play areas.</p> <p>The proposed development could be viewed to be compatible with the relationship of the proposed development with the related Planning Guideline Principles</p>
<p>Building orientation, envelope and design</p> <p>C11 Objective: To respond to the streetscape and site, while optimising solar access and opportunities for shade.</p> <p>C12 Objective: To ensure that the scale of the child care facility is compatible with adjoining development and the impact on adjoining buildings is minimised.</p>	<p>The design of the proposed child care building has had regard to site attributes and corresponds with the lot layout, constraints, neighbouring sites and the character of the area.</p> <p>Council Officers raise no objection to the proposed development</p>

<p>C13/C14 Objective: To ensure that setbacks from the boundary of a child care facility are consistent with the predominant development within the immediate context.</p> <p>C15 Objective: To ensure that the built form, articulation and scale of development relates to its context and buildings are well designed to contribute to an area's character.</p> <p>C16 Objective: To ensure that buildings are designed to create safe environments for all users.</p> <p>C17 Objective: To ensure that child care facilities are designed to be accessible by all potential users.</p>	
<p>Landscaping C18/C19 Objective: To provide landscape design that contributes to the streetscape and amenity.</p>	<p>The submitted plans indicate existing street trees will be retained. New landscaping is proposed to enhance the amenity of the proposed development.</p> <p>Complies</p>
<p>Visual and acoustic privacy C20/C21 Objective: To protect the privacy and security of children attending the facility.</p> <p>C22 Objective: To minimise impacts on privacy of adjoining properties.</p> <p>C23/C24 Objective: To minimise the impact of child care facilities on the acoustic privacy of neighbouring residential developments</p>	<p>Play areas would be located toward the rear of the site with landscaping screening these areas from the New England Highway and fencing to secure play areas.</p> <p>A noise impact assessment has been submitted. This assessment indicates noise impacts can be satisfactorily managed.</p> <p>The adjoining sites are zoned E2 Commercial Centre under the Muswellbrook LEP 2009. This zone promotes the commercial development of land. Older dwellings established under a previous land use regulations are located on properties north of the site. The use of outdoor play areas for daytime activities will create new noise impacts weekdays, but these will be in a location that is currently impacted by the noise from highway and rail transport. Council Officers recommend conditions of consent like the maintenance of boundary fencing to manage visual privacy impacts.</p> <p>Complies</p>
<p>Noise and air pollution C25/C26 Objective: To ensure that outside noise levels on the facility are minimised to acceptable levels.</p> <p>C27/C28 Objective: To ensure air quality is acceptable where child care facilities are proposed close to external sources of air pollution such as major roads and industrial development.</p>	<p>A noise impact assessment has been prepared in relation to the proposed development and the potential for external noise sources to impact the development. This technical assessment is supportive of the proposal from an acoustic impact perspective.</p> <p>Council Officers raise no objection with the relationship of the proposed development with the related Planning Guideline Principles</p>
<p>Hours of operation</p>	<p>The operating hours of the proposed facility would be 7:00am – 6:30pm weekdays.</p>

C29/C30 Objective: To minimise the impact of the child care facility on the amenity of neighbouring residential developments	<p>Noting the location in a commercial setting and adjacent the New England Highway – which is a significant thoroughfare well used within and outside of these hours Council Officers have no objection to the proposed operating hours.</p> <p>Complies</p>
<p>Traffic, parking and pedestrian circulation</p> <p>C31/C32/C33 Objective: To provide parking that satisfies the needs of users and demand generated by the centre.</p> <p>C34/C35 Objective: To provide vehicle access from the street in a safe environment that does not disrupt traffic flows.</p> <p>C36/C37/C38 Objective: To provide a safe and connected environment for pedestrians both on and around the site.</p>	<p>The proposed development would provide 27 off-street car parking spaces. The parking rate required under M DCP 2009 is 30 spaces. The minimum parking rate required by the <i>Child Care Planning Guidelines (2021)</i> is 28 spaces.</p> <p>Does not comply. It is anticipated that the “turning bay” shown on the plans near the front entrance to the child care facility would operate as an extra parking space if all other spaces were full, making 28 spaces available.</p>

S 3.26 prescribes the non-discretionary development standards to reviewed in the table below.

Control	Planning Comment (where applicable)	Compliance
(2)(a) there is no limitation on a centre being located at any distance from an existing or proposed centre		Complies
Indoor space (109 children) 3.25m ² per child 3.25 x 109 = 354.25m ²	354.25m ² required per this standard. The proposed plans indicate that 382.57m ² would be provided.	Complies
Outdoor space (109 children) 7m ² per child 7 x 109 = 763m ²	763m ² required per this standard 866m ² provided per the proposed plans	Complies
Site dimensions	This clause allows a child care centre to be located on a site of any size or dimension. Limiting the opportunity for a consent authority to refuse consent to an application for a related reason.	Complies
Colour and building materials	This clause limits the opportunity for a child care building to be refused for reasons related to its colour or material composition where it is not located in a heritage conservation area. The subject site is located in a conservation area. Accordingly, this requirement does not apply.	Not relevant

Sub-clause 3.27 limits the degree to which Council Development Control Plans may inform the determination of a centre based child care development.

SEPP (Resilience and Hazards (2021))

Satisfactory: ☒ Yes ☐ No ☐ NA

Chapter 4 Remediation of Land

This chapter under the SEPP requires that a consent authority must not consent to the carrying out of any development on land unless:

- (a) *It has considered whether the land is contaminated, and*
- (b) *If the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) *If the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

Sub-clauses 2 – 4 continue on to reference the Contaminated Land Planning Guidelines and considerations required where development involves specific uses such as child care uses and land used for past uses regarded as potentially contaminated under table 1 of the land planning guideline.

The site currently contains multiple residential dwellings that have existed for substantial period of time Council has no record of the land being used for any purpose referenced in Table 1 of the Contaminated Land Planning Guidelines which would have the potential to cause the contamination of the site. T

The SEPP and the *Education and Care Services National Regulation 2011* (Section 25) requires a soil assessment to be prepared for the registration of a premises as a care premises with the NSW State Government. The process of obtaining this approval is a legislated separate process. The applicant has proposed to carryout the assessment at the conclusion of demolition works. The carrying out of the investigation at this stage would enable the investigation to have regard to the outcomes of those works (e.g. were asbestos building materials managed appropriately).

The Assessing Officer considers that:

- In view of the site history it is unlikely to be subject to any significant contamination requiring remediation for the development to progress, and that the site would not be subject to any contamination that would prevent the demolition of the existing dwellings being carried out.
- The proposed development may proceed as development compatible with the provisions of Clause 4.6 of the SEPP – the consent authority is satisfied that the land is unlikely to be subject to any contamination requiring remediation under this Clause. Notwithstanding, this finding a recommended condition has been put forward to requires related documentation at the conclusion of demolition works to ensure this remains/is the case prior to the establishment of the new land use in line with obligations under the *Education and Care Services National Regulation 2011*.

SEPP (Industry and Employment)

Chapter 3 Advertising and Signage

The submitted plans include an indicative location for signage along the frontage of the building. This area is approximately 3m² and is a Business Identification Sign. Therefore, the SEPP applies to the development and the Council is the consent authority.



In this regard, the Council must not grant consent to an application to display an advertisement unless:

- It is consistent with the objectives of this chapter of the SEPP
- Has been assessed by Council in accordance with the assessment criteria and satisfied that the proposal is acceptable in terms of its impacts; and
- Satisfied any other relevant requirements of this chapter.

Schedule 5 Assessment Criteria	
Assessment Item	Planning Comment
1. Character of the area	The surrounding properties are commercial in nature. This includes Betta Electrical, Fast food retailers and service station. The signage associated with those businesses is more intrusive than what is shown above.
2. Special areas	The subject site is not identified as a special area. Therefore, this matter is not applicable to the subject development.
3. Views and vistas	The proposed signage will not compromise views or dominate the skyline. It is proposed to be erected on the building.
4. Streetscape, setting or landscape	As above.
5. Site and building	The proposed signage will be erected on a building and is classified as a business identification sign.
6. Associated devices and logos with advertisements and advertising structures	This matter is not applicable to the subject development.
7. Illumination	The applicant has not provided information regarding illumination of the signage. Should the application be approved, a condition will be imposed requiring the signage to not be illuminated.
8. Safety	The proposed signage will not reduce the safety of the travelling public. The building is setback approximately 11.5m from the front boundary.

From the above, the assessing officer is satisfied the proposed business identification sign complies with the SEPP.

Having regard to the above Council Officers are satisfied that the proposed development would be compatible with the requirements of the relevant State Environmental Planning Policies

Section 4.15(1)(a)(ii) the provisions of any draft EPI.

There are no draft EPIs relevant to the subject Application.

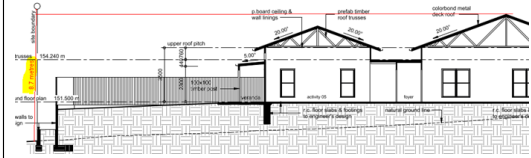
Section 4.15(1)(a)(iii) the provisions of any development control plan

Muswellbrook DCP 2009

Section 9 Local Centre

MUSWELLBROOK SHIRE COUNCIL DCP SECTION 9 LOCAL CENTRE DEVELOPMENT		
DCP REQUIREMENTS	COMPLIES	PLANNING COMMENT
9.1.1 Built Form (i) The design of new buildings should reflect and enhance the existing character of local centres. (refer to section 15 of this DCP for further guidance)	Yes	<ul style="list-style-type: none"> ➤ The proposed new building would be compatible with the character of the streetscape. ➤ While the existing dwellings are of heritage value and compliment the heritage precinct the limited ability for the structures to be adaptively re-used for commercial purposes limits the ability to establish alternate development in the precinct that

<p>on development in the Bridge Street area)</p> <p>(ii) Building design should relate to its retail/commercial/office function.</p> <p>(iii) Building materials should be of high quality and harmonise with surrounding development. The use of reflective materials is discouraged. Materials and colours should not dominate the streetscape.</p> <p>(iv) Awnings should be designed to integrate with the architecture of the building façade and provide for continuous shelter for pedestrians. Awnings should follow consistent heights above the footpath with a minimum height to the underside of the awning of 3.2 metres</p> <p>(v) Building facades should relate to the context of buildings in the area to achieve continuity and harmony. The continuity of commercial frontages should not be broken by parking areas, service and delivery areas etc.</p> <p>(vi) Buildings should provide for 'activated street frontages' by incorporating active uses at street level including cafes and other retail activities.</p> <p>(vii) Blank building facades to streets or public places are to be avoided.</p> <p>(viii) The placement of windows should provide visual interest and variation to the building façade and relate to those of adjacent buildings. (ix) Building designs should allow for passive surveillance of public places and streets.</p> <p>(ix) Building entrances should be well defined and well lit.</p> <p>(x) New residential development shall be located above street level.</p>		<p>would be compatible with related DCP and zoning objectives.</p> <ul style="list-style-type: none"> ➤ The information submitted with the development application indicates that new materials would be used in the development construction and that those materials would not be highly reflective. ➤ The proposed development addresses Maitland St ➤ The premises has been designed to incorporate signage to address the streetscape.
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(xi) Incorporate areas for future signage into the building design.		
<p>9.1.2 Height of Buildings</p> <p>(i) Building heights comply with the building height limits prescribed by Muswellbrook LEP 2009.</p> <p>(ii) The height of buildings should be consistent with the character of the area, and include roof parapets where that is a characteristic in the surrounding streetscape.</p> <p>(iii) The height of buildings should not result in unreasonable overshadowing or compromise the privacy of adjoining properties.</p>	Yes	<p>The proposed development would comply with the Muswellbrook LEP building height requirement of 13m.</p> <p>In this regard, the maximum height of the building will be 8.7m from the natural ground level.</p>  <p>Complies</p>
<p>9.1.3 Setbacks</p> <p>(i) The front of buildings should be aligned to provide a continuous street frontage.</p> <p>(ii) In some cases, front setbacks should allow for street landscaping and footpath widening where necessary.</p> <p>(iii) New development should respect the setbacks of other buildings along the streetscape.</p> <p>(iv) Separation fencing is provided between development land and any rail corridor.</p> <p>(v) (Not included Relates to Rail Corridor Development)</p>	Yes	<p>Land within the E2 Commercial Centre does not have a front setback requirement.</p> <p>In this instance, the setback of 11.5m is proposed to accommodate vehicle access and parking at the site.</p> <p>The Bridge Street frontage will be landscaped with a hedge to reduce the visual impact of the carparking area and building. This landscape hedge will have a maximum mature height of 2.4m and a mature canopy spread of 1.5m.</p> <p>Complies</p>
<p>9.1.4 Accessibility</p> <p>This Section of the DCP requires new commercial developments to be designed and constructed in a manner which comply with the relevant accessibility standard.</p>	Yes	<p>The proposed development would be subject to a requirement that it is carried out in accordance with the Building Code of Australia and Access to Premises Standard.</p> <p>Detailed designs plans demonstrating that the development can comply with the relevant accessibility standards are to be submitted to and approved by the Principle Certifying Authority prior to the issue of a Construction Certificate.</p> <p>This work needs to be completed to ensure the accessibility standards are met prior to an application for an Occupation Certificate.</p> <p>Complies</p>
<p>9.2.1 Urban Landscaping</p> <p>(i) Where appropriate, landscaping should be incorporated into building</p>	Yes	<p>The plans include an area for landscaping along the Bridge Street (New England Highway) frontage.</p> <p>The landscaping proposed would enhance the</p>

<p>design to enhance the character of the streetscape and the amenity of buildings and public places.</p> <p>(ii) Landscaping should reflect the size and height of buildings and should be consistent with the character of the area.</p> <p>(iii) Landscaping should be used to soften the impact of hard surfaces where necessary.</p> <p>(iv) Where landscaping is proposed to be incorporated into a new development, a landscape plan detailing hard and soft landscaping works should be submitted with the development application</p>		relationship of the site and proposed development with the streetscape and conservation area.
9.2.2 Car Parking	Yes	<p>Council Officers are satisfied that the rate off off-street car parking proposed would meet the relevant DCP off-street car parking requirements.</p> <p>Complies</p>
9.2.3 Outdoor Eating Areas	N/A	<p>The proposed development does not involve any outdoor eating areas which would require assessment against the requirements of this Sub-section.</p>
9.2.4 Signage and Advertising	Yes	<p>The submitted plans include an indicative signage location. Refer to discussion under SEPP (Industry and Employment) 2021 and Section 14 of the Muswellbrook Development Control Plan.</p>

Section 14 – Outdoor Signage

The Statement of Environmental Effects states that the development includes a signage envelope within the façade design on the front elevation facing Bridge Street. The indicative signage area is proposed to be approximately 3m², however, no further details have been provided.



Figure 14 – Extract of elevations showing indicative location of signage.

As the site is located within a Heritage conservation area, this signage cannot be considered as exempt development. In this regard, a condition will be required for the development to provide details, including colours, on the proposed signage prior to the release of the Construction Certificate.

Section 15 Heritage Conservation

The site is located within the business heritage conservation area as identified in the Muswellbrook Local Environmental Plan 2009. The site also adjoins a local heritage item being Kildonan, now known as the Heritage Tea House, located at 220 Bridge Street, Muswellbrook.

The potential impact of the proposed development on the conservation area and heritage item is explored in other sections of this report.

The Assessing Officer is of the view that the proposed development would not adversely impact heritage conservation area and would have a positive impact on the Kildonan Heritage item, through the increasing the visual prominence of the building by the demolition of the adjoining structures and the increased setback of the proposed new child care facility. Accordingly, Council Officers are satisfied that the proposed development would comply with this DCP section.

Section 16 Car Parking

This Section of the DCP requires the provision of off-street car parking to child care centre developments at a rate:

Development	Criteria	Required	Proposed
Child Care Centre	1 space per employee	19 staff = 19 spaces	The development is proposing 27 spaces. Does not comply
	PLUS	PLUS	
	1 space per 10 children	109 children / 10 = 10.9 spaces	
		TOTAL = 29.9 (rounded up to 30 spaces)	

The proposal includes 27 off-street car parking spaces plus a “turning bay” and a storage space for a bulk waste bin. There is no capacity to increase the number of spaces with the current design.

It is anticipated that the turning bay would be used as a parking space if all other spaces were full – the turning bay is not essential given the width of the internal driveway allows parked cars to easily manoeuvre to exit the site in a forward direction without needing to use the turning bay. Delivery vans and trucks could also reverse to the space in front of the waste bin to manoeuvre and exit the site in a forward direction. 28 off-street car parking space would be compliant with the minimum parking provisions required for regional locations in the *Child Care Planning Guidelines (2021)* issued by the NSW government.

Reducing enrolments to 100 children would likely reduce staff numbers by one, leading to compliance with MDCP 2009. Reducing enrolments would impact the financial model of the Centre. This has not been recommended by the Assessing Officer:

- As parking by parents is usually for short periods. This high turnover and the capacity of the internal driveway to accommodate a vehicle waiting to park when a space becomes available will lessen the impact if the minor non-compliance; and
- The parking provision would meet the minimum standards in the *Child Care Planning Guidelines (2021)* issued by the NSW government.

Should the application be approved, conditions will be imposed on the consent requiring the development to comply with AS 2890 in relation to carparking widths, turning bays, reversing distance and internal signage.

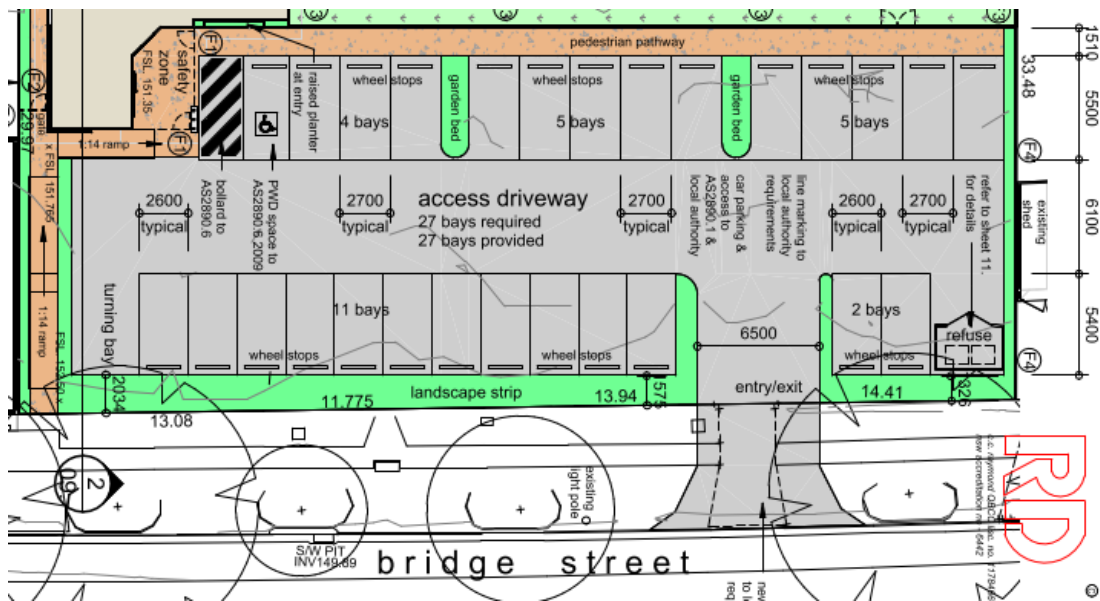


Figure 15 - extract from Site plan showing carparking configuration

Complies

Section 18 Child Care Centres

The provisions of the SEPP (Transport and Infrastructure) 2021 include provisions limiting the requirement for centre based child care facilities to comply with provisions of a local Council Development Control Plan where they address related provisions of the Child Care Centre Planning Guideline.

The table below comments only on matters that are not suspended by Clause 26 of the SEPP.

DCP requirement	Planning Comment
18.1 Entry, Access, Safety and Security	
18.1.1 All-weather entry to be provided.	An all-weather entry point has been incorporated into the development design in accordance with this requirement. Complies
18.1.2 Access and mobility	It will be necessary for construction work to comply with the BCA and accessibility requirements. Complies
18.2.1 Drop off and pick up of children	Parking provision should comply with the local DCP, but at a minimum should be provided at the rate of 1 space per 4 enrolments (28 spaces for this development). The 28 spaces provided do not comply with MDCP 2009 requirements but meet the minimum. Partial compliance

An assessment of the proposed development against the provisions of this NSW Government Guideline has been completed under the SEPP heading of this report. Council Officers are satisfied that the proposed development complies with related relevant requirements.

Complies

Section 24 Waste Minimisation and Management

This section of the DCP requires development applications to be accompanied by a waste minimisation management plan in relation to the construction and operation of the proposed development.

A recommended condition of consent has been put forward to require the submission of a waste management plan prior to the issue of a Construction Certificate.

It is noted that the space available for storage of waste bins is limited. This, combined with the high rates of waste generation at a child care facility, means that it is most likely that the Centre will need to have a bulk waste bin collected by a contractor separate to the Council provided waste collection service.

Compliance to be managed by condition

Section 25 Stormwater Management

This section of the DCP aims to:

- Ensure stormwater is controlled in a way that minimises nuisances and damage to the adjoining properties
- Manage natural drainage lines and water bodies to sustainably protect the health of the receiving waterway.
- Mitigate pollutants from entering waterways.
- Ensure appropriate easements are provided over existing drainage systems on private property.
- Assist in the efficient use of water.

The applicant has provided a concept stormwater plan for the carparking area which shows a connection to a Council stormwater pipe in the Bridge Street road reserve. Noting the stormwater plan provided and that stormwater from the proposed development could be managed to a legal point of discharge Council Officers are satisfied that the proposed development would comply with this Section of the Muswellbrook DCP.

Additional stormwater conditions informed by Council Roads and Drainage comments have been put forward as stormwater related conditions of consent.

Section 94 Contributions Plan 2001

Section 7.11 (Formerly Section 94) Contributions are not applicable to the proposed development.

Section 94A Contributions Plan 2009

In accordance with Council's Section 94A Contribution Plan a Section 7.12 (formerly Section 94A) developer contribution would be applicable to the proposed development at a rate of 1% of the total estimated capital investment value.

The proposed development would have a capital investment value of \$2,960,280 and thereby a contribution of \$29,602.80 would be applicable to the proposed development. Should the application be approved, a condition will be imposed requiring this to be paid prior to the release of the Construction Certificate.

Section 4.15(1)(a)(iia) the provisions of any planning agreement

There are no planning agreements relevant to the subject Application.

Section 4.15(1)(a)(iv) the provisions of the regulations

Section 4.15(1)(a)(iv) of the EP&A Act requires the consent authority to consider any prescribed matters under the Environmental Planning and Assessment Regulations 2021 (EP&A Regulation). Council has assessed the development in accordance with all relevant matters prescribed by the EP&A Regulation.

Section 4.15(1)(a)(v) the provisions of any coastal zone management plan

Not applicable - the application does not relate to a coastal area.

Section 4.15(1)(b) the likely impacts of that development

Section 4.15(1)(b) of the EP&A Act requires Council to consider “the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality”.

Context and Setting

The proposed development would not adversely impact the sites existing context and context and setting. The building design has been subject to detailed consideration against the Child Care Centre Planning Guideline and Council staff are satisfied that the proposed development would be consistent with that guideline and in accordance with the relevant design requirements.

Potential Impact on Adjacent Properties

The proposed development would be adequately separated from sensitive residential receptors so as not to negatively impact the enjoyment of neighbouring residential properties. The application was notified to neighbours for a minimum of 14 days with only 2 submissions received for surrounding businesses. No submissions were received from the residential properties.

Noise & Vibration

The application included a Noise Impact Assessment which has recommended controls in order to comply with the noise intrusion and emission criteria:

The following maximum number of children are allowed to play outdoors at the same time (to be able to have no restrictions in play time):

– Play Area A:
 > All 24 toddlers can play at the same time.

– Play Area B:
 > Up to 16 children aged 3-5, and
 > Up to 16 children aged 2-3.

- Solid fences to be built around the outdoor play areas, as shown in Figure 17 below.
- Minimum glazing thickness as presented in Table 25.
- Noise emission from mechanical plant to be re-assessed when mechanical plans and selections are finalised.

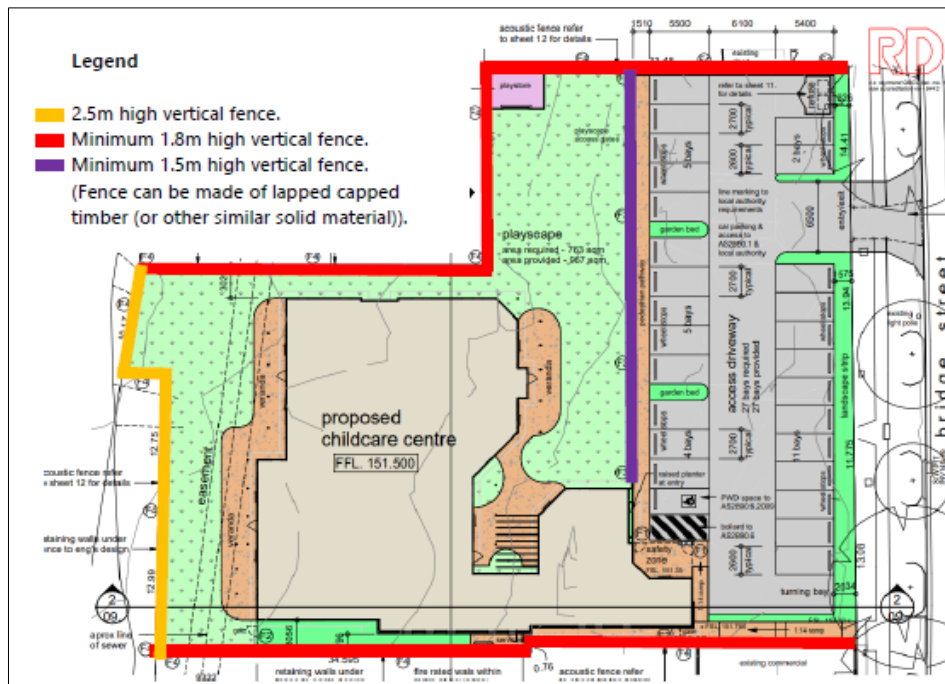


Figure 17 – Recommended fence heights, extract taken from the Noise Impact Assessment.

The indicative glazing requirements for the Child care facility include:

Area	Element	Glazing thickness	Minimum R_w / STC requirement for element with frame and acoustic seals
Activity Rooms 06	Windows to the north	6.38mm laminate	31
	Window/ glazed door to the east	10.38mm laminate	33
Activity Rooms 03 and 07	Windows/ glazed doors to the east	10.38mm laminate	33
Corridor	All glazing	6mm	29
Multi-purpose room	All glazing	6.38mm	31
Foyer/ Reception	All glazed doors and windows	6.38mm	31
Office	Windows to the south	6mm	29
Staff room	Windows	6mm	29
Sleep/ Playstore	Window	10.38mm	33
Activity Rooms 01 - 05	Windows/ glazed doors	6.38mm	31

With the development implementing the recommendations of the Noise Impact Assessment, the assessment officer is satisfied the proposal can meet the noise criteria for child care centres. In this regard, should the application be approved, a condition will be imposed requiring compliance with the Noise Impact Assessment.

Heritage Impact

Context

- The subject site is located within the Muswellbrook Business Centre Heritage Conservation Area. The extent of the heritage conservation area concludes a short distance to the north of the site at the intersection of Bridge and Wilkins Streets.
- To the north of the site is 'Kildonan'. 'Kildonan' is listed as a local heritage item under the Muswellbrook Local Environmental Plan 2009.
- Informed by advice from Council's Heritage Advisor it is understood that the buildings at 200 and 202 Bridge Street were built around 1915 at the Federation period and the buildings at 204 and 206 were built around 1940. The site or any of these buildings contained within it are not listed as heritage items.
- The site is zoned E2 Commercial Centre under the Muswellbrook Local Environmental Plan 2009. Under the Muswellbrook Local Environmental Plan 2009 E2 Local Centre land use table development for the purposes of dwelling houses is a land use prohibited within the zone.
- Council has previously granted development consent to development applications involving the demolition of heritage contributory dwellings in relation to the site and adjoining conservation area. A brief outline of related development applications has been included below.
 - **DA 2007-131** – approved 18 November 2007. Granted development consent to the demolition of the four dwellings at 200 206 Bridge Street (the same dwellings proposed for demolition under this application and the construction of a supermarket. This approved development was not acted on within the 5 year period attached to the consent.
 - **DA 2010-132** – approved October 2010 in relation to 145 Bridge Street (currently Hungry Jacks) – approved the demolition of two residential buildings and a shop constructed between the inter war period or immediately after World War II. These buildings have been demolished.
 - **DA 1999-2146** – approved March 2000 related to 198 Bridge Street (current day Betta Electrical immediately adjoining the site subject to this application) – approved the substantive alteration/partial demolition of an existing residential building. The building was identified as a Californian Bungalow by Council's Heritage Advisor and viewed as being contributory to the heritage area and that the buildings significance. The alterations would significantly alter the building and its historical attributes.

Heritage Impact Statement

A Statement of Heritage Impact was submitted by the Applicant's heritage Advisor. The report conclusions which were supportive of the proposed development have been reproduced below:

The redevelopment of the former residential sites would involve substantial change, though the proposed new childcare building has been designed, where practicable, to limit impacts on the Muswellbrook Business Heritage Conservation Area and the

adjacent identified heritage item Kildonan.

Use of the site for a childcare centre is consistent with the E2 Commercial Centre zoning with the existing residences no longer a desirable place to live, owing in part to the heavy traffic of the New England Highway. Whilst the demolition of the Federation period houses at 200 and 202 Bridge Street would result in the loss of historic building stock within the Conservation Area, the significance of the heritage listed area lies primarily with commercial buildings. Further, the northern end of the Conservation Area has already been negatively impacted by more recent development, including the substantial service station and fast food restaurants located opposite the subject site. It is also noted that there are also other more substantial groups of relatively intact Federation period houses located elsewhere in Muswellbrook which are not identified heritage items in the Muswellbrook LEP.

As the existing buildings were constructed as modest timber houses, their adaptation for commercial purposes poses some challenges and is not considered practicable for adaptation to a childcare centre. A purpose-built childcare facility is instead proposed. Key challenges with incorporating the existing houses into a new childcare centre include compliance issues and functional challenges due to mismatched floor levels and the awkward relationships between the buildings. Other challenges have also been discussed in this report.

It is acknowledged that the contemporary functional and statutory requirements of a childcare centre would mean that the proposed development incorporates a substantial carpark and large fenced play areas which are not features of historic development in the Conservation Area. Whilst the location of the carpark at the rear of the site would be preferable, this is not considered practicable due to the lack of access from the rear and the need to efficiently accommodate 27 parking bays. The proposed childcare building has been designed to respond to the character of the listed heritage area and the individually identified Kildonan located adjacent to the site. The incorporation of gable roofs together with traditional elements including the recessed porch and skillion verandah would help to reinforce the character of historic development in the Conservation Area. Further, the modulation of the built form, including a projecting bay and projecting front wing, would serve to reduce the perceived bulk of the proposed building, making it more sympathetic to the nearby heritage buildings.

The applicant's heritage advisor provided further supplementary advice through their planning consultant in later correspondence dated 14 August 2023. This supplementary advice remained supportive of the proposed development from a heritage impact perspective.

Council Heritage Advisor

Council's heritage advisor put forward the following commentary related to the buildings proposed for demolition and recommendation.

The four houses are contributory in the conservation because they are sufficiently intact and were constructed in the periods that are recognised in the statement of significance for the conservation area. Namely, 200 and 2002 were built around 1915 in the Federation period, and 2004 and 2006 were built around 1938 in the inter-war period. Reasonably intact buildings of all periods up to the end of the inter-war period (say 1940) are contributory within this conservation area'.



Front of 202 Bridge Street



Front of 200 Bridge Street



Decorative metal finials and timberwork to gable ends



204 Bridge Street



Porch to 206 Bridge Street

Heritage Advisor Recommendation

1) *The preferred heritage response for this application is detailed in the report:*

1. Retain the four houses for their historical and aesthetic contribution to the conservation area. The Federation houses at 200 and 202 are the more significant houses out of the four. The front sections of all four of the houses are the most important parts to contribute to the conservation area.

Reason: to retain and respect the early twentieth-century buildings in the conservation area that contribute to the setting of heritage items in the conservation area.

Council Assessing Officers comments on Heritage significance

Related to the potential impact of the proposed development on the adjoining Kildonan Heritage Item Council Officers accept that the proposed development would not adversely impact the significance of this adjoining heritage item. Related to this point Council Officers consider note:

While Council's Heritage Advisor indicates the dwellings proposed to be demolished are of a notable age and contain some aesthetic historical building elements they are not a commercial building type recognised as being of importance to the fabric or overall importance of the Muswellbrook Business Conservation Area.

Council has previously approved a development application (DA 2007/131) which granted

approval to the demolition of the four dwellings. This approval has since lapsed.

Council has previously approved two further development applications involving the demolition or substantive alteration of historic buildings in the immediate vicinity of the subject site and conservation area at 198 Bridge Street (DA 1999-2146) and 145 Bridge Street (DA 2010-132).

The site is zoned E2 Commercial Centre under the Muswellbrook LEP 2009. There are limited opportunities for the adaptive reuse of the dwellings in a manner that could support the establishment of a commercial premises at the site.

In view of these facts, it is the view of the Assessing Officer that the demolition of the four (4) dwellings would not have a significant adverse impact on the Muswellbrook Business Conservation Area and thereby may be supported from a heritage impact perspective

Natural and Technological Hazards

The subject site is not located on land identified as being affected by any natural or technological hazards limiting the carrying out of the proposed development.

Safety, Security & Crime Prevention

The application included the submission of a Crime Prevention through Environmental Design (CPTED) report. There are four key CPTED principles laid out in the CPTED guidelines. These are:

- » Surveillance.
- » Access control.
- » Territorial reinforcement.
- » Space management.

The report submitted has recommended several requirements, which are to be implemented, to enhance the safety and security of the child care facility and its visitors. These include:

- » Install a controlled access system at all entrances to regulate entry and exit.
- » Upgrade or install additional security cameras at key locations to monitor activity.
- » Ensure adequate lighting throughout the facility, paying particular attention to entrances, parking areas, and outdoor play areas.
- » Trim or remove any vegetation or structures that impede natural surveillance.
- » Implement clear signage indicating the Child Care Centre's boundaries and any security measures in place.
- » Establish a maintenance schedule to keep the premises clean and well-maintained.
- » Develop and enforce comprehensive security policies and procedures, including staff training on emergency protocols.

Social and Economic Impact on the Locality

The proposal would expand the capacity in Muswellbrook of early education and day care services, supporting its economic viability and the level of service available in the locality.

Section 4.15(1)(c) the suitability of the site for the development

The development can be integrated into the locality without any significant adverse impacts. The site is therefore considered suitable for the proposed development.

Section 4.15(1)(d) any submissions made

The Application was notified to adjoining owners from 12 July to 26 July 2023. A notice was also placed on Council's website and Facebook page at the commencement of the notification period.

A total of three submissions were received during the notification period. The matters raised

in the submissions are summarised below:

Concern	Planning Comment
Inappropriate location for a child care centre due to highway and rail line.	<p>The application was referred to Transport for NSW and Australian Rail and Track Corporation for their consideration and comment. They have not objected to the application subject to suggested conditions.</p> <p>As there are multiple child care facilities in Muswellbrook, it is anticipated that parents will consider the location near a main road and railway line when deciding which child care facility to utilise.</p>
Increased traffic movements onto Bridge Street	<p>The Traffic Assessment accompanying the application states that Bridge Street has capacity, as an arterial road to, to accommodate the additional traffic movements. After the bypass opens traffic volumes will reduce.</p>
No fencing proposed around the carpark area to secure the site and stop children running onto the highway.	<p>The carparking area will have a landscaped hedge along the site frontage to delineate the car park from the footpath areas, which in turn would make pedestrian access from the car park to the highway difficult except for the driveway. This is similar to many businesses that have parking areas adjoining a highway.</p> <p>The children play areas will be fenced to ensure children do not enter the car parking area.</p>
Pollution from highway and coal trains	<p>Air quality will be impacted by heavy vehicle and train exhaust fumes and particulates from loads. This issue exists for schools and child care facilities across the State that are sited on main roads and/or railway lines.</p> <p>As there are multiple child care facilities in Muswellbrook, it is anticipated that parents will consider this issue when deciding which child care facility to utilise.</p>
Use may sterilise the land for future uses	<p>Should the child care centre close for whatever reason, adaptable reuse of the building is possible. This would need to be assessed with a change of use application.</p>
Incorrect traffic accident information provided in Traffic Report.	<p>The traffic accident information in the Traffic Assessment only reflects accidents that have been reported to the police.</p> <p>Council acknowledges there may have been more incidents with vehicles in this</p>

	locality.
Close proximity to a Hotel (Eatons)	<p>The subject site is less than 50m from an operating Hotel. There are no guidelines for the appropriate distance a child care centre can be operate from a Hotel.</p> <p>In this instance, there are three properties between the proposed child care centre and the Hotel. This is considered to be suitable separation.</p>
Concerns about the rear access laneway	The proposed child care centre will not be accessing the rear lane. All vehicles associated with the development will be accessing the site off Bridge Street.
Concerns over potential congestion of carpark area during drop off / pick up times.	<p>The Muswellbrook Development Control Plan, the <i>Child Care Planning Guidelines (2021)</i> issued by the NSW government and the <i>Guide to Traffic Generating Development</i> set out the carparking requirement for Child care centres.</p> <p>The design of the car park allows vehicles to manoeuvre to leave the site in a forward direction and could accommodate 28 parked vehicles.</p> <p>The Guide to Traffic Generating Development estimates that based on the proposed enrolments numbers, a maximum of 88 trips during the morning peak between 7:00am and 9:00am and 76 trips during the evening peak of 5:00pm and 6:30pm. Many staff would arrive earlier and depart later than these two peaks.</p> <p>The application was referred to Council's Engineers and the Local Traffic Committee. As a result, it has been recommended that a "no stopping" zone be in place along the frontage of the site. This will provide a vehicle turning lane for vehicles entering the site and improve visibility for vehicles entering and exiting the site. No concerns were raised regarding congestion in the parking area.</p>
Requirements of Section 18 of the DCP regarding Preliminary Hazard Assessment as the site is close to a service station.	This section of the DCP refers to <i>SEPP 33 Hazardous Development</i> which no longer exists. However, the service station is relatively new and was required to do a hazard risk assessment for adjoining properties, assuming they were occupied by sensitive uses and to be designed to

	limit impacts on adjoining properties. Therefore, a Preliminary Hazard Assessment is not required.
Concerns over the commercial viability of the child care centre / Oversupply of childcare centres	This is not a planning consideration. The development is permissible with development consent. Should the application be approved, the development needs to physically commence within 5 years to remain active. It is up to the developer to proceed with the lodgement of the Construction Certificate.
Location of Waste bins	<p>The waste bin is proposed to be in the northeastern corner of the site within the carparking area.</p> <p>The plans submitted include a concept design of the bin enclosure. A condition of consent has been included to ensure that the waste bin area is in accordance with Council's DCP.</p>

Council Officers have considered the matters raised in the submissions and consider that the proposal may be approved subject to conditions.

Section 4.15(1)(e) the public interest.

Section 4.15(1)(e) of the EP&A Act requires Council to consider "the public interest".

The development satisfactorily addresses Council's criteria and would provide a development outcome that, on balance, would result in a positive impact for the community. Approval of the development would be in the public interest.

9. CONCLUSION

The proposed development has been assessed against the relevant heads of consideration of Section 4.15 of the Environmental Planning and Assessment Act 1979. It is recommended the application be approved subject to conditions of consent.

General Conditions

(1) Approved Plans and Supporting Documents

Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise.

Plan. No.	Rev. No.	Plan Title.	Drawn by.	Dated.
Sheet 1 of 14	P3	Face sheet / site data	Raymond design	16 October 2024
Sheet 2 of 14	P1	Site plan – existing condition	Raymond design	27 April 2023
Sheet 3 of 14	P1	Site context plan	Raymond design	27 April 2023
Sheet 4 of 14	P3	Site Plan	Raymond design	16 October 2024
Sheet 5 of 14	P2	Floor Plan	Raymond design	9 May 2023
Sheet 6 of 14	P4	Elevations	Raymond design	7 June 2023
Sheet 7 of 14	P3	Elevations	Raymond design	7 June 2023
Sheet 8 of 14	P3	Site sections	Raymond design	16 October 2024
Sheet 9 of 14	P3	Site sections	Raymond design	16 October 2024
Sheet 10 of 14	P2	Site sections	Raymond design	7 June 2023
Sheet 11 of 14	P1	Play store and refuse details	Raymond design	27 April 2023
Sheet 12 of 14	P1	Fence details	Raymond design	27 April 2023
Sheet 13 of 14	P3	Shadow diagrams	Raymond design	16 October 2024
Sheet 14 of 14	P2	3D views	Raymond design	9 May 2023
L500	A	Cover sheet and drawing schedule	Space Lab	8 June 2023
L501.1	A	Landscape Plan	Space Lab	8 June 2023
L502.1	A	Planting Plan	Space Lab	8 June 2023

Document Title.	Ver. No.	Prepared By.	Dated.
Statement of Environmental Effects		Eight Mile Planning	19 June 2023
Statement of Heritage Impact		Philip Leeson Architects	15 June 2023
Environmental Noise Impact Assessment		ADP	31 May 2023
CPTED Report		Eight Mile Planning	19 June 2023
Traffic and Parking assessment		SECA Solution	7 June 2023

In the event of any inconsistency between the approved plans and the supporting

documentation, the approved plans prevail. In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Note: an inconsistency occurs between an approved plan and supporting documentation or between an approved plan and a condition when it is not possible to comply with both at the relevant time.

Condition reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

(2) Building Code of Australia

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Condition reason: Prescribed condition under section 69 of the *Environmental Planning and Assessment Regulation 2021*.

(3) Carrying out Demolition Work

Any demolition work is to be carried out in accordance with the relevant provisions of *Australian Standard 2601:2001: Demolition of Structures*

Condition reason: To ensure that demolition work is carried out in accordance with the Australian Standards.

(4) Access to Premises Standard

The building shall comply with the requirements of the *Commonwealth Disability (Access to Premise Standard) 2010*.

Condition reason: To ensure the development complies with the requirements of *Commonwealth Disability (Access to Premise Standard) 2010*.

(5) Education and Child Care Services National Regulations

The Child Care centre is to fully comply with the requirements of the *Education and Child Care Services National Regulations*.

Condition reason: Legislative

(6) Safety - Asbestos & Hazardous Material Survey

This condition is to be complied with prior to the commencement of any demolition works. In relation to the demolition of the existing buildings and structures on the site:

- a) A report prepared by an appropriately qualified person (such as an Occupational Hygienist or Environmental Consultant) is to be submitted to the Certifying Authority, with the Construction Certificate, detailing whether any asbestos or hazardous materials exist on the site that are affected by the proposed building works. (e.g. lead in paints, ceiling dust, glass fibre insulation or asbestos based products).

If no hazardous materials are identified, the demolition may proceed in accordance with AS2601 and the following conditions, including dust control and Safe Work NSW requirements.

- b) Should any hazardous materials be identified as per item (a), a Work Plan shall be submitted to and approved by the Certifying Authority prior to the

commencement of works and set out in accordance with AS2601 – Demolition of Buildings. The report shall contain details regarding:

- i. The type of hazardous material;
 - ii. The level or measurement of the hazardous material in comparison to National Guidelines;
 - iii. Proposed methods of containment;
 - iv. Proposed methods of disposal;
 - v. Details of signage to be provided on the site to comply with the provisions of the Work Health and Safety Regulation 2017, to ensure persons are warned, by the use of signs, labels or other similar measures, of the presence of asbestos or asbestos-containing material in a place at which construction work is being carried out.
- c) Where unacceptably high levels of lead are found in a premises to be demolished soil samples from site are to be tested by a NATA Registered laboratory before and after demolition and submitted to Council. This will determine whether remediation of the site is necessary.
 - d) the demolition must be undertaken in accordance with AS2601.
 - e) any works involving asbestos based products must be undertaken in accordance with the requirements of SafeWorkNSW Authority in relation to removal, handling and disposing of material, and the Work Safe Australia Asbestos Code of Practice.
 - f) all work involving lead removal must not cause lead contamination of air or ground, and the Work Plan submitted to comply with item (b) must comply with the requirements of AS 4361.2-1998: *Guide to lead paint management - Residential and commercial buildings*. Particular attention must be given to the control of dust levels on the site.

Details demonstrating compliance with these requirements shall be submitted to the the Certifying Authority and submitted with the Construction Certificate.

Further details regarding requirements for removal of hazardous materials can be obtained from SafeWorkNSW website or at www.lead.org.au. Failure to comply with legislative requirements relating to the removal or handling of hazardous materials is likely to result in enforcement action, including fines or prosecution without prior warnings.

Condition reason: To minimise the impacts of demolition work on the health and safety of the community.

Before issue of a Construction Certificate

(7) Construction Certificate Requirement

No works shall commence on-site until a Construction Certificate has been issued for either part or all of the works to be undertaken. If a Construction Certificate is issued for part of the approved works, it must relate to all works being undertaken.

Note: a construction certificate issued by an Accredited Certifying Authority must be provided to Council at least 48 hours prior to the commencement of any earthworks, engineering or building work on the site.

Condition reason: Prescribed condition under Clause 6.7 of the *Environmental Planning and Assessment Act 1979*.

(8) Section 7.12 Contributions

Pursuant to section 4.17(1) of the *Environmental Planning and Assessment Act 1979*, and the *Muswellbrook Shire Council Section 94A Development Contributions Plan 2010*, a contribution of \$29,602.80 shall be paid to Muswellbrook Shire Council.

The amount to be paid is to be adjusted at the time of the actual payment, in accordance with the provisions of the Muswellbrook Shire Council Section 94A Development Contributions Plan 2010. The contribution is to be paid prior to the issue of the Construction Certificate.

Condition reason: Fixed development consent levy in accordance with Section 7.12 of the *Environmental Planning and Assessment Act 1979*.

(9) Headworks Contribution - Notice of Requirements

Prior to the carrying out of any works associated with the provision of reticulated water and sewer to the development, a 'Notice of Requirements pursuant to the provisions of the Water Management Act 2000, is to be obtained from Council.

Any Notice of Requirements will require the payment of water and sewer headworks contributions prior to the issue of a Compliance Certificate. Water and sewer headworks contributions applicable under Council's current fees and charges for the development are specified the table below:

	ET Per person	No of persons (109 children + 19 staff)	ET Credit	Additional ET	Contribution per 1 ET	Total Contribution
Water	0.06	128	4	3.68 [(128 x 0.06 = 7.68) (7.68 - 4 = 3.68)]	\$8,839.50 (3.6 x 8,839.50)	\$31,822.20
Sewer	0.1	128	4	8.8 [(128 x 0.1 = 12.8) (12.8 - 4 = 8.8)]	\$6,862.80 (8.8 x 6,862.80)	\$60,075.84
Total						\$91,898.04

The contributions payable are subject to annual adjustments in accordance with Council's Fees and Charges and the Consumer Price Index. The contributions paid in relation to this approval shall be the contributions applicable under Council's Fees and Charges at the time of any application for a Compliance Certificate.

To inform the process of obtaining a 'Notice of Requirements' it is recommended that early contact is made with Council's Water & Waste Division on (02) 6549 3840. It is

recommended that early contact in relation to the required water connections as the construction of water/sewer extensions can be time consuming and may impact on other services, building, driveway, or landscape design.

Condition reason: Requirement under the *Water Management Act 2000*.

(10) Noise Impact Assessment Recommendations

The detailed design plans submitted to the Certifying Authority for approval with any Construction Certificate shall incorporate all recommended construction material to manage intrusive traffic and rail noise recommended in the approved Noise Impact Assessment prepared by ADP Consulting (this document is referenced in the approved plans condition and stamped with Council's approval stamp).

Condition reason: manage impact of road and rail noise on the facility

(11) Section 68 Local Government Act Approval

Prior to the issue of a Construction Certificate, it shall be necessary for the applicant to obtain a Section 68 Local Government Act approval for all water supply, sewerage and stormwater drainage works.

Documentary evidence is to be provided to the Principle Certifying Authority demonstrating that these approvals have been obtained prior to the issue of a Construction Certificate.

Any Section 68 application to Council is to be accompanied by an updated stormwater management plan/design plans for the development which includes the following amendments/additions:

- a) Incorporate stormwater quality improvement devices for the treatment of water prior to discharge in line with Council's Development Control Plan.
- b) Where appropriate and subject to any advice from your stormwater engineer include a backflow prevention device to prevent stormwater backflow from Council's stormwater drainage network into the on-site detention tank.

Condition reason: Compliance with Local Government Act 1993 and ensure stormwater is managed in accordance with requirements of Council Roads and Drainage Engineers

(12) Earthworks - Erosion and Sediment Control Plan

Before the issue of a Construction Certificate, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the principal certifying authority:

- a) Council's development control plan,
- b) The guidelines set out in the NSW Department of Housing manual '*Managing Urban Stormwater: Soils and Construction Certificate*' (the Blue Book) (as amended from time to time).

Condition reason: To ensure no substance other than rainwater enters the stormwater system and waterways

(13) Road Occupancy License

Prior to the issue of a Construction Certificate the person acting with this consent shall obtain a Road Occupancy Licence (ROL) for the work within Bridge Street from Transport for NSW.

Documentary evidence detailing compliance with this requirement is to be provided to the Certifying Authority with any Construction Certificate application.

Condition reason: Legislative.

(14) Section 138 Permit

Prior to the issue of a Construction Certificate the person acting with this consent shall obtain a Section 138 permit from Council's Roads and Drainage Engineers related to the carrying out of work within Bridge Street.

Any Section 138 application lodged with Council shall include:

- a) Detailed design plans of the site access.
- b) Subject to advice from the civil design team where possible and triangle shape wedged split arrangement or appropriate line marking should be included at the site access to delineate the driving lines for the in and out traffic flows from the site exit.
- c) A signage plan detailing the following traffic signage for vehicles entering and exiting the site:
 - (i) A left hand turn only sign to be installed at the site exit. To restrict vehicles from making right hand movements from the site
 - (ii) A no right hand turn sign to be installed adjacent the site exit at the opposite side of Bridge Street restricting vehicles from making right hand movements from the site
 - (iii) A no right hand turn sign to be installed adjacent the site entrance facing the southbound traffic lane adjacent the site restricting vehicles from making right turn movements (movements across the northbound traffic lane) to access the site.

All proposed signage is to comply with relevant Australian Standards.

Condition reason: Legislative.

(15) No stopping zone requirement

Prior to the issue of a Construction Certificate, the person acting on this consent shall submit to Council's Community Infrastructure Department professionally prepared plans relating to the establishment of a no stopping zone along the entirety of the site's Bridge Street frontage.

These plans should include details of signage proposed to be installed to establish the no stopping zones and the proposed location of its installation. All signage must be designed and located in accordance with the relevant Australian Standard.

These no stopping zones and related signage plans will be presented to Council's Local Traffic Committee for review by Council's Engineers. Where endorsed by the Local Traffic Committee the related no stopping zones are to be established adjacent the site in accordance with the conditions of this consent.

Documentary evidence is to be provided to the certifying authority demonstrating that the plans required by this condition have been submitted to Council for review or endorsed by Council's Traffic Committee prior to the issue of a Construction Certificate.

Condition reason: To ensure compliance with local Roads Authority requirements.

(16) Waste Management Plan

A Waste Management Plan is to be submitted with the Construction Certificate. The plans should include, but not be limited to:

- a) the estimated volume of waste and method of disposal for the construction and operation phases of the development,
- b) all landfill removed from the site,
- c) haulage routes,
- d) design of on-site wind proof waste storage and recycling area, and administrative
- e) arrangements for waste and recycling management during the construction process
- f) arrangements for waste and recycling management during the operating phase

Condition reason: To ensure that waste created by the development is managed appropriately.

(17) Foundations adjacent sewer main

The foundations for building structures and walls adjacent to the sewer main are to be constructed in such a manner that does not affect the integrity of sewer drainage lines.

A zone of influence design is to be prepared by an appropriately qualified civil engineer detailing compliance with this requirement, and where appropriate detailing related construction design measures to ensure Council's asset is not affected by the development.

Related design plans detailing compliance with this requirement are to be provided to the Certifying Authority with any Construction Certificate application.

Condition reason: ensure development does not impact Council infrastructure.

(18) Environmental Health - Fit-out to be in accordance with relevant legislation and standards

Prior to the issue of a Construction Certificate the applicant shall submit detailed design plans to the Principle Certifying Authority demonstrating that the fit out of the food handling areas would comply with the requirements of Food Act 2003, Food Regulation 2015 and Australian Standards relevant design construction and fit out of food premises (AS4674)

Condition reason: To ensure that food preparation areas comply with the relevant food safety requirements.

(19) Soil quality investigation

At the conclusion of demolition work and prior to the issue of a Construction Certificate the person acting with this consent shall engage an appropriately qualified person to carry out a Preliminary Site Investigation to determine that the site is free of any contaminants (including potentially hazardous building material including asbestos containing materials related to the demolition works).

Subject to the recommendations of the Preliminary Site Investigation any further soil quality investigations including (but not limited to) a Detailed Site Investigation and Remediation Action Plan shall be carried out.

Prior to the issue of a Construction Certificate the soil quality investigations required by this condition are to be submitted to Council for approval.

Following the approval of the related documents the person acting with this consent is to ensure that the development is carried out in accordance with any requirements of these approved documents.

Documentation demonstrating the preparation and Council approval of the soil investigation report required by this condition is to be provided to the Certifying Authority.

Condition Reason: ensure further detailed soil quality investigations are carried out at an appropriate timing at the completion of demolition work and the development is carried out in accordance with Education and Care Services National Regulations

(20) Construction Management Program

Prior to the issue of a Construction Certificate a Construction Management Program must be prepared, submitted to and approved in writing by the Council prior. The program shall include such matters as:

- a) a Safe Work Method Statement;
- b) the proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
- c) the proposed phases of construction works on the site, and the expected duration of each construction phase;
- d) the proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- e) the proposed way adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process;
- f) the proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- g) the proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- h) the proposed method/device to remove loose material from all vehicles

and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;

- i) the proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising structural engineer, or equivalent;
- j) proposed protection for Council and adjoining properties. Details are to include site fencing and the provision of "B" class hoardings and fans over footpaths and laneways;
- k) proposed protection for Council and adjoining properties;
- l) the location of any Construction Zone (if required) approved by Council's Traffic Committee, including a copy of that approval; and
- m) location, identification, treatment and disposal of all hazardous materials on site.

All work and excavation, demolition or construction activities shall be undertaken in accordance with the approved Construction Management Program and any conditions attached to the approved plan. A copy of the approved Construction Management Plan, and any conditions imposed on that plan, shall be always kept on the site and made available to any officer of Council upon request.

Before building work commences

(21) Site Sign

A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:

- a) stating that unauthorised entry to the work site is prohibited,
- b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours, and
- c) showing the name, address and telephone number of the Principal Certifying Authority for the work.

Any such sign must be maintained while building work or demolition work is being carried out but must be removed when the work has been completed.

This condition does not apply to building works being carried out inside an existing building.

Condition reason: Requirement under Section 70 under the *Environmental Planning and Assessment Regulation 2021*.

(22) Site Facilities

- a) A garbage receptacle fitted with a tight-fitting lid is to be provided for disposal of all food scraps and papers from the work site prior to building work commencing and must be maintained and serviced for the duration of the work.
- b) Toilet facilities must be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the work site.
- c) Each toilet provided must: • be a standard flushing toilet, connected to a public sewer, or

- i. if connection to a public sewer is not available, to an on-site effluent disposal system approved by the council, or
 - ii. an approved temporary chemical closet.
- d) The provision of toilet facilities must be completed before any other work is commenced.

Condition reason: To ensure that measures that will protect the public, and the surrounding environment are in place during site works and construction.

(23) Excavation, earthworks and other construction – Proximity to rail Corridor

The Applicant is to seek concurrence from the Australian Rail and Track Corporation for any proposed works within 25m of the rail corridor.

Condition reason: To protect the operation and safety of the rail corridor.

(24) Damage to Public Infrastructure

The applicant shall bear the cost of all restoration works to Council property damaged during the course of this development. The applicant shall submit to Council, in writing and/or photographic record, evidence of any existing damage to Council property before commencement of work.

Note: This documentation will be used to resolve any dispute over damage to infrastructure. If no documentation is received prior to commencement of work, it will be assumed that the infrastructure was undamaged, and the applicant will be required to restore all damaged infrastructure at their expense.

Condition reason: To ensure any damage to public infrastructure is rectified.

(25) Sediment and Erosion Control Measures in Place

All required erosion and sedimentation techniques are to be properly installed prior to the commencement of any site works and maintained in a functional and effective condition throughout the construction activities until the site is stabilised.

Condition reason: To minimise/prevent impacts on waterways by minimising soil erosion and sediment leaving the site.

(26) Heritage – Photographic Survey

Black and white or digital photographic surveys, prepared in accordance with the guidelines for archival recording published by the Department of Planning's Heritage Office, is to be submitted prior to the demolition of the subject buildings with the Construction Certificate. The photographic surveys are to be submitted in an unbound report format, which is to contain:

- a) A front cover marked with:
 - the name/location of the property;
 - the date of the survey;
 - the name of the Company or persons responsible for the survey.
- b) A layout plan of the existing building; identifying rooms and features shown in the photographs.
- c) Photographs of the interior, exterior, and streetscape view of the building, labelled to indicate their location in relation to the layout plan in accordance with the Heritage Office Guidelines requirements

- d) Where colour is a feature of the building (for example, the building features stained glass, leadlight or polychrome brickwork), additional colour photographs are to be included in the photographic survey report.

Three (3) copies of the complete set of documents provided in accordance with these conditions are to be remitted to the Council and copies forwarded to Upper Hunter Regional Library and Local & Family History Society.

Condition reason: To ensure the preservation of historical knowledge where an item of Heritage Significance cannot be retained.

(27) Protection of Public Places

- a) If the work involved in the erection or demolition of a building:
 - i. is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
 - ii. building involves the enclosure of a public place,
 - a hoarding and site fencing must be erected between the work site and the public place and be contained within the site boundary unless prior permission has been obtained in writing from Council.
- b) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- c) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- d) Any such hoarding, fence or awning is to be removed when the work has been completed.
- e) No access across public reserves or parks is permitted.

Condition reason: To minimise safety impacts due to the approved development

During building work

(28) Construction Hours

Subject to this clause, building construction is to be carried out during the following hours:

- i. between Monday to Friday (inclusive)—7.00am to 6.00pm
- ii. on a Saturday—8.00am to 1.00pm

Building construction must not be carried out on a Sunday or a public holiday.

Demolition works and excavation works must only be carried out between Monday to Friday (inclusive) between 8.00am and 5.00pm.

The builder and excavator must display, on-site, their 24-hour contact telephone numbers, which are to be clearly visible and legible from any public place adjoining the site

Condition reason: To protect the amenity of the surrounding area.

(29) Demolition or Removal of buildings

- a) Demolition must be carried out in accordance with AS 2601–1991, Demolition of structures.
- b) Demolition materials must not be burnt or buried on the work site.
- c) A person having the benefit of this certificate must ensure that all vehicles leaving the work site carrying demolition materials, have their loads covered and do not track soil or waste material onto the road.
- d) If demolition work will obstruct or inconvenience pedestrians or vehicular traffic on an adjoining public road or reserve, a separate application must be made to council to enclose the public place with a hoarding or fence.
- e) Erosion and sediment controls must be provided in accordance with the details shown on the approved plans, prior to the disturbance of any soil on the work site and must be maintained in a functional condition throughout the construction activities until the site is stabilised is until the
- f) The work site must be left free of waste and debris when work has been completed.

Condition reason: To protect the surrounding properties.

(30) Soil management

While site work is being carried out, the Certifying Authority must be satisfied all soil removed from or imported to the site is managed in accordance with the following requirements:

- d) All excavated material removed from the site must be classified in accordance with the EPA's Waste Classification Guidelines before it is disposed of at an approved waste management facility and the classification, and the volume of material removed must be reported to the Certifying Authority.
- e) All fill material imported to the site must be Virgin Excavated Natural Material as defined in Schedule 1 of the Protection of the Environment Operations Act 1997.

Condition reason: To ensure soil removed from the site is appropriately disposed of and soil imported to the site is not contaminated and is safe for future occupants.

(31) Erosion and Sediment Controls

The approved Sediment & Erosion controls shall be reinstated daily prior to workers leaving the site where modified at any time. Any sediment that escapes from the allotment shall be cleaned, collected and disposed of to Council's waste management facility or the sediment shall be returned to the subject allotment on a daily basis.

Condition reason: To ensure sediment laden runoff and site debris do not impact local stormwater systems and waterways.

(32) Amenity - Site Waste Minimisation

Throughout the carrying out of building works the person acting with this consent shall take steps to minimise waste from the carrying-out of the development in accordance with the Waste Management Plan submitted with the Construction Certificate and the following objectives of Chapter 24 Waste Minimisation and Management of Council's Development Control Plan. Steps to be taken:

- Optimise adaptive reuse opportunities of existing building/structures.

- Maximise reuse and recycling of materials.
- Minimise waste generation.
- Ensure appropriate storage and collection of waste.
- Minimise environmental impacts associated with waste management.
- Avoid illegal dumping.
- Promote improved project management.

Condition reason: To ensure site management measures are implemented during the carrying out of site work.

(33) Amenity - Dust Emission and Air Quality

The following measures must be taken to control the emission of dust:

- a) Materials must not be burnt on the site.
- b) Vehicles entering and leaving the site with soil or fill material must be covered.
- c) Dust screens must be erected around the perimeter of the site and be kept in good repair for the duration of the work.
- d) All dusty surfaces and stockpiles of materials must be wet down and any dust created must be suppressed by means of a fine water spray. Water used for dust suppression must not be allowed to enter the stormwater system.
- e) Dust suppression measures must be carried out to minimise wind-borne emissions in addition odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

Condition reason: To protect the amenity of the locality.

(34) Mandatory Inspections under Section 68 Local Government Act 1993

The person acting with this consent shall ensure that all mandatory sewer and water inspections are carried out by Council at the relevant stages of construction in accordance with any Section 68 approval issued for the development.

Note: a minimum notice of 48 hours is required when booking an inspection. Inspection fees will be charged in accordance with Council's adopted fees and charges and must be paid prior to the issue of the Construction Certificate.

Condition reason: To require approval to proceed with building work following each critical stage inspection.

Before issue of an Occupation Certificate

(35) Occupation Certificate Requirement

The building / structure is not to be used or occupied until a final inspection has been carried out and an Occupation Certificate has been issued by the Certifying Authority.

Condition reason: Prescribed condition under Clause 6.9 of the Environmental Planning and Assessment Act 1979.

(36) Consolidation of lots

Prior to the issue of the Occupation Certificate, Lots 7 and 8 DP 37789 and Lots 671 and 672 DP 619443 are to be consolidated into one Lot.

Condition reason: To provide for the logical identification of land and administered

compliance with the Building Code of Australia.

(37) Notice of Completion

Prior to the issue of the Occupation Certificate, a Notice of Completion or a final compliance certificate from Council's Water and Waste Division is to be obtained in relation to works carried out to provide a reticulated water and sewerage service to the site.

Condition reason: To ensure that contributions and works required by the Notice of Requirements have been complied with.

(38) Reinstatement of Infrastructure

Prior to the issue of the Occupation Certificate, all redundant lay-backs and vehicular crossings shall be reinstated, at the applicant's expense, to conventional kerb and gutter/ foot-paving.

Condition reason: To ensure that any damage to Infrastructure is rectified.

(39) Connection to Sewer

The premises shall be connected to the sewer system in accordance with the *Australian Standard 3500*. A works as executed plan on Council's approved form is to be submitted to Council within seven (7) days following the final drainage inspection and prior to the Occupation Certificate being issued.

Condition reason: To ensure the development complies with Muswellbrook Shire Council Sewer requirements.

(40) Environmental Health – Registration

Prior to the issue of an Occupation Certificate, the food premises must be registered with Council's Environmental Health section accordance with the Food Safety Standards, prior to commencement of food business operations.

Upon completion of the work and prior to the issuing of an occupation certificate, the premises must be inspected by Council's Environmental Health Officer to ascertain compliance with relevant construction requirements and Food Safety Standards. Prior to the issue of the Occupation Certificate documentary evidence is to be provided to the Principle Certifying Authority that the premises has been inspected by Council's Environmental Health Officer and that this Officer was satisfied that premises fit out was achieved the relevant construction and food safety requirements.

Condition reason: To ensure that the development complies with the relevant food safety regulations.

(41) Parking - Off Street Car Parking

Prior to the issue of an Occupation Certificate a total of 27 off-street car-parking spaces (including 1 accessible parking space), a turning bay, and waste storage space, together with access driveways, shall be constructed, paved, line marked and signposted in accordance with the approved development plans, appropriate Australian Standards and industry best practice as appropriate.

Condition reason: Ensure compliance with Muswellbrook Development Control Plan.

(42) No Stopping zone establishment

Prior to the issue of any Occupation Certificate no stopping areas are to be established

along the entirety of the sites Bridge Street frontage in accordance with no stopping zones endorsed by Council's Local Traffic Committee and related no stopping and signage plans endorsed by Council and the Traffic Committee in accordance with the conditions of this consent.

All required no-stopping signage is to be installed at no cost to Council by the person acting with this consent.

Condition reason: To ensure compliance with Roads Authority requirements.

(43) Site access construction

Prior to the issue of any Occupation Certificate the site access is to be constructed in accordance with the detailed design plans approved by Council under its Section 138 permit application.

All traffic management signage detailed in the related Section 138 plans are to be installed to the satisfaction of Council Community Infrastructure Officers.

Condition reason: To ensure compliance with Roads Authority requirements.

(44) Education and care service policies and procedures

Policies and procedures are to be prepared for the operation of the premises in accordance with the requirements of Section 168 of the Education and Care Services National Regulations.

Prior to the issue of an Occupation Certificate an emergency and evacuation policy and procedure are to be prepared in relation to the proposed facility in accordance with the requirements of Clauses 97 and 168 of the Education and Care Services National Regulations and industry best practice.

These documents are to be provided to the Principle Certifying Authority prior to or with any application for an Occupation Certificate and should be provided to Council for its information.

Condition reason: Legislative

(45) Noise Impact Assessment Recommendations

All building materials require by the Noise Impact Assessment prepared by ADP Consulting are to be installed as part of the construction of the development. Suitable documentary evidence confirming their installation are to be provided to the Certifying Authority with any Occupation Certificate application.

Condition reason: manage impact of road and rail noise on the facility

(46) Construction of Waste Storage Areas

Prior to issue of any Occupation Certificate the bin storage area is to be constructed in accordance with the approved plans and requirements of this condition or as otherwise specified by Council in writing.

In addition to the design information included on the approved plans the bin storage

area is to be constructed in accordance with the following:

- All internal walls of this enclosure are to have a smooth service and the enclosure is to coved flood/wall intersection.
- The floor is to be graded toward the centre of the enclosure to prevent the escape of waste.
- A tap is to be located in a close proximity to the waste storage area.

(47) Trade Waste

Where food preparation for enrolled children is to be carried out as part of the operation of the premises it will be necessary for the person acting with this consent to obtain a Trade Waste Agreement from Council.

Prior to the issue of an Occupation Certificate the person acting with this consent shall either:

- a) Obtain a Trade Waste Agreement from Council's Water and Sewer Division, or
- b) Obtain written confirmation from Council's Water and Sewer Division Trade Waste Officer confirming that a Trade Waste Agreement is not required for the development.

Condition reason: comply with water authority requirements.

Occupation and ongoing use

(48) Stormwater - Management

All stormwater from the development including all hard surfaces and overflows from rainwater tanks is to be collected and disposed off in accordance with the approved stormwater management plan).

Condition reason: To ensure that stormwater created by the development is managed appropriately.

(49) Hours of Operation

The property is to be open for business and used for the purpose approved only within the following hours:

- Weekdays: 6.30am to 6.30pm
- Weekends and Public holidays: Closed

Condition reason: Ensure business operates between approved hours

(50) Delivery Hours

No deliveries, loading or unloading associated with the premises are to take place between the hours of 10pm and 6am on any day.

Condition reason: To minimise impacts to traffic and amenity of the locality.

(51) Amenity- Landscaping

The landscaped area of the development is to be maintained at all times in accordance

with the approved landscape plan

Condition reason: Ensure compliance with the approved plans

(52) Maximum centre capacity

Unless otherwise approved by Council in writing the maximum number of children permitted to attend the child care centre at any one time shall be 109.

Condition reason: To ensure there is adequate staffing.

(53) Lighting, external finishes – rail corridor

No lighting and external finishes of buildings which face the rail corridor are to have temporary blinding effects or distraction caused by lighting or glare from reflective surfaces. In this regard, external finishes are to use non-reflective materials and the lighting is to be in accordance with AS4282-1997 *Control of Obtrusive Effects of Outdoor Lighting*.

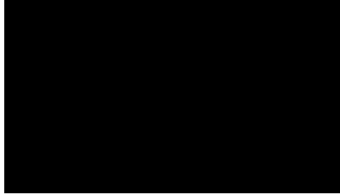
Condition reason: To reduce glare impact on rail corridor

(54) Site Access

No approval is given to vehicular access to the rear of site. All vehicles are to access the site off Bridge Street.

Condition reason: This is the legal access

20/7/23



The General Manager
Muswellbrook Shire Council
PO Box 122
MUSWELLBROOK NSW 2333
Email: council@muswellbrook.nsw.gov.au

RE: DA 2023/72

DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCT CHILDCARE CENTRE

Dear Sir

I wish to lodge my objection to the above proposal in Bridge Street Muswellbrook.

The idea of having a childcare centre on the Main Highway and Main Railway line in the main street of Muswellbrook is ludicrous.

The volume of traffic, including so many heavy vehicles that pass this location is enormous. The danger of having small children so close to these vehicles is too great.

I have seen first-hand the many accidents/near misses that occur on a very regular basis at this location. The trucks have started to speed up as they are approaching the incline to the rail overpass at the far end of Bridge Street, where two lanes merge into one. This makes it very

difficult for them to come to a stop. They have taken off the doors and mirrors of parked cars and have not even stopped. Imagine if a child had opened the door.

The new service station across the road has also increased traffic movements. Cars heading north are not expecting a car to suddenly become stationary to turn across the highway to enter the service station. The vehicle following, then has to quickly change lanes into the Left Lane. If there was also a car slowing down to turn into the childcare centre, with families inside, it would most certainly cause a crash.

In the traffic report supplied with the DA, I have read that there was only 1 accident in the past 5 years, this is incorrect as I can name at least 6 incidents that occurred in the past year. Imagine if the centre was approved, with 109 children attending and 19 staff, these accidents would surely increase and involve very small children.

In the DA it has the carparking at the front of the block with no fencing at the highway, only a fence to the Centre and the playground. Anyone who has been around small children knows that they can run off in an instance with access straight onto the highway. In the DA they state that often multiple children from one family will be in attendance. So, if a parent has to get a baby and a toddler out of the car at the same time, the walking toddler/child could easily be out of their reach for some time. A scenario too scary to imagine. But with a busy highway within 2 metres it is possible to have a catastrophe.

Another reason for the location being unsuitable is the proximity of the Main Railway Line. The number of trains running along the rear boundary is only on the increase. A train goes past this site literally every half an hour and blows their whistle at the pedestrian crossing at the rear of the site.

This is not an ideal location for a childcare center, as the pollution the coal trains at the rear and the highway at the front. The playground has been pushed to the rear of the block less than 50 metres from the coal trains. And at the front the highway is less than 25 metres to the playground.

There are already 5 functioning centers in Muswellbrook and another one to open very shortly. Another one is proposed with a residential subdivision in South Muswellbrook. (Once again this is fronting the main highway).

Is there a need for another centre??

Are they able to find staff for these centres??

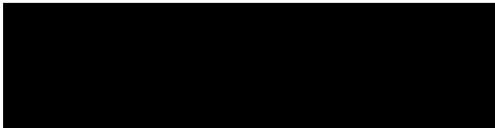
In the Muswellbrook LEP a centre based childcare centre is permitted in most zones. We only have limited Business/Commercial zones in Muswellbrook with limited land. Why would the Council want to waste this business/commercial land with a childcare centre that could be built anywhere, in any residential area, away from the highway with better more pleasing outlooks than a main highway and a main railway line.

What happens if it is approved and built, and they can't staff it, or people do not want to send their children to a Centre on the highway and railway line?? This becomes a White elephant. This centre cannot be easily adapted to another purpose.

Waste of commercial/business land and definitely the wrong location.

Please consider carefully my objection to this Childcare centre in this location.

Your Faithfully

A large black rectangular box used to redact the signature of the person submitting the objection.

24/7/23

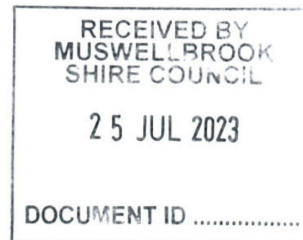
The General Manager

Muswellbrook Shire Council

PO Box 122

MUSWELLBROOK NSW 2333

Email: council@muswellbrook.nsw.gov.au



RE: DA 2023/72

DEMOLITION OF EXISTING STRUCTUES AND CONSTRUCT CHILDCARE CENTRE

Dear Sir

We wish to lodge our objection to the above proposal in Bridge Street Muswellbrook.

Our reasons for objection are listed below:

- **Location on the New England HWY**

██████████. In our opinion, the New England Highway, with around 10,000 vehicle movements a day, is clearly an unsuitable location for a childcare centre.

The SECA traffic report supplied by the applicant stated that there was only one vehicular accident in this location listed in the last five years. This is obviously incorrect and does not include the many vehicle incidents which we constantly witness in front of our shop. In the last YEAR alone there have been TWO DOORS and FOUR MIRRORS smashed off by trucks. Another TWO vehicles were side swiped. Another vehicle rolled away from the service station across the road into oncoming traffic.

In many of the incidents where the doors and mirrors were removed off cars, the offending trucks didn't even stop. Many also may have not even realised that they had collected the cars. Now, if this was a CHILD opening the door in this situation, they clearly would have been killed.

- **Location to the Main North Railway line**

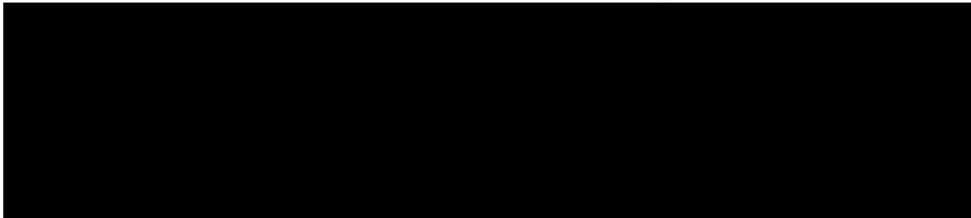
Obviously, the proximity to the railway line at the rear creates all sorts of hazardous issues which would make the location unsuitable for a childcare centre.

The trains also sound their horn at the crossing on Wilkins Street every time they pass. This would wake any sleeping children and babies during the day.

Last year there was a contracted volume of an average of 65 loaded coal trains a day, (or one train every 22 minutes.) At times they could peak to 87 trains a day. With an average length of 1.3Km.

Air quality issues creating adverse health impacts to children from pollutants from trains

- **Delivery Trucks**



- **Proximity to the Pub (Eaton's Hotel)**

Not only is the proximity to a pub not ideal for a childcare centre, but the recent DA conditions for Eaton's Hotel require them and their patrons to use the rear lane for an exit, with access at the front only for incoming vehicles. There is very little care taken [REDACTED] [REDACTED] by any vehicle leaving the hotel via this laneway!

- **Adverse effects on neighboring businesses**

The drop-off and pick-up times of the morning and afternoon for around 109 children would be a complete debacle. Very few people would use the car park. The majority would pull-up out the front of all the businesses in this area, which is still part of the CBD.

As well as the obvious danger involved with the traffic, [REDACTED] [REDACTED]

- **Proximity to the service station (Muswellbrook North Mobil)**

Muswellbrook's DCP 18 states that a childcare centre will not be approved within 200m of a service station unless the application is supported by a PHA, under state environmental policy No. 33 and a biophysical and societal risk assessment.

- **The actual viability of this type of development in this area**

There would surely be many more viable and long-term sustainable developments which could be planned for this prime location in town.

Many [REDACTED] have commented that they would not take their child to a childcare centre in the Main Street, on the highway!

There are already plenty of childcare centres in town, and more currently being built or approved. Many of these are already finding it difficult to staff the centres to have them run at their full capacity.

If the business fails to be commercially viable in this location, what other uses would the proposed development be able to be used for, having been purpose-built as a childcare centre. There have certainly been difficulties finding tenants in the past for old childcare centres in town, like the one in Rutherford Road which was vacant for many years. This development has the very real potential of becoming a "white elephant" in this location in the future.

- **Extracts from the Childcare Planning Guidelines of NSW**

These are planning guidelines that should be sort when looking for a suitable site for a childcare centre in NSW

For proposed developments in commercial and industrial zones, consider: • potential impacts on the health, safety and wellbeing of children, staff and visitors with regard to local environmental or amenity issues such as air or noise pollution and local traffic conditions • the potential impact of the facility on the viability of existing commercial or industrial uses.

Alternate vehicular access should be provided where childcare facilities are on sites fronting: • a classified road • roads which carry freight traffic or transport dangerous goods or hazardous materials.

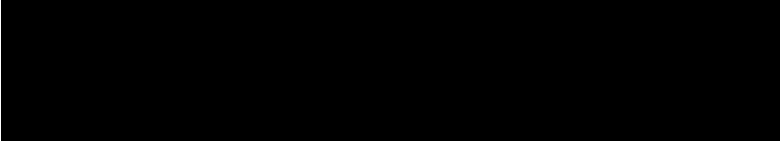
Locate childcare facilities on sites which avoid or minimise the potential impact of external sources of air pollution such as major roads and industrial development.

From heritage issues to car parking issues, water run-off and an abundance of safety issues, this is not a suitable site for this type of business and would only be detrimental to the surrounding businesses and be a blight on the Muswellbrook's town planning. The applicant clearly has no regard for the safety and wellbeing of the children or the effects on the local businesses.



- One of the many damaged vehicles which have had doors and / or mirrors taken off by the traffic while getting out of their parked cars over the last twelve-month period.





CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

For attn: Tanya, Planning Dept

Ref: Lockbridge Statement of Heritage Impact, issue C, 15 June 2023
page 33, para 2.

Dear Tanya,
Further to my conversation yesterday with your department, regarding proposed redevelopment of the site/s south of 'Kildonan', 208 Bridge St, Muswellbrook.

For information, we are currently looking to purchase the property at 208 Bridge St.

Our legal representative at Equilaw has confirmed that the premises at 208 Bridge St already has Council approval for the operation of hospitality services, namely accommodation and cafe facilities.

While we intend that the b&b side will be operational first; later we hope to establish a cafe onsite, possibly out of the existing garage, of course provided a future application to Council can allow improvements within the garage to safely and hygienically conduct such cafe business.

We refer to paragraph 3, page 33 of Lockbridge's statement. This proposed a garbage bin enclosure "close to Bridge Street and the adjacent site ... etc", ie 208 Bridge St.

As potential owners of the buildings at 208 Bridge St, please be advised we have no objection at all to the proposed development of 200-206 Bridge St to become a ChildCare Centre.

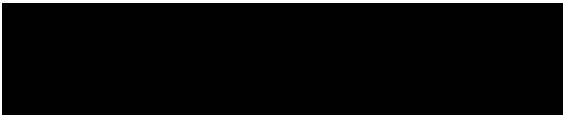
While we don't yet have access to full details re: the intended site drawings:

However, we would be grateful if Council can review the developers' proposed placement of the bin enclosure, noting it's proximity to our future intended food preparation and patrons eating areas, namely the existing garage and area adjacent to the fence, at NE corner of the proposed development site.

We look forward to hearing from you.

With thanks

Kind regards,



**10.1.2. Development Application No 2024-12 - Telecommunications Tower, Karoola Park, Muswellbrook**

Responsible Officer: Director - Planning & Environment

Author: Senior Land Use Planner

Community Strategic Plan *Not Applicable*

Not Applicable

Delivery Program Goal: *Not Applicable*

Attachments:

1. Attachment A - DA 2024-12 - Plans [**10.1.2.1** - 3 pages]
 2. Attachment B - DA 2024 12 - Visual Impact Assessment - Telecommunications Tower [**10.1.2.2** - 21 pages]
 3. Attachment C - DA 2024-12 Development Assessment Report [**10.1.2.3** - 9 pages]
 4. Attachment D - DA 2024-12 draft Conditions [**10.1.2.4** - 6 pages]
 5. Attachment E - DA 2024-12 - Submissions - Redacted [**10.1.2.5** - 6 pages]
-

APPLICATION DETAILS

Applicant: Downer EDI PTY LTD

Owner: Muswellbrook Shire Council

Proposal: Construction of a 33.3m High Telecommunications Tower

Location: Lot 13 DP 1080309

Permissibility: The proposed development is defined as a Telecommunications Facility and is permissible under the State Environmental Planning Policy (Transport and Infrastructure) 2021

PURPOSE

The report has been prepared to assist Council in the determination of DA 2024-12 being the construction of a 33.3m telecommunications tower at Karoola Park, Muswellbrook (Lot 13 DP 1080309), near the intersection of Shiraz and Lexia Streets.

The matter is being reported to Council for determination due to a variation of the Height of Buildings standard in the Muswellbrook Local Environmental Plan 2009.

**OFFICER'S RECOMMENDATION**

Council grants development consent to Development Application No 2024-12 being for the construction of a 33.3m High Telecommunications Tower at Lot 13 DP 1080309, Karoola Park Muswellbrook, subject to the recommended conditions of consent detailed in Attachment D.

Moved: _____ **Seconded:** _____

☐

Cr C. Bailey

☐

Cr A. Barry

☐

Cr D. Douglas

☐

Cr J. Drayton

☐

Cr L. Dunn

☐

Cr D. Hartley

☐

Cr G. McNeill

☐

Cr R. Mahajan

☐

Cr D. Marshall

☐

Cr M. Morris

☐

Cr R. Scholes

☐

Cr B. Woodruff

Aerial Photograph Identifying Development Site

Figure 1:1. Aerial Photo

DESCRIPTION OF THE PROPOSAL

The proposed development seeks approval for the installation of:

- One (1) 33.3m high monopole with antenna protrusions.
- One (1) antenna square headframe supporting four (4) panel antennas.
- One (1) outdoor equipment cabinet, 3.2m x 1.8m floor area, at ground level and contained within the proposed 11.6m (w) x 9.6m (l) compound fenced area.
- Ancillary equipment associated with the operation and safety of the facility, including remote radio units, cabling (internal), and antenna support mounts.

The facility will be located within a fenced compound. The monopole and associated equipment will be finished in non-reflective pale grey.

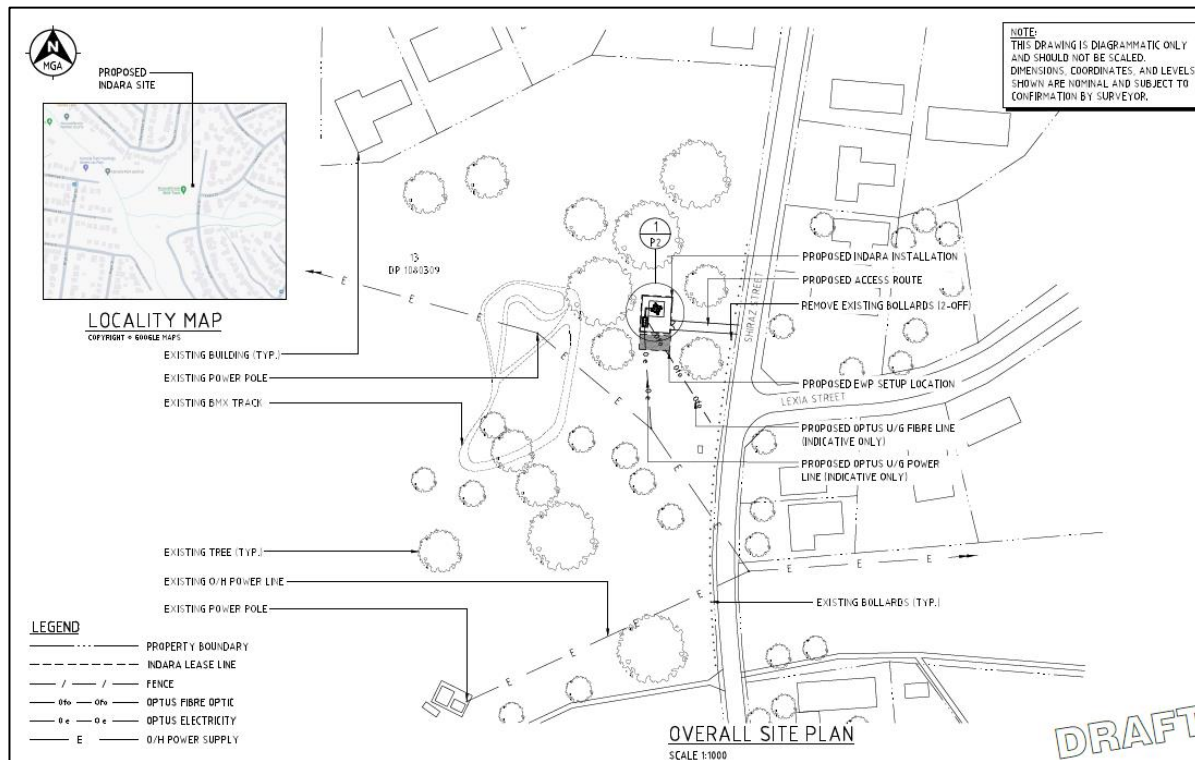


Figure 2: 2.Site Plan

ASSESSMENT SUMMARY

The proposal has been assessed against the relevant matters prescribed by s4.15 of the Environmental Planning and Assessment Act 1979. A copy of the Assessment Report is provided in Attachment C.

A summary of the key assessment issues and findings are provided below:

- The proposed development is situated on land zoned RE1 Public Recreation under the Muswellbrook Local Environmental Plan 2009. The proposed development is NOT PERMISSIBLE in the RE1 zone.
- The application is being considered under State Environmental Planning Policy (Transport and Infrastructure) 2021 under Clause 2.143(1) which allows for telecommunication facilities on land zoned RE1.
- The application is requesting a height variation under *Clause 4.6 Exceptions to development standards* of the Muswellbrook Local Environmental Plan 2009. The site



has a height limit of 12m, and the development is proposing 33.3m. The Height of Building standard for the site is based on urban development rather than utility infrastructure. The proposed telecommunications facility is not a habitable building.

- The construction of the telecommunications facility will improve mobile services within Muswellbrook and surrounding areas.
- The design and height of the proposed telecommunications facility is consistent with other utility facilities within Muswellbrook and other areas of NSW.

COMMUNITY CONSULTATION

The proposal was publicly notified in accordance with the requirements of the Muswellbrook Community Participation Plan.

Five (5) submissions were received during this notification period. The matters raised by the submissions are summarised and commented on in the attached Section 4.15 assessment report, and copies of the submissions are attached for Council's consideration in Attachment E.

Key matters raised by the submissions relate to:

- Visual impact.
- Excessive height.
- Proximity to residential dwellings.
- Overshadowing.
- Better locations within Muswellbrook for a telecommunications tower.

The applicant provided information on why the subject site was chosen, and an Electromagnetic and Radio Frequency Report was submitted.

After having regard to the matters raised by submitters, Council Officers do not consider that there are valid reasons to refuse development consent to the proposed development.

OPTIONS

Council may:

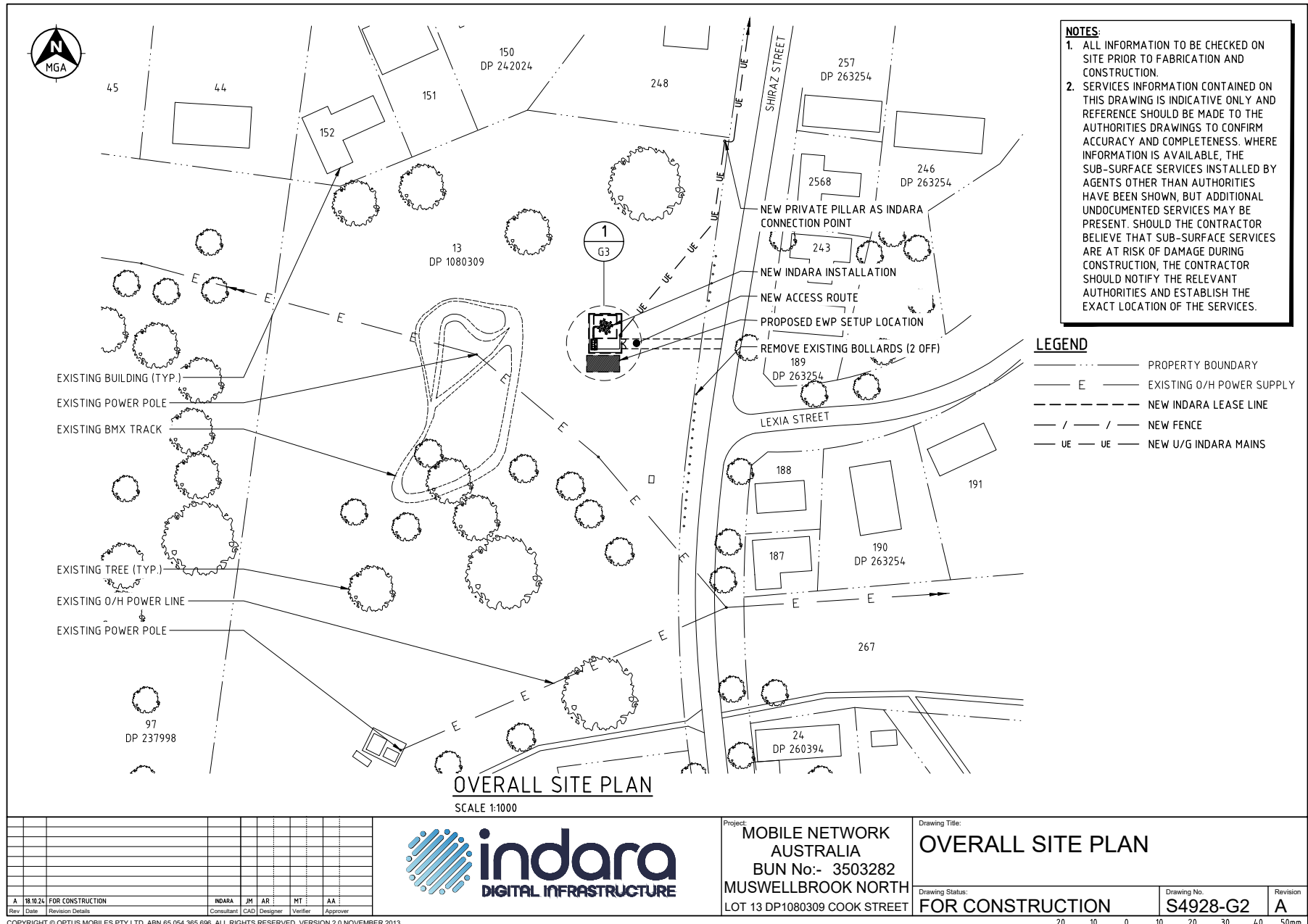
- A) Approve the proposed development subject to the recommended conditions of consent.
- B) Approve the proposed development subject to amended conditions of consent.
- C) Refuse the proposed development and, in doing so, provide reasons for refusal.

CONCLUSION:

After completing a Section 4.15 assessment, the Assessing Officer is recommending that Council grants development consent to the proposed development subject to recommended conditions of consent set out in Attachment D.

LEGAL IMPLICATIONS

Where the applicant is dissatisfied with the determination of the development application, they have an opportunity, under the provisions of the *Environmental Planning and Assessment Act 1979*, to appeal that determination through the Land and Environment Court.



CAD File: C:\Users\Nitchell.Film\Downloads\S4928-DFC (1).dwg Date: 13.12.2024 9:08 AM



29 November 2024

Our Reference: **S4928 Muswellbrook North**

Ms. Tanya Alsleben
Muswellbrook Shire Council
PO Box 122
Muswellbrook NSW 2333

Via: NSW Planning Portal

Dear Ms Alsleben,

Response to Request for Further Information for Planning Application DA 2024-12 | PAN-415980 for Proposed Telecommunications Facility, BMX Track, Cook Street, Muswellbrook NSW 2333.

We write concerning the proposed telecommunications facility at Cook Street, Muswellbrook. The proposed facility, being deployed by Indara, will host Optus telecommunications equipment.

Council has alerted Downer of concerns regarding the visual impact of proposed telecommunications tower on surrounding residential receivers, and views of the structure within the wider locality. Concerns have been specifically raised about the height of the facility.

Downer thanks Council for the opportunity to respond to these concerns. We note that mobile telecommunications infrastructure, by its nature, needs to protrude above the surrounding environment to function, and therefore it is not possible to totally hide such facilities – essential mobile telecommunications services cannot be provided without the infrastructure being visible to some degree.

In response to Council's concerns, Downer has taken specific steps to minimise the size of the proposed telecommunications facility. We consider that these changes appropriately address the concerns raised by Council. We have provided a detailed response below.

Service Requirements and Alternative Candidates

Before addressing visual impact, Downer wishes to reiterate the need for this facility.

This proposal seeks to resolve a significant Optus network blackspot in the northern part of Muswellbrook. This area is poorly serviced by Optus' existing facilities because they are generally too far away, or the local terrain restricts them from providing an effective level of service.

Figure 1 shows the approximate area within which Optus is targeting improved service. It is Optus' objective to service as many residents and businesses in this area with high quality 4G and 5G services.

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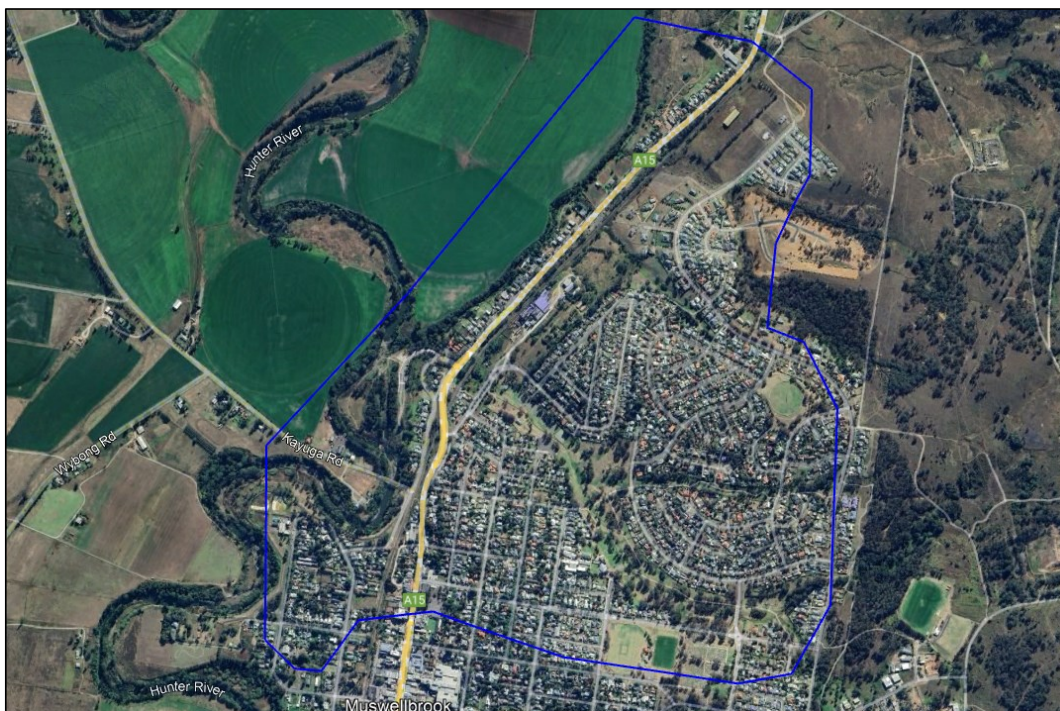


Figure 1: Optus' target coverage area as outlined in blue.

Optus has several mobile base stations within the wider Muswellbrook area, however none of these can provide the required level of service to the area shown in **Figure 1**.

Downer has considered a number of potential locations for the new facility. We note that the Statement of Environmental Effects did not include a comprehensive list of alternative candidates – this is simply because there were few realistic options for a new telecommunications facility within this area. It is important for Council to understand the decision-making process that has gone into selection of this candidate.

Because much of the area that Optus is trying to service is residential, we have focused on sites on non-residential land (such as industrial land, utility land or parks and reserves).

Co-location on existing telecommunications is always considered as our first priority, however, in this instance, there were no existing telecommunications facilities in the northern Muswellbrook area. The closest is an existing Telstra facility at Victoria Park, Hill Street, Muswellbrook (RFNSA 2333021). This facility is too far south to resolve the service issues in the area that Optus is trying to cover.

Initially, Downer investigated several industrial properties along the railway line, which have an E4 General Industrial zoning, for a new tower. From a visual perspective, siting the facility in an industrial area would have been preferred. Downer was unable to secure tenure on a property in this area, however these properties are in a less favourable location from a technical perspective and are also generally 10-15m lower in elevation than the current site. This means they are much less suitable from a service perspective.



Similarly, Downer also considered the water treatment plant at Scott Street – co-siting telecommunications facilities with other infrastructure can often assist to reduce visual impact. Unfortunately, this site was not viable on technical grounds because it is too far west of the area that Optus is trying to service. It is also around 20m lower in elevation than the current site.

Downer has considered several parks and reserves in northern Muswellbrook. Victoria Park was ruled out because it is too far south of Optus' service area and would not achieve a favourable level of coverage. Volunteer Park was also ruled out because of its less favourable position for service, but also because there is little vegetation on this park and a new telecommunications facility would have a much higher visual impact than the current site.

Karoola Park is very large, and several locations were considered; the current site, near the BMX track, is considered the best location because the facility can be tucked into existing trees to reduce its visibility. Whilst Council's concerns about visual impact are acknowledged, we genuinely consider that a site in Karoola Park best minimises visual impact whilst still enabling Optus to provide a feasible level of service.

Landscape Setting of the Proposal

The proposal is located near the northeastern corner of Karoola Park (the park), adjacent to the Muswellbrook BMX track and setback approximately 35m from Shiraz Street.

The topography of the park is characterised by gentle rolling hills, with elevation ranging from approximately 156m AHD to 183m AHD at its peak. Slopes are present across the park, with a maximum uphill slope of approximately 7.9% and downhill slope of 11.2%. The average slope across the area is approximately 3%, indicating gentle inclines and declines, rather than steep terrain.

The surrounding landscape character is low-density residential, comprised predominantly of single-story, detached dwellings with large footprints that are typically surrounded by vegetation, which will aid in screening outward views. Both the residential property yards and the streetscape are well-planted, with established vegetation present across the landscape, refer **Figures 2 and 3**.

The subject property consists of maintained areas of grass, with bands of mature vegetation (including mature trees and shrubs) present across the park. Directly around the proposed site location is a small cluster of mature trees to the north and south, refer **Figures 4 and 5**.

The proposal is located in the context of existing power infrastructure, including overhead power poles, power lines and light poles. The wider park area also contains other vertical infrastructure, consisting of the flood lighting for the netball courts to the west, refer **Figures 6 and 7**.

Whilst the facility cannot be hidden, Indara considers that the presence of established vegetation within the park, and the presence of other street infrastructure nearby, will help to offset the visual profile of the proposed facility.

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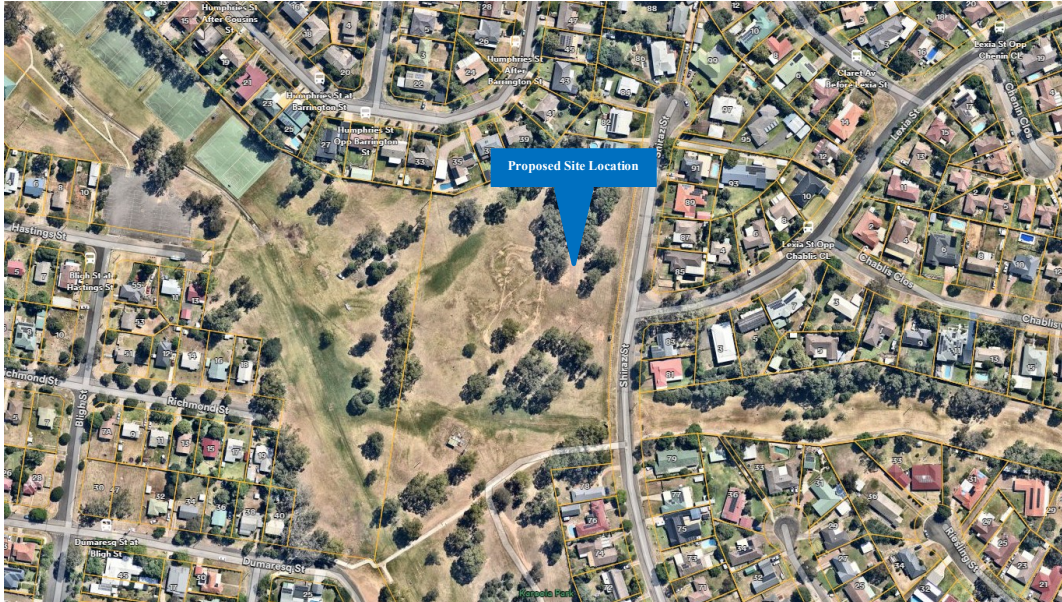


Figure 2: Location of the proposed facility in context of Karoola Park, the surrounding residential areas and mature vegetation within the streetscape and residences (Nearmap 2024).



Figure 3: Indicative views of mature vegetation within the streetscape from the east, along Lexia Street (Google Earth 2024).

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Figure 4: Indicative views of mature vegetation within Karoola Park from the southwest, along Newman Street (Google Earth 2024).



Figure 5: Indicative views of mature vegetation and overhead power lines within Karoola Park from the west, along Hastings Street (Google Earth 2024).

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Figure 6: Views of the mature vegetation and flood lights at the netball courts within Karoola Park from the northwest, along Hunter Street (Google Earth 2024).



Figure 7: Existing overhead power lines adjacent to the proposed site location (Google Earth 2024).

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Revised Design

Following Council's concerns about the amenity impacts of the original proposal, Downer has sought a reduction in the height from Indara and Optus.

The revised proposal plans have incorporated a 25% reduction in height of the monopole from 40m to 30m, in order to reduce the visibility of the monopole from surrounding viewpoints. Whilst this has had an impact on the technical performance of the facility, it also means the facility better meets Council's visual expectations in this area. Optus have agreed to accept these impacts in recognition of the significant need to improve service in this area.

We also note that this represents the most substantial reduction in height that we can achieve without compromising the feasibility of the facility, in terms of both its ability to service the area, and our ability to secure a transmission link via dish to the next site in the network.

Planning Considerations Relevant to Visual Matters

Height of Buildings – 12m

Of relevance to visual impact matters, the proposed site location is covered by a 12m Height of Buildings overlay. As noted in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827 (Wehbe)*, there are five ways in which an applicant, can demonstrate that compliance with a development standard is unreasonable or unnecessary. The five ways are as follows:

- Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard;
- Test 2 - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
- Test 3 - The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
- Test 4 - The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; and
- Test 5 - The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

In this instance, the proposal is considered to satisfy the first two of the five ways in *Wehbe*.

Firstly, the objectives of Standard 4.3 are achieved notwithstanding non-compliance with the standard.

- **Objective (a): to limit the height of buildings**

Objective (a) is merely declaratory.

- **Objective (b): to promote development that is compatible with the height of surrounding development and conforms to and reflects natural landforms by stepping development on sloping land to follow the natural gradient**

Objective (b) is to promote development that is compatible with the height of surrounding development, as well as the natural landform.

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Indara considers that the revised height of the facility is compatible with surrounding development and natural landforms, noting that telecommunications infrastructure needs to protrude above the surrounding environment in order to function correctly; this is a technical requirement that cannot be avoided. The height of the facility has been reduced to the lowest height that can still achieve a feasible service outcome for Optus.

While Indara have been able to reduce the height of the facility from 40m to 30m monopole, this is the minimum height required at this location, based on the area the site must cover. Reducing the height further to achieve the 12m limit would render the facility incapable of achieving the coverage objectives for Optus. This would have the opposite effect to what Council intend, as additional facilities would be required to fill the resulting coverage gaps.

We also note that protrusion above the height limit is unavoidable in this location, as the entirety of the wider surrounding area is subject to an 8.5m - 13m height restriction.

Protrusion above the height limit will not have an adverse amenity impact on this area. The structure is, while tall, a slim element, which will be finished in a galvanized steel finish to match the existing utility infrastructure in the surrounding streetscape. Alternatively, at Council's request, the facility can be painted in a green colour, such as 'Pale Eucalypt', to match the surrounding vegetation. We note that these colours are considered to be the most sympathetic finishes that will blend into an urban landscape.

The proposed facility is intended to provide coverage to a well-established residential area, where there are few opportunities to site a facility away from sensitive development. Unlike the other parks within the wider surroundings, namely Victoria Park, Muswellbrook Park and Volunteer Park, the proposed site location affords a level of screening and visual mitigation from the mature bands of vegetation to the north, south and west, as well as from the surrounding residential planting. Additionally, the proposal is sited adjacent to other utility infrastructure.

The proposed facility responds to an established need for improved mobile coverage in this location. The facility will resolve service issues within a specific network blackspot in northern Muswellbrook. Further, because the site will de-load traffic from other existing base stations in the wider area, it will relieve network congestion on existing base stations and therefore improve the capacity and performance of Optus' network across Muswellbrook. The project will result in more reliable network coverage for residents and businesses, as well as emergency services – an important community benefit noting the surrounding area is subject to both flooding and bushfires.

The proposal will also aid in avoiding the proliferation of telecommunications infrastructure in the area, as the Indara facility has been designed as a neutral host facility, capable of supporting co-location by other carriers, government entities and wireless service providers at a future time, as required.

Mobile base stations are critical and essential infrastructure, it is vital that mobile infrastructure keeps pace with this increasing demand for network services and telecommunications towers are an established feature across all landscapes.

- **Objective (c): to promote the retention and, if appropriate, sharing of existing views**

Objective (c) is to promote the retention of existing views. Given the slim appearance and small footprint of the proposal, it does not remove or restrict access to views from the surrounding residences, either current or future.

- **Objective (d) to maintain solar access to new and existing dwellings and public recreation areas and to promote solar access to new buildings**

Objective (d) is to ensure that buildings (defined to include structures) and public areas continue to have views of the sky and receive exposure to sunlight. The structure, noting its slim shape, does not prevent any views of the sky or exposure to sunlight by any of the surrounding residences, or when viewed from the public domain. The facility has been situated as far from residential properties as practical, whilst also being located in an unutilised area of the park that does not adversely detract from the community's use of the park grounds and recreational facilities.

- **Objective (e) to maintain privacy for residents of existing dwellings and promote privacy for residents of new buildings**

Objective (e) is to maintain privacy for both existing and future residents in the surrounding area. We note the proposal is for unmanned utility infrastructure, which does not impose on the privacy of surrounding residents.

Secondly, under Section 2.143 of the *State Environmental Planning Policy (Transport and Infrastructure) 2021* (SEPP), consideration of the NSW Telecommunications Facilities Guideline including Broadband, July 2010 is required. That Guideline is addressed in Section 6.2.2 of the Statement of Environmental Effects. The site selection, design, construction and operation of telecommunication facilities in NSW carried out under the SEPP must be consistent with the principles in the Guideline. These principles address design and appearance of the structure, visual impacts including minimizing visual clutter, and height. Those principles have been addressed and the proposed development is considered to be consistent with them.

Viewpoint Assessment

Due to the predominantly open and flat topography of the surrounding area, the viewshed, or areas from which the facility is likely to be visible, is considered to extend out to the residential areas surrounding the park grounds.

Figures 8 and 9 indicate the indicative theoretical viewshed of the proposal based on Google Earth. It should be noted that the viewshed is based on topography only and does not consider any screening effects of vegetation, terrain or built elements. As a result, it essentially demonstrates a theoretical or worst-case scenario. In reality, bands of vegetation throughout the landscape and surrounding residential areas will contribute to the screening of views towards the proposal from a number of viewpoints.

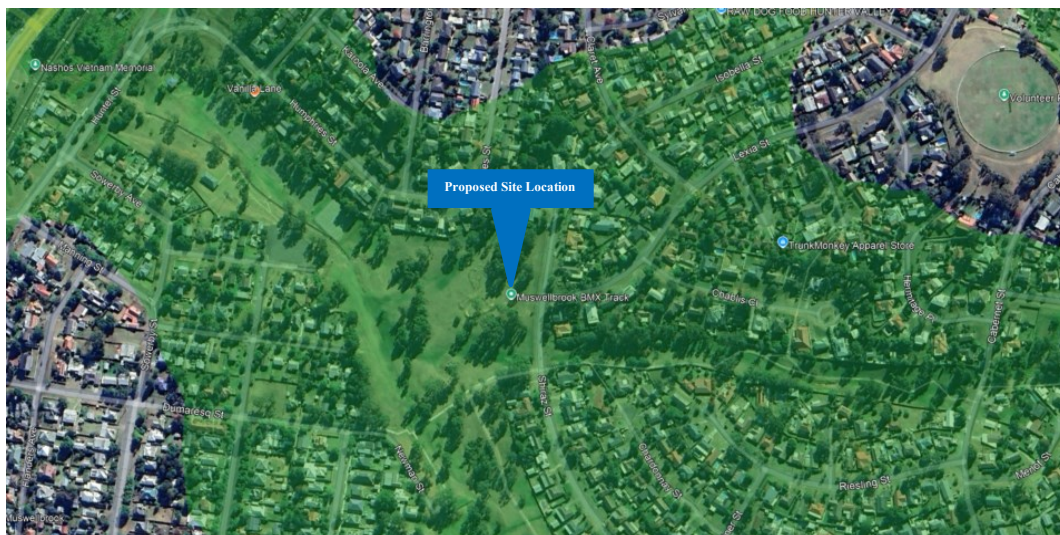


Figure 8: Theoretical viewshed of the proposal (Google Earth 2024).



Figure 9: Oblique aerial view demonstrating the undulating topography and vegetation surrounding the proposal, which provides varying degrees of screening (Google Earth 2024).

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Viewpoint Assessment

As discussed and agreed with Council, seven viewpoint locations have been identified in **Figure 10**, as being representative of the commonly occurring topography forms and vegetation coverage within the surrounding areas. A number of photomontages have been prepared from publicly accessible areas from these locations to demonstrate the views residents can expect to have of the proposal, refer to **Appendix 1 through 7**. Note that while all care has been taken to ensure the accuracy of the montages, they should be treated as indicative only.



Figure 10: Photomontage locations, as shown in Appendix 1 through 7 surrounding proposed site location (Nearmap 2024).

- **Appendix 1:** Located approximately 160m east, along Lexia Street.

Positioned east, this location is relatively close to the proposed site location and the upper portions of the monopole will protrude above the landscape, however, for many locations the monopole will be screened or obscured to various degrees by the vegetation.

- **Appendix 2:** Located approximately 112m northeast, at the Shiraz Street cul-de-sac.

Positioned northeast, this location is also relatively close to the proposed site location and the upper portions of the monopole will again protrude above the landscape, however, for many locations the monopole will be screened or obscured to various degrees by the vegetation, as shown by the house to the right in the image.

- **Appendix 3:** Located approximately 115m northwest, along Humphries Street.

Positioned northwest, the rolling terrain, together with the tall trees will mitigate direct views of the proposed facility. The ground equipment and lower portions of the monopole are considered to be obscured to various degrees by the vegetation, with only the upper sections of the monopole protruding above the tree line to varying degrees from this aspect.

- **Appendix 4:** Located approximately 250m west, along Hastings Street

Positioned west, the lower elevation and mature vegetation affords varying degrees of screening as one moves around the park. Given the distance, the proposal is not considered to be a visual focal point from this aspect.

- **Appendix 5:** Located approximately 230m southwest, along Richmond Street.

Positioned southwest, as with Location 4, the lower elevation and mature vegetation also affords varying degrees of screening of the proposed facility. Given the distance, the proposal is not considered to be a visual focal point from this aspect.

- **Appendix 6:** Located approximately 255m southwest, along Newman Street

Positioned southwest, this location is considered to have varying degrees of visibility. While the mature bands of vegetation will aid in screening views of the proposed facility, the top of the monopole will be visible above the tree line from the cleared grassed areas. However, it is noted that from this distance, the proposal is not considered to be a visual focal point.

- **Appendix 7:** Located approximately 230m southeast, along Shiraz Street

Positioned southeast, this location is considered to have varying degrees of visibility. While the vegetation will afford good screening from some aspects, the proposal will be visible above the tree line from further south along Shiraz Street. However, the mature trees surrounding the proposed site location will break up the profile of the monopole against the skyline.

Amelioration

Given the position of the proposal within a clearing that is surrounded by several bands of mature vegetation, landscape mitigation is not considered to be required, as only the upper part of the monopole will be visible, backdropped against the sky from most aspects.

While the lower portion of the monopole and the equipment compound will be partially visible from Shiraz Street, we note that ongoing access is required from this location to maintain and upgrade the equipment at the top of the monopole.

Noting Council's future plans to potentially upgrade the BMX track and surroundings, we respectfully ask this is done in consultation with Indara, should the application be approved, to ensure access to the proposed site location can be maintained.

Colour and Materiality of Facility Equipment

Where back dropped against the skyline, a pale grey colour provides an improved visual outcome under a range of weather and lighting conditions. This determination has been reached following numerous studies into a colour assessment of wind turbines, that are usually finished in these colours.

In this instance, the monopole will likely be constructed of galvanised steel (subject to final design confirmation), refer **Figure 11**, which weathers to a uniform dull grey through exposure to the elements, similar to other utility infrastructure such as streetlights and power poles.

However, Indara will consider an alternative colour scheme, such as 'Pale Eucalypt', to match the surrounding vegetation, at Council's request, refer **Figure 12**.



Figure 11: Galvanised steel finish.



Figure 12: Pale Eucalypt colour.

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Conclusion

It is considered from the visual assessment, there are few locations from where the proposal will adversely dominate its surroundings or be significantly out of place with the existing infrastructure already present within the surroundings.

As noted previously, telecommunications facilities are required to protrude above the surrounding environment in order to function correctly, which can invariably make them noticeable within any landscape. Given the reduced scale of the proposal, however, we consider that we have minimised the visual impact of the facility and it will not be significantly out of scale with the local area.

Given the context of the park and the surrounding area, the proposal is considered to be well placed adjacent to mature vegetation and other similar infrastructure. Views towards it from surrounding roads and residences will be partially screened by existing vegetation.

The proposal is not considered to have an unreasonable visual impact and is considered to strike an appropriate balance between the provision of expected community infrastructure and the need to minimise visual intrusion and impact on landscape values. Given the important community benefit that will be provided by the facility, we consider that it merits approval.

Should you have any questions or require further clarification, please contact our office.

Yours sincerely,



Kaitlen Perkins
Town Planner
Downer



PHOTOMONTAGE – APPENDIX 1

FOR REFERENCE



LEVEL 1 / 110 PACIFIC HIGHWAY
ST LEONARDS NSW 2065
COMMUNITY@INDARA.COM
02 9495 9000

Project:
S4928 Muswellbrook North
BMX Track, Cook Street, Muswellbrook
NSW 2333

Drawing Title:
MONTAGE 1
(INDICATIVE ONLY)

Drawn: KP

Date: 11/11/2024

Scale: NTS



PHOTOMONTAGE – APPENDIX 2

FOR REFERENCE



LEVEL 1 / 110 PACIFIC HIGHWAY
ST LEONARDS NSW 2065
COMMUNITY@INDARA.COM
02 9495 9000

Project:
S4928 Muswellbrook North
BMX Track, Cook Street, Muswellbrook
NSW 2333

Drawing Title:
MONTAGE 2
(INDICATIVE ONLY)

Drawn: KP

Date: 11/11/2024

Scale: NTS



PHOTOMONTAGE – APPENDIX 3

FOR REFERENCE



LEVEL 1 / 110 PACIFIC HIGHWAY
ST LEONARDS NSW 2065
COMMUNITY@INDARA.COM
02 9495 9000

Project:
S4928 Muswellbrook North
BMX Track, Cook Street, Muswellbrook
NSW 2333

Drawing Title:
MONTAGE 3
(INDICATIVE ONLY)

Drawn: KP

Date: 11/11/2024

Scale: NTS



PHOTOMONTAGE – APPENDIX 4

FOR REFERENCE



LEVEL 1 / 110 PACIFIC HIGHWAY
ST LEONARDS NSW 2065
COMMUNITY@INDARA.COM
02 9495 9000

Project:
S4928 Muswellbrook North
BMX Track, Cook Street, Muswellbrook
NSW 2333

Drawing Title:
MONTAGE 4
(INDICATIVE ONLY)

Drawn: KP

Date: 11/11/2024

Scale: NTS



PHOTOMONTAGE – APPENDIX 5

FOR REFERENCE



LEVEL 1 / 110 PACIFIC HIGHWAY
ST LEONARDS NSW 2065
COMMUNITY@INDARA.COM
02 9495 9000

Project:
S4928 Muswellbrook North
BMX Track, Cook Street, Muswellbrook
NSW 2333

Drawing Title:
MONTAGE 5
(INDICATIVE ONLY)

Drawn: KP

Date: 11/11/2024

Scale: NTS



PHOTOMONTAGE – APPENDIX 6

FOR REFERENCE



LEVEL 1 / 110 PACIFIC HIGHWAY
ST LEONARDS NSW 2065
COMMUNITY@INDARA.COM
02 9495 9000

Project:
S4928 Muswellbrook North
BMX Track, Cook Street, Muswellbrook
NSW 2333

Drawing Title:
MONTAGE 6
(INDICATIVE ONLY)

Drawn: KP

Date: 11/11/2024

Scale: NTS



PHOTOMONTAGE – APPENDIX 7

FOR REFERENCE



LEVEL 1 / 110 PACIFIC HIGHWAY
ST LEONARDS NSW 2065
COMMUNITY@INDARA.COM
02 9495 9000

Project:
S4928 Muswellbrook North
BMX Track, Cook Street, Muswellbrook
NSW 2333

Drawing Title:
MONTAGE 7
(INDICATIVE ONLY)

Drawn: KP

Date: 11/11/2024

Scale: NTS

Extended
DEVELOPMENT ASSESSMENT REPORT

Attached: Site Plan

REPORT TO: COUNCIL

ADDRESS:	LOT: 13 DP: 1080309 REF: PARK Cook Street MUSWELLBROOK 2333
APPLICATION No:	2024-12
PROPOSAL:	Construction of a 33.3m Telecommunications Monopole
OWNER:	Muswellbrook Shire Council
APPLICANT:	Downer Edi Pty Ltd Private Bag 1 GRANVILLE NSW 2142
AUTHOR:	Donna Watson
DATE LODGED:	20/05/2024
DATE OF REPORT:	12 January 2025

1. RECOMMENDATION

It is recommended that development consent be granted to DA 2024-12 being for the construction of a 33.3m telecommunications monopole subject to recommended conditions of consent.

2. SITE LOCALITY AND DESCRIPTION

The Site subject to this development application is Lot 13 DP 1080309, Cook Street MUSWELLBROOK, although the site is close to the intersection of Shiraz and Lexia Streets. The Site is known as Karoola Park and is used for public recreation.



Figure 11. – Site location

Flood Prone Land	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
Bushfire Prone Land	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
Terrestrial Vegetation	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
Heritage Conservation Item	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
Heritage Conservation Zone	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
Contaminated Land	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
Mine Subsidence	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
Classified Road Frontage	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
Council Infrastructure within Site	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
Other	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>

3. DESCRIPTION OF PROPOSAL

The proposed development seeks approval for the installation of:

- One (1) 33.3m monopole with an overall height of 33.3m including antenna protrusions
- One (1) antenna square headframe supporting the following equipment four (4) panel antennas at 2.688m in length.
- One (1) outdoor equipment cabinet, 3.2m x 1.8m floor area, at ground level and contained within the proposed 11.6m (w) x 9.6m (l) compound fenced area.

- Ancillary equipment associated with the operation and safety of the facility, including twelve (12) remote radio units, six (6) dual filters, cabling (internal), and antenna support mounts.

The facility will be located within a fenced compound. The monopole and associated equipment will be finished in non-reflective pale grey.

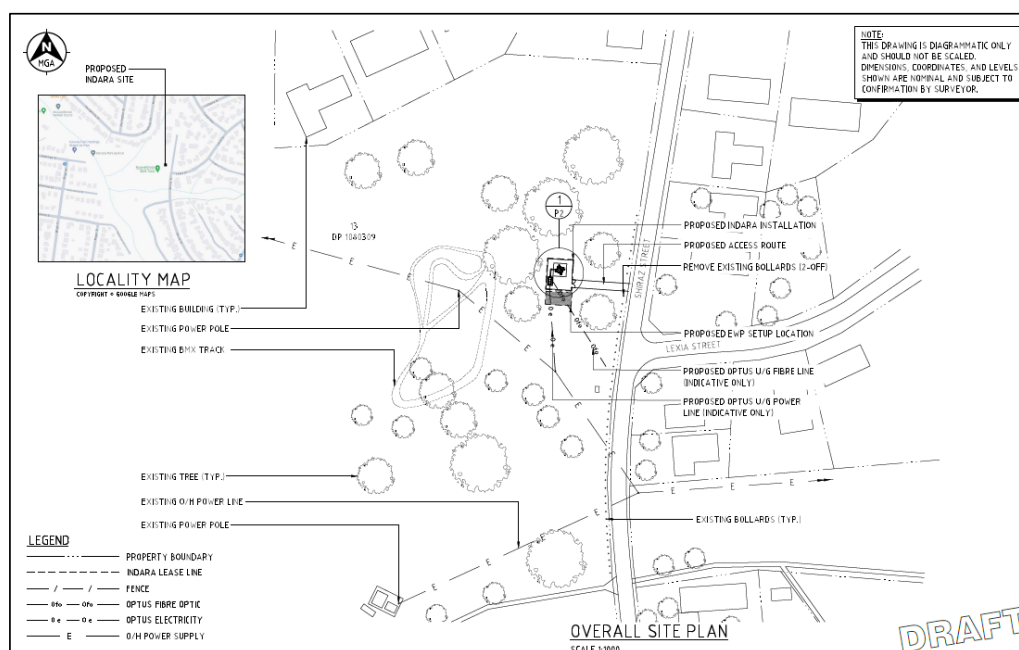


Figure 2. – Site Plan (Source: Applicant)

Notification Required	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
Notification Dates	05/06/2024 – 07/06/2024
Number of Submissions	5
Standard Local Development	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
Regionally Significant Development	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
Designated Development	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
Integrated Development	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>

4. RELEVANT HISTORY

The Assessing Officer could not find any historical development approvals for the site.

5. REFERRAL COMMENTS

Internal Referrals

The application did not require any internal referrals.

External Referrals

The proposed development involves non-exempt work on land affected by Mine subsidence and has therefore been referred to NSW Subsidence Advisory under Section 4.46 under the *Environmental Planning and Assessment Act 1979*. Subsidence Advisory have no objection to the application and provided it complies with the General Terms of Approval provided. These have been incorporated into draft conditions of consent.

6. ASSESSMENT - Section 4.15 Matters for Consideration

This report provides an assessment of the material presented in the Application against the relevant State and local planning legislation and policy.

Section 4.15(1)(a)(i) The provisions of any Environmental Planning Instrument (EPI)

A. Muswellbrook Local Environmental Plan 2009 (MLEP 2009)

Relevant Clauses applicable under the Muswellbrook Local Environmental Plan 2009 are:

Part 2 Permitted or prohibited development

Land Use Zone and Permitted Land Use

The development site is zoned RE1 Public Recreation pursuant to MLEP 2009. The proposal is best defined as a *telecommunications facility*:

telecommunications facility means—

- (a) *any part of the infrastructure of a telecommunications network, or*
- (b) *any line, cable, optical fibre, fibre access node, interconnect point equipment, apparatus, tower, mast, antenna, dish, tunnel, duct, hole, pit, pole or other structure in connection with a telecommunications network, or*
- (c) *any other thing used in or in connection with a telecommunications network.*

A telecommunications facility is prohibited in the RE1 zone under MLEP 2009.

Accordingly, the application is being considered under *State Environmental Planning Policy (Transport and Infrastructure) 2021* under Clause 2.143(1) which allows for telecommunication facilities on land zoned RE1.

Clause 2.143(2) requires that the consent authority must take into consideration any guidelines concerning site selection, design, construction, and operation of telecommunications facilities issued by the Planning Secretary. The current guidelines are the *NSW Telecommunications Facilities Guideline, Including Broadband (October 2022)*.

The applicant has provided a detailed table outlining the considerations of this guideline and found that the subject site is the most suitable location for the proposed facility within the radio frequency objective range. The Assessing Officer has reviewed this information and found that:

- the development will have a visual impact on the locality; however, the development is considered an essential service that is required for the access to modern telecommunications technologies.
- The applicant has considered other potential locations for the placement of this infrastructure and the proposed location is the most effective with the least impact.

Due to this, the assessing Officer is satisfied that the proposed development is consistent with the requirements under Clause 2.143(2) of the SEPP.

The proposed development will enable the improvement of the telecommunications network in the north Muswellbrook area.

Part 4 Principal Development Standards

4.3 Height of buildings

The building height limit for the subject site is 12m. The proposed telecommunications pole will have a maximum height of 33.3m and therefore does not comply with this requirement

under the LEP.

The objectives of this clause are as follows:

(1) *The objectives of this clause are as follows—*

- (a) *to limit the height of buildings,*
- (b) *to promote development that is compatible with the height of surrounding development and conforms to and reflects natural landforms by stepping development on sloping land to follow the natural gradient,*
- (c) *to promote the retention and, if appropriate, sharing of existing views,*
- (d) *to maintain solar access to new and existing dwellings and public recreation areas and to promote solar access to new buildings,*
- (e) *to maintain privacy for residents of existing dwellings and promote privacy for residents of new buildings.*

The proposed telecommunications tower will be located on recreational land. The structure will not reduce privacy of adjoining properties or restrict solar access. Adjoining residential properties will still be able to achieve a minimum 4 hours of solar access to their properties.

Complies

4.6 Exceptions to development standards

This section of the Muswellbrook LEP states that *“Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument....”*

“Consent must not be granted to development that contravenes a development standard unless Council is satisfied the applicant has demonstrated that:

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

The applicant has submitted a request for a variation to the Height of Buildings development standard, to allow a 33.3m high telecommunications tower to be constructed. The variation of is approximately 64% more than the development standard.

A Clause 4.6 report has been submitted with the following justification for the variation:

Firstly, the proposed facility has reduced in height from a 40m monopole to 30m and cannot function at a lower height than this. Strict compliance with the standard would render the project unfeasible. There is a precedent for telecommunications facilities around Muswellbrook to exceed the height limit.

Secondly, the site is well separated from visually sensitive development, and is located amongst established, existing vegetation where scenic amenity is not a predominant planning consideration. This, along with the existing use of land, present a comparable appearance to the telecommunications facility.

Thirdly, the proposal will have minimal environmental impact, and it will not require significant ground works.

Finally, the proposal retains significant merit from a public benefit perspective and warrants approval.

Further:

- *The height limit does not account for the technical requirements of mobile base stations, which need to be taller than their environment to function.*

- *Strict compliance with Council's height limits would prevent new telecommunications facilities from being deployed in much of Muswellbrook. Optus and other mobile carriers would be unable to deliver an effective service to the community, with significant social, economic, and public safety implications.*
- *Part 4.6 of the LEP provides that development standards can be varied with consent of Council, where compliance is "unreasonable or unnecessary" and where there are sufficient grounds to justify contravention of the standard.*
- *Compliance with the standard is considered unreasonable, as it is a technical requirement that the facility be taller than 8.5m.*
- *The proposal does, however, have sufficient merit on environmental planning grounds. The proposal will have minimal impact on local amenity, generally complies with the LEP, and will have significant public benefit. The public benefit of approving the facility, in terms of improved communications, outweighs the public benefit of maintaining the standard.*
- *Contravening the development standard will not raise any matter of significance for state or regional environmental planning.*
- *The proposal passes the New South Wales government's five-part test for variation applications.*

In addition to the above, the proposed development has been designed to minimise visual impact as much as possible while being functional. The development will also require minimal clearing of land or any other environmental impact.

Due to the function of the proposed development as an essential service, the Assessing Officer is satisfied that the applicant has demonstrated the need for the variation to the clause.
Supported

Part 7 Additional Local Provisions

Relevant Clause	Compliance
7.6 Earthworks	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA The proposed development will involve some earthworks for the establishment of the pad for the proposed telecommunications pole. This, however, will have a footprint of at most 10m x 12m. The amount of earthworks required for the installation of the pole is unlikely to have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

B. State Environmental Planning Policies Relevant to Muswellbrook Shire

The application is being considered under *State Environmental Planning Policy (Transport and Infrastructure) 2021* and complies.

Section 4.15(1)(a)(ii) the provisions of any draft EPI.

There are no draft EPIs relevant to the subject Application.

Section 4.15(1)(a)(iii) the provisions of any development control plan

Muswellbrook DCP 2009

Section 3 Site Analysis
Satisfactory: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA
A site and other relevant documentation has been provided with the application.
Section 20 – Erosion and Sediment Control
Satisfactory: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA
The development will be carrying out earthworks to create a building pad. In this regard, sediment and erosion control measures are to be implemented during the construction phase. Should the application be approved, a condition will be imposed requiring these measures to be in place.
Section 24 – Waste Minimisation and Management Systems
Satisfactory: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Applicable
A waste management plan has not been submitted with the development application. A condition of consent is recommended requiring a Waste Management Plan be provided prior to the issue of an Occupation Certificate.

Section 4.15(1)(a)(iia) the provisions of any planning agreement

There are no planning agreements relevant to the subject Application.

Section 4.15(1)(a)(iv) the provisions of the regulations

Division 8A of the Environmental Planning and Assessment Regulation 2000 applies to the development.

Development Contributions

The cost of works for the proposed development is \$350,000.00. A developer contribution of \$3,500 will apply to the proposed development should the Application be approved.

Section 4.15(1)(a)(v) the provisions of any coastal zone management plan

Not applicable - The Application does not relate to a coastal area.

Section 4.15(1)(b) the likely impacts of that development

Built Form

The facility has been designed to utilize a small footprint (120m²). The colours of the construction materials will ensure the facility blends as much as possible with the existing infrastructure onsite.

Potential Impact on Adjacent Properties

The application was notified to adjoining neighbours and submissions were received. These submissions are addressed later in the report. All Australian health and construction standards will be met, with the closest dwelling being approximately 55 metres.

Access, Transport and Traffic

Construction vehicles will access to the site off Shiraz Street. Once the telecommunications tower has been constructed, there will be no vehicle access to the site.

Soils

The development will be carrying out minimal earthworks which will require sediment and erosion control measures to be in place. Should the application be approved, a condition will be imposed on the consent.

Safety, Security & Crime Prevention

The telecommunications tower will be fully fenced and not accessible by the public.

Social Impact on the Locality

The proposal will improve mobile phone coverage for the immediate area and broader Muswellbrook community. It will not impede on the current activities that are carried out within the sporting field complex.

Construction

The telecommunications will be constructed in accordance with the Building Code of Australia.

Section 4.15(1)(c) the suitability of the site for the development

Carriers and mobile phone network operators have an obligation under the Industry Deployment Code (C564:2011) to utilise and upgrade existing infrastructure as opposed to developing new sites. This was unachievable due to numerous constraints with the 5 sites explored. These sites either did not meet the required coverage or were opposed by the landowner. Victoria Park was chosen as it met the coverage upgrade requirements and had minimal environmental impact:

- The site has availability of viable connections to the power and transmission networks in the area;
- Visual impact – the proposed site location will not result in the loss of amenity or the obstruction of viewing corridors to and from the proposed site;
- The proposed site is provided with natural vegetation screening;
- The location will offer a cost effective site solution whilst maximising coverage and mobile phone service provisions within the identified locality; and
- Tenure – An agreement has been determined with the subject landowner and Optus.

It is considered that the development is suitable for the site characteristics, subject to consent conditions.

Section 4.15(1)(d) any submissions made

The Application was notified to adjoining owners from 5 June to 27 June. A notice was also placed on Council's website and Facebook page at the commencement of the notification period.

A total of five (5) submissions were received during the notification period. The matters raised in the submissions are summarised below:

Concern	Planning Comment
Visual	The applicant has confirmed that the telecommunications tower will be grey in colour which will blend with the surrounding area. The application also included a visual assessment of the tower, which included photos from several locations in the area. The visual assessment indicates minimal visual impact.
Proximity of residential dwellings	The proposed tower will be located approximately 55m from the closest dwelling and complies with siting guidelines.
Excessive height	The proposed telecommunications tower will be 33.3m in height.

	<p>The original proposal was for a 40m high tower. The applicant has reduced the tower by 7m.</p> <p>Due to the nature of the tower, height is a necessity to enable the maximum mobile coverage for the area.</p>
Better locations for a telecommunications tower	<p>Before the application was lodged, the telecommunications provider researched sites within Muswellbrook to determine a suitable location.</p> <p>Based on elevations and coverage, the site at Karoola Park was determined to be the best location for the tower.</p>
Overshadowing of dwellings	<p>The closest dwellings to the development are approximately:</p> <ul style="list-style-type: none"> • 55m to the east • 65m to the north • 120m to the south • 200m to the west. <p>In this regard, due to these distances, and the slender nature of the Tower, the development is unlikely to overshadow and single dwelling for a significant amount of time.</p>

Council Officers have considered the matters raised in the submissions and consider that the proposal may be approved subject to conditions.

Section 4.15(1)(e) the public interest.

The proposed development is unlikely to have any adverse environmental impacts. Accordingly, the proposed development is generally in accordance with the public interest.

7. CONCLUSION

Accordingly, it is recommended the application be approved subject to conditions of consent.

General Conditions

1. Approved Plans and Supporting Documents

Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise.

Pln. No.	Rev. No.	Plan Title.	Drawn by.	Dated.
	A	Overall Site Plan	Indara Digital Infrastructure	18 October 2024
	A	Site Layout and Setout Plan	Indara Digital Infrastructure	18 October 2024
	A	Site Elevation	Indara Digital Infrastructure	18 October 2024

Document Title.	Ver. No.	Prepared By.	Dated.
Statement of Environment Effects	1.0	Downer Group	April 2024
Clause 4.6 Variation Request	2.0	Indara	12 December 2024
Environmental EME Report		Downer Group	29 November 2023

In the event of any inconsistency between the approved plans and the supporting documentation, the approved plans prevail. In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Note: an inconsistency occurs between an approved plan and supporting documentation or between an approved plan and a condition when it is not possible to comply with both at the relevant time.

Condition reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. Building Code of Australia

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Condition reason: Prescribed condition under section 69 of the *Environmental Planning and Assessment Regulation 2021*.

3. General Terms of Approval

The development is to be carried out in accordance with the General Terms of Approval issued by the following approval bodies and referenced below:

- Subsidence Advisory NSW General Terms of Approval dated 21 June 2024

These General Terms of Approval have been stamped with Council's Approval Stamp

and form part of this Notice of Determination

Condition reason: Requirement under Section 4.46 of the *Environmental Planning and Assessment Act 1979*.

Before issue of a Construction Certificate

4. Construction Certificate Requirement

No works shall commence on-site until a Construction Certificate has been issued for either part or all of the works to be undertaken. If a Construction Certificate is issued for part of the approved works, it must relate to all works being undertaken.

Note: a construction certificate issued by an Accredited Certifying Authority must be provided to Council at least 48 hours prior to the commencement of any earthworks, engineering or building work on the site.

Condition reason: Prescribed condition under Clause 6.7 of the *Environmental Planning and Assessment Act 1979*.

5. Section 7.12 Contributions

Pursuant to section 4.17(1) of the *Environmental Planning and Assessment Act 1979*, and the *Muswellbrook Shire Council Section 94A Development Contributions Plan 2010*, a contribution of \$3,500 shall be paid to Muswellbrook Shire Council.

The amount to be paid is to be adjusted at the time of the actual payment, in accordance with the provisions of the *Muswellbrook Shire Council Section 94A Development Contributions Plan 2010*. The contribution is to be paid prior to the issue of the Construction Certificate.

Condition reason: Fixed development consent levy in accordance with Section 7.12 of the *Environmental Planning and Assessment Act 1979*.

6. Construction Management Plan

Prior to the issue of a Construction Certificate, a Construction Site Management Plan must be prepared, and provided to the principal certifying authority. The plan must include the following matters:

- a) The location and materials for protective fencing and hoardings on the perimeter of the site;
- b) Provisions for public safety;
- c) Pedestrian and vehicular site access points and construction activity zones;
- d) Details of construction traffic management including:
 - i. Proposed truck movements to and from the site;
 - ii. Estimated frequency of truck movements; and
 - iii. Measures to ensure pedestrian safety near the site;
- e) Details of bulk earthworks to be carried out;
- f) The location of site storage areas and sheds;
- g) The equipment used to carry out works;
- h) The location of a garbage container with a tight-fitting lid;
- i) Dust, noise and vibration control measures;
- j) The location of temporary toilets;
- k) The protective measures for the preservation of trees on-site and in adjoining public

areas including measures in accordance with:

- i. AS 4970 – Protection of trees on development sites;
- ii. An applicable Development Control Plan;
- iii. An arborist's report approved as part of this consent

A copy of the construction site management plan must be kept on-site at all times while work is being carried out.

Condition reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.

7. Earthworks - Erosion and Sediment Control Plan

Before the issue of a Construction Certificate, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the principal certifying authority:

- a) Council's development control plan,
- b) The guidelines set out in the NSW Department of Housing manual '*Managing Urban Stormwater: Soils and Construction Certificate*' (the Blue Book) (as amended from time to time).

Condition reason: To ensure no substance other than rainwater enters the stormwater system and waterways.

8. Amenity - Waste Management Plan

A Waste Management Plan is to be submitted with the Construction Certificate. The plans should include, but not be limited to:

- a) the estimated volume of waste and method of disposal for the construction and operation phases of the development,
- b) all landfill removed from the site,
- c) haulage routes,
- d) design of on-site wind proof waste storage and recycling area, and administrative
- e) arrangements for waste and recycling management during the construction process

Condition reason: To ensure that waste created by the development is managed appropriately.

Before building work commences

9. Site Sign

A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:

- a) stating that unauthorised entry to the work site is prohibited,
- b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours, and
- c) showing the name, address and telephone number of the Principal Certifying Authority for the work.

Any such sign must be maintained while the building work or demolition work is being carried out but must be removed when the work has been completed.

This condition does not apply to building works being carried out inside an existing building.

Condition reason: Requirement under Section 70 under the *Environmental Planning and Assessment Regulation 2021*.

10. Works within Council Road Reserve

Prior to commencing construction of the driveway/vehicle crossing/layback, within the road reserve, a permit for the work must be obtained from Council, under Section 138 of the Roads Act 1993.

Condition reason: To ensure compliance with Council's Road Design requirement.

11. Sediment and Erosion Control Measures in Place

All required erosion and sedimentation techniques are to be properly installed prior to the commencement of any site works and maintained in a functional and effective condition throughout the construction activities until the site is stabilised.

Condition reason: To minimise/prevent impacts on waterways by minimising soil erosion and sediment leaving the site.

12. Neighbour Notification of Work That May Impact Residents

A minimum of seven (7) days prior to the commencement of works the person acting with this consent shall provide written notice to residents in the local area of their intention to commence the works by way of a letter box drop. Notices shall be provided to all adjoining properties.

These written Notices must contain:

- a) A description of the work involved in the project along with an image identifying the location of the site.
- b) The date which works will commence
- c) Contact information for the toll-free number to be made available for the making of complaints
- d) A copy of the Communication Plan prepared in relation to the work or information to a website link from where the Communication Plan may be accessed

A copy of the written Notice is to be provided to Council for its information.

Condition reason: To ensure notice of works provided to neighbours along with process for making complaints.

13. Public Liability Insurance

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of and approved works within Council's Road reserve or public land, as approved in this consent.

The Policy is to note, and provide protection for Muswellbrook Shire Council, as an

interested party and a copy of the Policy must be submitted to Council and the Certifying Authority prior to commencement of the works.

The Policy must be valid for the entire period that the works are being undertaken on public land.

Note: Applications for vehicular crossings etc will require evidence of insurance upon lodgement of the application.

Condition reason: To ensure any damage to public infrastructure is rectified.

During building work

14. Construction Hours

Subject to this clause, building construction is to be carried out during the following hours:

- i. between Monday to Friday (inclusive)—7.00am to 6.00pm
- ii. on a Saturday—8.00am to 1.00pm

Building construction must not be carried out on a Sunday or a public holiday.

Demolition works and excavation works must only be carried out between Monday to Friday (inclusive) between 8.00am and 5.00pm.

The builder and excavator must display, on-site, their 24-hour contact telephone numbers, which are to be clearly visible and legible from any public place adjoining the site

Condition reason: To protect the amenity of the surrounding area.

15. Erosion and Sediment Controls

The approved Sediment & Erosion controls shall be reinstated daily prior to workers leaving the site where modified at any time. Any sediment that escapes from the allotment shall be cleaned, collected and disposed of to Council's waste management facility or the sediment shall be returned to the subject allotment on a daily basis.

Condition reason: To ensure sediment laden runoff and site debris do not impact local stormwater systems and waterways.

Before issue of an Occupation Certificate

16. Occupation Certificate Requirement

The building / structure is not to be used or occupied until a final inspection has been carried out and an Occupation Certificate has been issued by the Certifying Authority.

Condition reason: Prescribed condition under Clause 6.9 of the Environmental Planning and Assessment Act 1979.

Occupation and ongoing use

17. Amenity - Impact on Surrounding Area – Non-Residential Areas

The implementation and intensity of this development shall not adversely affect the

amenity of the neighbourhood by reason of excessive levels of illumination (internal or external), solar glare arising from the building materials utilised in any construction processes or fit-out, the emission of noises, noxious fumes, odours and waste.

Condition reason: To protect the amenity of the locality.

The General Manager,
Muswellbrook Shire Council.

22/06/2024

Development Application 2024/12 OBJECTION.

To whom it may concern,

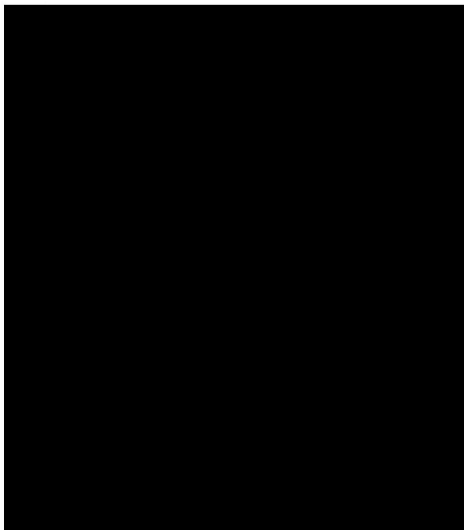
I would like to lodge our objection to development of the proposed 40m Telecommunications Monopole listed on DA 2024/12 for the following reasons:


1. [REDACTED] Our primary reason of purchase was so we could look out over parkland from the main living area of our residence now and into retirement. This tower would provide an unsightly obstruction not only from the living area of our home but an eyesore to the local community.
2. This is a green space NOT an industrial area and the tower should be located elsewhere (see alternate locations below).
3. A 40m tower located in this park is too close local residences.
4. The tower will impinge on a Muswellbrook visual asset (Karooola Park)

Suitable alternate locations for 40m Telecommunications Monopole tower:

- a) Industrial Close area
- b) Weeraman Sporting Fields
- c) Muswellbrook Waste Facility grounds
- d) Volunteer Park

Regards,





General Manager
Muswellbrook Shire Council
PO Box 122
Muswellbrook NSW 2333

Dear Sir

RE: DEVELOPMENT APPLICATION No. 2024/12

In receipt of Council's advice for a proposal to construct a 40M telecommunications tower for Optus, we lodge our objection to this development.

Reasons:-

- a) Proximity to residential properties.
- B) Loss of visual amenity.
- c) Excessive height (40M)
- d) Obstructive fence surround and associated EWP structures.
- e) Access is opposite a busy thoroughfare (Lexia/Shiraz) intersection.
- f) The DCP does not provide for this infrastructure.
- g) removal of two bollards will allow access for other vehicles - dangerous near where children use BMX track.

Alternatives:-

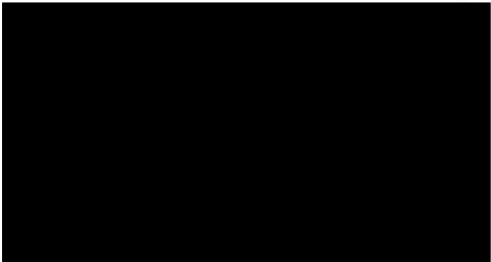
Obviously Council will receive annual rent for the site, which has not been disclosed, up to \$20,000. per annum. Therefore, we suggest that other Council land be made available which will have less visual and physical effect upon neighbours.

Suggestions:-

- 1. Highbrook Park (elevation).
- 2. Junction of Lexia - adjacent the Volunteer Park.
- 3. Waste depot.
- 4. Bushfire land off Industrial Close - already securely fenced.
- 5. Karoola dog park.
- 6. Weeraman Field.

Council will note that the heights of the alternative sites could negate the need for a 40M tower.

We iterate that Council has many alternative sites that will not impact on the central green space and will still provide an income stream that will not be diminished by relocation.



OBJECTION IN CONDIDENCE

Indara digital infrastructure bun 3503282 x muswellbrook north

Cook street

To the council

Please note that i fulley object to the proposed optus tower

This tower will overshadow my house completely

Its a park not a technology

Center

Take it elsewhere

Rehards



Dear general manager

My name is [REDACTED]

I would like to oppose DOWNER's application to place a telecommunications pole in this location, it will be an eye saw to the local community, Im sure there are more then enough locations on the outside of the township that this tower will be just as effective and less of an impact to the rate payers.

Thank you for you're time

[REDACTED]

To the General Manager,

Muswellbrook Shire Council,

Dear Sir/Madam,

I would like to express my concerns and objections to the proposed development of a 40m Telecommunication Monopole in my neighbourhood, Shiraz Street Muswellbrook.

DA Reference No. 2024/12

[REDACTED]

This is a residential area of homes of families and retired residents. The large Roger Street school is also only across the park. It is a sought after area of high quality homes and residents who take pride in their surrounds and their homes.

I ask why is this necessary ?

I am aware mobile communication is important to most people. However not everyone has OPTUS connection and therefore why is the council considering an application from a minority telecommunication company and not considering the residents in this area as fair and equal. Optus is owned by Singtel a Singaporean company and their monopole could surely be erected on an area outside the confines of the town of Muswellbrook and certainly not in a residential cut-de-sac.

I ask also what are the benefits to Muswellbrook Shire Council both financially and aesthetically ?

Apart from an 'eyesore' to the landscape and the park itself what financial gains will the Muswellbrook Council be collecting ? Are they being offered a lump sum as a yearly lease?

Does the council really think we need more towers and large buildings used by a minority.

I am concerned about the emission of electromagnetic energy from this monopole. Of course OPTUS will state this is a negative risk but the jury is still out on these poles and it is still too early to give a definite result.

Health risks are associated with monopoles and as a nurse of over 40 years experience these health risks are important to me. Asbestos was not considered a risk either.

Why are the residents around our cut- de-sac subjected to an unsightly 40 m pole on their doorstep? Haven't we got enough potential health risks in Muswellbrook with coal dust.and mining noises surrounding us.

I also am concerned that a 40 m monopole close by a lovely cut de sac will deter future house prices in our area. I would seriously not consider buying a house close to a 40m communication tower.

The proposed site for this monopole is in a peaceful park.This would cause a negative visual impact.

Muswellbrook Shire Council has many areas that this monopole could be erected.There are areas surrounding the town such as near the waste disposal facility and the land behind the tip as well as land near Black Hill I do think these telcos could also use the same towers or have towers next to each other. When I was having poor connection I had a dish put onto my roof From what I have learnt upgrades to OPTUS existing infrastructure could achieve the same outcomes as a monopole. Perhaps this is just Optus taking short cuts

Muswellbrook;brook Shire Council have not told us why they would consider a monopole near our street.The 20th May,2024 was the first time I was aware of this proposal. As a long time resident of Muswellbrook [REDACTED],I believe I should have a say in how my town is progressed.

Muswellbrook Shire Council have a duty of care to the residents surrounding this area and must place people before the profits of an international owned company.

I ask that the council look favourably and reject this proposal.

Your Faithfully,

[REDACTED]

**10.1.3. Draft Rivers and Drainage Channels Policy for Public Exhibition**

Responsible Officer:	Sharon Pope - Director - Planning & Environment
Author:	Director - Planning & Environment
Community Strategic Plan:	6 - Community Leadership Collaborative and responsive leadership that meets the expectations and anticipates the needs of the community
Delivery Program Goal:	6.2.5 - Implement a comprehensive and targeted business improvement program.
Operational Plan Action:	6.2.5.3 - Develop and review policies in accordance with statutory and operational requirements.
Attachments:	1. DRAFT Rivers and Drainage Channels Policy [10.1.3.1 - 12 pages]

PURPOSE

To seek endorsement from Council to place the attached *Draft Rivers and Drainage Channels Policy* on public exhibition.

OFFICER'S RECOMMENDATION

1. Council provides notice of intention to adopt the *Draft Rivers and Drainage Channels Policy*, by placing it on public exhibition via Council's website for a period of 28 days; and
2. A further report be submitted to Council for consideration of submissions received during the exhibition period.

Moved: _____ **Seconded:** _____

EXECUTIVE SUMMARY

A review of the *Draft Rivers and Drainage Channels Policy* has been conducted with additional information added to section 5.7 Maintenance Requirements. All amendments are shown as tracked changes in attachment 1. The draft policy has been endorsed by Manex for submission to Council for public exhibition.

PREVIOUS RESOLUTIONS

The *Draft Rivers and Drainage Channels Policy* was adopted by Council on 26 May 2020.

BACKGROUND

Council is committed to ensuring the responsible and orderly management of rivers and urban drainage systems throughout the Shire and so enhance and improve them with respect to:

- a) natural environmental values;
- b) aquatic fauna habitat;
- c) water quality or availability;
- d) drainage and flood risk management;
- e) maintainability;



- f) accessibility; and
- g) visual amenity.

The *Draft Rivers and Drainage Channels Policy MSC067E* (the policy) applies to development in the areas of the Shire which impact upon, adjoins, or crosses rivers and urban drainage systems. It defines Council's obligations and expectations in relation to maintenance, improvements, and rehabilitation of rivers, including urban drainage systems.

The Policy was previously adopted by Council on 26 May 2020 and is now due for review.

CONSULTATION

Director Environmental and Planning

Group Manager Infrastructure and Operations

Technical Officer - Traffic & Roads

Business Improvement Officers

MANEX – 16 December 2024

REPORT

A review of the *Rivers and Drainage Channels Policy* has been carried out, and additional information has been included in section 5.7 Maintenance Requirements. Amendments are shown as tracked changes in attachment 1.

On 16 December 2024, Manex endorsed the draft policy to be submitted to Council for Public Exhibition.

FINANCIAL CONSIDERATIONS

Ongoing Operational and Maintenance Costs Implications Associated with Capital Project

1. Financial Implications – Capital

Nil known.

2. Financial Implications – Operational

Nil known.

POLICY IMPLICATIONS

The policy has been reviewed in line with Council's Policy Management Framework.

STATUTORY / LEGISLATIVE IMPLICATIONS

Local Government Act 1993

Environmental Planning and Assessment Act 1979

Biodiversity Conservation Act 2016

Fisheries Management Act 1994

Water Management Act 2000

Conveyancing Act 1919

RISK MANAGEMENT IMPLICATIONS

Nil known.

COMMUNITY CONSULTATION / COMMUNICATIONS



Public exhibition of 28 days via Council's website will provide the Community with an opportunity to make submissions.



**muswellbrook
shire council**

DRAFT Rivers and Drainage Channels Policy

R25—1MSC067E

Authorisation Details

Authorised by:		Internal/External:	External
Date:		Minute No:	
Review timeframe:	4 years	Review due date:	
Department:	Environmental and Planning Services		
Document Owner:	Director Environmental and Planning Services		
Community Strategic Plan Goal	3: An environmentally sensitive and sustainable community.		
Community Strategic Plan Strategy	3.3: Enhance our local rivers and creeks to improve environmental outcomes and access for recreation.		
Delivery Program activity	3.3.1 Implement funded actions of the adopted Urban Riparian Masterplan. 3.3.2 Develop a Catchment Management Plan for Muscle Creek and Possum Gully.		

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1 Policy Objective

Muswellbrook Shire Council is committed to ensuring the responsible and orderly management of rivers and urban drainage systems throughout the Shire and so enhance and improve them with respect to:

- a) natural environmental values;
- b) aquatic fauna habitat;
- c) water quality or availability;
- d) drainage and flood risk management;
- e) maintainability;
- f) accessibility; and
- g) visual amenity.

2 Risks being addressed

To manage riparian corridors adjacent to rivers (including adjacent levees) and urban drainage systems in order to achieve better environmental outcomes, in a financially sustainable manner, and the safety of the community.

3 Scope

The policy applies to development in the areas of the Shire which impact upon, adjoins or crosses rivers and urban drainage systems. It defines Council's obligations and expectations about maintenance, improvements and rehabilitation of rivers including urban drainage systems.

4 Definitions

For the purpose of this policy a river has the same meaning as in the Water Management Act 2000, being

"river includes:

- (a) any watercourse, whether perennial or intermittent and whether comprising a natural channel or a natural channel artificially improved, and*
- (b) any tributary, branch or other watercourse into or from which a watercourse referred to in paragraph (a) flows, and*
- (c) anything declared by the regulations to be a river,*

whether or not it also forms part of a lake or estuary but does not include anything declared by the regulations not to be a river."

"urban drainage systems" shall mean any channel, drain or open swale channelling water, (including intermittent channels) including but not limited to Muscle Creek, Possum Gully, the Lorne Street Catchment and Sandy Creek."

5 Policy Statement

5.1 The Role of Riparian Corridors

A riparian corridor forms a transition zone between the land, also known as the terrestrial environment, and the river. Riparian corridors perform a range of important environmental functions such as:

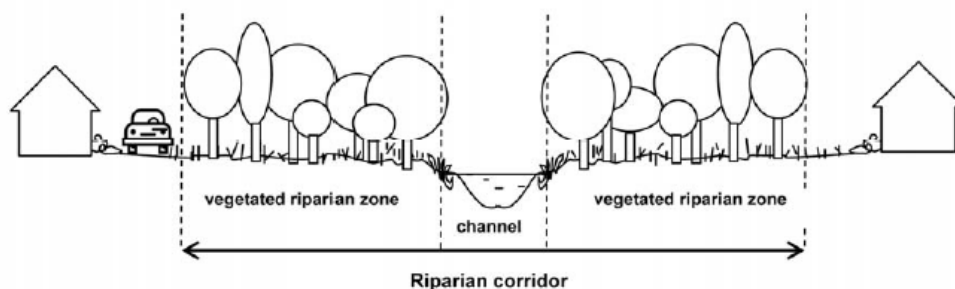
- providing bed and bank stability and reducing bank and channel erosion
- protecting water quality by trapping sediment, nutrients and other contaminants
- providing diversity of habitat for terrestrial, riparian and aquatic plants (flora) and animals (fauna)
- providing connectivity between wildlife habitats
- conveying flood flows and controlling the direction of flood flows
- providing an interface or buffer between developments and waterways
- providing passive recreational uses.

The protection, restoration or rehabilitation of vegetated riparian corridors is important for maintaining or improving the shape, stability (or geomorphic form) and ecological functions of a river.

The riparian corridor consists of:

- the channel which comprises the bed and banks of the river (to the highest bank) and
- the vegetated riparian zone (VRZ) adjoining the channel.

Figure 1 - Vegetated Riparian Zones (VRZ)



The NSW Officer of Water recommends a VRZ width based on an order as classified under the Strahler System of ordering rivers and using current 1:25 000 topographic maps (see Figure 2 and Table 1). The width of the VRZ should be measured from the top of the highest bank on both sides of the river.

Figure 2 The Strahler System

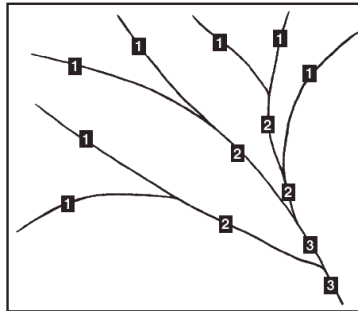


Table 1 Vegetated Riparian Zones

Types of Rivers	VRZ Width (Each side of river) for R1, R5, RU5, B2 and B5.	VRZ Width (each side of river) for RU1, RU3 and E3
Any fourth order ¹ river or greater including Hunter River Goulburn River	20 metres	40m + channel width
Any other river	12 metres	40m + channel width
an urban drainage system	3 metres	N/A

¹ As classified under the Strahler System of ordering rivers.

5.2 Requirements for Development on Land Adjacent to Rivers and within the Riparian Vegetated Zone

- 1.
- 2.
- 3.
- 4.
- 5.
- 5.1
- 5.2

5.2.15.1.1 Rivers must be maintained in as natural a state as is feasible, including the maintenance of riparian vegetation and habitat.

5.2.25.1.2 Where a development is associated with, or will affect a river, rehabilitation must occur to return that river, as much as possible, to a natural state.

5.2.35.1.3 Stormwater must be managed to minimise nutrient and sediment run-off entering constructed drainage lines or rivers.

5.2.45.1.4 Development within a Vegetated Riparian Zone (VRZ), as shown in Table 1 – VRZ Zones, should be avoided where possible to retain its ecological processes.– Where development is unavoidable within the VRZ, it must be demonstrated that potential impacts on water quality, aquatic habitat, and riparian vegetation will be negligible and can be managed effectively.

5.2.55.1.5 A Plan of Management must be submitted in accordance with State Government guidelines for development proposed within a VRZ.

5.2.65.1.6 Bushfire Asset Protection Zones must not be located within the Vegetated Riparian Zones.

5.2.75.1.7 Suitable public and/or Council access is to be provided for maintenance of the riparian corridor.

5.2.85.1.8 Where the riparian corridor or drainage reserve is to be in public ownership, the development is to be planned such that there are suitably sized interfaces between the corridor and a public road or public reserve. These interfaces, and any other points of access, shall be provided with suitable vehicle barriers and heavy duty locked gates to control unauthorised vehicular access.

5.2.95.1.9 The riparian corridor or drainage reserve shall be connected to other reserve and natural areas in an approved manner that facilitates vegetated corridors of suitable habitat.

5.2.105.1.10 Development within the VRZ of the Hunter or Goulburn Rivers, or a fourth order river, must be accompanied by:

- Detailed contour survey;
- Confirmation of the tenure of the land and river;
- Flood risk impact assessment by a suitably qualified engineer;
- Review of existing vegetation of the river that extends sufficiently across the land and immediate upstream and downstream reaches and a statement addressing improvements or enhancements to be gained by the application; and
- Review of existing interventions in the river and a statement about how the river is to be improved or enhanced by the application.

5.3 5.3 Guidelines For Development Assessment

5.3.1.2 5.3

5.3.1 5.3.1 The following may require development consent from Council, including any necessary Controlled Activity Approval from the NSW Office of Water or a Dredging Permit from Fisheries NSW as required:

- the removal of trees or vegetation;
- any works in locations that contain threatened species, or threatened ecological communities, or their habitats as listed under the *Biodiversity Conservation Act 2016* or the *Fisheries Management Act 1994*, or in Key Fish Habitat as mapped by Fisheries NSW; and
- works, including excavation, scour protection and engineered bed or bank stabilisation works.

In most instances, waterfront land and river activities will require a Controlled Activity Approval (CAA) pursuant to the *Water Management Act (WMA) 2000*.

5.3.2 5.3.2 Where the requirement for referral to the NSW Office of Water is not triggered, similar principles will be followed along a given river, or where relevant, adapted from those applied in similar situations; or apply standard consistent conditions to similar applications. For example, requirements for waterway and vegetation restoration and improvement works to an approved design, and requirements for a waterway maintenance plan with a suitable bond held for an establishment period of at least two years.

5.3.3 5.3.3 In some instances waterfront land and river activities may require a permit under s.90 of the National Parks and Wildlife Act 1974 where the works may affect Aboriginal heritage.

5.3.4 5.3.4 Development assessment will also include:

- assessment of the flood information either by a suitably qualified council engineer, or a council appointed independent expert engineer.
- Assessment of flood risk;
- assessment of all the applicable waterway requirements in terms of: capacity, depth and velocity and potential impacts upstream and downstream, bed and bank stabilisation requirements, water quality requirements, treatment of crossings and service crossings, maintainability, access, fencing, need for easements etc.
- Reference to the New South Wales Publication Planning for Bushfire Protection 2019 to avoid creating fire risks within Asset Protection Zones.

5.4 Guidelines for Rezoning Proposals

The following section applies to future rezoning requests/planning proposals. Council considers that identification of rivers, drainage channels and riparian vegetation is a critical component of the early stage in the land use planning process, and requires proponents to ensure that protecting and maintaining of rivers and drainage channels will be one of the factors to be considered in the preparation of an overall stormwater management strategy for greenfield sites. The Planning proposal should:

- i. Identify existing rivers and urban drainage systems.
- ii. Determine appropriate riparian corridor width, in accordance with Table 1 of this Policy.
- iii. Take into consideration riparian vegetation connectivity and potential opportunities for future connectivity of riparian vegetation
- iv. Incorporate identified rivers, urban drainage systems and associated riparian zones into a concept plan
- v. Recognise potential social, economic and environmental benefits and potential land use activities within identified areas (i.e. easements, passive recreational areas)

5.5 Ownership of Rivers and Urban Drainage Systems

Wherever possible, rivers (including adjacent levees) and urban drainage systems are to be publicly accessible. Wherever possible, easements for access and drainage must be created to the benefit of Council.

Council will consider the transfer of ownership to Council of the applicable VZRZ of the river (including adjacent levees) or urban drainage system in circumstances where the outcomes of this policy will only be achieved through that dedication. Transfer will only be agreed to following rehabilitation of the river (including adjacent levees) and/or urban drainage system to a standard agreed to by Council. Transfer will only be agreed to at a nil cost to Council.

5.6 Easements and Restrictions as to User

Easements and restrictions as to user will be required within the urban areas of the Shire, depending on the extent to which access is required and to ensure minimisation of the risk to urban drainage and flooding.

Easements are generally for the purpose of:

- (a) protecting Council's assets and other property from damage and to prevent injury;

- (b) ensure access to Council's works for operations, maintenance and rehabilitation;
- (c) alert owners of property that pipe work and/or other infrastructure is on their property and that special conditions apply; and
- (d) to facilitate construction and limit the future use of the land in a way so as to satisfy the above.

Where rivers are predominantly functioning as an integral part of an urban drainage system, (such as Possum Gully), easements to drain water in favour of council will be required for all new development. The size and alignment is to be guided by a stormwater/flood study should one exist, or by an assessment by Council's engineer based on the assessment of the application. Generally, it will involve at least the 'floodway area' as defined in the Floodplain Development Manual; however, in some instances additional lands may be required for riparian management reasons, and or maintenance/access considerations. Depending on location, easement for access may also be required.

Restrictions as to user may also be required to:

- a) control floor levels;
- b) impose flood plain risk management options;
- c) Impose conditions associated with land and waterway management to enhance flood plain risk management options.

In the case of rivers in rural and natural catchments beyond the urban areas, easements to drain water in favour of Council will not be required over the river but may be required over any lateral drainage systems. The size and alignment is to be guided by a stormwater study should one exist or an assessment by council's engineer based on the assessment of the application.

Depending on location, easements for access for river care, waterway and land management activities may also be required.

Where development, other than subdivision, is proposed in the R1, R5, RU5, B2 and B5 zones, and where the development cost is less than **\$1,000,000** Council shall pay the reasonable costs of the Applicant for:

- a) Surveying costs;
- b) Legal fees;
- c) Mortgagee consent fees; and
- d) Registration fees;

For the creation and registration of the easement.

5.7 Maintenance Requirements

This policy recognises that rivers (including adjacent levees) and urban drainage systems and their associated vegetation should be left in as natural a state as possible, unless extraordinary circumstances apply. Notwithstanding this, Council recognises that there are instances in which the condition of rivers may deteriorate as a result of inappropriate development, erosion and/or sedimentation, overgrowth with weeds or dumping or accumulation of rubbish. In such cases, it is recognised that maintenance and/or rehabilitation of these waterways may be required.

5.7.15.6.1 Drainage Easements

Council is responsible for the maintenance of all of its structures within private property where Council has acquired a drainage easement on such property.

A drainage easement on your property is a legal encumbrance on the title to provide Council with the authority to carry out whatever works are required on drainage infrastructure within the easement to facilitate the efficient operation of the drainage system. The infrastructure can include open drainage channels, below ground pipe systems and grated inlets that are designed to accept allotment local overland flow and roof water together with larger upstream catchment stormwater flows. Generally, no structures or improvements (such as dwellings, buildings and landscaping treatments including earthworks, retaining walls and fill) are permitted within the easement boundaries.

5.6.2 Maintenance

The property owner is responsible for the maintenance of an easement on private property. Council is not responsible for vegetation maintenance, including the clearing of weeds and trees or any other maintenance of overgrown vegetation, to watercourses or easements located within private property. However, Council may carry out maintenance work to stormwater drainage infrastructure located within drainage easements on private property, as deemed necessary, to ensure the efficient operation of the system. When constructing new drains and related infrastructure Council will leave the site in a condition that is reasonable to maintain.

5.7.25.6.3 Rivers

It is important that river and riparian areas are maintained by the landowner to the extent reasonably practical. Rivers form a valuable component of the environment and should be sensitively and effectively managed. A well-managed river also has high aesthetic values and provides valuable habitat.

In general, only minor maintenance activities are permitted. Such activities should occur with care and consideration of the physical and ecological integrity of the river and in accordance with relevant environmental legislation and guidelines.

Major maintenance work i.e. excavation, filling, diversion, scour protection, improvements etc., will require development consent including the necessary approvals from state government agencies under the Water Management Act 2000, the Fisheries Management Act 1994 and possibly the National Parks and Wildlife Act 1974.

Council will address significant incidences of bank and bed erosion/scour/siltation, if this damage is a direct result of Council's actions.

Easements, where required, are intended to give Council rights to drain water, install or maintain infrastructure, or intervene in land management matters that potentially impact on the health of the river. The easement is not intended to imply that Council will maintain the vegetation or fencing, etc.

5.8 Fencing Requirements

Fencing of private land along a river forms an interface between the built and natural environment and should be sensitively managed.

To this end the fencing shall achieve the following objectives:

- a) Lateral fencing shall allow for unimpeded passage of stormwater flows and floodwaters, and for overland flow to the river. Consideration of the risk associated with the fencing in respect to things like debris loadings, and potential to cause downstream issues if washed away;

- b) Longitudinal fencing along the easement or riparian zones shall be see-through and permeable and incorporate suitable gates to allow maintenance access.

5.9 Applications or Requests for Improvements or Rehabilitation

5.9.15.8.1 Within Drainage Easements

All requests for works in Council drainage easements, within private property, are to be received and assessed as to whether the work is of net benefit to the community and the environment and prioritised according to budget constraints. If Council is to contribute to the works, the property owner must contribute at least one-half of the cost of the work.

If the work is required to facilitate the development of the land, then the works, if approved, will be at the owner's full cost.

5.9.25.8.2 Within Rivers and Riparian Corridors

Owners wishing to undertake works in rivers and or riparian corridors are responsible for arranging and carrying out the work at their own cost.

The owner will need to obtain approvals from state government authorities under the Water Management Act 2000 and the Fisheries Management Act 1994.

Council may determine that an easement in favour of Council should be created over the riparian corridor and/or river in order to ensure drainage of a public road, in which case granting of the easement should be at no cost to Council.

5.9.35.8.3 Inter-allotment Drainage Easements (Benefiting private property owners)

In most cases all maintenance, improvements and rehabilitation works to drains in inter-allotment drainage easements within private property are the responsibility of property owners and users of the easement. These drains are usually 'private' drains and do not belong to Council. There are a few exceptions to this where the inter-allotment drainage easements benefit Council by enabling the drainage of public land.

If there is a problem, i.e. damaged or defective pipes or flooding to a lower property, Council (under Section 124 of the Local Government Act 1993) may direct the owners and users of the drain to undertake repairs or maintenance.

5.9.45.8.4 Within Public Reserves, Drainage Reserves, Public Road Reserves or Council owned land

- (a) Maintenance – Council is responsible for maintenance of rivers and drainage channels in council-managed public land.
- (b) Improvements and Rehabilitation – All requests for improvements and rehabilitation will be assessed to determine desirability, prioritised according to budget constraints, and considered for allocations of funds in Council's Works Programs.

5.10 Unapproved Drainage Works

Property owners are required to accept natural flows from adjoining properties and control and dispose of flows properly.

5.10.15.9.1 Unapproved Drainage Works on Council Land

If unapproved drainage works are carried out on Council land, Council may remove the works and recover costs from the owner that carried out the work.

5.10.25.9.2 Unapproved Drainage Works on Private Land.

- (a) If new unapproved drainage works are carried out on private land, Council may require the owner to remove the works at the owner's expense.
- (b) Maintenance – Council will not maintain unapproved drainage infrastructure located on private owned land.

6 Dispute Resolution

Processes as set out in the Environmental Planning and Assessment Act 1979, the Local Government Act 1993

7 Related Documents

7.1 Legislation and Guidelines

- Local Government Act, 1993
- Environmental Planning and Assessment Act, 1979
- Biodiversity Conservation Act 2016
- Fisheries Management Act 1994
- Water Management Act 2000
- Conveyancing Act 1919

7.2 Policies and Procedures

- Nil

7.3 Other Supporting Documentation

- Muswellbrook Urban Riparian Landcare Master Plan 2018
- Muswellbrook Floodplain Risk Management Management Study and Plan 2019
- Floodplain Development Manual (NSW Government)

8 Authorisation Details

Authorised by:	Council
Minute No:	347
Date:	26 May 2020
Review timeframe:	Two Years
Department:	Environmental and Planning Services
Document Owner:	Sharon Pope

98 Version History

Version No.	Date changed	Modified by	Amendments made /Previous adoption details
01	19.5.15	E Love	Document created
02	26.5.20	S Pope	<ul style="list-style-type: none"> Update references to current legislation; Include references to the Muswellbrook Urban Riparian Landcare Master Plan and the Muswellbrook Floodplain Risk Management Study and Plan 2019; Provide for easements in favour of Muswellbrook Council on developments sites neighbouring the urban stormwater system; Adopt a policy of Council reimbursing landholders for costs associated with creation of easements. Correct formatting errors; Provide clarification on certain matters regarding easements, piping of open drainage channels and requirements for pollution reduction devices; and Reference legislation plans and policies that are relevant to planning for storm water management. <p><u>Adopted by Council on 26/05/2020, minute number 347.</u></p>
<u>03</u>	<u>12/12/2024</u>	<u>Director Environmental and Planning</u>	<p><u>Policy code amended from R25/1, to MSC067E.</u></p> <p><u>5.7.1 Drainage Easements updated.</u></p>

**10.1.4. Muswellbrook Solar Farm - Submission to the Independent Planning Commission (and other related matters)**

Responsible Officer: Director - Planning & Environment

Author: Environmental Planning Officer

Community Strategic Plan: 6 - Community Leadership

Collaborative and responsive leadership that meets the expectations and anticipates the needs of the community

Delivery Program Goal: Not Applicable

Operational Plan Action: Not applicable

Attachments: 1. Attachment A - draft Submission to the IPCn on Muswellbrook solar farm [10.1.4.1 - 5 pages]

PURPOSE

To consider Council's submission to the Independent Planning Commission (IPCn) in relation to the Muswellbrook Solar Farm (SSD-46543209) and to seek support to commence preparation of a Road Maintenance Contributions Plan for both Sandy Creek Road and Muscle Creek Road.

OFFICER'S RECOMMENDATION

Council resolves to:

1. Submit the draft submission in Attachment A, regarding the Muswellbrook Solar Farm, to the IPCn; and
2. Commence preparation of a Road Maintenance Contributions Plan for both Sandy Creek Road and Muscle Creek Road.

Moved: _____ **Seconded:** _____

EXECUTIVE SUMMARY

ESCO Solar Farm 9 PTY LTD (the Proponent) proposes to develop the Muswellbrook Solar Farm (the Project), a 135 megawatt (MW) solar farm (approximately 300,000 solar PV panels and associated mounting infrastructure) and 135 MW / 270 MW-hour (MWh) battery, approximately 2.5 kilometres (km) east of Muswellbrook

DPHI has completed its assessment of the Project and has referred the assessment and recommended draft conditions to the IPCn for determination of the project.

Staff have reviewed the Assessment Report and Recommended Instrument of Consent and have prepared a submission for the IPCn to highlight Council's remaining issues. A copy of the proposed submission is provided in Attachment A.

As multiple projects are now proposing to use Muscle Creek Road and Sandy Creek Road for construction and operation of various developments, it is considered that the best way to manage the maintenance of these roads, during the period of increased heavy vehicle movements, is through a Road Maintenance Contributions Plan similar to the one in place for Thomas Mitchell Drive.



BACKGROUND

Council has previously made two formal submissions to the Department of Planning, Housing and Infrastructure (DPHI) in relation to the Project, as follows:

- Comments on the Environmental Impact Statement dated 19 September 2023; and
- Comments on the Submissions Report dated 20 March 2024.

Staff have also made comments on the Draft Instrument of Consent for SSD-46543209 on 03 September 2024, with follow up emails to DPHI in relation to road usage, road upgrades, and disposal of solar panels to Council's waste management facility.

The Proponent and Council have previously agreed on the General Terms of a Planning Agreement regarding community benefit contributions. Council resolved the General Terms at the Extra-Ordinary Council meeting of 14 May 2024.

CONSULTATION

The IPCN Commissioners invited the Mayor, General Manager, and relevant staff to a meeting on Friday 17 January 2025. The meeting gave the Commissioners a chance to ask questions about Council's submissions. The Commissioners also invited Council to provide a formal written submission on outstanding issues and any additional conditions of consent that Council would like included if approval is granted.

REPORT

Draft Submission

DPHI has completed its assessment of the Project and has referred to the IPCn for determination, as there were more than 50 unique submissions in the form of objections.

Staff have reviewed the Assessment Report and Recommended Instrument of Consent and have prepared a submission to provide to the IPCn to highlight Council's remaining issues. A table showing whether DPHI has addressed Council's concerns is provided below.

Staff comments on Instrument of Consent	How Addressed
Not addressed and included in the Submission	
Road Upgrade – Site Access to Sandy Creek Road	
There is an error in Table 1 of Appendix 4 of the Instrument of Consent. The table refers to the intersection being upgraded to accommodate 26m long B-Double trucks. Condition B1, and requirements of TfNSW and Council, are that the maximum length of vehicle using Sandy Creek Road is to be a 19m long B-double.	Not addressed in Instrument of Consent – comment reiterated.
The proposed intersection should be in accordance with AUSTROADS Standards and the design should be subjected to a road safety audit.	
Dilapidation Surveys and Road Maintenance	
Changes required to draft Condition B7 to include: <ul style="list-style-type: none"> • Dilapidation surveys include road pavement, drainage structures and other road related infrastructure; and • Development of a Maintenance Management Plan. 	Not addressed in Instrument of Consent – comment reiterated.
Disposal of Solar Panels	
.... During construction and operation, no solar panels are to be disposed of at Council's waste management facility, and preferably are not to be disposed of at any public or private landfill sites...	Not addressed in Instrument of Consent – comment updated and reiterated.
Final Land Use Plan	
A post-decommissioning land use plan should be	Not addressed in Instrument of Consent – comment



Staff comments on Instrument of Consent	How Addressed
prepared a minimum of five years before the end of the approval, to determine the most appropriate mix of land uses for the site, including new employment opportunities for a minimum of 9 staff, prepared in consultation with Council, the local business community, local environmental experts and Aboriginal representatives.	updated and reiterated.
Procurement Strategy	
A Procurement Strategy should be prepared in consultation with Council.	Not addressed in Instrument of Consent (however, this was in the negotiated terms of the Planning Agreement with Council) – comment reiterated.
Site Facilities	
Site facilities are required during construction and operation to ensure basic health, hygiene, and welfare for workers, compliance with regulatory requirements and minimisation of environmental impacts.	Not addressed in Instrument of Consent – comment reiterated.
Addressed and not included in the Submission	
Riparian Plantings	
Replanting riparian corridors to achieve nature positive outcomes was requested.	The Proponent is required to maintain and improve PCT 281 in riparian areas within the Project Area – Condition B14.
Accommodation and Employment Strategy	
Accommodation Strategy should demonstrate how accommodation demand will be managed during periods of high demand; consultation with regional accommodation providers; and coordinate placement in short-term accommodation.	Condition B35 requires an Accommodation and Employment Strategy. Staff are satisfied with the condition. The proponent has been discussing accommodation options with the Freedom Development Group
New England Highway Intersection Upgrade	
The Proponent must not commence use of Sandy Creek Road until the intersection upgrade of the New England Highway has occurred.	This issued was resolved by the Proponent in consultation with TfNSW and several conditions have been included in the consent, including: <ul style="list-style-type: none"> • Heavy vehicles accessing Sandy Creek Road are to approach from the south only, and exit left onto the New England Highway; and • Limiting the number of vehicles using the intersection to 10 light vehicles and 4 heavy vehicles during AM & PM construction peak period, using shuttle buses, to ensure queue lengths at the intersection are not exceeded (supported by SIDRA modelling).

A copy of the proposed submission is provided in Attachment A.

Road Maintenance Contributions Plan

In its Planning Agreement General Terms with the Proponent, Council requested the following:

- 7. As there will be heavy vehicles along Sandy Creek Road for simultaneous multiple projects (Muswellbrook Battery Energy Storage System, Muswellbrook Pumped Hydro, Muswellbrook Bypass, and Muswellbrook Solar Farm), the pavement damage for any specific project will need to be accurately calculated. As such, a proper methodology for contributions will need to be developed by Council and part funded by the Proponent through the Planning Agreement.*

A similar issue arose with Thomas Mitchell Drive and its use by five separate coal mines. In



that instance, it was managed by development of the Thomas Mitchell Drive Contributions Study. In that case the plan established the apportionment of costs for road maintenance and road upgrades based on the traffic generation estimates provided by each mine as they sought approval.

In the case of Sandy Creek Road and Muscle Creek Road, each project will be utilising different lengths of the road, so it may be more appropriate to require project proponents to carry out upgrades and the Contributions Plan to focus solely on the maintenance aspect.

FINANCIAL CONSIDERATIONS

Council will need to engage an external consultant to complete the Plan works. There are possible sources of funding available from EnergyCo, or the cost of preparation can be included in the Plan and recouped from the developments.

POLICY IMPLICATIONS

The General Terms of the Planning Agreement include a contribution being paid into the Muswellbrook Shire Community Benefit Fund.

STATUTORY / LEGISLATIVE IMPLICATIONS

Nil known.

RISK MANAGEMENT IMPLICATIONS

Nil known.

COMMUNITY CONSULTATION / COMMUNICATIONS

Notifications have been placed on Council's Facebook page to advise the community about the referral of the Assessment by DPHI to the IPCn and option for the community to address the IPCn at a public hearing.

XX February 2025

**Professor Neal Menzies
Commissioner (Panel Chair)
Independent Planning Commission**

Dear Professor Menzies

**Muswellbrook Shire Council Submission to the Independent Planning Commission
in relation to the Muswellbrook Solar Farm (SSD-46543209)**

Muswellbrook Shire Council (Council) has reviewed the Assessment Report and Recommended Instrument of Consent for the Muswellbrook Solar Farm (SSD-46543209) (the Project), which, along with the Project, is currently under consideration by the Independent Planning Commission (IPCn).

The purpose of this submission is to highlight issues that have been raised previously with the Proponent and Department of Planning, Housing and Infrastructure (DPHI) and that Council does not consider have been fully addressed by the DPHI or the Proponent. Council would also like to provide comment on issues raised by the community during the project notification process.

Community Issues

Loss of Agricultural Land

As outlined in the Assessment Report, 23 of the submissions originated from within the Muswellbrook Local Government Area (LGA), and some of these raised concerns about impacts on agricultural land.

While the land involved has relatively low carrying capacity, and, due to mining activities, some of the land has not been used regularly for grazing/farming activities for many years, it would be preferable that grazing occurs under the panels for management of grass and weeds rather than relying on slashing and weed spraying. Council supports the Proponent's commitment to exploring solar and agricultural integration to reduce agricultural impacts.

Council reiterates its comments on the Environmental Impact Statement, as follows:

42. Council supports the commitment contained within Section 6.4 of the Agricultural Impact Statement that the Proponent will 'investigate the potential for integrating solar panel installation and agricultural use at Muswellbrook Solar Farm as a means of further mitigating the impacts to agriculture'.

Visual Impact

Council notes that the visual impact from most nearby dwellings will be limited and screened by topography and vegetation. Many residents will, however, view the project from Muscle Creek Road as they travel between Muswellbrook and their residences. For this reason, Council supports the proposed benefit sharing for nearby residents, in the form of a land rate rebate administered with the assistance of Council.

Road Upgrade – Site Access to Sandy Creek Road

There is an error in Table 1 of Appendix 4 of the draft Instrument of Consent. The table refers to the intersection being upgraded to accommodate 26m long B-Double trucks. Draft condition B1, and requirements of TfNSW and Council, are that the maximum length of vehicle using Sandy Creek Road is to be restricted to a 19m long B-double.

In addition, the proposed intersection upgrade should be designed in accordance with AUSTRROADS Standards and the design should be subjected to a road safety audit.

Dilapidation Surveys and Road Maintenance

Council requests that draft Condition B7 be updated to state:

- a) The dilapidation surveys will record the condition of the road pavement, drainage structures, and other road related infrastructure; and
- b) The Proponent must develop a Maintenance Management Plan in respect of these roads, prepared in accordance with Transport for NSW M3 specifications for road maintenance, to the satisfaction of the relevant council.

This is to ensure that drainage infrastructure that is integral to the road is included, not just the surface pavement. There have been disagreements with project proponents in the past on this issue.

DPHI has not included this as the draft condition of consent.

Contributions Study

Note: the following has not been raised previously with DPHI.

In its Planning Agreement General Terms with the Proponent, Council approved the following:

7. As there will be heavy vehicles along Sandy Creek Road for simultaneous multiple projects (Muswellbrook Battery Energy Storage System, Muswellbrook Pumped Hydro, Muswellbrook Bypass, and Muswellbrook Solar Farm), the pavement damage for any specific project will need to be accurately calculated. As such, a proper methodology for contributions will need to be developed by Council and part funded by the Proponent through the Planning Agreement.

Since agreeing to these terms, Council staff have met with multiple project proponents, ranging from EnergyCo with plans to construct 500KV powerlines, TfNSW to construct the Muswellbrook Bypass, Santos to construct the Hunter gas pipeline, AGL with plans to construct a pumped Hydro development, and several Battery Energy Storage proposals. The cumulative impact of consumption of the same local road assets by multiple projects is difficult to manage.

It is the intention of Council to prepare a Contributions Plan to apportion the cost of maintenance of Sandy Creek Road and Muscle Creek Road, during the construction phase of these projects, across the abovementioned projects if they are under construction simultaneously.

In similar instances in the shire (e.g various mining projects), an instrument of consent would include the following condition (excerpt from SSD-10418 for the Mount Pleasant Coal Mine):

Thomas Mitchell Drive

B105. The Applicant must contribute to the upgrade and maintenance of Thomas Mitchell Drive, proportionate to its impact (based on usage) on that infrastructure, in accordance with the Contributions Study prepared by GHD titled, *"Thomas Mitchell Drive Contributions Study, August 2018"* (as amended from time to time).

For Thomas Mitchell Drive, the contributions must be paid to Council in accordance with:

- (a) the payment schedule in the Contributions Study for the upgrade works; and
- (b) the maintenance schedule established in accordance with the Contributions Study during the life of the development, unless otherwise agreed with Council.

Notes:

- *In making a determination about the applicable contribution/s under this condition, the Planning Secretary will take into account the contributions already paid or required to be paid towards the upgrade and maintenance of the local road network in the Muswellbrook Local Government Area under this consent and any associated Planning Agreement with Council.*
- *If there is a dispute between the relevant parties about the implementation of this condition, then any party may refer the matter to the Planning Secretary for resolution.*

Council requests a similar condition is included in the Instrument of Consent for the Project, applicable to both Sandy Creek Road and Muscle Creek Road.

Disposal of Solar Panels

For the past 30 years, the open cut coal mines in the Hunter have been disposing of waste tyres on their individual sites. They have said they have to bury them as there is no one able to recycle these tyres. Council estimates that in the Hunter alone there are approximately 150,000 tyres being buried each year, becoming a legacy for future generations.

It is important that the solar panel industry and projects are not permitted to follow this same path of generating a "waste product" but not actively working to find solutions to refurbish, reuse, or recycle damaged or defective panels.

Industry experts have told Council staff that 10% of the panels sent to site for this project will be defective, damaged in transit, or damaged during construction. This represents 30,000 panels just in the construction phase. Council's waste management facility does not have the capacity to accept this quantity of panels.

Council requested a condition of consent stating that:

During construction and operation, no solar panels are to be disposed of at Council's waste management facility (and preferably not be disposed of at any public or private landfill sites). All damaged or nonfunctioning solar panels should be recycled or rehabilitated and reused.

Council is currently working with other Hunter councils to remove household solar panels from the waste stream via a contract with a solar panel recycling company. Coordinating the storage and collection of damaged/defective panels from a commercial farm would be

a significant impact on Council staff resources and space requirements at Council's waste facility.

DPHI has not included this as a condition of consent, and has recommended only a standard waste condition.

Whilst it is acknowledged that the Proponent has made several commitments in its Waste Management Plan relating to recycling, Council is of the opinion that the Instrument of Consent should strictly prohibit any solar panel being disposed of at landfill, due, mainly, to ensure the project proponent actively looks for solutions to this issue.

Prohibiting disposal to landfill would also be consistent with targets set in the newly released Australian *Circular Economy Framework* which aims to double the circularity of the economy by 2025, that is, recovering 80% of resources.

There are start-up companies able to recycle components from panels in NSW. It is Council's preference that the Proponent negotiate contacts directly with these companies, including the transport of defective or damaged panels to processing sites.

Final Land Use Plan

Council requested a condition of consent that:

A post-decommissioning land use plan be prepared a minimum of five years before the end of the approval, to determine the most appropriate mix of land uses for the site, including maintaining employment opportunities for a minimum of 9 staff. The plan should also be prepared in consultation with Council, the local business community, local environmental experts, and Aboriginal representatives.

DPHI has not included this as a condition of consent and has recommended only a standard rehabilitation condition (which excludes the retention of the workforce).

Council's experience with power stations and mines is that over a twenty to thirty year period the community changes and becomes dependent on these "temporary" industries. Their closure creates loss of jobs, impacts on the local economy, and loss of confidence.

A condition that considers planning for new employment and local workforce opportunities is important because it ensures the site transitions effectively and enables consideration of the most appropriate mix of land uses, and addresses a gap in how such transitions are currently managed within the Shire's industries.

Temporary Construction Workforce Accommodation

Council has been fielding enquiries from various project proponents to develop temporary construction workforce accommodation on scattered sites across the Shire. Council would prefer a more strategic and coordinated approach; potentially, accommodation that is shared by various projects at one or two well positioned locations that provide long-term benefits for the community, rather than an ad hoc approach.

Procurement Strategy

In its Environmental Impact Statement and the General Terms of the Planning Agreement, the Proponent has committed to preparing a Procurement Strategy in consultation with

Council. Council requested that an appropriate condition of consent be included to ensure that this commitment is formalised.

DPHI has not included this as a condition of consent.

Site Facilities

Council requested a condition requiring site facilities during construction and operation to ensure basic health, hygiene, and welfare for workers, compliance with regulatory requirements, and minimisation of environmental impacts.

Site Facilities

- a) A garbage receptacle fitted with a tight-fitting lid for the reception of all food scraps and papers from the work site must be provided prior to building work commencing and must be maintained and serviced for the duration of the work.*
- b) Toilet facilities must be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the work site.*
- c) Each toilet and sink provided must be connected to an on-site effluent disposal system approved by the Council.*
- d) The provision of toilet facilities must be completed before any other work is commenced.*
- e) Provision of a lunchroom and site office.*

DPHI has not included this as a condition of consent.

Council staff appreciates the opportunity to comment and would be pleased to provide additional information if requested. Should you need to discuss the above, please contact Theresa Folpp, Environmental Planning Officer, on 02 6549 3700 or email council@muswellbrook.nsw.gov.au.

Yours faithfully

Sharon Pope
Director Environment and Planning

**10.1.5. Monthly Report to Council - Planning, Environment and Regulatory Services****Responsible Officer:** Director - Planning & Environment**Author:** Sustainability Officer**Community Strategic Plan:** 6 - Community Leadership

Collaborative and responsive leadership that meets the expectations and anticipates the needs of the community.

Delivery Program Goal: 6.2.1 - Maintain a strong focus on financial discipline to enable Council to properly respond to the needs of the communities it serves.**Attachments:** Nil**OFFICER'S RECOMMENDATION**

The information contained in this report be noted.

Moved: _____ **Seconded:** _____**REPORT****PLANNING AND ENVIRONMENT*****Schedule 1: Development Applications Approved (1/12/2024-12/1/2025)***

DA No.	DESCRIPTION	PROPERTY	VALUE (\$)
2024.55.2	S4.55 (1A)-Modification - Expansion in size of approved 4 x shade sale	111A Skellatar Stock Route Muswellbrook	\$39,050.00
2024.73.1	Hay Storage & Machinery Shed	Grasstree Ridge Row Muswellbrook	\$107,670.00
2023.130.2	S4.55(1) Modification - Subdivision of Six (6) lots into Three (3)	New England Highway Liddell	\$34,000.00
2024.75.1	Extension to Existing Shed	54 Shiraz Street Muswellbrook	\$6,084.00
2021.99.2	S4.55(1A) Modification - Alterations and Additions to Muswellbrook Indoor Sports/Youth Centre	Rutherford Road Muswellbrook	\$1,148,786.00
2024.48.1	Shed and Slab	5 Sepoy Crescent Muswellbrook	\$57,000.00



DA No.	DESCRIPTION	PROPERTY	VALUE (\$)
2024.39.1	Warehouse	6 Common Road Muswellbrook	\$180,000.00

TOTAL = 7***Schedule 2: Development Applications Currently Being Assessed As at 12/1/2025***

DA No.	DESCRIPTION	PROPERTY	VALUE (\$)
2024.90.1	Single Storey Dwelling	222-224 Queen Street Muswellbrook	\$408,985.00
2024.89.1	Office Building	113 Bridge Street Muswellbrook	\$328,740.00
2017.25.2	S4.55(1A) Modification - Mobile Crushing Plant	11 Glen Munro Road Muswellbrook	\$50,000.00
2024.86.1	Fifty-Nine (59) Lot Subdivision	Northview Circuit Muswellbrook	\$5,494,500.00
2024.85.1	Inground Swimming Pool	85a Brook Street Muswellbrook	\$42,000.00
2024.83.1	Shed and Shipping Container	67 Stockyard Parade Muswellbrook	\$56,100.00
2024.82.1	Taxi Depot	47a Maitland Street Muswellbrook	\$350,000.00
2024.81.1	Swimming Pool and Associated Safety Barriers	9 Herdsman Close Muswellbrook	\$48,870.00
2024.80.1	Proposed alterations and additions to existing industrial building. Additions of 3 new office rooms, reception area, meeting room, kitchenette, bathroom, outdoor lunch area, proposed new covered entry area and 7 new car parking spaces	24 Strathmore Road Muswellbrook	\$365,540.00
2024.79.1	Shed	23 Stockyard Parade Muswellbrook	\$48,726.00
2017.18.5	S4.55 (2) Modification - modification of condition 20 and amendment to fire safety measures	15 Sydney Street Muswellbrook	\$700,000.00
2024.72.1	Single Storey Dwelling (Manufactured Home)	3220 Wybong Road Hollydeen	\$402,813.00



DA No.	DESCRIPTION	PROPERTY	VALUE (\$)
2024.60.1	Construction of K-12 School	72-74 Maitland Street Muswellbrook	\$7,892,500.00
2024.36.1	Subdivision of (2) Lots into (24) & Construction of multi-dwelling housing comprised of ninety-six (96) dwellings	Ironbark Road Muswellbrook	\$20,679,314.00
2024.12.1	Construction of a 30m Telecommunications Monopole	Cook Street Muswellbrook	\$350,000.00
2024.24.1	Childcare Centre	118 Maitland Street Muswellbrook	\$4,268,105.00
2024.23.1	Inground Swimming Pool & Associated Barriers	27 Chardonnay Street Muswellbrook	\$30,000.00
2024.19.1	Subdivision of Two (2) Lots into Three (3) Lots	20 Ogilvie Street Denman	\$15,000.00
2024.9.1	Childcare Centre	38 Maitland Street Muswellbrook	\$1,924,000.00
2023.135.1	Shed	44 Cousins Street Muswellbrook	\$30,000.00
2023.123.1	Dwelling - Relocated	478 Sandy Creek Road Muswellbrook	\$135,240.00
2021.29.2	S4.55(1A) Modification - Relocation of Existing Dwelling & Construct New dwelling	49 Carl Street Muswellbrook	\$490,000.00
2023.72.1	Childcare Centre	200 Bridge Street Muswellbrook	\$2,960,280.00
2023.61.1	Three (3) Lot Subdivision	Golden Hwy Giants Creek	\$20,031.00
2023.14.1	Storage Complex - 103 self storage units and 12 open storage bays	Turner Street Denman	\$3,555,527.00
2019.53.1	Subdivision of Two (2) Lots into Seventy Five (75) Lots	9027 New England Hwy Muswellbrook	\$4,875,600.00
2024.92.1	Change of use to allow for a 'place of public worship' on the first floor (upper floor) and minor works to facilitate accessibility	75 Bridge Street Muswellbrook	\$100,000.00



DA No.	DESCRIPTION	PROPERTY	VALUE (\$)
2024.91.1	relocatable home to be placed on rear of property	12 Hyde Street Denman	\$120,000.00
2024.87.1	Building of a Garage / Shed	3 Armitage Avenue Muswellbrook	\$0.00
2024.84.1	30ft prefabricated container house	64a Osborn Avenue Muswellbrook	\$80,000.00
2024.74.1	Dwelling House	120 Reedy Creek Road Hollydeen	\$330,000.00
2024.63.1	proposed second house on existing plan block with first house already approved	19 Northview Circuit Muswellbrook	\$425,000.00
2024.35.2	Proposed storage premises with ancillary meeting rooms and amenities	292 Kayuga Road Muswellbrook	\$165,000.00
2022.149.2	S4.55(1) Modification - Single Storey Dwelling	56 Stockyard Parade Muswellbrook	\$527,100.00
2008.319.5	S4.55(1A) Modification - 12 Lot Residential Subdivision & Construction of New Road	65 Ironbark Road Muswellbrook	\$1,000,000.00

Total = 35

20.1.12 Inspect onsite wastewater sewerage systems to ensure they are installed and maintained in compliance with regulatory requirements.

On-site Wastewater Statistics - 13 Month Analysis (2023/2024)

	Dec 23	Jan 24	Feb 24	Mar 24	Apr 24	May 24	Jun 24	Jul 24	Aug 24	Sept 24	Oct 24	Nov 24	Dec 24
Applications Received (new installation)	0	1	0	0	0	0	1	0			0	0	0
Applications Approved (new installation)	1	0	1	0	0	0	0	0			0	0	0
Inspections (new system)	3	0	0	1	0	1	0	0			0	1	0
Inspections (existing system)	0	1	33	10	13	2	1	0			0	2	1



24.1.5 Registration and inspection of regulated premises (caravan parks, food outlets, skin penetration premises, hairdressers, mortuaries, air handling systems) in accordance with regulatory requirements to ensure public health and safety is protected.

	Dec 23	Jan 24	Feb 24	Mar 24	Apr 24	May 24	Jun 24	Jul 24	Aug 24	Sept 24	Oct 24	Nov 24	Dec 24
Applications Received (new businesses)	28	2	2	5	1	1	0	0			0	0 NB: 34 Temp food received	2
Inspections (new businesses)	4	3	2	2	0	1	2	3			0	2 NB: 28 Temp food inspected	2
Inspections (existing businesses)	0	3	1	28	14	0	24	1			0	0	14
Re-inspections	0	0	0	0	0	0	0	0			0	0	0

4.1.1.1 Reduce the environmental impact of development on our community by carrying out regular inspection of building sites and monitoring waste.

Building Site Compliance Inspection Statistics – 13 Month Analysis (2023/2024)

	Dec 23	Jan 24	Feb 24	Mar 24	Apr 24	May 24	Jun 24	Jul 24	Aug 24	Sept 24	Oct 24	Nov 24	Dec 24
Total Sites Inspected	6	7	10	16	9	11	3	12			15	11	11
Total non-compliant and educated	0	0	0	0	0	0	0	0			0	0	0
Total compliance after education	0	0	0	0	0	0	0	0			0	0	0
Total Penalty Notices Issued	0	2	0	0	0	0	0	0			0	0	0



14.1.11 Continue surveillance and regulation of illegal dumping on an ongoing basis through participation in the Hunter Central Coast Regional Illegal Dumping Squad

Illegal Dumping Statistics – 13 Month Analysis (2023/2024)

	Dec 23	Jan 24	Feb 24	Mar 24	Apr 24	May 24	Jun 24	Jul 24	Aug 24	Sept 24	Oct 24	Nov 24	Dec 24
Total Investigations	1	7	8 (3 reports were also made with no waste actually found or insufficient information to investigate)	5 (1 report made with no waste actually found)	4	5	10	18			0	7	10
Total Clean up by Council - insufficient evidence	0	3	1	2	0	0	0	0			0	0	0
Total Clean Up by individual	0	2	1	0	0	0	0	0			0	1	1
Total Penalty Notices Issued	0	0	0	0	0	0	0	0			0	0	0
Court Attendance Notice Issued	0	0	0	0	0	0	0	0			0	0	0
Still under investigation	1	2	6	2	4	5	10	18			0	6	9



24.1.8 Ensure statutory requirements under the Private Swimming Pools Program (Swimming Pool Act 1992) are implemented.

Swimming Pool Compliance Statistics – 13 Month Analysis (2023-2024)

	Dec 23	Jan 24	Feb 24	Mar 24	Apr 24	May 24	Jun 24	Jul 24	Aug 24	Sept 24	Oct 24	Nov 24	Dec 24	Total
Applications for Compliance Certs.	1	0	3	3	2	3	0	6			0	1	0	19

Total compliance inspections (not inc. finals for OCs)	5	13	8	5	10	4	6	6			7	6	3	73
Initial Inspections	2	5	2	4	4	1	4	4			5	3	0	34
Re-inspections	3	8	6	1	6	3	2	2			2	3	3	39

Compliance Certs / Occ. Certs issued	2	5	5	1	5	4	3	4			4	3	4	40
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Fees invoiced	\$500	\$900	\$1050	\$514	\$1200	\$572.73	\$650	\$1100			\$1300	\$350	\$600	\$8,736.73
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Total Pools in Council's SPR = 1002

(Note: 1141 records in SPR but 136 have been notified as demolished, 2 are Council's Public Pools and 1 is on Crown Land)

Current Compliance = 20.85%

Sustainability - December 2024

Sustainable Events.

This year we have worked to make events run or sponsored by Council more sustainable. Council staff and event managers are required to follow the Sustainable Events Procedure. Special container collection bins and water refill stations are available for events. In 2025 more focus will be placed on ensuring event managers follow these procedures.

Natural Areas

Weed control continues along Muscle Creek slopes and the golf course. In March 2025 a further 3700 native seedlings will be planted along Muscle Creek and in Denman. Flat natural areas are maintained by 1 full time and 1 part time Council natural areas staff. Sloped natural areas and Muscle Creek along the golf course are maintained by private contractors through limited sustainability budgets.

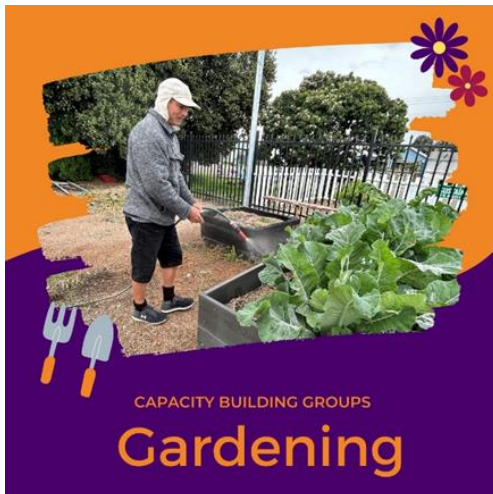
Visits to the Animal Care and Sustainability Hub

Over 2 days in mid-Dec 35 children visited the Animal Care and Sustainability Hub for presentations about native plants, gardening, worm farms and animal care.

Over 1700 people visited the Hub in 2024. This includes Auora Supports, Hunter Disability Services and Warrior Disability Services helping with gardening, the seed library and artwork each week.



03 Sustainability Hub



Waste Solutions Grant

Sustainability staff submitted a grant application in the Waste Solutions program. The application was for funding for a scoping study for a regional mobile tool library, repair café and CRC.

Polly Farmer Foundation

A meeting was held with Polly Farmer Foundation CEO and BHP staff. The Polly Farmer Follow the Dream program provides after school tuition and mentoring to aspirant Aboriginal and Torres Strait Islander secondary students. Polly Farmer Foundation students have worked with the Sustainability Unit for 4 years on projects at the Hub and Muscle Creek. This work will continue in 2025.



Sustainable Futures – Muswellbrook Facebook

Followers of the Muswellbrook Facebook page continues to grow. It has now received 1875 page likes and 2,120 page followers. This page continues to be a great way for Council to engage with the community around a range of sustainability topics. This includes promotion of sustainability activities, waste management practices, FOGO, sewerage management, the Reuse Shop, soft plastic recycling, Sustainability Hub activities, reducing food waste, plastic free July, worm farms, composting, grant projects and more.



10.2. Infrastructure and Property

10.2.1. Section 138 Roads Act 1993 Permit Bengalla Mining Company - Culverts and Water Pipes under Bengalla Road

Responsible Officer: Director - Infrastructure & Property

Author: Traffic & Roads Status Officer

Community Strategic Plan: 5 - Community Infrastructure

Effective and efficient infrastructure that is appropriate to the needs of our community.

Delivery Program Goal: 5.1.3 - Facilitate investment in high quality community infrastructure necessary to a Regional Centre.

Operational Plan Action: Not applicable

Attachments: 1. Bengalla Mine Bengalla Link Road Culvert and Water Transfer Pipes [10.2.1.1 - 6 pages]

PURPOSE

To advise Council of the receipt of an application from Bengalla Mining Company (BMC) under section 138 Roads Act 1993 to undertake the construction of stormwater culverts and water transfer pipes under Bengalla Link Road.

OFFICER'S RECOMMENDATION

Council delegates to the General Manager authority to sign the s.138 Roads Act 1993 permit for Bengalla Mining Company for the installation of stormwater culverts and water transfer pipes under Bengalla Link Road.

Moved: _____ **Seconded:** _____

EXECUTIVE SUMMARY

Council has received an application from Bengalla Mining Company (Bengalla), under section 138 Roads Act 1993, to undertake the construction of stormwater culverts and water transfer pipes under Bengalla Link Road. Bengalla proposes installation of two additional underbores to support continued water transfer as the active mining operation advances westwards.

PREVIOUS RESOLUTIONS

Not applicable.

BACKGROUND

Bengalla Link Road passes between Bengalla Mine's active mining operations to the east and water storage dams on the west side of the road. A series of existing underbores pass under the road to allow two-way transfer of water under the road. Bengalla proposes installation of two additional underbores to support continued water transfer as the active mining operation advances westwards.



CONSULTATION

Roads Drainage & Technical Services, WSP Consulting Engineers, and Bengalla Mining Company

REPORT

The first underbore would comprise 3 x 1200 diameter reinforced concrete pipes (RCP) culverts to allow clean water runoff from catchments above and ahead of the pit to be directed around mining operations and towards the Hunter River. The second underbore would comprise 2 x 500 diameter casings to install pipelines for 2-way transfer of water between mining operations and water storage dams. The underbores are proposed in addition to the existing underbores, which will remain in service.

First Underbore – Clean Water Diversion

A clean water diversion channel (contour drain) was constructed by Bengalla in 2015 to intercept clean water runoff ahead of mining and divert it around the mining operation so that it could report to the Hunter River.

The clean water diversion channel must be relocated from time to time so that it can continue to function ahead of the advancing mining operations.

Most recently, a downstream section of the clean water diversion channel was relocated in 2023, with water being directed under the existing rail bridge at Bengalla Link Road. In this way, it was not necessary to construct an underbore to pass water under Bengalla Link Road.

The diversion channel must again be relocated before the downstream section of the diversion channel is impacted by mining.

The new alignment will require water to pass under Bengalla Link Road approximately 1.5 km north of the Bengalla Mine entrance.

Second Underbore – Pipeline

Bengalla's active mining area on the east side of Bengalla Link Road is supported by water management infrastructure on the west side.

A series of underbores were installed in 2018 to allow two-way transfer of water under the road. These underbores remain in service.

To support the pit as it advances westwards, a new 2-way pipeline is proposed to:

- Transfer water from the pit to the water storage dams; and
- Transfer water from the water storage dams to in-pit water cart fill points.

Occupation of the road is required to undertake the works. A permit under Section 138 of the Roads Act 1993 is required for the work to proceed. The permit will be subject to conditions.

It is recommended that Council approves delegation to the General Manager to issue consent to allow the installation of the works to proceed with applicable conditions.

In order that disruption to traffic is minimised, Bengalla proposes to install the RCP culverts by horizontal drilling techniques rather than by trenching and backfilling.

FINANCIAL CONSIDERATIONS

All costs will be met by the applicant.

POLICY IMPLICATIONS

Nil known.



STATUTORY / LEGISLATIVE IMPLICATIONS

Council is the roads authority under the *Roads Act 1993* and is acting within its powers under the Act.

RISK MANAGEMENT IMPLICATIONS

The permit would be subject to applicable conditions to mitigate risk.

Traffic Management will be undertaken in accordance with Transport for NSW guidelines "Traffic Control at Work Sites" Traffic Guidance Scheme Guidelines.

COMMUNITY CONSULTATION / COMMUNICATIONS

Traffic control will be undertaken as required and the travelling public will be notified by the required signage in accordance with the TfNSW Traffic Control at Worksite Manual.



**Bengalla Link Road
Two Underbore Crossings**

**Additional Context
to
S138 Application**

1. SUMMARY

Bengalla Link Road passes between Bengalla Mine's active mining operations to the east and water storage dams on the west side of the road.

A series of existing underbores pass under the road to allow two way transfer of water under the road.

Bengalla proposes installation of two additional underbores to support continued water transfer as the active mining operation advances westwards.

- The first underbore would comprise 3 x 1200diam rcp culverts to allow clean water runoff from catchments above and ahead of the pit to be directed around mining operations and towards the Hunter River
- The second underbore would comprise 2 x 500diam casings to install pipelines for 2 way transfer of water between mining operations and water storage dams

The underbores are proposed as additional to the existing underbores, which will remain in service.

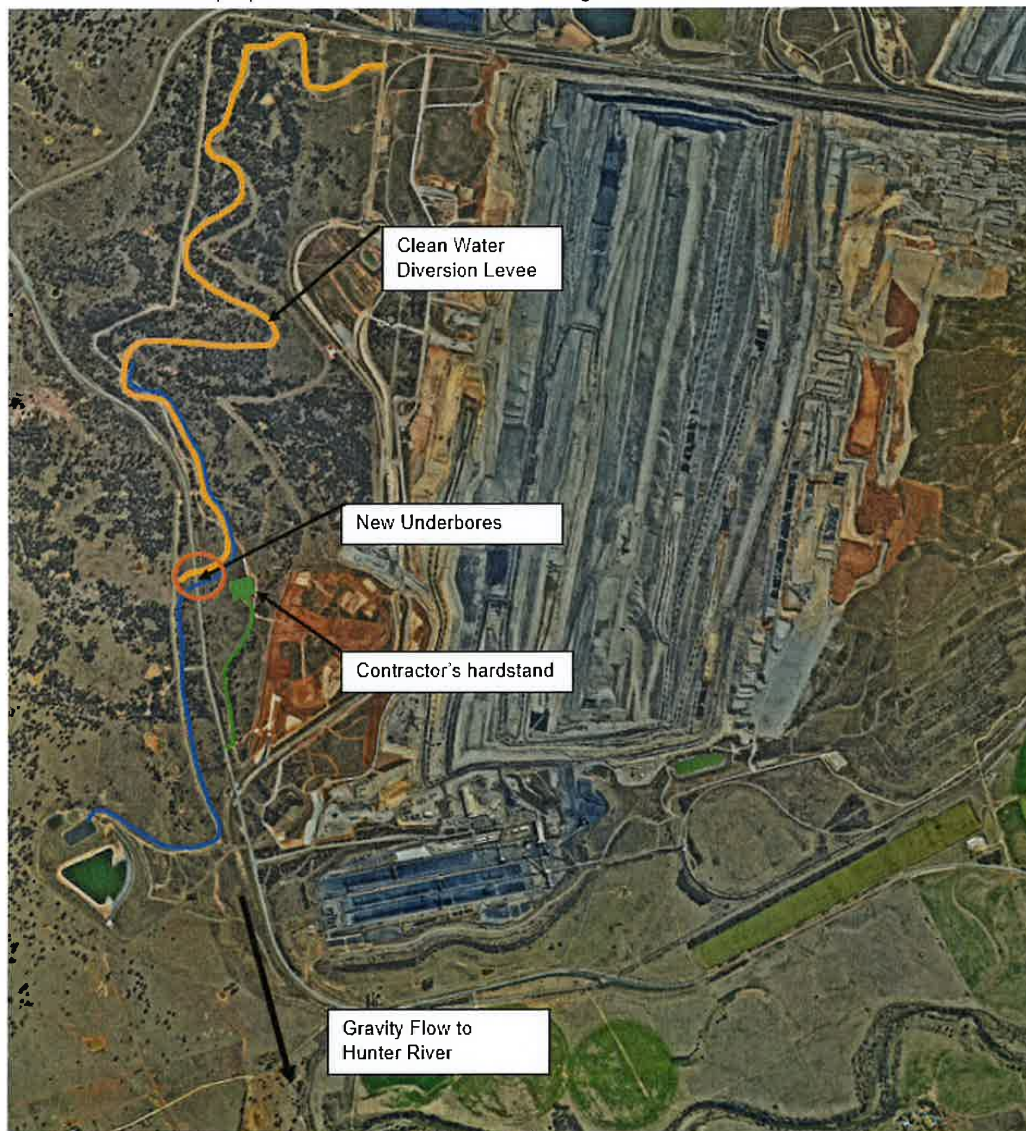


Fig 1 – General Arrangement

This document provides additional context to Bengalla's application for a Section 138 approval for installation of the two underbores.

It is noted that Bengalla Link Road is proposed to be relocated in the next 3-5 years, so the operational life of the new underbores is limited.

2. CONTEXT

2.1 First Underbore – Clean Water Diversion

A clean water diversion channel (contour drain) was constructed by Bengalla in 2015 to intercept clean water runoff ahead of mining and divert it around the mining operation so that it could report to the Hunter River.

The clean water diversion channel must be relocated from time to time so that it can continue to function ahead of the advancing mining operations.

Most recently, a downstream section of the clean water diversion channel was relocated in 2023, with water being directed under the existing rail bridge at Bengalla Link Road. In this way, it was not necessary to construct an underbore to pass water under Bengalla Link Road.

The diversion channel must again be relocated before the downstream section of the diversion channel is impacted by mining.

The new alignment will require water to pass under Bengalla Link Road approximately 1.5km north of the Bengalla Mine entrance. (Refer Figure 1)

2.2 Second Underbore – Pipeline

Bengalla's active mining area on the east side of Bengalla Link Road is supported by water management infrastructure on the west side.

A series of underbores were installed in 2018 to allow two way transfer of water under the road. These underbores remain in service.

To support the pit as it advances westwards, a new 2 way pipeline is proposed to :

- Transfer water from the pit to the water storage dams
- Transfer water from the water storage dams to in-pit water cart fill points

An underbore is required to pass the pipe under the road.

3. DESIGN

3.1 First Underbore – Clean Water Diversion

Consistent with the original (2015) and subsequent (2023) designs, the new alignment will comprise an open channel sized for the 1 in 100 year flow event. Culverts will be used to direct water under the road.

Design Flow

- Peak Flow 100 year ARI : 10.0m³/s

The design flow rate is less than the flow rate used for the 2023 realignment (16.5m³/s) because the catchment reporting to the new alignment is reduced. As mining operations advance westwards, the clean water diversion is also being relocated westwards, and so the catchment is reducing.

Culvert Design

- 3 x 1200 diam reinforced concrete pipe

That is, the first underbore comprises 3 adjacent culvert pipes.

In order that disruption to traffic is minimised, Bengalla proposes to install the RCP culverts by horizontal drilling techniques rather than by trenching and backfilling.

Minimum cover for the underbores will be 1500mm.

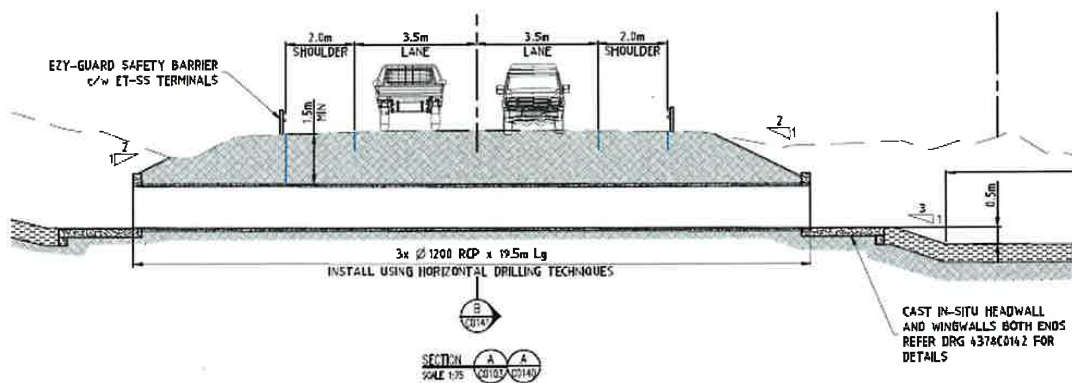


Fig 2 – Long Section Through Underbore

The design incorporates :

- Upstream and downstream rip rap to provide scour protection
- Upstream and downstream headwalls, which will be cast insitu.
- Guardrailing

The engineering design has been developed by Arkhill Engineers. Bengalla will retain Arkhill to provide construction support throughout the construction period to ensure design integrity.

3.2 Second Underbore – Pipeline

Design for the second underbore follows the same principles and methodology that has used for existing underbores.

The water transfer pipeline will comprise : DN400 PN10 PE100 hdpe pipe

In order that disruption to traffic is minimised, Bengalla proposes to install the pipeline by horizontal drilling techniques rather than by trenching and backfilling.

Two DN500 steel casing pipes are proposed :

- DN400 PN10 PE100 hdpe pipe will be inserted through one casing
- Second casing will be a spare, for future use

The engineering design has been developed by Arkhill Engineers. Bengalla will retain Arkhill to provide construction support throughout the construction period to ensure design integrity.

4. PROCUREMENT

Bengalla will engage and manage suitable contracting resources to install the underbores as part of a wider scope of work for construction of the re-aligned clean water diversion levee and pipeline.

The Works will be competitively tendered to suitably qualified contractors with local experience.

Both underbores will be included in the same scope.

5. CONSTRUCTION WORKS

5.1 Site Establishment

Installation of the two underbores is supported by Bengalla's ownership of the land on either side of each underbore.

Direct access will be achieved from BMC owned land on either side of each underbore.

The contractor's hardstand will be located within the mine lease and accessed through an existing farm gate (BMC Access Gate 10).

It is noted that :

- right hand turns are not permitted from Bengalla Link Road into Gate 10
- Right hand turns from Gate 10 onto Bengalla Link Road are not permitted



Fig 2 – Contractor's Hardstand Location

5.2 Traffic Management

Although underbores are proposed in lieu of trenching, the contractor will need to access the road corridor to construct launch and receival pits for each underbore as well as headwalls, rip rap and road furniture.

The contractor's scope will include preparation of suitable Traffic Control Plans, which will be tabled with Council for review.

Traffic management will comply with :

- TfNSW Specification G10 (Traffic Management), and
- TCWS (TfNSW Traffic Control at Work Sites Manual)

5.3 Project Quality Records

The Contractor's scope will include :

- Preparation of quality assurance records including inspection and test plans
- Preparation of as-built survey files

Copies of these documents will be provided to Council at the end of the project.

5.4 Health & Safety Management

The contractor will be engaged and managed by Bengalla.

5.5 Schedule

The schedule will depend on availability of key resourcing :

- Suitable civil contractor
- Underbore crew
-

Procurement will begin after Council endorsement and approval has been secured.

Subject to weather, and availability of seal crew, the construction period for the underbores is expected to be in the order of 3 weeks.

**10.2.2. Intention to Enter Into a New Lease with Muswellbrook Golf Course**

Responsible Officer:	General Manager
Author:	Technical Officer - Property & Building Services
Community Strategic Plan:	6 - Community Leadership Collaborative and responsive leadership that meets the expectations and anticipates the needs of the community
Delivery Program Goal:	5.1.1 - Review, develop and maintain liveable town and village precincts.
Operational Plan Action:	Not applicable
Attachments:	Nil

PURPOSE

To request Council's support to enter into a new lease period between Muswellbrook Shire Council as Trustee of Muswellbrook Golf Course Reserve Trust, as Lessor, and Muswellbrook Golf Club and Muswellbrook RSL Sub-Branch Club, as Lessee.

OFFICER'S RECOMMENDATION

Council APPROVES, in compliance with the terms and conditions detailed in the report:

1. Entering into a new lease with the Muswellbrook Golf Club and Muswellbrook RSL Sub-Branch Club; and
2. Establishing a recurring 12-month licence agreement for the use of the Bell Street road reserve as a car park.

Moved: _____ **Seconded:** _____

EXECUTIVE SUMMARY

It is proposed for Council to enter into a new lease as the Trustee of Muswellbrook Golf Course Reserve Trust, as Lessor, with the Muswellbrook Golf Club and Muswellbrook RSL Sub-Branch Club, as Lessee. This is a continuation of existing use and considered in the Olympic Park Precinct Plan of Management.

It is also proposed to establish a 12-month recurring licence for the use of the Bell Street road reserve as a car park.

PREVIOUS RESOLUTIONS

Nil.

BACKGROUND

The Muswellbrook Golf Club and Muswellbrook RSL Sub-Branch Club operates the Muswellbrook Golf Course on Crown Land reserves 570025 and 1010588, classified as Community Land for recreation, and previously entered into a 20-year lease, which expired July 2024. The lease is for operating a golf links course for playing golf and other forms of sport and for the recreation of its members, and for any associated purposes approved by Muswellbrook Shire Council.

The consideration of the lease is included in Council's adopted Plan of Management for the Olympic Park Precinct.

The Muswellbrook Golf Club's clubhouse, however, sits on a separate Crown Reserve, with a lease arrangement between Muswellbrook Golf Club and Muswellbrook RSL Sub-Branch Club direct with the Crown, which is due to expire 28 February 2030.

The Muswellbrook Golf Club relies in part for the car park on the road reserve of Bell Street, however, there is currently no formalised agreement for this area, which can create uncertainty around the roles and responsibilities of each party.

The Muswellbrook Golf Club is also a significant end-user of Council's recycled water, paying a flat sum, adjusted each year by CPI, and is a key stakeholder in Council's Recycled Water Management Plan for Muswellbrook, which is currently under review.

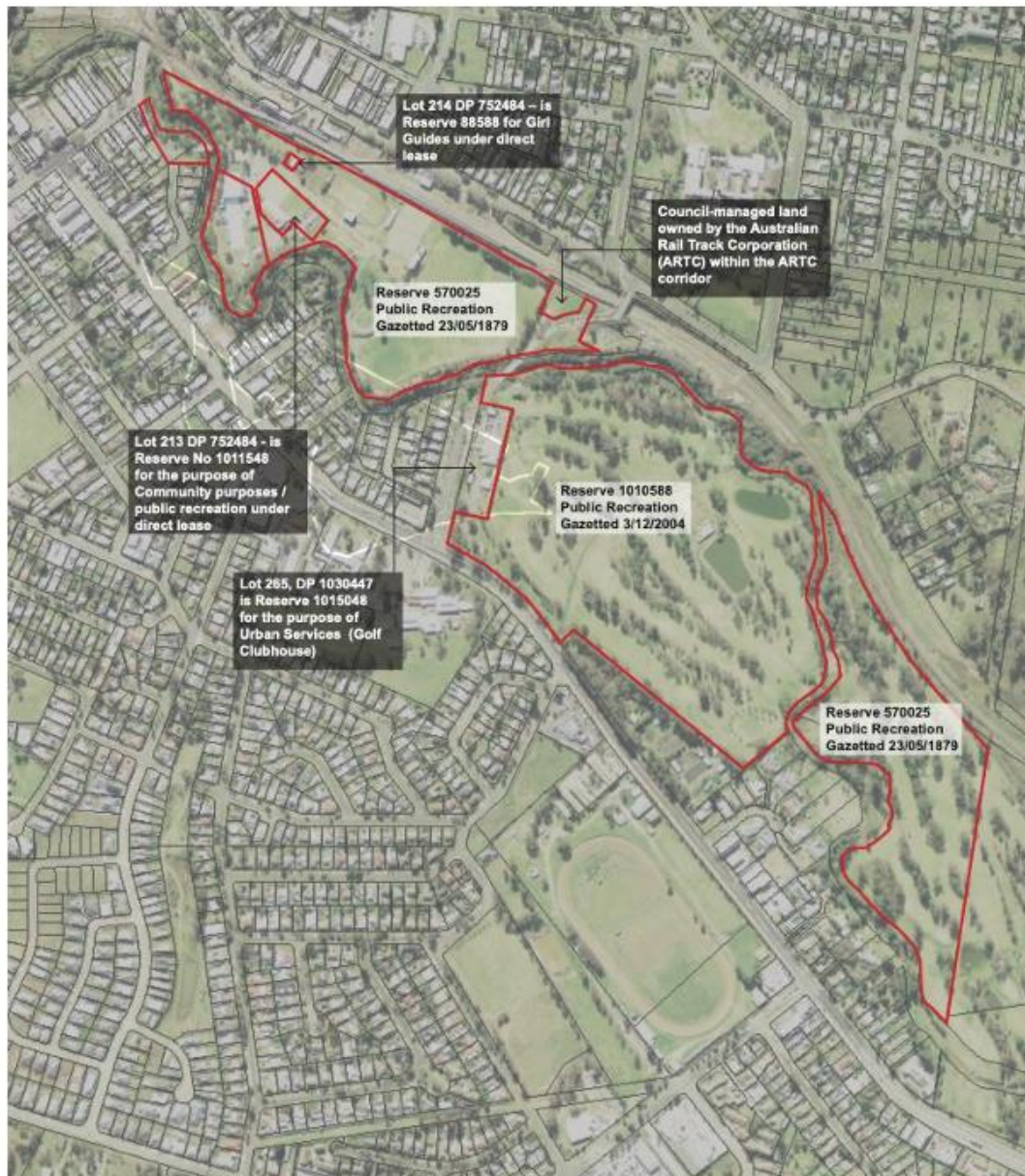


Figure 2.2
Olympic Park Precinct – Extent of Crown Reserves

CONSULTATION



Muswellbrook Golf Club General Manager

REPORT

It is intended to enter into a new lease with the Muswellbrook Golf Club and Muswellbrook RSL Sub-Branch Club that will be publicly advertised in accordance with the *Local Government Act 1993*. The lease term proposed is 28 February 2030 to align with the lease for the clubhouse. Further, to ensure roles and responsibilities over the part of the car park that is located on the Bell Street road reserve, it is proposed to establish a recurring 12-month licence at the statutory minimum amount for a licence.

The proposed terms of the Lease include:

1. Commencement date 1 July 2024 (to ensure continuity).
2. Termination date 28 February 2030.
3. Permitted use is outlined as:
A golf links course for playing golf and other forms of sport and for the recreation of its members and for any associated purposes approved by the Lessor.
4. Rent Payable per annum, excluding GST, will be \$6,000 adjusted annually for CPI.
5. A Market Rent review date three years from the Commencement Date and at the end of the lease period.
6. Special conditions:
 - a. Access for Muswellbrook Shire Council: Muswellbrook Shire Council staff, contractors, and authorised persons are to be granted access for operational purposes, including but not limited to, repair and maintenance of network assets, maintenance of vegetation and lawns in areas not maintained by the Golf Club, maintenance and inspection of the waterway, riverbank, and surrounding area, and maintenance of the public pathway along Muscle Creek.
 - b. Access to Public Pedestrians: the pathway along Muscle Creek shall be accessible to the public as part of the wider Muscle Creek nature walk. Pedestrians accessing the area do so at their own risk and must obey signage installed by the Golf Club.

The proposed terms of the Licence include:

1. Commencement date 1 July 2024 (aligning lease and licence dates).
2. 12 months.
3. Permitted use is outlined as:
Car parking for members and public.
4. Statutory minimum \$642.
5. Special conditions:
 - a. The Muswellbrook Golf Club is responsible for the use, formation, and maintenance of the car park



FINANCIAL CONSIDERATIONS

Nominal changes in revenue.

Ongoing Operational and Maintenance Costs Implications Associated with Capital Project

1. *Financial Implications – Capital*

Nil known.

2. *Financial Implications – Operational*

Nil known.

POLICY IMPLICATIONS

Nil known.

STATUTORY / LEGISLATIVE IMPLICATIONS

As Crown Land classified as Community Land, it is land intended for public access and use, or where other restrictions applying to the land create some obligation to maintain public access.

RISK MANAGEMENT IMPLICATIONS

Nil known.

COMMUNITY CONSULTATION / COMMUNICATIONS

The lease must be advertised to the public for at least 28 days.



10.2.3. Regional Entertainment Centre Design

Responsible Officer: Director - Infrastructure & Property

Author: Dennis Fernandes – Project Manager Property & Place

Community Strategic Plan: 1 - Economic Prosperity

A dynamic Local economy with full employment for current and future residents in a diverse range of high value industries.

Delivery Program Goal: 4.2.1 - Progress a Regional Entertainment and Conference Centre.

Operational Plan Action: 4.2.1.1 - Progress resubmission of the Regional Entertainment Centre Development Application.

- Attachments:**
1. Regional Entertainment Centre - Initial Design - Tender Issue [**10.2.3.1** - 6 pages]
 2. Regional Entertainment Centre Optimised Design [**10.2.3.2** - 4 pages]
 3. Regional Entertainment Centre Optimised Design - Preliminary Costs [**10.2.3.3** - 2 pages]
 4. MREC Notional Utilisation of Proposed Theatre Facilities RSTC 091224 [**10.2.3.4** - 1 page]

PURPOSE

This report outlines the updated design scope improvements, budget recommendations, and planning approval pathways for the Regional Entertainment Centre following consultation with Councillors, key stakeholders, the theatre consultant, architects, and the quantity surveyor (QS).

OFFICER'S RECOMMENDATION

Council:

1. Supports the revised design scope for the Regional Entertainment Centre (Stage 1 – Theatre) as described in the report and under 'key changes';
2. Proceed with the submission of a development application based on the revised design scope; and
3. Support a Stage 2 – Studio and additional back of house for concept only.

Moved: _____ **Seconded:** _____

EXECUTIVE SUMMARY

The report provides a revised design scope to deliver the Regional Entertainment Centre (Stage 1 -Theatre). In recent months, the focus has been to provide a design for a functioning theatre, to meet a targeted project budget of \$20 million, and reduce risks of development approval delays.



The recommendations are based on consultation with the theatre consultant, Councillors, key stakeholders, the internal project team, and quantity surveyor (QS).

Key revisions include:

- retaining the half fly tower;
- reduction in the foyer, balcony, and revision and staging of back-of-house areas; and
- Use of precinct and adjacent Muswellbrook Library spaces.

The revised design scope proposes retaining the half fly tower in consideration of height restriction approvals under the Local Environmental Plan (LEP) and trends of future advanced LED lighting and rigging solutions, achieving cost savings while maintaining operational performance.

The revised design does exceed the height restrictions under the LEP and, therefore, will still require a development standard variation application but is more likely to be approved based on previous development applications.

PREVIOUS RESOLUTIONS

At the 28 November 2023 Ordinary Council meeting, Council resolved as follows:



17.2. Regional Entertainment Centre - QS Review of FJCT Studio's Variation Proposal for Design Development

This report is CONFIDENTIAL under the provisions of Section 10A(2)(c) of the Local Government Act 1993, as it relates to information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.

Council considers that discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

212 RESOLVED on the motion of Cr R. Scholes and Cr L. Dunn that:

Council APPROVES FJCT Studio's fee variation, including provisional sums for consultant design reports, on the condition that the architect collaborates with Council to ensure that the project meets the value management and functionality requirements.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr M. Bowditch, Cr J. Drayton, Cr L. Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B. Woodruff.

Against: Nil.

Following the Council meeting, a further progress update was provided at the August 2024 Regional Entertainment Centre Development Advisory Committee meeting, and subsequently reported to Council. At this meeting, it was recommended as follows:

**6.1 Progress Update**

RECOMMENDED on the motion of Cr J. Lecky and Cr R. Scholes that:

1. The information contained in this report be noted.
2. A meeting be organised with Richard Stuart and the Committee to discuss design including Fly Tower options.
3. A tour of similar venues to that proposed for Muswellbrook Shire be organised for the Committee.

BACKGROUND

The Muswellbrook Regional Entertainment Centre project has been divided into two stages to manage budget constraints:

- Stage 1: Theatre and associated facilities.
- Stage 2: Studio and additional Back of House/ Meeting/ Rehearsal space.

The theatre is expected to host a variety of productions, including local performances, community events, and touring groups. The budget for this stage of the project has been capped at \$20 million, and a site footprint of 1,500 m² has been identified as the maximum feasible area for construction to meet the targeted budget.

The initial scope for Stage 1 was based on a 2,166 m² footprint (or 2,396 m² including grid mesh for a half fly tower), which exceeded the \$20 million budget. See attached original design for the Entertainment Centre (Attachment 1). Cost escalation projections have necessitated scope review, prompting a review by Quantity Surveyors and subsequent design revision.

A tour to Goulburn and Wollondilly Performing Arts Centres was organised for key stakeholders late last year, with Councillors, the Theatre Consultant, and Council staff in attendance. Following the tour, a stakeholder workshop meeting was held on Monday, 16 December 2024 to discuss the way forward, including an additional visit to the Newcastle Civic Theatre.

The conclusion from the workshop advice was to write to the Regional Planning Panel, Hunter and Central Coast Planning Panel, to seek guidance on the final acceptable height of the fly-tower. The consensus of the meeting was to get as much height above the stage as allowed by planning constraints.

CONSULTATION

Theatre Consultant – Richard Stuart

Mayor

Councillors

Muswellbrook Amateur Theatrical Society

Upper Hunter Conservatorium of Music

Upper Hunter Eisteddfod

General Manager

Council staff

REPORT

Following the review of the design brief and cost estimates, the project team, in conjunction with the design team and Theatre Consultant, has collaboratively identified a range of



adjustments that can reduce the building footprint while maintaining the theatre's functionality, and optimising costs.

See attached Regional Entertainment Centre Revised Design (Attachment 2).

The key changes identified include but are not limited to:

1) Building Footprint and Budget

The Quantity Surveyor's revised cost estimate (Attachment 3), which incorporates market escalation, suggests that the theatre's footprint should not exceed 1,500 m² to meet the \$20 million budget. Current designs propose an area of 2,166m² (or 2,396m² with the grid mesh floor to the half fly tower), which exceeds the nominated budget and the need to continue rationalising of space where possible.

2) Consultant Reviews

Additional assessments were undertaken to refine the theatre's functionality. The design and project team looked at the seating arrangements and the types of events hosted at similar regional theatres such as Ulumburra, Goulburn, and Batemans Bay. This review did confirm that 400 seats is sufficient to meet the expected demand in the community, based on the catchment sizes and event types.

3) Stage 1 Adjustments

Following a detailed consultant review, the following design changes were recommended:

- a) Retain 400 seats to ensure a functional theatre.
- b) Stage dimensions to be retained as originally proposed.
- c) Maintain the fixed orchestra pit for appropriate performance capabilities. Review option of including orchestra pit void for future hydraulic lift.
- d) An external covered connection to the Muswellbrook Library seminar space to function as a studio space for performers and for dance groups. This studio space will be designed to function autonomously from the theatre, enabling independent operations and usage.
- e) External caged waste area to be deleted.
- f) Stage door and office spaces to be rationalised.
- g) The green room to be designed to include staff kitchen to optimise multi-use space.
- h) Colonnade and foyer/amenities space to be optimised to accommodate the needs of 400 people and allow equitable access.
- i) Move the building forward (towards the North) as currently extends in two-way traffic.
- j) Include storage proximate to the loading dock and an office for a theatre technician.

Stage 2 (Studio)

The design for the studio (Stage 2) will be developed separately and independent of the Theatre's Stage 1, in that it is concept only. Subject to any anticipated delay, Stage 2 may or may not be included in the development application.

4) Balcony and Administration Adjustments

- a) The scale of the balcony space will be reduced to minimise unnecessary costs. Review option of removing balcony and stairs and including lift access only.



- b) Include manager's office between ticket box and cloakroom.
 - c) Cloak room to be reduced.
 - d) The layout will be adjusted to ensure equitable access to toilets from both sides, ensuring improved accessibility.
- 5) Revised Layout Adjustments - Dressing Rooms and Green Room Relocation
- The dressing rooms and green room will be relocated between the rear corridor and the loading dock driveway to make the building design more streamlined. This allows for easier access and the potential for future expansion.
- 6) Loading Dock Adjustments
- The undercover loading dock will be deleted, with the loading dock flipped to the north (towards the library) to facilitate streamlined truck movements and easier access for performance logistics.
- 7) Fly Tower
- It is proposed to retain the half fly tower, reducing the building's height and associated costs in comparison to a full fly tower. This approach is based on the need to provide a cost-effective solution, while addressing the functionality requirements for the community's theatre needs.

The recommendation to exclude the full fly tower is driven by multiple factors related to the community size, production capacity, and budget constraints.

Fly Tower Options Comparison:

Feature	Half Fly Tower	Full Fly Tower
Definition	A fly tower where scenery and backdrops can be partially raised, but they do not fully disappear from the audience's view.	A fly tower that allows scenery and backdrops to be fully raised and stored out of the audience's view.
Advantages	<ul style="list-style-type: none"> - More cost-effective than a full fly tower. - Provides some vertical storage for scenery. - Supports medium-scale productions. 	<ul style="list-style-type: none"> - Allows for complex, large-scale productions. - Allows for quick scene changes. - Scenery fully concealed when not in use.
Disadvantages	<ul style="list-style-type: none"> - Limits the height of scenery or backdrops. - Some scenic elements may remain visible. - Not suitable for highly technical or large productions. 	<ul style="list-style-type: none"> - High initial construction costs. - Expensive to maintain due to technical complexity. - Requires specialised staff for operation. - Increased building height can impact architectural constraints or zoning regulations.
Cost Implications	Moderate cost for construction and	High initial and ongoing costs.



Feature	Half Fly Tower	Full Fly Tower
	maintenance. Less expensive than a full fly tower.	Significant investment in rigging, counterweight systems, and training.
Production Flexibility	Allows for partial scene changes and modest technical effects. Suitable for mid-level productions.	Supports complex and rapid scene changes. Accommodates larger and more elaborate set designs.
Space Requirements	Requires moderate vertical space and infrastructure.	Requires significant vertical and structural space. Increases overall building height.
Audience Impact	Partial concealment of scenery may be visible, potentially detracting from immersion in high-end productions.	Ensures all scenery and technical elements are concealed when not in use, enhancing the audience's immersive experience.
Best Suited For	<ul style="list-style-type: none"> - Productions with moderate technical demands. - Multi-purpose spaces where cost and scale are considerations. 	<ul style="list-style-type: none"> - Large Productions with high technical demands. - Iconic or large-scale performance venues with significant funding.

Why Half Fly Tower is Optimal for Muswellbrook

- **Community Needs:** The theatre is intended to serve a regional community of approximately 17,000 residents, with an expected seating capacity of 400 seats. The productions hosted at this venue are expected to be community-based events, medium-scale performances, or touring groups with moderate technical complexity. A half-fly tower design provides sufficient functionality while remaining cost-effective. See attached Regional Entertainment Centre Notional utilisation of Proposed Theatre by the Theatre Consultant (Attachment 4).
- **Budget Constraints:** With the \$20 million budget and a site footprint limitation of 1,500 m², the inclusion of a full fly tower is not feasible. The half-fly tower design provides the most cost-effective solution, reducing both construction and ongoing operational costs.
- **Audience Experience:** While the absence of a full fly tower limits certain high production capabilities, the community's theatre needs can be met with simpler technical equipment, and the venue can still host mid-level productions with the flexibility required for varied staging and lighting setups.
- Finally, a full fly tower, in its original design, exceeds the Local Environmental Plan (LEP) height restriction of 13 m by more than 6.5 m, requiring an application to vary the development standard.

Complexity of Varying the Development Standard is detailed below:

Aspect	Complexity Level
Preparation of Justification	High: Robust technical evidence such as massing design studies, visual impact assessments, and heritage reports are needed to justify the variation.
Community	Moderate: There may be opposition if the variation leads to overshadowing, visual dominance, or loss of amenity in surrounding



Aspect	Complexity Level
Feedback	areas.
Approval Likelihood	Moderate-High: The variation is likely to be approved if it is aligned with the LEP's objectives, such as enhancing local community facilities.
Planning Panel Oversight	High: A variation exceeding 10% requires approval by the Regional Planning Panel, increasing scrutiny.
Timeframe	Moderate: The approval process may take several months depending on the need for additional studies or reviews.

Given the complexities involved in varying the development standard and the associated costs, the recommendation is to exclude the full fly tower from the design and adopt the half-fly tower option, thereby avoiding the need for complex height variance application approvals and associated delays which are unlikely to be approved.

The inclusion of a half-fly tower will also require a variation to the development standard. However, the complexity of this variation is significantly lower than a full-fly tower proposal, and the likelihood of approval is considered to be high.

To facilitate approval in principle from the Regional Planning Panel, Council staff sought advice from the planning and regulatory teams. The recommended process for seeking advice involves:

1. Requesting a pre-lodgement meeting via the NSW Planning Portal or through the Panel's planning officer for the new development proposal.
2. Ensuring the Panel receives relevant additional contextual planning documentation and reports to support the review at the pre-lodgement meeting.

Given the extensive time and effort invested in the previous development application (DA), there is a strong likelihood that the Regional Planning Panel will engage constructively in this process.

However, to get informed comments back, it was recommended that Council commission an assessment by qualified consultants to evaluate the impact of the structure's height on the key view corridors identified in the Town Centre Masterplan, as well as the heritage values of the precinct and surrounding buildings.

This assessment, along with additional supporting planning and heritage reports, is currently in progress. This process will require time of up to 2 months in aligning with the Hunter and Central Coast Planning Panel monthly meetings and attaining additional reports.

Staff do not expect to be provided a definitive answer but, ideally, will receive an indication that varying the height limit by 1 to 3 metres is acceptable.

Therefore, to progress with the project, it is recommended that the revised design with the inclusion of a half-fly tower is progressed to a development application.

Additionally, Slattery (Quantity Surveyors) advised that achieving the \$20 million budget requires a reduction in the building footprint to approximately 1,500m². To meet this constraint, potential cost-saving measures include:

- Substituting cost-effective materials for the building envelope and interior finishes.
- Simplifying architectural elements to reduce construction complexity.
- Optimising building systems to enhance cost efficiency while retaining full functionality.



Next Steps

To ensure the project remains aligned with budgetary and community expectations, the following steps are recommended:

1. **Collaboration with Quantity Surveyor and Consultants:** Finalise design changes based on recommendations, including adjustments to space requirements.
2. **Finalisation of DA Submission:** Submit a development application (DA) reflecting the revised design, ensuring compliance with budget constraints and local planning regulations.

The inclusion of a half fly-tower, along with other design adjustments, ensures the Muswellbrook Regional Entertainment Centre (Stage 1) remains closely aligned with both financial and planning constraints.

These modifications should deliver a functional and adaptable venue for local events and medium sized productions while meeting the needs of the community.

A pre-lodgement meeting will be held with the Regional Planning Panel but rather than waiting for this milestone it is considered sensible to progress preparing the development application based on the 'key changes' described in the report.

SOCIAL IMPLICATIONS

The theatre remains a vital community project, fostering cultural and economic growth. The theatre will serve as a hub for local events, performances, and conferences, providing a venue for entertainment and community activities.

The updated design will ensure that the project is not only cost-effective but also provides significant value to the community.

FINANCIAL CONSIDERATIONS

The reduced design scope for building construction only is estimated at \$23M as of July 2024. Cost escalation to Q3 2025 increases the estimate to \$24.5M, excluding external works which are separately funded by the Priority Community Infrastructure Programme (PCIP) funding of \$10.5M.

The revised design is intended to keep the project cost closer to the \$20M target. The savings generated by excluding the full fly tower and optimising space will help offset the cost escalation that could otherwise push the project further above budget.

The current cost estimate for the theatre building is \$23M as of July 2024, and this figure is expected to rise to approximately \$25.5M by Q3 2025 if the design is not optimised. External works are funded separately through PCIP funding.

The Regional Entertainment Centre construction does rely on \$6,394,854 from Resources Regions Round 8 (R4R8) which needs to be expended by 31 December 2025 at this time. It is proposed to reallocate between PCIP funding and R4R8 to ensure Council can meet funding deadlines.

Preliminary discussions have been held with both funding bodies. R4R8 funding will be directed towards the Pocket Park, town centre car park, and enabling works instead of the Regional Entertainment Centre, and the equivalent PCIP funding will be redirected to early stages of the Regional Entertainment Centre construction.

POLICY IMPLICATIONS

Nil known.



STATUTORY / LEGAL IMPLICATIONS

Nil known.

RISK MANAGEMENT IMPLICATIONS

Risk will be managed through ongoing consultation with Council, the Quantity Surveyor, architects, Theatre consultant, and other stakeholders.

COMMUNITY CONSULTATION / COMMUNICATION

To be determined.

General notes

- General notes**
- All dimensions and existing conditions shall be checked and verified by the contractor before proceeding with the work.
 - All levels relative to 'Australian Height Datum'.
 - Do not scale drawings.
 - Use figured dimensions only.

Legend

GENERAL ARRANGEMENT NOTES

1. CONTRACTOR TO REFER TO LANDSCAPE AND CIVIL DOCUMENTATION AND ALLOW FOR ALL REQUIRED SPOIL REMOVAL/CLEAN FILL TO ACHIEVE THE NOMINATED FINISHED SITE LEVELS
2. REFER A0240 SERIES FOR WALL TYPES
3. REFER A0260 SERIES FOR MATERIAL TYPES
4. ALL SECONDARY STEEL COMPONENTS TO BE COVERED UNDER CONTRACTOR D+G PACKAGE
5. CONTRACTOR TO REFER TO ROOF SAFETY ACCESS (REPORT172) FOR ROOF ACCESS SYSTEM AND LAYOUT

GENERAL

- | | | |
|----|-------|--|
| 74 | 00000 | SITE BOUNDARY |
| 74 | 00000 | FINISHED FLOOR LEVEL TO DATUM |
| 74 | 00000 | STRUCTURAL LEVEL TO DATUM |
| 74 | 00000 | DOOR NUMBER |
| 74 | 00000 | SPECIAL ACoustic DOOR |
| 74 | 00000 | BALLUSTRADE |
| 74 | 00000 | EXPANSION JOINT |
| 74 | 00000 | FLOOR FERRULE (REFER TO SHOP DRAWINGS) |
| 74 | 00000 | FH FIRE HYDRANT |
| 74 | 00000 | FHR FIRE HOSE REEL |
| 74 | 00000 | FW FLOOR WASTE |
| 74 | 00000 | FRAMING AS REQUIRED TO SUPPORT CEILING BELOW |
| 74 | 00000 | DB DISTRIBUTION BOARD |
| 74 | 00000 | DN DOWN PIPE |
| 74 | 00000 | OF OVERFLOW |
| 74 | 00000 | UC ULTHER CUPBOARD |
| 74 | 00000 | LB LIGHTING BAR 483mm O/D |
| 74 | 00000 | REFER THEATRE CONSULTANT'S DETAIL |

CABLE PASS LEGEND

- | | |
|------|---|
| CP_H | CABLE PASS THROUGH WALL @2500
AFFL OR 100 ABOVE DOOR FRAME |
| CP_L | CABLE PASS THROUGH WALL @200 AFFL |
| CP_F | CABLE PASS THROUGH FLOOR 1500A |
| WH# | WALL HANGER |

NOTE:
OVERHANG WALL ONLY 50mm TYP 150 DIA. WITH FIRE
PILLOW ON CAPTIVE CHAIN.

WH# CL 2500mm MAX. BETWEEN HOOKS.

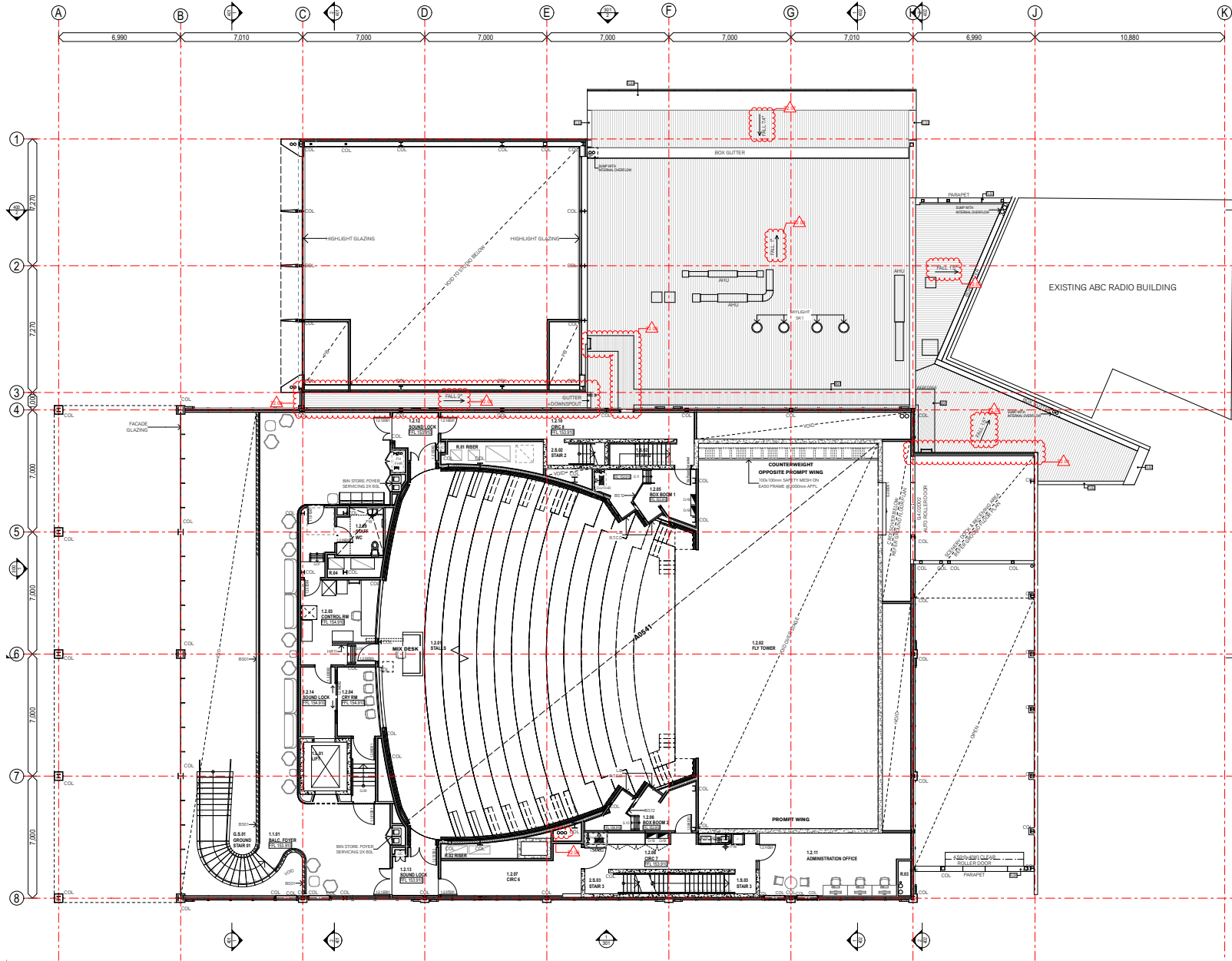
	T208	End Date to Date 5	
	T208	Hydraulic Piping Reduction	
	T207	Door Number Increment	
	T208	Doorway Reduction	
T2	T207	Door 10 Core adjustment	Transfer Addition/Reduce Issue
	T208	Door Wall Increment	
	T208	Door to View Reduction	
	T202	Door Opening Increment	
	T201	Parallel Wall Type Update	

Muswellbrook Regional Entertainment Centre
30 Brook Street
Muswellbrook NSW 2333

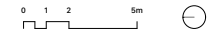
General Arrangement Plans **Scale**
Ground Floor 1:100 @ A1

Project Code	First Issued
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Sheet No.	Rev
A0200	T2



fjmtstudio



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- Legend**
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 3. REFER ASADO SERIES FOR MATERIAL TYPES
 4. CONTRACTOR TO REFER TO ROOF SAFETY ACCESS REPORT(S) FOR ROOF ACCESS SYSTEM AND LAYOUT

- GENERAL**
- SITE BOUNDARY
 - FL 000.00 FINISHED FLOOR LEVEL TO DATUM
 - SL 000.00 STRUCTURAL LEVEL TO DATUM
 - 6-A-00 DOOR NUMBER
 - BS SPECIAL ACOUSTIC DOOR
 - BS BALUSTRADE
 - EJ EXPANSION JOINT
 - FF FLOOR FERRULE (REFER TO SHOP DRAWINGS)
 - FI FIRE HYDRANT
 - FR FIRE HOSE REEL
 - FW FLOOR WASTE
 - FAR FRAMING AS REQUIRED TO SUPPORT CEILING BELOW
 - D/B DISTRIBUTION BOARD
 - DP DOWN PIPE
 - OF OVERFLOW
 - UC USER CUPBOARD
 - LB LIGHTING BARN LIGHTS ON D/O
 - R.T.C.D. REFER THEATRE CONSULTANT'S DETAIL

- CABLE PASS LEGEND**
- CP_H CABLE PASS THROUGH WALL @2500 AFFL OR 100 ABOVE DOOR FRAME
 - CP_L CABLE PASS THROUGH WALL @2000 AFFL
 - CP_F CABLE PASS THROUGH FLOOR 1500DA
 - WH # WALL HANGER
- NOTE:** OVERHANGS SHALL ONLY 50mm TYPICAL WITH FIRE FOLLOW ON CAPTIVE CHAIN.
- WH# CL 2500mm MAX BETWEEN HOOKS.

NO	DESCRIPTION	DATE
1	Issue for Tender	11/05/21
2	Issue for Tender	11/05/21
3	Issue for Tender	11/05/21
4	Issue for Tender	11/05/21
5	Issue for Tender	11/05/21
6	Issue for Tender	11/05/21
7	Issue for Tender	11/05/21
8	Issue for Tender	11/05/21

Muswellbrook Regional Entertainment Centre
30 Brook Street
Muswellbrook NSW 2333

General Arrangement Plans Scale 1:100 @ A1
Level 1

Project Code	First Issued
MREC	11/05/21
Sheet No.	Rev
A0201	T2

For Tender

- All dimensions and existing conditions shall be checked and verified by the contractor before proceeding with the work.
- All levels relative to 'Australian Height Datum'.
- Do not scale drawings.
- Use figured dimensions only.

GENERAL NOTES

- GENERAL NOTES**
1. ALL WALL FINISHES TO BE PC01, UNLESS NOTED OTHERWISE
 2. REFER TO A0920 SERIES FOR INTERIOR FINISHES & A0960 SERIES FOR FF&E SCHEDULES FOR FURTHER DETAILS
 3. 3D VIEWS SHOWN FOR DIAGNOSTIC INTENT ONLY. FOR TENDR PURPOSES REFER TO 2D DRAWINGS.
 4. SIGNAGE NOT SHOWN. PROVIDE AND INSTALL STATUTORY SIGNAGE. PROVIDE NOGGINN AND SUPPORT WITHIN WALL FRAMING. REFER TO SIGNAGE SPECIFICATION.

- ② SEATING TO THEATRE SEATING SPECIFICATION
 ③ HOLYOAKE PSD200/BLACK FLOOR DIFFUSER
 FB03 FLOOR BOX R.T.C.D



fjmtstudio

0 0.5 1.0 2.0m

General notes

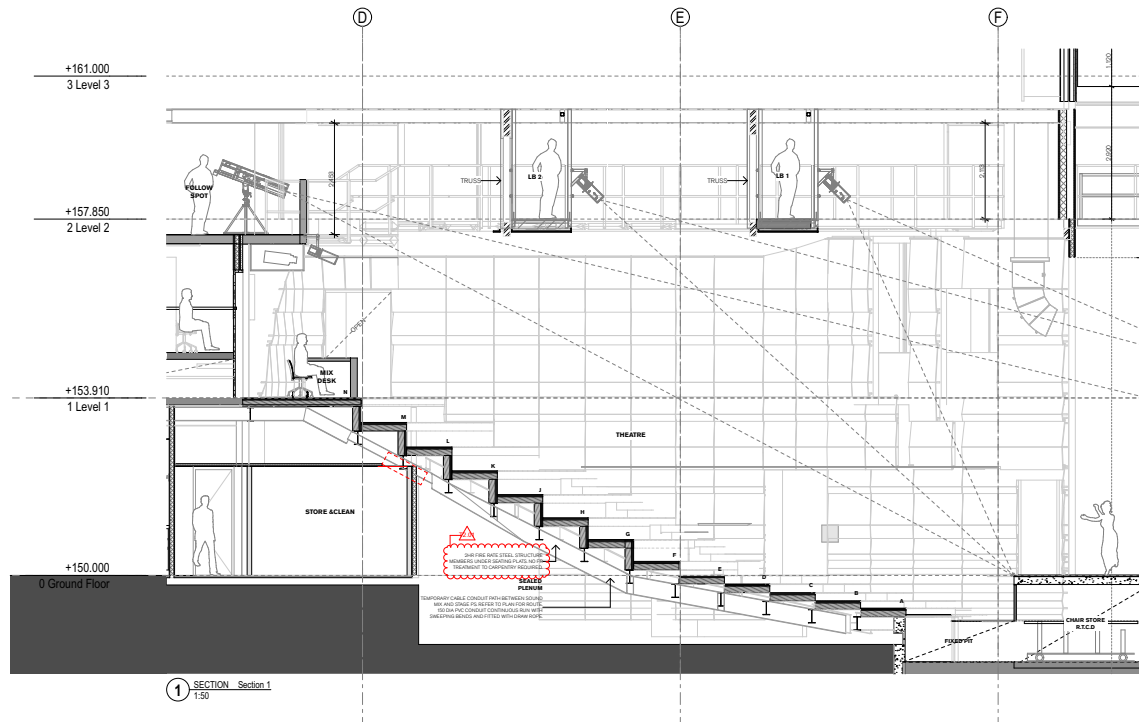
- All dimensions and existing conditions shall be checked and verified by the contractor before proceeding with the work.
- All levels relative to 'Australian Height Datum'.
- Do not scale drawings.
- Use figured dimensions only.

Legend

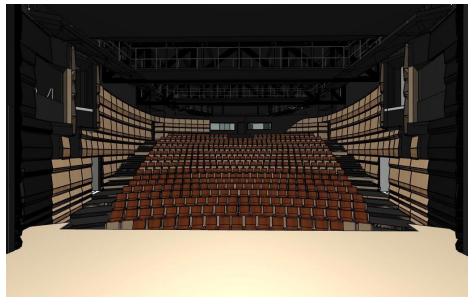
GENERAL NOTES

1. ALL WALL FINISHES TO BE PCV, UNLESS NOTED OTHERWISE.
2. REFER TO A2020 SERIES FOR INTERIOR FINISHES & A2030 SERIES FOR FINE SCHEDULES FOR FURTHER DETAILS.
3. 3D VIEWS SHOWN FOR DIAGNOSTIC INTENT ONLY FOR TENDER PURPOSES REFER TO 2D DRAWINGS.
4. SIGNAGE NOT SHOWN. PROVIDE AND INSTALL SIGNATORY SIGNAGE. PROVIDE NOSSIGNS AND SUPPORT WITHIN WALL FRAMING REFER TO SIGNAGE SPECIFICATION.

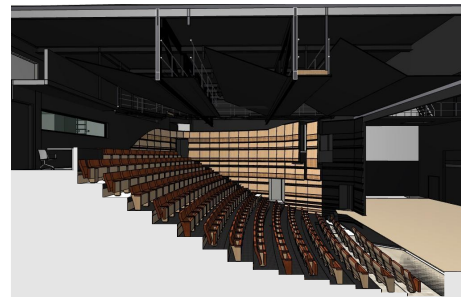
R.T.C.D. REFER THEATRE CONSULTANT DOCUMENTS



1 SECTION Section 1
1:50



2 3D VIEW Theatre From Stage



3 3D VIEW Sectional Perspective

10	10/01/21	Revised Architectural Drawings	10
11	10/01/21	Revised Architectural Drawings	11
12	10/01/21	Revised Architectural Drawings	12
Rev	Date	Issue	By
Muswellbrook Regional Entertainment Centre			
30 Brook Street			
Muswellbrook NSW 2333			
Theatre		Scale	
Section Sheet 1		1:50 @ A1	
Project Code		First Issued	
MREC		11/05/21	
Sheet No.		Rev	
A0549		T2	

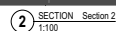
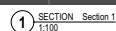
For Tender

General notes

- All dimensions and existing conditions shall be checked and verified by the contractor before proceeding with the work.
- All levels relative to 'Australian Height Datum'.
- Do not scale drawings.
- Use figured dimensions only.

Legend

REFER TO FACADE DRAWINGS A0430



T1	MS/2H	Teacher Documentation Issue	60
T2	MS/2H	Design Development Issue	60
rev	data	name	by

Muswellbrook Regional Entertainment Centre
 30 Brook Street
 Muswellbrook NSW 2333

1:100 Sections
 Sheet 1 1:100

Project Code	First Issue
MREC	11/0

Sheet No.
 A0410

For Tender

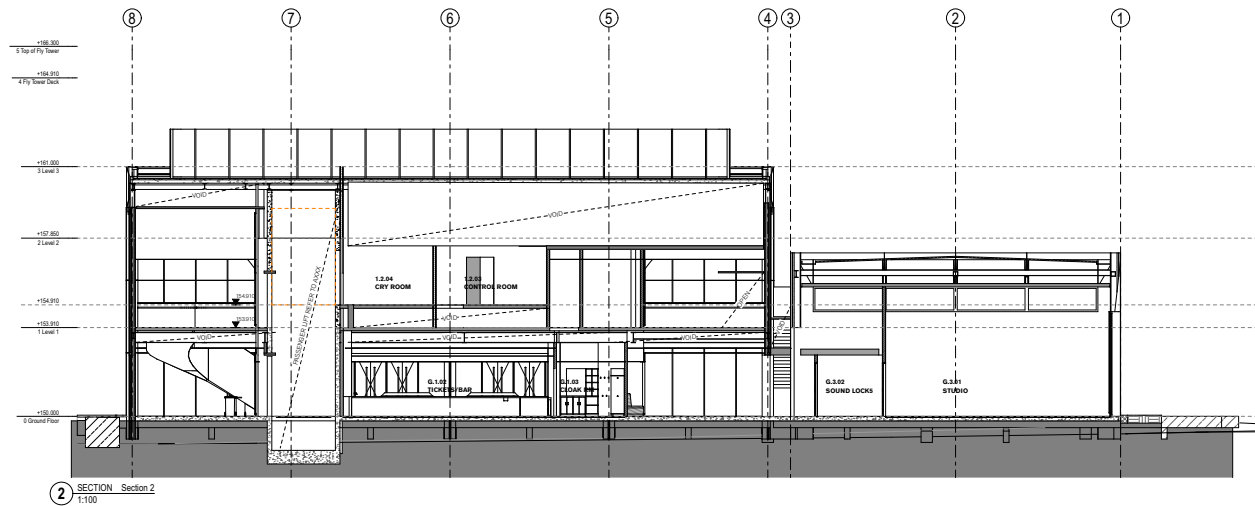
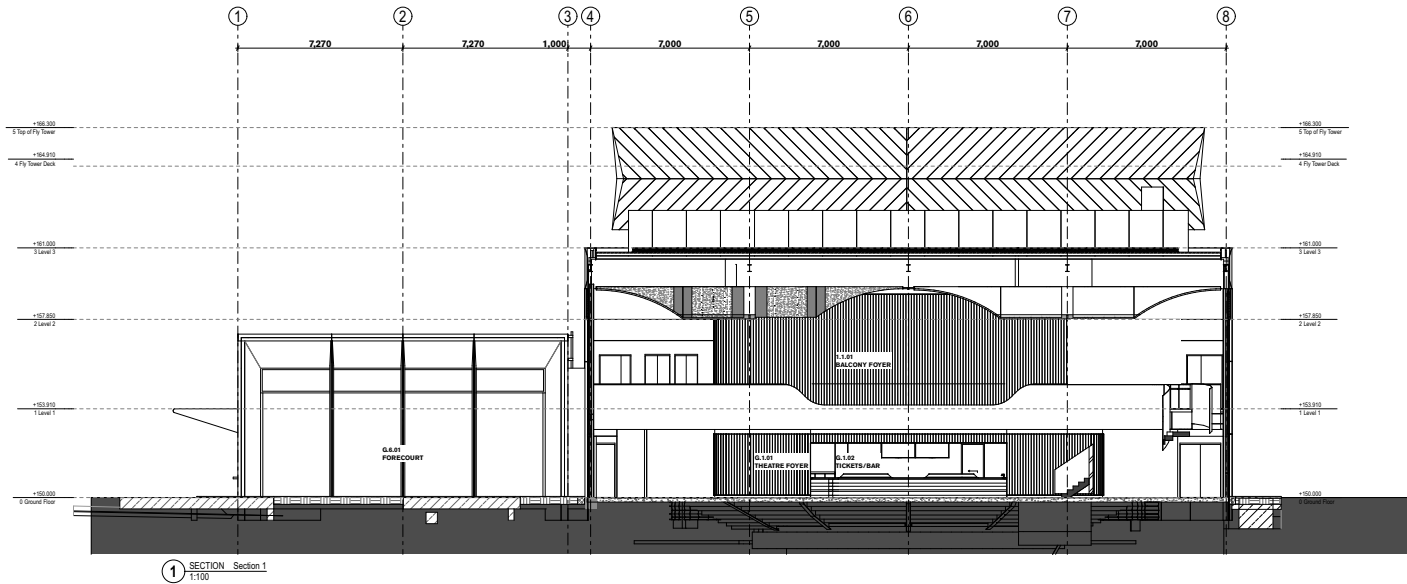


General notes

- All dimensions and existing conditions shall be checked and verified by the contractor before proceeding with the work.
- All levels relative to 'Australian Height Datum'.
- Do not scale drawings.
- Use figured dimensions only.

Legend

REFER TO FACADE DRAWINGS A0430



11	05/05/21	Section Documentation Issue	01
12	05/05/21	Section Documentation Issue	02
Rev	Date	Issued	By
Muswellbrook Regional Entertainment Centre			
30 Brook Street			
Muswellbrook NSW 2333			
1:100 Sections		Scale	
Sheet 2		1:100 @ A1	
Project Code		First Issued	
MREC		11/05/21	
Sheet No.		Rev	
A0411		T1	

Area Schedule

Summary

Reduced Brief Stage 3a

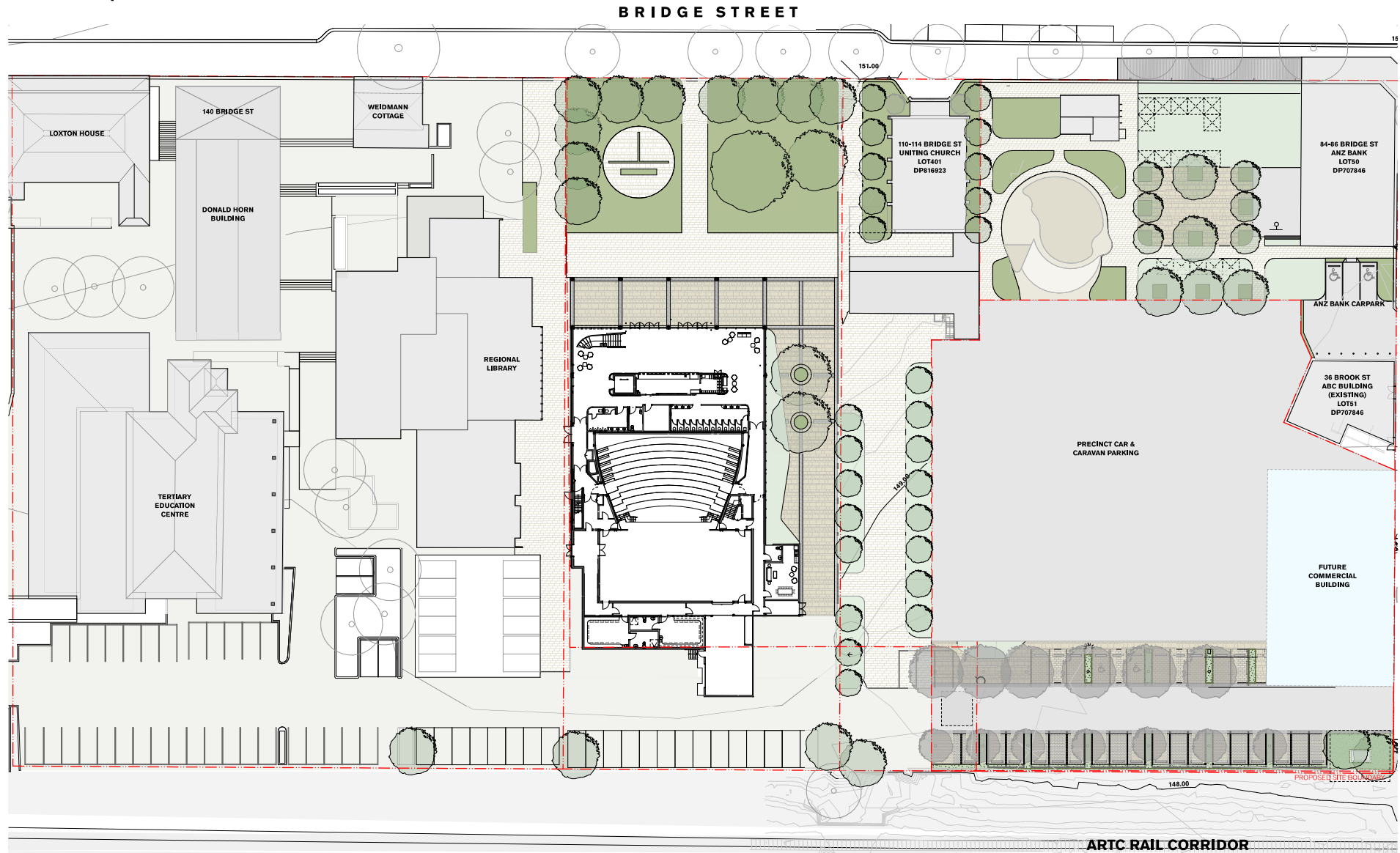
- 2,166 (or 2,396m² including grid mesh floor to the fly tower).

Reduced Brief to less than 1,500m2

- 1,344m² for further discussion

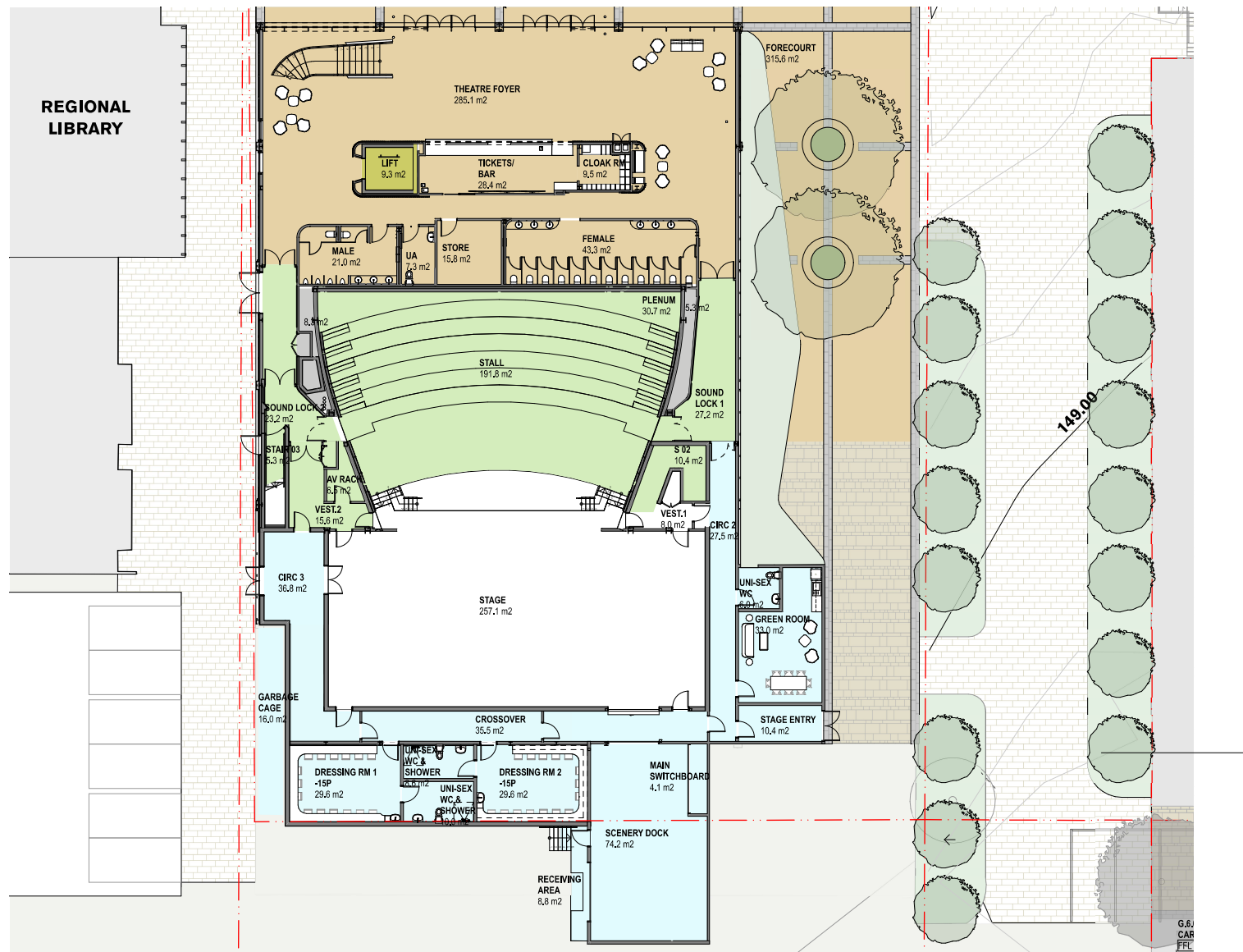
[illegible]

Updated Precinct Plan



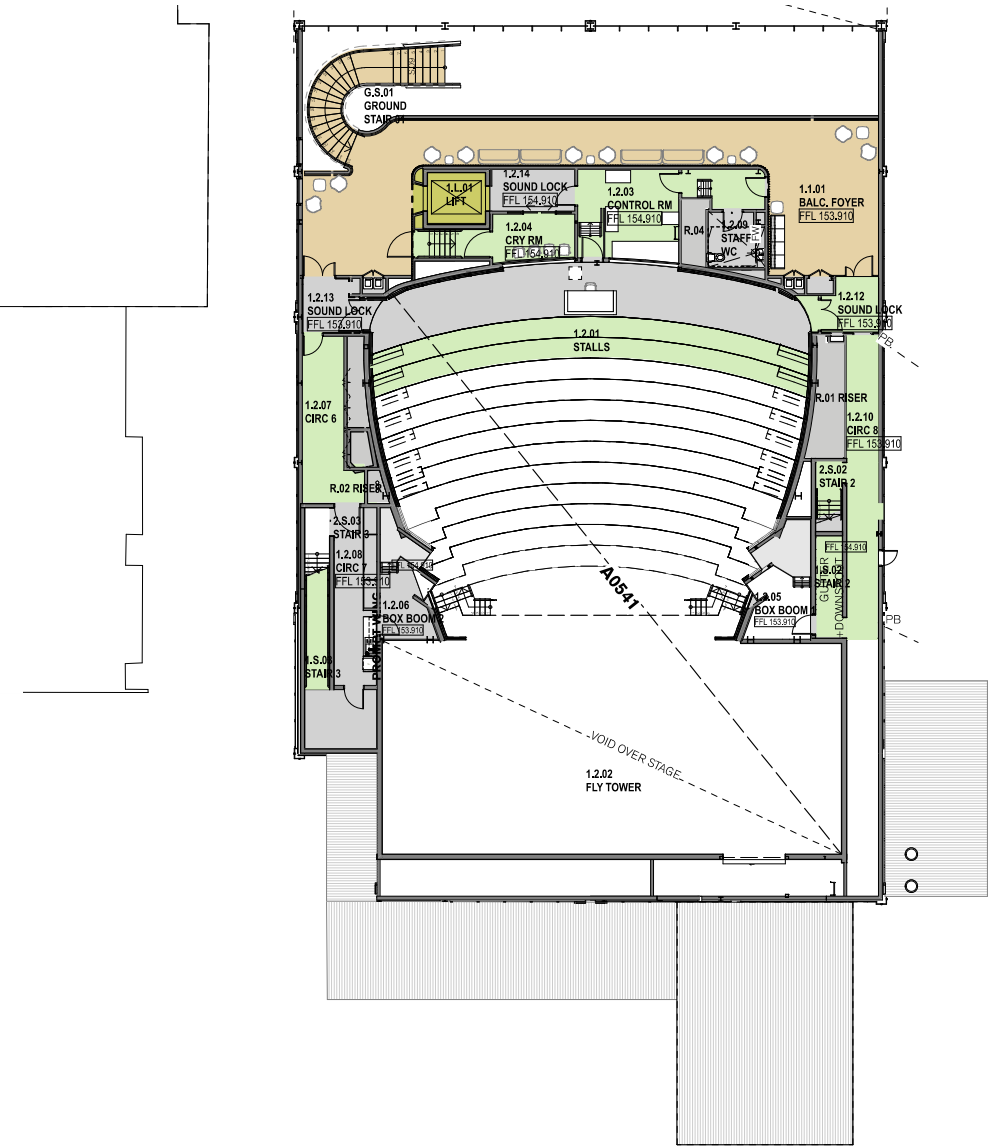
fjstudio / architecture / interiors / landscape / urban / place

Zone Plan - Ground Floor



fjstudio / architecture / interiors / landscape / urban / place

Zone Plan - Level 1



Area Schedule

SP Zone Schedule Concept copy 1			
Story	Zone No.	Room Name	Area m2
Basement 1			
	B.2.01	LIFT PIT	18.18
	B.2.05	PLENUM	26.86
			191.57
			236.61 m²
Ground Floor			
	G.1.01	THEATRE FOYER	285.08
	G.1.02	TICKETS/BAR	28.40
	G.1.03	CLOAK RM	9.45
	G.1.04	STORE	15.94
	G.1.06	UA	7.31
	G.1.07	FEMALE	43.33
	G.1.08	MALE	20.98
	G.2.01	STALL	191.76
	G.2.03	STAGE	257.08
	G.2.04	SOUND LOCK 1	27.15
	G.2.05	SOUND LOCK 2	23.19
	G.2.06	VEST.1	7.98
	G.2.07	VEST.2	15.56
	G.2.08	PLENUM	30.74
	G.2.10	AV RACK	6.45
	G.4.01	CIRC 2	27.50
	G.4.01	CIRC 3	36.76
	G.4.02	CROSSOVER	35.46
	G.4.08	DRESSING RM 1 - 15P	29.56
	G.4.08	DRESSING RM 2 - 15P	29.56
	G.4.10	GREEN ROOM	33.01
	G.4.11	STAGE ENTRY	10.42
	G.4.14	MAIN SWITCHBOARD	4.13
	G.4.14	SCENERY DOCK	74.16
	G.4.15	RECEIVING AREA	8.82
	G.4.16	GARBAGE CAGE	16.01
	G.4.19	UNI-SEX WC	6.03
	G.4.20	UNI-SEX WC & SHOWER	10.04
	G.4.21	UNI-SEX WC & SHOWER	8.61
	G.6.01	FORECOURT	315.59
	G.6.02	COLONNADE	198.64
	G.6.03	CAR DROP OFF ZONE	282.39
	G.6.04	CARPARK	963.34
	GL.01	LIFT	9.28
	G.5.02	S.02	10.41
	G.5.03	STAIR 03	5.30
	R.01 RISER		5.25
	R.02 RISER		8.32
			3,098.99...
Level 1			
	1.1.01	BALC. FOYER	113.45
	1.2.01	STALLS	95.20
	1.2.02	FLY TOWER	238.43
	1.2.03	CONTROL RM	28.80
	1.2.04	CRY RM	14.86
	1.2.05	BOX BOOM 1	9.29
	1.2.06	BOX BOOM 2	9.18
	1.2.07	CIRC 6	18.06
	1.2.08	CIRC 7	15.73
	1.2.09	STAFF WC	7.02
	1.2.10	CIRC 8	22.85
	1.2.12	SOUND LOCK	8.00
	1.2.13	SOUND LOCK	8.18
	1.2.14	SOUND LOCK	8.23

MREC Area Schedule GFA			
Story	Zone No.	Room Name	Area m2
	1.L.01	LIFT	10.24
	1.S.02	STAIR 2	6.53
	1.S.03	STAIR 3	6.76
	2.S.02	STAIR 2	3.41
	2.S.03	STAIR 3	3.62
	G.5.01	GROUND STAIR 01	16.33
	R.01 RISER		8.49
	R.02 RISER		8.35
	R.03		1.40
	R.04		3.77
			675.02 m²
Level 2			
	2.2.01A	FLY GALLERY EAST	33.99
	2.2.01B	FLY GALLERY WEST	12.53
	2.2.02	FOLLOW SPOT	25.30
	2.2.03A	LB1	30.03
	2.2.03B	LB2	44.08
	2.2.04	CIRC 11	30.00
	2.2.05	CIRC 10	6.09
	2.2.06	CIRC 9	7.55
	2.2.07	FLY TOWER	164.58
	2.L.01	FOH LIFT OVER RUN TO LV.1	7.01
	2.S.02	STAIR 2	10.99
	2.S.03	STAIR 3	15.48
	R.01 RISER		8.85
	R.02 RISER		8.36
	R.04 RISER		4.42
			409.26 m²
Level 3			
	3.2.01	FLY TOWER	209.52
	3.4.01	PLANTDECK	539.34
			748.86 m²
Fly Tower Deck			
	4.4.01	ROOF	245.41
			245.41 m²
			5,415.15...

**Muswellbrook Entertainment & Conference Centre
Reduced Scope Cost Plan 1**

Muswellbrook Shire Council

8 July, 2024

Functional Area	Scope	GFA (m2)	Rate (\$/m2)	Total (\$)
Muswellbrook Theatre				
Site Piling		2,254	430	969,000
Theatre	Finished	2,254	9,157	20,640,000
Loose Furniture, Fittings & Equipment	Finished	2,254	51	116,000
ICT & AV	Finished	2,254	263	593,000
Theatre Equipment	Finished	2,254	304	686,000
Total Building Cost (at July, 2024)		2,254	10,206	23,004,000
Provisional allowance for demolition	Item			150,000
Provisional allowance for External Works and Services to facilitate new build - Precinct Works funding	Item			940,000
Allowance for PV	Item			50,000
Provisional allowance for carparking	Note			Excluded
Allowance for works outside site boundary, etc.	Note			Excluded
Allowance for abnormal ground conditions / site decontamination / remediation	Note			Excluded
Total Building and External Works & Services Cost (at July, 2024)			10,712	24,144,000
Design Contingency	Item		1.0%	241,000
Contract Contingency	Item		5.0%	1,219,000
Escalation to commencement - assume Q2, 2025	Item		5.0%	1,280,000
Total Construction Cost (at Q3, 2025)			11,927	26,884,000
Consultants Fees	Item			3,330,000
Council Management Fees	Item			Excluded
Authority & Headwork's Charges	Item		2.00%	538,000
Other Project Costs	Note			Excluded
Goods & Services Tax	Note			Excluded
Total End Cost (at July, 2024)			13,643	30,752,000

This cost plan is based on preliminary information and therefore should be regarded as indicative only of the possible order of cost.
All components of the cost plan will require confirmation once further documentation is available. Refer to the accompanying letter for details of basis of cost plan and exclusions from above costs.

Muswellbrook Entertainment & Conference Centre
Reduced Scope Cost Plan 1
Muswellbrook Shire Council
Elemental Summary

Elements	Theatre		
	FECA: 2,254		
	%	\$ / m2	\$ Total
Substructure		658	1,482,996
Superstructure		3,591	8,094,921
Columns		267	601,593
Upper Floors		323	727,508
Stairs		145	327,378
Roof		641	1,443,823
External Walls / Windows / Doors		1,459	3,287,775
Internal Walls		515	1,161,214
Internal Screens		63	142,703
Internal Doors		179	402,927
Finishes		569	1,281,533
Wall Finishes		293	660,353
Floor Finishes		144	324,580
Ceiling Finishes		132	296,599
Fitments		705	1,589,324
Fitments / joinery		330	744,296
Special Equipment		375	845,028
Services		1,983	4,468,959
Hydraulics (inc. Sanitary Fixtures)		130	293,801
Mechanical		857	1,930,693
Fire Protection		166	374,946
Electrical / Communications / Security		726	1,636,892
Lifts		64	145,000
BWIC with Services		39	87,627
Preliminaries and Overheads	18%	1,351	3,045,192
Builder's Margin	4%	300	676,709
Total		9,157	20,640,000

slattery

Ref 20075-Muswellbrook-CP1-reduced scope Date 8/07/2024 Page 2 of 2

Revised as at 9 December 2024

TOTAL INDICATIVE TIMES PAC FACILITIES USED	22	7	6	21	3	19	3	22	8	22	8	2	6	5	23	23	11	10	5	21	21	21	12	19	16	5	13	16	15	7	7	23	23
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10.2.4. Draft Memorandum of Understanding - St Heliers Correctional Centre

Responsible Officer: General Manager

Author: Director - Infrastructure & Property

Community Strategic Plan: 5 - *Community Infrastructure*

Effective and efficient infrastructure that is appropriate to the needs of our community

Delivery Program Goal: 5.1.4 - Maintain and continually improve community infrastructure across the Shire.

Operational Plan Action: Not applicable

Attachments: 1. Draft Memorandum of Understanding [10.2.4.1 - 11 pages]

PURPOSE

To provide Council with the draft Memorandum of Understanding (MoU) between Department of Communities and Justice, Corrective Services NSW, and Council for community service work to be undertaken by inmates of St Heliers Correctional Centre.

OFFICER'S RECOMMENDATION

Council authorises the General Manager to sign the Memorandum of Understanding (MoU) between the Department of Communities and Justice, Corrective Services NSW, and Muswellbrook Shire Council.

Moved: _____ **Seconded:** _____

EXECUTIVE SUMMARY

This report provides an attached draft Memorandum of Understanding (MoU) between the Department of Communities and Justice, Corrective Services NSW, and Muswellbrook Shire Council for community service work to be undertaken by inmates of St Heliers Correctional Centre for the War Memorial Grove and, potentially, other sites.

While it requires some resources from Council, it will ultimately free up Council's resources to maintain other parks and gardens in the Shire.

PREVIOUS RESOLUTIONS

Nil known.



BACKGROUND

Prior to 2020 and the impacts of the COVID-19 pandemic, Council only undertook infrastructure maintenance of the War Memorial Grove on Aberdeen Street. The Muswellbrook RSL sub-Branch managed the cleaning of amenities and gardens, and St Heliers Correctional Centre managed mowing and vegetation maintenance generally.

Understandably there were restrictions on both organisations to service the Memorial Grove during COVID-19. Since then, Council has included the cleaning of amenities in Council's cleaning contract and the parks maintenance has been added to Council's Works programme.

A meeting was held with St Heliers Correctional Centre, the Mayor, and the General Manager towards the end of 2024 to discuss resuming parks maintenance of the War Memorial Grove and other opportunities for community service work for St Heliers inmates.

Council has an existing agreement with Correctional Services NSW for the Community Service Work that offenders are required to complete. This work supplements Council's work in the Muswellbrook old cemetery, but does not have a current arrangement with St Heliers Correctional Centre. Previously, this arrangement for the War Memorial Grove was between Correctional Services NSW and Muswellbrook RSL sub-Branch.

CONSULTATION

Corrective Services NSW

Muswellbrook RSL sub-Branch

Mayor

General Manager

Manager Works

REPORT

Attached is a draft Memorandum of Understanding (MoU) between the Department of Communities and Justice, Corrective Services NSW, and Muswellbrook Shire Council for community service work to be undertaken by inmates of St Heliers Correctional Centre for Council's review.

It sets out the agreed understanding of the parties for a four-year agreement. Schedule 1 provides the details of the MoU and sets out the responsibilities of each party:

Responsibilities of Corrective Services NSW (CSNSW)

- Supply of inmate work crew and CSNSW overseer on mutually agreed dates and times.
- Transport of inmate crew and CSNSW overseer to and from the locations within the shire.
- Suitable learning resources for certificate qualifications for inmates as appropriate.
- Assess inmates for competencies and qualifications.
- Manage quality assurance of work under direction of External Agency.

Responsibilities of External Agency (Muswellbrook Shire Council)

- Identify and inspect suitable sites with prior notice to CSNSW of at least 48 hours indicating suitable site risk assessment including notification of inherent site hazards, details of requested work and notification of location.
- Supply all equipment, tools including the maintenance of them, and materials will be provided by Council.



- Create and enforce traffic management plan as appropriate to manage work site access.
- Any costs associated with works completed will be the responsibility of External Agency.
- Supply suitable personal protection equipment (PPE).
- Supply suitable access to toilet facilities.
- Compile records of delivery of the service and provide copy to CSNSW within 2 weeks of completion of work.

In consultation with the Manager Works, it is considered that Council will be able to provide St Heliers with a trailer that could be utilised for the transportation of equipment, a zero-turn, whipper snippers, and blower. Council staff will also be able to assist with requirements for an appropriate Traffic Guidance Scheme (TGS) to routinely be applied.

FINANCIAL CONSIDERATIONS

There will be some minor expenditure for deploying the Council's small plant and equipment. However, these resources are necessary to service the Memorial Grove regardless of who carried out the maintenance work. This will free up Council's resources to maintain other parks and gardens in the Shire.

POLICY IMPLICATIONS

Nil known.

STATUTORY / LEGISLATIVE IMPLICATIONS

Crimes (Administration of Sentences) Act 1999

RISK MANAGEMENT IMPLICATIONS

Nil known.

COMMUNITY CONSULTATION/MEDIA IMPLICATIONS

To be determined.

Memorandum of Understanding

This Memorandum of Understanding ("**MOU**") is made on: _____.
Insert date when signed by both parties.

Between

1. **The Crown in right of the State of New South Wales, acting through the Department of Communities and Justice, Corrective Services NSW** (ABN 32 980 170 687) of Level 4, 219-241 Cleveland Street, Strawberry Hills NSW 2016 ("**CSNSW**"); and
2. **Muswellbrook Shire Council** (ABN 86 864 180 944) of Campbell's Corner, 60-82 Bridge St, Muswellbrook NSW 2333 ("**External Agency**").

Background

- A. **CSNSW** is part of the Department of Communities and Justice as defined in s. 3 of the *Crimes (Administration of Sentences) Act 1999* (the "**Act**"). The St Heliers Correctional Centre (the "**Centre**") is one of the correctional centres managed by **CSNSW** and which houses a number of inmates. A convicted inmate may, from time to time, be directed to carry out community service work pursuant to s. 6 of the **Act**. Community Service Work is defined in s.118 of the **Act** (**definitions set out in Schedule 2**).
- B. Community reparation is seen as an essential component of offender programs at the Centre. **CSNSW** and the **External Agency** wish to enter into an arrangement by which the **External Agency** will actively utilise inmates from the **Centre** in projects that develop community facilities (the "**Project**").
- C. This MOU sets out the agreed understanding of the parties as to the terms and conditions on which this arrangement is entered into. It is not intended to be a legally binding agreement except in relation to insurance and liability, however, by their endorsement of this MOU, the parties confirm their intention to abide by its terms and conditions.

Operative provisions

1. Term

- (a) This MOU commences on the Commencement Date specified in Item 1 of Schedule 1 and terminates on the Termination Date specified in Item 1 of Schedule 1 (the "**Term**").
- (b) This MOU may be extended before the expiry of the Term on such terms as may be agreed to between the parties in writing.

MOU – Muswellbrook Shire Council Grounds Maintenance

2. The External Agency's obligations

2.1 Community service work

- (a) The **External Agency** will assist **CSNSW** in its aim to provide meaningful work for inmates to undertake in order for them to be in work that is of mutual benefit to the community and to the inmates as set out in **Schedule 1**.
- (b) The **External Agency** will identify **Projects** within the description in Schedule 1 or as otherwise agreed between the parties that provide work that produces or maintains community facilities that are of a lasting benefit to the community. **Projects** identified should ideally provide assistance to Government and not for profit agencies.
- (c) **CSNSW**, with the approval of the **External Agency**, will determine in its discretion what **Projects** are undertaken by inmates in accordance with this MOU.
- (d) The **External Agency** will identify **Projects** that can be achieved with the labour provided by **CSNSW** however that use of inmate labour should not of itself create a loss of local employment.
- (e) Once identified by the **External Agency**, a written request for assistance with a **Project** should be forwarded by the **External Agency** to the General Manager of the **Centre**. Any request must provide sufficient information for the General Manager to assess the **Project** as set out in Schedule 1.

2.2 Sites

- (a) The External Agency will provide access to the Sites where it has been agreed between the parties that community service work pursuant to a Project will be undertaken by the inmates in accordance with this MOU, for the purpose of inmates undertaking community service work at those Sites.
- (b) The External Agency warrants that the Sites are owned or leased or exclusively controlled by the External Agency or the External Agency is legally entitled to provide access to the Sites and to allow community service work to be performed at those Sites as agreed to in this MOU.

2.3 Supplies and Equipment

- (a) The **External Agency** will supply all consumables required to operate the Equipment referred to in clauses 3.3 and 3.4 below.

2.4 Training

- (a) The External Agency, at its cost, will ensure that all inmates and **CSNSW** staff who attend the Sites and/or use the Equipment receive all necessary work

health and safety ("**WHS**") training in relation to the use of the Equipment and the performance of community service work at the Sites.

2.5 General

- (a) The **External Agency**, in giving access to the Sites, will take all reasonable care to provide a safe operating environment for inmates and **CSNSW** staff. The **External Agency** will promptly notify **CSNSW** if it becomes aware of any safety or liability issues that may arise in relation to the use of the Sites by inmates and/or **CSNSW** staff.

3. CSNSW's obligations

3.1 Project assessment

- (a) CSNSW will undertake a considered and timely assessment of all requests for assistance on Projects received from the External Agency. Such assessment will include, but is not limited to, security; available Centre resources; and impact on the local community.
- (b) Once CSNSW has determined that the Project is appropriate, the parties shall undertake a work site occupational health and safety assessment.

3.2 Licencing

- (a) CSNSW will ensure a register is maintained to show operators using zero-turn mowers have a current NSW driver's licence.

3.3 Equipment

- (a) **The External Agency** will provide all necessary Equipment for the purpose of inmates undertaking community service work at the Sites.
- (b) **The External Agency** will ensure that the Equipment (and any other items supplied by the **CSNSW** for use at the Sites) is well maintained and kept in good working order at all times during the Term.

3.4 Supervision of offenders

- (a) **CSNSW** agrees that its staff will provide supervision for all inmates that are present at the Sites for the purpose of performing community service work.
- (b) Supervisory requirements are determined by reference to inmate classification and shall, at all times, be determined by **CSNSW**. The security of inmates, officers and the community shall hold precedence within this agreement.
- (c) **CSNSW** reserves the right to defer or cancel scheduled **Projects** if security of inmates, officers or the community is compromised.

3.5 Signage

- (a) **CSNSW** shall be responsible for providing and displaying signage indicating the **Centre's** involvement in the **Project**.
- (b) Signage required for occupational health and safety purposes will be arranged as agreed between the parties.

4. Act or omission of inmate performing community service work.

- (a) The **Project** and work being carried out by the inmates in accordance with this MOU is community service work within the meaning of sections 3, 6 and 118 of the **Act** (set out in Schedule 2).
- (b) The Governor of the **Centre** has directed the inmates to carry out the work in accordance with section 6 of the **Act**.
- (c) The Commissioner has approved the program and work to be carried out by the inmates.
- (d) The provisions of section 120 of the **Act** (set out in Schedule 2) apply so that the **External Agency** is not liable in respect of any act or omission of an inmate in the performance of work under this MOU, provided that the work is approved and required by the Commissioner.

5. Indemnity and Insurance

5.1 Indemnity

- (a) Subject to the provisions of clause 4, the **External Agency** agrees to indemnify and keep indemnified **CSNSW**, and its employees, officers, contractors and agents involved in the **Projects** ("those indemnified"), from and against any liability or loss (including reasonable legal costs and expenses), which may be suffered or incurred by any of those indemnified by reason of or in connection with:
 - (i) Any unlawful, wrongful, wilful or negligent act or omission of the External Agency or its staff resulting in personal injury to, or the death of, any person;
 - (ii) Any unlawful, wrongful, wilful or negligent act or omission of the External Agency or its staff resulting in loss of, or damage to, property; and
 - (iii) Any unlawful, wrongful, wilful or negligent act or omission by the External Agency or its staff in the performance of its obligations under this MOU.

- (b) The **External Agency's** liability to indemnify those indemnified under this MOU shall be reduced proportionally to the extent that any unlawful, wrongful, wilful or negligent act or omission of those indemnified caused or contributed to the liability or loss.

5.2 Insurance

- (a) The **External Agency** must maintain, at its expense and with a reputable insurance company:
 - (i) broad form liability insurance (that includes public liability insurance and products liability insurance) in the amount specified in Item 3 of Schedule 1; and
 - (ii) Workers' compensation insurance in accordance with applicable legislation in respect of all officers, employees and volunteers of the **External Agency**.
- (b) This insurance must be maintained during the **Term** and for the additional period after expiry or termination of this MOU specified in Item 5 of Schedule 1.
- (c) The External Agency must, on request, produce satisfactory evidence to CSNSW that the insurance requirements of this clause 5 have been affected and are current.
- (d) The External Agency acknowledges that the Crown in the right of the State of New South Wales is self-insured through the Treasury Managed Fund and that the Department of Communities and Justice acting through Corrective Services NSW is covered by this scheme.

6. Termination of the MOU

- (a) Either party may terminate this MOU prior to the expiry of the **Term** by giving the other party 4 weeks written notice.
- (b) **CSNSW** may terminate this MOU immediately on written notice if:
 - (i) In CSNSW's reasonable opinion the External Agency commits a material breach of this MOU that is not capable of remedy; or
 - (ii) The External Agency breaches any term of this MOU that is capable of remedy and fails to remedy that breach within 7 days of written notice to remedy the breach; or
 - (iii) CSNSW forms the view at any time during the Term that there is a risk to the health or safety of an inmate or CSNSW staff that relates to attendance at a Site or use of the Equipment; or

- (iv) The External Agency is the subject of proceedings or investigations commenced or threatened by the Independent Commission Against Corruption, the police service or similar public body; or
- (v) The External Agency comes into disrepute, is the subject of criticism or engages in behaviour that in CSNSW's reasonable opinion reflects unfavourably on its good name, goodwill, reputation or image; or
- (vi) The External Agency is declared insolvent, or insolvency proceedings are commenced against it, or it becomes subject to any form of insolvency administration.

7. Amendment and review of MOU

- (a) This MOU can only be varied or amended by the written agreement of both parties.
- (b) The parties agree to meet every 12 months to discuss the terms and conditions of this MOU and to consider whether any variations or amendments need to be made.

8. Miscellaneous

- (a) Where a clause defines a word or term by capitalising it and enclosing it in brackets and quotation marks, the meaning of the word will be as set out in that clause.
- (b) Unless stated to the contrary in this MOU, any communication required in connection with this MOU must be directed to the contact person specified in Item 2 of Schedule 1.
- (c) For the avoidance of any doubt:
 - (i) neither party is an employee, agent or, partner of the other for any purpose; and
 - (ii) the inmates are not the employees, agents or contractors of the External Agency for any purpose.

Signed for and on behalf of the Crown in right of)
the State of New South Wales, acting through the)
Department of Communities and Justice)
Corrective Services NSW, but so as not to incur)
personal liability, by its authorised)
representative.)
) (signature of authorised representative)
)
)
)
)
)
in the presence of.....)
) (signature of witness)

Signed for and on behalf of Muswellbrook Shire Council by:)
)
)
)
.....)
(insert name of authorised representative)) (signature of authorised representative)
)
)
)
)
)
.....)
in the presence of.....)
(insert name of witness not a party to this Agreement)) (signature of witness)

Schedule 1 – MOU Details

Item 1 Term

Commencement Date: [XXXXXX]

Expiry Date: 4 years from Commencement Date

Item 2 Contact Details

(a) For CSNSW:

Address: 70 St Heliers Road Muswellbrook 2333

(postal address for notices under this MOU: PO Box 597
Muswellbrook NSW 2333)

Contact: Governor, St Heliers Correctional Centre

Telephone: (02) 65424300

(b) For the External Agency:

Address: Muswellbrook Shire Council Administration Centre, Campbell's Corner,
60-82 Bridge St, Muswellbrook NSW 2333

Contact: General Manager

Telephone: (02) 65493700

Item 3 Insurance

Insured amount: \$20 million

Additional insurance period after
termination or expiry of this MOU: 12 months

Item 4 Work program and responsibilities of each party

Work Program

All work will be approved by the St Heliers Correctional Centre Community Consultative Committee prior to commencement.

This MoU relates to the provision of suitable worksites by the External Agency and the suitable provision by CSNSW of inmates, under supervision, to undertake grounds maintenance within Muswellbrook Shire.

The works undertaken by inmates will include and be limited to the use of zero-turn mowers, push mowers, brush-cutters/line-trimmers, petrol blower, hedge trimmer, applications of

MOU – Muswellbrook Shire Council Grounds Maintenance

herbicides and hand tools under the supervision of a qualified Corrective Services NSW Overseer.

The services provided by inmates will also include and be limited to some lifting, removal of vegetation as instructed, weed spraying, lawn mowing and maintenance. Occasional plantings and watering will also be required.

Hours of work will be limited to, without exception between 6.30am and 1.30 pm.

Responsibilities of CSNSW

- Supply of inmate work crew and CSNSW overseer on mutually agreed dates and times.
- Transport of inmate crew and CSNSW overseer to and from the locations within the shire.
- Suitable learning resources for certificate qualifications for inmates as appropriate.
- Assess inmates for competencies and qualifications.
- Manage quality assurance of work under direction of External Agency.

Responsibilities of External Agency

- Identify and inspect suitable sites with prior notice to CSNSW of at least 48 hours indicating suitable site risk assessment including notification of inherent site hazards, details of requested work and notification of location.
- Supply all equipment, tools including the maintenance of them, and materials will be provided by Council.
- Create and enforce traffic management plan as appropriate to manage work site access.
- Any costs associated with works completed will be the responsibility of External Agency.
- Supply suitable personal protection equipment (PPE).
- Supply suitable access to toilet facilities.
- Compile records of delivery of the service and provide copy to CSNSW within 2 weeks of completion of work.

Schedule 2 – Legislative Definitions

Crimes (Administration of Sentences) Act 1999 (NSW)

Section 3 Interpretation

(1) In this Act –

“**Community service work**” means any service or activity approved by the Minister, and includes participation in personal development, educational or other programs.

Section 6 Work performed by inmates.

- (1) The governor of a correctional centre may make an order directing any convicted inmate in the correctional centre to carry out such work as the governor considers suitable.
- (2) The governor may direct a convicted inmate, or such classes or groups of convicted inmates as the Commissioner may from time to time determine, to carry out community service work, or any work for Corrective Services NSW or a public or local authority--
 - (a) within the correctional centre in which the inmate is imprisoned, or
 - (b) within the correctional complex in which the inmate is imprisoned but outside the correctional centre, or
 - (c) outside the correctional complex in which the inmate is imprisoned.
- (3) An inmate is not required to carry out work that the inmate is not capable of carrying out.

Section 118 Definitions

In this Division:

“**Community service work**” means –

- (a) community service work performed by an offender while in full-time detention, and
- (b) community service work performed by an offender under an intensive correction order, and
- (c) community service work performed by an offender under a community correction order, and
- (d1) community service work performed by an offender who is a resident of a residential facility, pursuant to a condition to which such residency is subject, and
- (d) other work performed by an offender outside a correctional centre in accordance with section 6 (2).

“**offender**” means a person who is required to perform community service work--

- (a) while in full-time detention, or
- (b) under an intensive correction order, or
- (c) a community correction order, or
- (d) while a resident of a residential facility, pursuant to a condition to which such residency is subject.

"Person involved", in relation to community service work, includes any person (including a corporation)--

- (a) for whose benefit that work is performed, or
- (b) who directs or supervises that work, specifies its terms or conditions or controls it, or
- (c) who owns or occupies the premises or land on which that work is performed,
- (d) but does not include the offender by whom the work is performed.

Section 120 Act or omission of offender performing community service work.

- (1) No act or omission of an offender by whom community service work is performed gives rise to civil liability on the part of any person involved in that work if the act or omission occurs in the course of that work.
- (2) A civil action that would, but for subsection (1), lie against a person involved in community service work lies instead against the Crown.
- (3) Subsections (1) and (2) do not have effect if the act or omission concerned was, or was a necessary part of, an act or omission that was expressly required by the person involved in that work but neither approved nor required by the Commissioner.



10.3. Corporate Services

10.3.1. Appointment of Acting General Manager - 1/01/2025 to 31/12/2025

Responsible Officer:	General Manager
Author:	{position}
Community Strategic Plan:	6 - Community Leadership Collaborative and responsive leadership that meets the expectations and anticipates the needs of the community
Delivery Program Goal:	Not Applicable
Operational Plan Action:	6.2.5.6 - Provide governance support services for the elected Council and executive.
Attachments:	Nil

PURPOSE

To submit for Council's consideration the appointment of an Acting General Manager for the period 1 January 2025 to 31 December 2025, to ensure continuity of Council's functions during any periods of absence by the General Manager.

OFFICER'S RECOMMENDATION

Council appoints:

1. For the period 1 January 2025 to 30 April 2025:
 - a. The person holding the position of Director Community and Economy be appointed to act as General Manager, if the General Manager is on leave, sick, or otherwise absent from work for any reason. Such appointment is to cease upon the return to work of the General Manager or other resolution of the Council.
 - b. If the person specified in point a. above is unable or unwilling to act as General Manager at any time during the specified period, the person holding the position of Director Environmental and Planning Services be appointed to act as General Manager if the General Manager is on leave, sick or otherwise absent from work for any reason. Such appointment to cease upon the return to work of the General Manager or other resolution of the Council.
 - c. If the persons specified in points a. and b. above are unable or unwilling to act as General Manager at any time during the specified period, the person holding the position of Director Infrastructure and Property be appointed to act as General Manager if the General Manager is on leave, sick or otherwise absent from work for any reason. Such appointment to cease upon the return to work of the General Manager or other resolution of the Council.
2. For the period 1 May 2025 to 31 August 2025:
 - a. The person holding the position of Director Environmental and Planning Services be appointed to act as General Manager if the General Manager is on leave, sick or otherwise absent from work for any reason. Such appointment is to cease upon the return to work of the General Manager or other resolution of the Council.



- b. If the person specified in point a. above is unable or unwilling to act as General Manager at any time during the specified period, the person holding the position of Director Infrastructure and Property be appointed to act as General Manager if the General Manager is on leave, sick or otherwise absent from work for any reason. Such appointment to cease upon the return to work of the General Manager or other resolution of the Council.
 - c. If the persons specified in points a. and b. above are unable or unwilling to act as General Manager at any time during the specified period, the person holding the position of Director Community and Economy be appointed to act as General Manager if the General Manager is on leave, sick or otherwise absent from work for any reason. Such appointment to cease upon the return to work of the General Manager or other resolution of the Council.
3. For the period 1 September 2025 to 31 December 2025:
- a. The person holding the position of Director Infrastructure and Property be appointed to act as General Manager if the General Manager is on leave, sick or otherwise absent from work for any reason. Such appointment is to cease upon the return to work of the General Manager or other resolution of the Council.
 - b. If the person specified in point a. above is unable or unwilling to act as General Manager at any time during the specified period, the person holding the position of Director Community and Economy be appointed to act as General Manager if the General Manager is on leave, sick or otherwise absent from work for any reason. Such appointment to cease upon the return to work of the General Manager or other resolution of the Council.
 - c. If the persons specified in points a. and b. above are unable or unwilling to act as General Manager at any time during the specified period, the person holding the position of Director Environmental and Planning Services be appointed to act as General Manager if the General Manager is on leave, sick or otherwise absent from work for any reason. Such appointment to cease upon the return to work of the General Manager or other resolution of the Council.

Moved: _____ **Seconded:** _____

EXECUTIVE SUMMARY

The purpose of this report is for Council to consider the appointment of an Acting General Manager for the period 1 January to 31 December 2025, to ensure continuity of Council's functions during any periods of absence by the General Manager

PREVIOUS RESOLUTIONS

Nil.

BACKGROUND

In the past, Council has appointed an Acting General Manager on a case-by-case basis. While this approach provides flexibility, it also involves additional administrative tasks, including drafting new delegations and obtaining approvals from the General Manager, Mayor, and Director.



CONSULTATION

Governance Officer

General Manager

Director Community and Economy

REPORT

To ensure continuity of Council's functions, and in keeping with best practice procedures, Council should make a regular resolution for the appointment of an Acting General Manager.

The General Manager's Instrument of Delegation provides that "In the absence of the General Manager that a person appointed by resolution to act as General Manager assume all functions, delegations and sub-delegations of the General Manager for the period only of the absence of the General Manager unless otherwise resolved by the Council".

It is proposed that, for the 2025 calendar year, each Director member of the Executive Leadership Team be appointed as Acting General Manager, during any period of absence by the General Manager, for periods of four months on a rotational basis.

The following options are available to Council:

1. Adopt the recommendation as written in the report.
2. Not adopt the recommendation and consider the appointment of an Acting General Manager on a case-by-case basis by way of a Mayoral Minute.

Option one is recommended to ensure continuity of service to our community.

FINANCIAL CONSIDERATIONS

There are no direct financial implications associated with the recommendation.

POLICY IMPLICATIONS

Nil.

STATUTORY / LEGISLATIVE IMPLICATIONS

Pursuant to section 351 of the Local Government Act 1993, if the General Manager's position is vacant or the holder of such a position is suspended from duty, sick or absent, only the Council may appoint a person to the position temporarily for a period of not more than 12 months.

Section 377 of the Local Government Act, 1993 provides that Council may, by resolution, delegate to the General Manager or any other person or body (not including another employee of the Council) any of the functions of the Council under this or any other Act, other than those functions restricted by this section.

RISK MANAGEMENT IMPLICATIONS

There is a risk that Council will not be able to meet its operational requirements in the absence of the General Manager, which may lead to service delivery and reputational implications and may lead to staff uncertainty and ongoing implications for our people.

COMMUNITY CONSULTATION / COMMUNICATIONS

Nil.

**10.3.2. Half-Day Public Holiday 2025**

Responsible Officer:	General Manager
Author:	Governance Officer
Community Strategic Plan:	6 - Community Leadership
Delivery Program Goal:	Collaborative and responsive leadership that meets the expectations and anticipates the needs of the community.
Operational Plan Action:	6.2.1 - Maintain a strong focus on financial discipline to enable Council to properly respond to the needs of the communities it serves. Not applicable
Attachments:	1. Application to Muswellbrook Council re half-day public holiday on Melbourne Cup Day 2025 [10.3.2.1 - 1 page]

PURPOSE

For Council to consider supporting the proposed application to NSW Treasury for a local half-day public holiday to be granted for Muswellbrook Shire on Tuesday 4 November 2025.

OFFICER'S RECOMMENDATION

Council APPROVES community consultation to be undertaken regarding a half-day public holiday for the Muswellbrook Cup Day from noon on Tuesday 4 November 2025, and that a further report be submitted to Council providing the results of the period of public consultation.

Moved: _____ **Seconded:** _____

EXECUTIVE SUMMARY

A request has been received from Muswellbrook Race Club, seeking Council's support in applying for a half day public holiday for the Muswellbrook Cup, which will be held on 4 November 2025. In order for the application to be considered, Council must seek feedback from various community stakeholders, such as schools, transport providers, banks, local businesses, Muswellbrook Chamber of Commerce, Denman Chamber of Commerce, and the Sandy Hollow Progress Association. The report requests Council's approval for community consultation to take place, with a further report to be submitted once the community consultation has been carried out.

PREVIOUS RESOLUTIONS

At the 24 October 2023 Ordinary Council Meeting, Council resolved as follows:



10.4.1.	Half-Day Public Holiday 2024
150	<p>RESOLVED on the motion of Cr S. Reynolds and Cr G. McNeill that:</p> <ol style="list-style-type: none"> 1. Council will make an application to the Minister for the Public Service and Employee Relations for the declaration of a half-day public holiday for the Muswellbrook Cup Day from noon on Friday, 5 April, 2024. 2. Council engages in discussion with the Muswellbrook Race Club in regards to moving the half day public holiday back to the Melbourne Cup Day as an alternate.
<u>In Favour:</u>	Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr L. Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall and Cr B. Woodruff.
<u>Against:</u>	Nil.

BACKGROUND

In order that the 2025 Muswellbrook Cup Half-Day Public Holiday may be observed, Muswellbrook Shire Council is required to make application to NSW Treasury, under the *Public Holidays Act 2010*, for the declaration of local public holidays and local event days.

CONSULTATION

Muswellbrook Race Club.

REPORT

A request has been received from Muswellbrook Race Club to apply to the NSW Minister for the Public Service and Employee Relations to declare a local public holiday on Tuesday 4 November 2025 to mark the running of the Muswellbrook Cup. The Muswellbrook Race Club has been granted approval from Racing NSW to hold the Muswellbrook Cup on Tuesday 4 November 2025, to stimulate greater participation and interest in the event. To mark the occasion, it is proposed that a half-day public holiday be observed in the Muswellbrook Local Government Area.

As recommended by NSW Treasury, consultation with the relevant stakeholders must be undertaken to support the application. Council will seek feedback from schools, transport providers, banks, local businesses, and the broader community through an online survey, which will be promoted by the Muswellbrook Chamber of Commerce and Industry. Additionally, targeted consultation will be undertaken with the Muswellbrook Race Club, local transport providers, banks, and schools.

The local half-day public holiday has become a tradition on Muswellbrook Cup Day, as it has been declared for many years. The Muswellbrook Cup is one of the major sporting events in the region, and experiences high attendance, with crowd numbers in excess of 5,000 not uncommon. Local support of, and attendance at, the Muswellbrook Cup is contributed to by the declaration of a local half-day public holiday.

CONCLUSION

It is recommended that Council seeks feedback from those listed in the report, for submitting an application to the Minister to declare a half-day public holiday for the Muswellbrook Cup Day from noon on Tuesday 4 November 2025, and that a further report be submitted to



Council once the period of public consultation has concluded.

FINANCIAL CONSIDERATIONS

A half-day public holiday would incur an estimated \$30,000 in wages to be paid in accordance with the Local Government State Award (2023). Council employees who would be required to work and maintain a minimum level of service to the community would be entitled to penalty rates.

POLICY IMPLICATIONS

Not applicable.

STATUTORY / LEGAL IMPLICATIONS

Not applicable.

RISK MANAGEMENT IMPLICATIONS

Not applicable.

COMMUNITY CONSULTATION/COMMUNICATIONS

Community consultation to be undertaken via survey monkey, social media, etc.



Mayor Jeff Drayton
General Manager Derek Finnigan
Muswellbrook Shire Council
Via email: derek.finnigan@muswellbrook.nsw.gov.au

9 January 2025

Dear Mayor Drayton

Application for Half-Day Public Holiday on Melbourne Cup Day 2025

On behalf of the Muswellbrook Race Club (MRC) and further to our discussions in December last year, I write to apply for a half-day public holiday on Melbourne Cup Day, Tuesday 4 November 2025.

The MRC is appreciative of the long-term support from Muswellbrook Shire Council with regards to a half-day public holiday on Muswellbrook Cup Day. As you are aware the Muswellbrook Cup is conducted on a Friday in autumn, having transferred from Melbourne Cup Day some years ago.

The Muswellbrook Cup date was moved in the best interest of racing and it was envisaged that the associated half-day public holiday would increase visitor numbers for the weekend, bring economic benefits to local businesses as well as boost crowd numbers for the club.

Further to our discussion, it would appear that local residents were using the half-day holiday to enjoy a long weekend away from the Muswellbrook Shire, and bolstering the tourism dollars of other regions.

With Melbourne Cup Day being on a Tuesday and a nationally recognised day of racing, the MRC believes a half-day public holiday would greatly assist with promoting its race meeting, growing its crowd numbers and strengthening the spend within the local community.

I respectfully request you table this letter at the next Muswellbrook Shire Council meeting for discussion.

I look forward to continuing and improving the already strong relationship between the MRC and Muswellbrook Shire Council.

Yours sincerely

Christine Williams
General Manager



10.3.3. Authorisation Under Section 226 of the Local Government Act

Responsible Officer: General Manager

Author: Manager – Governance & Risk

Community Strategic Plan: 6 - Community Leadership

Collaborative and responsive leadership that meets the expectations and anticipates the needs of the community

Delivery Program Goal: Not Applicable

Operational Plan Action: 6.2.5.6 - Provide governance support services for the elected Council and executive.

Attachments:

PURPOSE

Section 226 (d) of the *Local Government Act* 1993 provides for the Mayor to exercise, in cases of necessity, the policy-making functions of the governing body of the Council between meetings of the Council. Since the last report, the Mayor has exercised his delegation on one occasion.

OFFICER'S RECOMMENDATION

Council notes the information provided in the report.

Moved: _____ **Seconded:** _____

EXECUTIVE SUMMARY

Section 226 (d) of the *Local Government Act* 1993 provides for the Mayor to exercise, in cases of necessity, the policy-making functions of the governing body of the Council between meetings of the Council. Since the 17 December 2024 Ordinary Council Meeting, the Mayor has exercised his delegation on one occasion.

PREVIOUS RESOLUTIONS

Nil.

CONSULTATION

General Manager

Executive Assistant

Director Infrastructure and Property

Chief Financial Officer

REPORT



The following delegations were exercised:

16 January 2025 to authorise the Approval for the General Manager for a period of one week, from Friday 17 January 2025 to close of business Friday 28 February 2025, up to one trailer load of storm-generated green waste per household in Muswellbrook Shire may be disposed of free of charge at the Muswellbrook Waste and Recycling Facility.

The green waste must be clean, that is, free of general household waste or other items, and must be green waste generated by the storms experienced across Muswellbrook Shire from 15 January 2025.

FINANCIAL CONSIDERATIONS

Council will be impacted by the waiving of fees associated with the disposal of waste at the Muswellbrook Waste and Recycling Centre and the Denman Waste Transfer Station. These costs will be calculated and reported to Council.

POLICY IMPLICATIONS

Not applicable.

STATUTORY / LEGISLATIVE IMPLICATIONS

Section 226 (d) of the *Local Government Act* 1993 provides for the Mayor to exercise, in cases of necessity, the policy-making functions of the governing body of the Council between meetings of the Council.

RISK MANAGEMENT IMPLICATIONS

Not applicable.

COMMUNITY CONSULTATION / COMMUNICATIONS

Facebook post was issued advising the community of the program. The Mayor will also advise of the matter in radio interviews.



10.3.4. Draft Model Code of Conduct and Procedures for Public Exhibition

Responsible Officer:	Derek Finnigan - General Manager
Author:	Manager – Governance & Risk
Community Strategic Plan:	6 - Community Leadership Collaborative and responsive leadership that meets the expectations and anticipates the needs of the community
Delivery Program Goal:	6.2.5 - Implement a comprehensive and targeted business improvement program.
Operational Plan Action:	6.2.5.3 - Develop and review policies in accordance with statutory and operational requirements.
Attachments:	1. DRAFT Code of Conduct [10.3.4.1 - 44 pages] 2. DRAFT Procedures for the Administration of the Code of Conduct [10.3.4.2 - 34 pages]

PURPOSE

To request Council's endorsement to place the attached *Draft Code of Conduct* and the *Draft Procedures for the Administration of the Code of Conduct* on public exhibition for a period of 28 Days as notice of intention to adopt.

OFFICER'S RECOMMENDATION

1. Council provides notice of intention to adopt the *Draft Code of Conduct* and the *Draft Procedures for the Administration of the Code of Conduct*, by placing them on public exhibition via Council's website for a period of 28 days; and
2. A further report be submitted to Council for consideration of submissions received during the exhibition period.

Moved: _____ **Seconded:** _____

EXECUTIVE SUMMARY

A review of Council's *Code of Conduct* and the *Procedures for the Administration of the Code of Conduct* has been undertaken. All amendments are minor and include removing some model template notes, references to Joint Organisations, and updating legislation references. The *Draft Code of Conduct* and *Draft Procedures for the Administration of the Code of Conduct* have been endorsed by Manex for submission to Council for public exhibition.

PREVIOUS RESOLUTIONS

The *Model Code of Conduct* and *Procedures for the Administration of the Model Code of Conduct* were previously adopted by Council on 20 December 2022.

BACKGROUND

The *Model Code of Conduct for Local Councils* in NSW (the Code) and the *Procedures for*



the Administration of the Model Code of Conduct for Local Councils in NSW (the Procedures) are prescribed under the *Local Government Act 1993* and the *Local Government (General) Regulation 2021*.

The Code sets the minimum standards of conduct for council officials. It is prescribed by regulation to assist council officials to:

- understand and comply with the standards of conduct that are expected of them;
- enable them to fulfil their statutory duty to act honestly and exercise a reasonable degree of care and diligence; and
- act in a way that enhances public confidence in local government.

All councils must adopt a code of conduct that incorporates the provisions of the Code. A council's adopted code of conduct may also include provisions that supplement the Code and that extend its application to persons that are not "council officials" for the purposes of the Code (for example, volunteers, contractors, and members of wholly advisory committees).

A council's adopted code of conduct has no effect to the extent that it is inconsistent with the Code. However, a council's or joint organisation's adopted code of conduct may prescribe requirements that are more onerous than those prescribed in the Code.

Councillors, administrators, members of staff of councils, delegates of councils, (including members of council committees that are delegates of a council) and any other person to whom council's adopted code of conduct applies, must comply with the applicable provisions of their council's code of conduct.

Breaches of a council's code of conduct are to be dealt with in accordance with the Procedures. All councils must adopt procedures for the administration of their codes of conduct that incorporate the provisions of the Model Procedures.

Muswellbrook Shire Council's *Model Code of Conduct* and *Procedures for the Administration of the Model Code of Conduct* were previously adopted by Council on 20 December 2022.

CONSULTATION

MANEX

Manager Governance and Risk

Governance Officer

Business Improvement Officers

Director Community and Economy

Legal Counsel

REPORT

Under section 440(7) of the *Local Government Act 1993*, Council must review their code of conduct within 12 months of a Local Government Election and make such adjustments as they consider appropriate. Councils must adopt a code of conduct that incorporates the provisions of the Model Code of Conduct prescribed by the Regulation.

The *Model Code of Conduct* and the *Procedures for the Administration of the Model Code of Conduct* have been reviewed, and amendments are shown as tracked changes in the attachments to this report:

- Attachment 1 – *Draft Code of Conduct*.
- Attachment 2 – *Draft Procedures for the Administration of the Code of Conduct*.



All amendments are minor and include removing some model template notes, references to Joint Organisations, and updating legislation references.

On 4 November 2024, Manex endorsed the Draft Code and Draft Procedures to be submitted to Council for Public Exhibition.

FINANCIAL CONSIDERATIONS

Nil known.

POLICY IMPLICATIONS

The attached *Draft Code of Conduct* and *Draft Procedures for the Administration of the Code of Conduct* require review and adoption by Council to ensure compliance with legislation.

STATUTORY / LEGISLATIVE IMPLICATIONS

Under section 440(7) of the *Local Government Act 1993*, councils must review their adopted code of conduct within 12 months of the local government election and make such adjustments as they consider appropriate and are consistent with the Act.

RISK MANAGEMENT IMPLICATIONS

Nil known.

COMMUNITY CONSULTATION / COMMUNICATIONS

Public exhibition of 28 days via Council's website will provide the community with an opportunity to make submissions.



**muswellbrook
shire council**

DRAFT ~~Model~~ Code of Conduct

MSC34E

Authorisation Details

Authorised by:		Internal/External:	External
Date:		Minute No:	
Review timeframe:	Within the first 12 months of the term of each new Council	Review due date:	
Department:	Governance <u>and Risk</u>		
Document Owner:	<u>Manager</u> Governance and Risk		
Community Strategic Plan Goal	6 Collaborative and responsive community leadership that meets the expectations and anticipates the needs of the community.		
Community Strategic Plan Strategy	6.2 Ensure Council is well managed, appropriately resourced, effective, efficient, accountable and responsive to its communities and stakeholders.		
Delivery Program activity	6.2.5 Implement a comprehensive and targeted business improvement program.		

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PART 1 Introduction

This *Model Code of Conduct for Local Councils in NSW* ("the Model Code of Conduct") is made under section 440 of the *Local Government Act 1993* ("LGA") and the *Local Government (General) Regulation 2021* ("the Regulation").

The Model Code of Conduct sets the minimum standards of conduct for council officials. It is prescribed by regulation to assist council officials to:

- understand and comply with the standards of conduct that are expected of them;
- enable them to fulfil their statutory duty to act honestly and exercise a reasonable degree of care and diligence (section 439); and
- act in a way that enhances public confidence in local government.

Section 440 of the LGA requires every council ~~(including county councils) and joint organisation~~ to adopt a code of conduct that incorporates the provisions of the Model Code of Conduct. A council's ~~or joint organisation's~~ adopted code of conduct may also include provisions that supplement the Model Code of Conduct and that extend its application to persons that are not "council officials" for the purposes of the Model Code of Conduct (eg volunteers, contractors and members of wholly advisory committees).

A council's ~~or joint organisation's~~ adopted code of conduct has no effect to the extent that it is inconsistent with the Model Code of Conduct. However, a council's ~~or joint organisation's~~ adopted code of conduct may prescribe requirements that are more onerous than those prescribed in the Model Code of Conduct.

Councillors, administrators, members of staff of councils, delegates of councils, (including members of council committees that are delegates of a council) and any other person a council's adopted code of conduct applies to, must comply with the applicable provisions of their council's code of conduct. It is the personal responsibility of council officials to comply with the standards in the code and to regularly review their personal circumstances and conduct with this in mind.

Failure by a councillor to comply with the standards of conduct prescribed under this code constitutes misconduct for the purposes of the LGA. The LGA provides for a range of penalties that may be imposed on councillors for misconduct, including suspension or disqualification from civic office. A councillor who has been suspended on three or more occasions for misconduct is automatically disqualified from holding civic office for five years.

Failure by a member of staff to comply with a council's code of conduct may give rise to disciplinary action.

Note: ~~References in the Model Code of Conduct to councils are also to be taken as references to county councils and joint organisations.~~

Note: ~~In adopting the Model Code of Conduct, joint organisations should adapt it to substitute the terms "board" for "council", "chairperson" for "mayor", "voting representative" for "councillor" and "executive officer" for "general manager".~~

Note: ~~In adopting the Model Code of Conduct, county councils should adapt it to substitute the term "chairperson" for "mayor" and "member" for "councillor".~~

PART 2 Definitions

In this code the following terms have the following meanings:

Term	Definition
administrator	an administrator of a council appointed under the LGA other than an administrator appointed under section 66
committee	see the definition of “council committee”
complaint	a code of conduct complaint made for the purposes of clauses 4.1 and 4.2 of the Procedures.
conduct	includes acts and omissions
council	includes county councils and joint organisations
council committee	a committee established by a council comprising of councillors, staff or other persons that the council has delegated functions to and the council’s audit, risk and improvement committee
council committee member	a person other than a councillor or member of staff of a council who is a member of a council committee other than a wholly advisory committee, and a person other than a councillor who is a member of the council’s audit, risk and improvement committee
council official	includes councillors, members of staff of a council, administrators, council committee members, delegates of council and, for the purposes of clause 4.16, council advisers
councillor	any person elected or appointed to civic office, including the mayor and includes members and chairpersons of county councils and voting representatives of the boards of joint organisations and chairpersons of joint organisations
delegate of council	a person (other than a councillor or member of staff of a council) or body, and the individual members of that body, to whom a function of the council is delegated
designated person	a person referred to in clause 4.8
election campaign	includes council, state and federal election campaigns
environmental planning instrument	has the same meaning as it has in the <i>Environmental Planning and Assessment Act 1979</i>
general manager	includes the executive officer of a joint organisation
joint organisation	a joint organisation established under section 400O of the LGA
LGA	<i>Local Government Act 1993</i>

local planning panel	<i>a local planning panel constituted under the Environmental Planning and Assessment Act 1979</i>
mayor	includes the chairperson of a county council or a joint organisation
members of staff of a council	includes members of staff of county councils and joint organisations
the Office	Office of Local Government
personal information	information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion
the Procedures	the Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW prescribed under the Regulation
the Regulation	the <i>Local Government (General) Regulation 2021</i> ¹⁰⁵
voting representative	a voting representative of the board of a joint organisation
wholly advisory committee	a Council Committee that the Council has not delegated any functions to

PART 3 General Conduct Obligations

General conduct

- 3.1 You must not conduct yourself in a manner that:
- a) is likely to bring the council or other council officials into disrepute
 - b) is contrary to statutory requirements or the council's administrative requirements or policies
 - c) is improper or unethical
 - d) is an abuse of power
 - e) causes, comprises or involves intimidation or verbal abuse
 - f) involves the misuse of your position to obtain a private benefit
 - g) constitutes harassment or bullying behaviour under this code, or is unlawfully discriminatory.
- 3.2 You must act lawfully and honestly, and exercise a reasonable degree of care and diligence in carrying out your functions under the LGA or any other Act. (*section 439*).

Fairness and equity

- 3.3 You must consider issues consistently, promptly and fairly. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.
- 3.4 You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.
- 3.5 An act or omission in good faith, whether or not it involves error, will not constitute a breach of clauses 3.3 or 3.4.

Harassment and discrimination

- 3.6 You must not harass or unlawfully discriminate against others, or support others who harass or unlawfully discriminate against others, on the grounds of age, disability, race (including colour, national or ethnic origin or immigrant status), sex, pregnancy, marital or relationship status, family responsibilities or breastfeeding, sexual orientation, gender identity or intersex status or political, religious or other affiliation.
- 3.7 For the purposes of this code, "harassment" is any form of behaviour towards a person that:
- a) is not wanted by the person
 - b) offends, humiliates or intimidates the person, and
 - c) creates a hostile environment.

Bullying

- 3.8 You must not engage in bullying behaviour towards others.
- 3.9 For the purposes of this code, “bullying behaviour” is any behaviour in which:
- a) a person or a group of people repeatedly behaves unreasonably towards another person or a group of persons, and
 - b) the behaviour creates a risk to health and safety.
- 3.10 Bullying behaviour may involve, but is not limited to, any of the following types of behaviour:
- a) aggressive, threatening or intimidating conduct
 - b) belittling or humiliating comments
 - c) spreading malicious rumours
 - d) teasing, practical jokes or ‘initiation ceremonies’
 - e) exclusion from work-related events
 - f) unreasonable work expectations, including too much or too little work, or work below or beyond a worker's skill level
 - g) displaying offensive material
 - h) pressure to behave in an inappropriate manner.
- 3.11 Reasonable management action carried out in a reasonable manner does not constitute bullying behaviour for the purposes of this code. Examples of reasonable management action may include, but are not limited to:
- a) performance management processes
 - b) disciplinary action for misconduct
 - c) informing a worker about unsatisfactory work performance or inappropriate work behaviour
 - d) directing a worker to perform duties in keeping with their job
 - e) maintaining reasonable workplace goals and standards
 - f) legitimately exercising a regulatory function
 - g) legitimately implementing a council policy or administrative processes.

Work health and safety

- 3.12 All council officials, including councillors, owe statutory duties under the *Work Health and Safety Act 2011* (WHS Act). You must comply with your duties under the WHS Act and your responsibilities under any policies or procedures adopted by the council to ensure workplace health and safety. Specifically, you must:
- a) take reasonable care for your own health and safety
 - b) take reasonable care that your acts or omissions do not adversely affect the health and safety of other persons
 - c) comply, so far as you are reasonably able, with any reasonable instruction that is given to ensure compliance with the WHS Act and any policies or procedures adopted by the council to ensure workplace health and safety
 - d) cooperate with any reasonable policy or procedure of the council relating to workplace health or safety that has been notified to council staff
 - e) report accidents, incidents, near misses, to the general manager or such other staff member nominated by the general manager, and take part in any incident investigations

- f) so far as is reasonably practicable, consult, co-operate and coordinate with all others who have a duty under the WHS Act in relation to the same matter.

Land use planning, development assessment and other regulatory functions

- 3.13 You must ensure that land use planning, development assessment and other regulatory decisions are properly made, and that all parties are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the exercise of land use planning, development assessment and other regulatory functions.
- 3.14 In exercising land use planning, development assessment and other regulatory functions, you must ensure that no action, statement or communication between yourself and others conveys any suggestion of willingness to improperly provide concessions or preferential or unduly unfavourable treatment.

Binding caucus votes

- 3.15 You must not participate in binding caucus votes in relation to matters to be considered at a council or committee meeting.
- 3.16 For the purposes of clause 3.15, a binding caucus vote is a process whereby a group of councillors are compelled by a threat of disciplinary or other adverse action to comply with a predetermined position on a matter before the council or committee, irrespective of the personal views of individual members of the group on the merits of the matter before the council or committee.
- 3.17 Clause 3.15 does not prohibit councillors from discussing a matter before the council or committee prior to considering the matter in question at a council or committee meeting, or from voluntarily holding a shared view with other councillors on the merits of a matter.
- 3.18 Clause 3.15 does not apply to a decision to elect the mayor or deputy mayor, or to nominate a person to be a member of a council committee or a representative of the council on an external body.

Obligations in relation to meetings

- 3.19 You must comply with rulings by the chair at council and committee meetings or other proceedings of the council unless a motion dissenting from the ruling is passed.
- 3.20 You must not engage in bullying behaviour (as defined under this Part) towards the chair, other council officials or any members of the public present during council or committee meetings or other proceedings of the council (such as, but not limited to, workshops and briefing sessions).
- 3.21 You must not engage in conduct that disrupts council or committee meetings or other proceedings of the council (such as, but not limited to, workshops and briefing sessions), or that would otherwise be inconsistent with the orderly conduct of meetings.

- 3.22 If you are a councillor, you must not engage in any acts of disorder or other conduct that is intended to prevent the proper or effective functioning of the council, or of a committee of the council. Without limiting this clause, you must not:
- a) leave a meeting of the council or a committee for the purposes of depriving the meeting of a quorum, or
 - b) submit a rescission motion with respect to a decision for the purposes of voting against it to prevent another councillor from submitting a rescission motion with respect to the same decision, or
 - c) deliberately seek to impede the consideration of business at a meeting.

PART 4 Pecuniary Interests

What is a pecuniary interest?

- 4.1 A pecuniary interest is an interest that you have in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to you or a person referred to in clause 4.3.
- 4.2 You will not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision you might make in relation to the matter, or if the interest is of a kind specified in clause 4.6.
- 4.3 For the purposes of this Part, you will have a pecuniary interest in a matter if the pecuniary interest is:
- (a) your interest, or
 - (b) the interest of your spouse or de facto partner, your relative, or your partner or employer, or
 - (c) a company or other body of which you, or your nominee, partner or employer, is a shareholder or member.
- 4.4 For the purposes of clause 4.3:
- (a) Your “relative” is any of the following:
 - i) your parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
 - ii) your spouse’s or de facto partner’s parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
 - iii) the spouse or de facto partner of a person referred to in paragraphs (i) and (ii).
 - (b) “de facto partner” has the same meaning as defined in section 21C of the *Interpretation Act 1987*.
- 4.5 You will not have a pecuniary interest in relation to a person referred to in subclauses 4.3(b) or (c):
- (a) if you are unaware of the relevant pecuniary interest of your spouse, de facto partner, relative, partner, employer or company or other body, or
 - (b) just because the person is a member of, or is employed by, a council or a statutory body, or is employed by the Crown, or

- (c) just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

What interests do not have to be disclosed?

- 4.6 You do not have to disclose the following interests for the purposes of this Part:
- (a) your interest as an elector
 - (b) your interest as a ratepayer or person liable to pay a charge
 - (c) an interest you have in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to the public generally, or to a section of the public that includes persons who are not subject to this code
 - (d) an interest you have in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to your relative by the council in the same manner and subject to the same conditions as apply to persons who are not subject to this code
 - (e) an interest you have as a member of a club or other organisation or association, unless the interest is as the holder of an office in the club or organisation (whether remunerated or not)
 - (f) if you are a council committee member, an interest you have as a person chosen to represent the community, or as a member of a non-profit organisation or other community or special interest group, if you have been appointed to represent the organisation or group on the council committee
 - (g) an interest you have relating to a contract, proposed contract or other matter, if the interest arises only because of a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company
 - (h) an interest you have arising from the proposed making by the council of an agreement between the council and a corporation, association or partnership, being a corporation, association or partnership that has more than 25 members, if the interest arises because your relative is a shareholder (but not a director) of the corporation, or is a member (but not a member of the committee) of the association, or is a partner of the partnership
 - (i) an interest you have arising from the making by the council of a contract or agreement with your relative for, or in relation to, any of the following, but only if the proposed contract or agreement is similar in terms and conditions to such contracts and agreements as have been made, or as are proposed to be made, by the council in respect of similar matters with other residents of the area:
 - i) the performance by the council at the expense of your relative of any work or service in connection with roads or sanitation
 - ii) security for damage to footpaths or roads
 - iii) any other service to be rendered, or act to be done, by the council by or under any Act conferring functions on the council, or by or under any contract
 - (j) an interest relating to the payment of fees to councillors (including the mayor and deputy mayor)

- (k) an interest relating to the payment of expenses and the provision of facilities to councillors (including the mayor and deputy mayor) in accordance with a policy under section 252 of the LGA,
- (l) an interest relating to an election to the office of mayor arising from the fact that a fee for the following 12 months has been determined for the office of mayor
- (m) an interest of a person arising from the passing for payment of a regular account for the wages or salary of an employee who is a relative of the person
- (n) an interest arising from being covered by, or a proposal to be covered by, indemnity insurance as a councillor or a council committee member
- (o) an interest arising from the appointment of a councillor to a body as a representative or delegate of the council, whether or not a fee or other recompense is payable to the representative or delegate.

4.7 For the purposes of clause 4.6, “relative” has the same meaning as in clause 4.4, but includes your spouse or de facto partner.

What disclosures must be made by a designated person?

4.8 Designated persons include:

- (a) the general manager
- (b) other senior staff of the council for the purposes of section 332 of the LGA
- (c) a person (other than a member of the senior staff of the council) who is a member of staff of the council or a delegate of the council and who holds a position identified by the council as the position of a designated person because it involves the exercise of functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the person’s duty as a member of staff or delegate and the person’s private interest
- (d) a person (other than a member of the senior staff of the council) who is a member of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of the council’s functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member’s duty as a member of the committee and the member’s private interest.

4.9 A designated person:

- (a) must prepare and submit written returns of interests in accordance with clauses 4.21, and
- (b) must disclose pecuniary interests in accordance with clause 4.10.

4.10 A designated person must disclose in writing to the general manager (or if the person is the general manager, to the council) the nature of any pecuniary interest the person has in any council matter with which the person is dealing as soon as practicable after becoming aware of the interest.

- 4.11 Clause 4.10 does not require a designated person who is a member of staff of the council to disclose a pecuniary interest if the interest relates only to the person's salary as a member of staff, or to their other conditions of employment.
- 4.12 The general manager must, on receiving a disclosure from a designated person, deal with the matter to which the disclosure relates or refer it to another person to deal with.
- 4.13 A disclosure by the general manager must, as soon as practicable after the disclosure is made, be laid on the table at a meeting of the council and the council must deal with the matter to which the disclosure relates or refer it to another person to deal with.

What disclosures must be made by council staff other than designated persons?

- 4.14 A member of staff of council, other than a designated person, must disclose in writing to their manager or the general manager the nature of any pecuniary interest they have in a matter they are dealing with as soon as practicable after becoming aware of the interest.
- 4.15 The staff member's manager or the general manager must, on receiving a disclosure under clause 4.14, deal with the matter to which the disclosure relates or refer it to another person to deal with.

What disclosures must be made by council advisers?

- 4.16 A person who, at the request or with the consent of the council or a council committee, gives advice on any matter at any meeting of the council or committee, must disclose the nature of any pecuniary interest the person has in the matter to the meeting at the time the advice is given. The person is not required to disclose the person's interest as an adviser.
- 4.17 A person does not breach clause 4.16 if the person did not know, and could not reasonably be expected to have known, that the matter under consideration at the meeting was a matter in which they had a pecuniary interest.

What disclosures must be made by a council committee member?

- 4.18 A council committee member must disclose pecuniary interests in accordance with clause 4.28 and comply with clause 4.29.
- 4.19 For the purposes of clause 4.18, a "council committee member" includes a member of staff of council who is a member of the committee.

What disclosures must be made by a councillor?

- 4.20 A councillor:
- (a) must prepare and submit written returns of interests in accordance with clause 4.21, and
 - (b) must disclose pecuniary interests in accordance with clause 4.28 and comply with clause 4.29 where it is applicable.

Disclosure of interests in written returns

- 4.21 A councillor or designated person must make and lodge with the general manager a return in the form set out in schedule 2 to this code, disclosing the councillor's or designated person's interests as specified in schedule 1 to this code within 3 months after:
- (a) becoming a councillor or designated person, and
 - (b) 30 June of each year, and
 - (c) the councillor or designated person becoming aware of an interest they are required to disclose under schedule 1 that has not been previously disclosed in a return lodged under paragraphs (a) or (b).
- 4.22 A person need not make and lodge a return under clause 4.21, paragraphs (a) and (b) if:
- (a) they made and lodged a return under that clause in the preceding 3 months, or
 - (b) they have ceased to be a councillor or designated person in the preceding 3 months.
- 4.23 A person must not make and lodge a return that the person knows or ought reasonably to know is false or misleading in a material particular.
- 4.24 The general manager must keep a register of returns required to be made and lodged with the general manager.
- 4.25 Returns required to be lodged with the general manager under clause 4.21(a) and (b) must be tabled at the first meeting of the council after the last day the return is required to be lodged.
- 4.26 Returns required to be lodged with the general manager under clause 4.21(c) must be tabled at the next council meeting after the return is lodged.
- 4.27 Information contained in returns made and lodged under clause 4.21 is to be made publicly available in accordance with the requirements of the *Government Information (Public Access) Act 2009*, the *Government Information (Public Access) Regulation 2009* and any guidelines issued by the Information Commissioner.

Disclosure of pecuniary interests at meetings

- 4.28 A councillor or a council committee member who has a pecuniary interest in any matter with which the council is concerned, and who is present at a meeting of the council or committee at which the matter is being considered, must disclose the nature of the interest to the meeting as soon as practicable.
- 4.29 The councillor or council committee member must not be present at, or in sight of, the meeting of the council or committee:
- (a) at any time during which the matter is being considered or discussed by the council or committee, or
 - (b) at any time during which the council or committee is voting on any question in relation to the matter.

- 4.30 In the case of a meeting of a board of a joint organisation, a voting representative is taken to be present at the meeting for the purposes of clauses 4.28 and 4.29 where they participate in the meeting by telephone or other electronic means.
- 4.31 A disclosure made at a meeting of a council or council committee must be recorded in the minutes of the meeting.
- 4.32 A general notice may be given to the general manager in writing by a councillor or a council committee member to the effect that the councillor or council committee member, or the councillor's or council committee member's spouse, de facto partner or relative, is:
- (a) a member of, or in the employment of, a specified company or other body, or
 - (b) a partner of, or in the employment of, a specified person.
- Such a notice is, unless and until the notice is withdrawn or until the end of the term of the council in which it is given (whichever is the sooner), sufficient disclosure of the councillor's or council committee member's interest in a matter relating to the specified company, body or person that may be the subject of consideration by the council or council committee after the date of the notice.
- 4.33 A councillor or a council committee member is not prevented from being present at and taking part in a meeting at which a matter is being considered, or from voting on the matter, merely because the councillor or council committee member has an interest in the matter of a kind referred to in clause 4.6.
- 4.34 A person does not breach clauses 4.28 or 4.29 if the person did not know, and could not reasonably be expected to have known, that the matter under consideration at the meeting was a matter in which they had a pecuniary interest.
- 4.35 Despite clause 4.29, a councillor who has a pecuniary interest in a matter may participate in a decision to delegate consideration of the matter in question to another body or person.
- 4.36 Clause 4.29 does not apply to a councillor who has a pecuniary interest in a matter that is being considered at a meeting if:
- (a) the matter is a proposal relating to:
 - (i) the making of a principal environmental planning instrument applying to the whole or a significant portion of the council's area, or
 - (ii) the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant portion of the council's area, and
 - (b) the pecuniary interest arises only because of an interest of the councillor in the councillor's principal place of residence or an interest of another person (whose interests are relevant under clause 4.3) in that person's principal place of residence, and
 - (c) the councillor made a special disclosure under clause 4.37 in relation to the interest before the commencement of the meeting.

- 4.37 A special disclosure of a pecuniary interest made for the purposes of clause 4.36(c) must:
- (a) be in the form set out in schedule 3 of this code and contain the information required by that form, and
 - (b) be laid on the table at a meeting of the council as soon as practicable after the disclosure is made, and the information contained in the special disclosure is to be recorded in the minutes of the meeting.
- 4.38 The Minister for Local Government may, conditionally or unconditionally, allow a councillor or a council committee member who has a pecuniary interest in a matter with which the council is concerned to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:
- (a) that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or
 - (b) that it is in the interests of the electors for the area to do so.
- 4.39 A councillor or a council committee member with a pecuniary interest in a matter who is permitted to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter under clause 4.38, must still disclose the interest they have in the matter in accordance with clause 4.28.

PART 5 Non-Pecuniary Conflicts of Interest

What is a non-pecuniary conflict of interest?

- 5.1 Non-pecuniary interests are private or personal interests a council official has that do not amount to a pecuniary interest as defined in clause 4.1 of this code. These commonly arise out of family or personal relationships, or out of involvement in sporting, social, religious or other cultural groups and associations, and may include an interest of a financial nature.
- 5.2 A non-pecuniary conflict of interest exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your official functions in relation to a matter.
- 5.3 The personal or political views of a council official do not constitute a private interest for the purposes of clause 5.2.
- 5.4 Non-pecuniary conflicts of interest must be identified and appropriately managed to uphold community confidence in the probity of council decision-making. The onus is on you to identify any non-pecuniary conflict of interest you may have in matters that you deal with, to disclose the interest fully and in writing, and to take appropriate action to manage the conflict in accordance with this code.

- 5.5 When considering whether or not you have a non-pecuniary conflict of interest in a matter you are dealing with, it is always important to think about how others would view your situation.

Managing non-pecuniary conflicts of interest

- 5.6 Where you have a non-pecuniary conflict of interest in a matter for the purposes of clause 5.2, you must disclose the relevant private interest you have in relation to the matter fully and in writing as soon as practicable after becoming aware of the non-pecuniary conflict of interest and on each occasion on which the non-pecuniary conflict of interest arises in relation to the matter. In the case of members of council staff other than the general manager, such a disclosure is to be made to the staff member's manager. In the case of the general manager, such a disclosure is to be made to the mayor.
- 5.7 If a disclosure is made at a council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes on each occasion on which the non-pecuniary conflict of interest arises. This disclosure constitutes disclosure in writing for the purposes of clause 5.6.
- 5.8 How you manage a non-pecuniary conflict of interest will depend on whether or not it is significant.
- 5.9 As a general rule, a non-pecuniary conflict of interest will be significant where it does not involve a pecuniary interest for the purposes of clause 4.1, but it involves:
- a) a relationship between a council official and another person who is affected by a decision or a matter under consideration that is particularly close, such as a current or former spouse or de facto partner, a relative for the purposes of clause 4.4 or another person from the council official's extended family that the council official has a close personal relationship with, or another person living in the same household
 - b) other relationships with persons who are affected by a decision or a matter under consideration that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship.
 - c) an affiliation between the council official and an organisation (such as a sporting body, club, religious, cultural or charitable organisation, corporation or association) that is affected by a decision or a matter under consideration that is particularly strong. The strength of a council official's affiliation with an organisation is to be determined by the extent to which they actively participate in the management, administration or other activities of the organisation.
 - d) membership, as the council's representative, of the board or management committee of an organisation that is affected by a decision or a matter under consideration, in circumstances where the interests of the council and the organisation are potentially in conflict in relation to the particular matter
 - e) a financial interest (other than an interest of a type referred to in clause 4.6) that is not a pecuniary interest for the purposes of clause 4.1

- f) the conferral or loss of a personal benefit other than one conferred or lost as a member of the community or a broader class of people affected by a decision.
- 5.10 Significant non-pecuniary conflicts of interest must be managed in one of two ways:
- a) by not participating in consideration of, or decision making in relation to, the matter in which you have the significant non-pecuniary conflict of interest and the matter being allocated to another person for consideration or determination, or
 - b) if the significant non-pecuniary conflict of interest arises in relation to a matter under consideration at a council or committee meeting, by managing the conflict of interest as if you had a pecuniary interest in the matter by complying with clauses 4.28 and 4.29.
- 5.11 If you determine that you have a non-pecuniary conflict of interest in a matter that is not significant and does not require further action, when disclosing the interest you must also explain in writing why you consider that the non-pecuniary conflict of interest is not significant and does not require further action in the circumstances.
- 5.12 If you are a member of staff of council other than the general manager, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with and at the direction of your manager. In the case of the general manager, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with and at the direction of the mayor.
- 5.13 Despite clause 5.10(b), a councillor who has a significant non-pecuniary conflict of interest in a matter, may participate in a decision to delegate consideration of the matter in question to another body or person.
- 5.14 Council committee members are not required to declare and manage a non-pecuniary conflict of interest in accordance with the requirements of this Part where it arises from an interest they have as a person chosen to represent the community, or as a member of a non-profit organisation or other community or special interest group, if they have been appointed to represent the organisation or group on the council committee.

Political donations

- 5.15 Councillors should be aware that matters before council or committee meetings involving their political donors may also give rise to a non-pecuniary conflict of interest.
- 5.16 Where you are a councillor and have received or knowingly benefitted from a reportable political donation:
- a) made by a major political donor in the previous four years, and
 - b) the major political donor has a matter before council,
- you must declare a non-pecuniary conflict of interest in the matter, disclose the nature of the interest, and manage the conflict of interest as if you had a

pecuniary interest in the matter by complying with clauses 4.28 and 4.29. A disclosure made under this clause must be recorded in the minutes of the meeting.

5.17 For the purposes of this Part:

- a) a “reportable political donation” has the same meaning as it has in section 6 of the *Electoral Funding Act 2018*
- b) “major political donor” has the same meaning as it has in the *Electoral Funding Act 2018*.

5.18 Councillors should note that political donations that are not a “reportable political donation”, or political donations to a registered political party or group by which a councillor is endorsed, may still give rise to a non-pecuniary conflict of interest. Councillors should determine whether or not such conflicts are significant for the purposes of clause 5.9 and take the appropriate action to manage them.

5.19 Despite clause 5.16, a councillor who has received or knowingly benefitted from a reportable political donation of the kind referred to in that clause, may participate in a decision to delegate consideration of the matter in question to another body or person.

Loss of quorum as a result of compliance with this Part

5.20 A councillor who would otherwise be precluded from participating in the consideration of a matter under this Part because they have a non-pecuniary conflict of interest in the matter is permitted to participate in consideration of the matter if:

- a) the matter is a proposal relating to:
 - i) the making of a principal environmental planning instrument applying to the whole or a significant portion of the council’s area, or
 - ii) the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant portion of the council’s area, and
- b) the non-pecuniary conflict of interest arises only because of an interest that a person has in that person’s principal place of residence, and
- c) the councillor discloses the interest they have in the matter that would otherwise have precluded their participation in consideration of the matter under this Part in accordance with clause 5.6.

5.21 The Minister for Local Government may, conditionally or unconditionally, allow a councillor or a council committee member who is precluded under this Part from participating in the consideration of a matter to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:

- a) that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or
- b) that it is in the interests of the electors for the area to do so.

5.22 Where the Minister exempts a councillor or committee member from complying with a requirement under this Part under clause 5.21, the councillor or committee

member must still disclose any interests they have in the matter the exemption applies to, in accordance with clause 5.6.

Other business or employment

- 5.23 The general manager must not engage, for remuneration, in private employment, contract work or other business outside the service of the council without the approval of the council.
- 5.24 A member of staff must not engage, for remuneration, in private employment, contract work or other business outside the service of the council that relates to the business of the council or that might conflict with the staff member's council duties unless they have notified the general manager in writing of the employment, work or business and the general manager has given their written approval for the staff member to engage in the employment, work or business.
- 5.25 The general manager may at any time prohibit a member of staff from engaging, for remuneration, in private employment, contract work or other business outside the service of the council that relates to the business of the council, or that might conflict with the staff member's council duties.
- 5.26 A member of staff must not engage, for remuneration, in private employment, contract work or other business outside the service of the council if prohibited from doing so.
- 5.27 Members of staff must ensure that any outside employment, work or business they engage in will not:
- a) conflict with their official duties
 - b) involve using confidential information or council resources obtained through their work with the council including where private use is permitted
 - c) require them to work while on council duty
 - d) discredit or disadvantage the council
 - e) pose, due to fatigue, a risk to their health or safety, or to the health and safety of their co-workers.

Personal dealings with council

- 5.28 You may have reason to deal with your council in your personal capacity (for example, as a ratepayer, recipient of a council service or applicant for a development consent granted by council). You must not expect or request preferential treatment in relation to any matter in which you have a private interest because of your position. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.
- 5.29 You must undertake any personal dealings you have with the council in a manner that is consistent with the way other members of the community deal with the council. You must also ensure that you disclose and appropriately manage any conflict of interest you may have in any matter in accordance with the requirements of this code.

PART 6 Personal Benefit

- 6.1 For the purposes of this Part, a gift or a benefit is something offered to or received by a council official or someone personally associated with them for their personal use and enjoyment.
- 6.2 A reference to a gift or benefit in this Part does not include:
- a) items with a value of \$10 or less
 - b) a political donation for the purposes of the *Electoral Funding Act 2018*
 - c) a gift provided to the council as part of a cultural exchange or sister-city relationship that is not converted for the personal use or enjoyment of any individual council official or someone personally associated with them
 - d) a benefit or facility provided by the council to an employee or councillor
 - e) attendance by a council official at a work-related event or function for the purposes of performing their official duties, or
 - f) free or subsidised meals, beverages or refreshments provided to council officials in conjunction with the performance of their official duties such as, but not limited to:
 - i) the discussion of official business
 - ii) work-related events such as council-sponsored or community events, training, education sessions or workshops
 - iii) conferences
 - iv) council functions or events
 - v) social functions organised by groups, such as council committees and community organisations.

Gifts and benefits

- 6.3 You must avoid situations that would give rise to the appearance that a person or body is attempting to secure favourable treatment from you or from the council, through the provision of gifts, benefits or hospitality of any kind to you or someone personally associated with you.
- 6.4 A gift or benefit is deemed to have been accepted by you for the purposes of this Part, where it is received by you or someone personally associated with you.

How are offers of gifts and benefits to be dealt with?

- 6.5 You must not:
- a) seek or accept a bribe or other improper inducement
 - b) seek gifts or benefits of any kind
 - c) accept any gift or benefit that may create a sense of obligation on your part, or may be perceived to be intended or likely to influence you in carrying out your public duty
 - d) subject to clause 6.7, accept any gift or benefit of more than token value as defined by clause 6.9

- e) accept an offer of cash or a cash-like gift as defined by clause 6.13, regardless of the amount
 - f) participate in competitions for prizes where eligibility is based on the council being in or entering into a customer–supplier relationship with the competition organiser
 - g) personally benefit from reward points programs when purchasing on behalf of the council.
- 6.6 Where you receive a gift or benefit of any value other than one referred to in clause 6.2, you must disclose this promptly to your manager or the general manager in writing. The recipient, manager, or general manager must ensure that, at a minimum, the following details are recorded in the council's gift register:
- a) the nature of the gift or benefit
 - b) the estimated monetary value of the gift or benefit
 - c) the name of the person who provided the gift or benefit, and
 - d) the date on which the gift or benefit was received.
- 6.7 Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, the gift or benefit must be surrendered to the council, unless the nature of the gift or benefit makes this impractical.

Gifts and benefits of token value

- 6.8 You may accept gifts and benefits of token value. Gifts and benefits of token value are one or more gifts or benefits received from a person or organisation over a 12-month period that, when aggregated, do not exceed a value of \$100. They include, but are not limited to:
- a) invitations to and attendance at local social, cultural or sporting events with a ticket value that does not exceed \$100
 - b) gifts of alcohol that do not exceed a value of \$100
 - c) ties, scarves, coasters, tie pins, diaries, chocolates or flowers or the like
 - d) prizes or awards that do not exceed \$100 in value.

Gifts and benefits of more than token value

- 6.9 Gifts or benefits that exceed \$100 in value are gifts or benefits of more than token value for the purposes of clause 6.5(d) and, subject to clause 6.7, must not be accepted.
- 6.10 Gifts and benefits of more than token value include, but are not limited to, tickets to major sporting events (such as international matches or matches in national sporting codes) with a ticket value that exceeds \$100, corporate hospitality at a corporate facility at major sporting events, free or discounted products or services for personal use provided on terms that are not available to the general public or a broad class of persons, the use of holiday homes, artworks, free or discounted travel.
- 6.11 Where you have accepted a gift or benefit of token value from a person or organisation, you must not accept a further gift or benefit from the same person or organisation or another person associated with that person or organisation within a single 12-month period where the value of the gift, added to the value of earlier gifts received from the same person or organisation, or a person

associated with that person or organisation, during the same 12-month period would exceed \$100 in value.

- 6.12 For the purposes of this Part, the value of a gift or benefit is the monetary value of the gift or benefit inclusive of GST.

“Cash-like gifts”

- 6.13 For the purposes of clause 6.5(e), “cash-like gifts” include, but are not limited to, gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internet credit, lottery tickets, memberships or entitlements to discounts that are not available to the general public or a broad class of persons.

Improper and undue influence

- 6.14 You must not use your position to influence other council officials in the performance of their official functions to obtain a private benefit for yourself or for somebody else. A councillor will not be in breach of this clause where they seek to influence other council officials through the proper exercise of their role as prescribed under the LGA.
- 6.15 You must not take advantage (or seek to take advantage) of your status or position with council, or of functions you perform for council, in order to obtain a private benefit for yourself or for any other person or body.

PART 7 Relationships Between Council Officials

Obligations of councillors and administrators

- 7.1 Each council is a body politic. The councillors or administrator/s are the governing body of the council. Under section 223 of the LGA, the role of the governing body of the council includes the development and endorsement of the strategic plans, programs, strategies and policies of the council, including those relating to workforce policy, and to keep the performance of the council under review.
- 7.2 Councillors or administrators must not:
- a) direct council staff other than by giving appropriate direction to the general manager by way of council or committee resolution, or by the mayor or administrator exercising their functions under section 226 of the LGA
 - b) in any public or private forum, direct or influence, or attempt to direct or influence, any other member of the staff of the council or a delegate of the council in the exercise of the functions of the staff member or delegate
 - c) contact a member of the staff of the council on council-related business unless in accordance with the policy and procedures governing the interaction of councillors and council staff that have been authorised by the council and the general manager
 - d) contact or issue instructions to any of the council's contractors, including the council's legal advisers, unless by the mayor or administrator exercising their functions under section 226 of the LGA.

- 7.3 Despite clause 7.2, councillors may contact the council's external auditor or the chair of the council's audit risk and improvement committee to provide information reasonably necessary for the external auditor or the audit, risk and improvement committee to effectively perform their functions.

Obligations of staff

- 7.4 Under section 335 of the LGA, the role of the general manager includes conducting the day-to-day management of the council in accordance with the strategic plans, programs, strategies and policies of the council, implementing without undue delay, lawful decisions of the council and ensuring that the mayor and other councillors are given timely information and advice and the administrative and professional support necessary to effectively discharge their official functions.

- 7.5 Members of staff of council must:

- a) give their attention to the business of the council while on duty
- b) ensure that their work is carried out ethically, efficiently, economically and effectively
- c) carry out reasonable and lawful directions given by any person having authority to give such directions
- d) give effect to the lawful decisions, policies and procedures of the council, whether or not the staff member agrees with or approves of them
- e) ensure that any participation in political activities outside the service of the council does not interfere with the performance of their official duties.

Inappropriate interactions

- 7.6 You must not engage in any of the following inappropriate interactions:

- a) councillors and administrators approaching staff and staff organisations to discuss individual or operational staff matters (other than matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters
- b) council staff approaching councillors and administrators to discuss individual or operational staff matters (other than matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters
- c) subject to clause 8.6, council staff refusing to give information that is available to other councillors to a particular councillor
- d) councillors and administrators who have lodged an application with the council, discussing the matter with council staff in staff-only areas of the council
- e) councillors and administrators approaching members of local planning panels or discussing any application that is either before the panel or that will come before the panel at some future time, except during a panel meeting where the application forms part of the agenda and the councillor or administrator has a right to be heard by the panel at the meeting
- f) councillors and administrators being overbearing or threatening to council staff
- g) council staff being overbearing or threatening to councillors or administrators

- h) councillors and administrators making personal attacks on council staff or engaging in conduct towards staff that would be contrary to the general conduct provisions in Part 3 of this code in public forums including social media
- i) councillors and administrators directing or pressuring council staff in the performance of their work, or recommendations they should make
- j) council staff providing ad hoc advice to councillors and administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community
- k) council staff meeting with applicants or objectors alone AND outside office hours to discuss planning applications or proposals
- l) councillors attending on-site inspection meetings with lawyers and/or consultants engaged by the council associated with current or proposed legal proceedings unless permitted to do so by the council's general manager or, in the case of the mayor or administrator, unless they are exercising their functions under section 226 of the LGA.

PART 8 Access To Information and Council Resources

Councillor and administrator access to information

- 8.1 The general manager is responsible for ensuring that councillors and administrators can access information necessary for the performance of their official functions. The general manager and public officer are also responsible for ensuring that members of the public can access publicly available council information under the *Government Information (Public Access) Act 2009* (the GIPA Act).
- 8.2 The general manager must provide councillors and administrators with the information necessary to effectively discharge their official functions.
- 8.3 Members of staff of council must provide full and timely information to councillors and administrators sufficient to enable them to exercise their official functions and in accordance with council procedures.
- 8.4 Members of staff of council who provide any information to a particular councillor in the performance of their official functions must also make it available to any other councillor who requests it and in accordance with council procedures.
- 8.5 Councillors and administrators who have a private interest only in council information have the same rights of access as any member of the public.
- 8.6 Despite clause 8.4, councillors and administrators who are precluded from participating in the consideration of a matter under this code because they have a conflict of interest in the matter, are not entitled to request access to council information in relation to the matter unless the information is otherwise available to members of the public, or the council has determined to make the information available under the GIPA Act.

Councillors and administrators to properly examine and consider information

8.7 Councillors and administrators must ensure that they comply with their duty under section 439 of the LGA to act honestly and exercise a reasonable degree of care and diligence by properly examining and considering all the information provided to them relating to matters that they are required to make a decision on.

Refusal of access to information

8.8 Where the general manager or public officer determine to refuse access to information requested by a councillor or administrator, they must act reasonably. In reaching this decision they must take into account whether or not the information requested is necessary for the councillor or administrator to perform their official functions (see clause 8.2) and whether they have disclosed a conflict of interest in the matter the information relates to that would preclude their participation in consideration of the matter (see clause 8.6). The general manager or public officer must state the reasons for the decision if access is refused.

Use of certain council information

8.9 In regard to information obtained in your capacity as a council official, you must:

- a) subject to clause 8.14, only access council information needed for council business
- b) not use that council information for private purposes
- c) not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have access by virtue of your office or position with council
- d) only release council information in accordance with established council policies and procedures and in compliance with relevant legislation.

Use and security of confidential information

8.10 You must maintain the integrity and security of confidential information in your possession, or for which you are responsible.

8.11 In addition to your general obligations relating to the use of council information, you must:

- a) only access confidential information that you have been authorised to access and only do so for the purposes of exercising your official functions
- b) protect confidential information
- c) only release confidential information if you have authority to do so
- d) only use confidential information for the purpose for which it is intended to be used
- e) not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
- f) not use confidential information with the intention to cause harm or detriment to the council or any other person or body
- g) not disclose any confidential information discussed during a confidential session of a council or committee meeting or any other confidential forum (such as, but not limited to, workshops or briefing sessions).

Personal information

- 8.12 When dealing with personal information you must comply with:
- a) the *Privacy and Personal Information Protection Act 1998*
 - b) the *Health Records and Information Privacy Act 2002*
 - c) the Information Protection Principles and Health Privacy Principles
 - d) the council's privacy management plan
 - e) the Privacy Code of Practice for Local Government

Use of council resources

- 8.13 You must use council resources ethically, effectively, efficiently and carefully in exercising your official functions, and must not use them for private purposes, except when supplied as part of a contract of employment (but not for private business purposes), unless this use is lawfully authorised and proper payment is made where appropriate.
- 8.14 Union delegates and consultative committee members may have reasonable access to council resources and information for the purposes of carrying out their industrial responsibilities, including but not limited to:
- a) the representation of members with respect to disciplinary matters
 - b) the representation of employees with respect to grievances and disputes
 - c) functions associated with the role of the local consultative committee.
- 8.15 You must be scrupulous in your use of council property, including intellectual property, official services, facilities, technology and electronic devices and must not permit their misuse by any other person or body.
- 8.16 You must avoid any action or situation that could create the appearance that council property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.
- 8.17 You must not use council resources (including council staff), property or facilities for the purpose of assisting your election campaign or the election campaigns of others unless the resources, property or facilities are otherwise available for use or hire by the public and any publicly advertised fee is paid for use of the resources, property or facility.
- 8.18 You must not use the council letterhead, council crests, council email or social media or other information that could give the appearance it is official council material:
- a) for the purpose of assisting your election campaign or the election campaign of others, or
 - b) for other non-official purposes.
- 8.19 You must not convert any property of the council to your own use unless properly authorised.

Internet access

- 8.20 You must not use council's computer resources or mobile or other devices to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature, or that could otherwise lead to criminal penalty or civil liability and/or damage the council's reputation.

Council record keeping

- 8.21 You must comply with the requirements of the *State Records Act 1998* and the council's records management policy.
- 8.22 All information created, sent and received in your official capacity is a council record and must be managed in accordance with the requirements of the *State Records Act 1998* and the council's approved records management policies and practices.
- 8.23 All information stored in either soft or hard copy on council supplied resources (including technology devices and email accounts) is deemed to be related to the business of the council and will be treated as council records, regardless of whether the original intention was to create the information for personal purposes.
- 8.24 You must not destroy, alter, or dispose of council information or records, unless authorised to do so. If you need to alter or dispose of council information or records, you must do so in consultation with the council's records manager and comply with the requirements of the *State Records Act 1998*.

Councillor access to council buildings

- 8.25 Councillors and administrators are entitled to have access to the council chamber, committee room, mayor's office (subject to availability), councillors' rooms, and public areas of council's buildings during normal business hours and for meetings. Councillors and administrators needing access to these facilities at other times must obtain authority from the general manager.
- 8.26 Councillors and administrators must not enter staff-only areas of council buildings without the approval of the general manager (or their delegate) or as provided for in the procedures governing the interaction of councillors and council staff.
- 8.27 Councillors and administrators must ensure that when they are within a staff only area they refrain from conduct that could be perceived to improperly influence council staff decisions.

PART 9 Maintaining the Integrity of this Code

Complaints made for an improper purpose

- 9.1 You must not make or threaten to make a complaint or cause a complaint to be made alleging a breach of this code for an improper purpose.
- 9.2 For the purposes of clause 9.1, a complaint is made for an improper purpose where it is trivial, frivolous, vexatious or not made in good faith, or where it otherwise lacks merit and has been made substantially for one or more of the following purposes:
- a) to bully, intimidate or harass another council official
 - b) to damage another council official's reputation
 - c) to obtain a political advantage
 - d) to influence a council official in the exercise of their official functions or to prevent or disrupt the exercise of those functions
 - e) to influence the council in the exercise of its functions or to prevent or disrupt the exercise of those functions
 - f) to avoid disciplinary action under the Procedures
 - g) to take reprisal action against a person for making a complaint alleging a breach of this code
 - h) to take reprisal action against a person for exercising a function prescribed under the Procedures
 - i) to prevent or disrupt the effective administration of this code under the Procedures.

Detrimental action

- 9.3 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for a complaint they have made alleging a breach of this code.
- 9.4 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for any function they have exercised under the Procedures.
- 9.5 For the purposes of clauses 9.3 and 9.4, a detrimental action is an action causing, comprising or involving any of the following:
- a) injury, damage or loss
 - b) intimidation or harassment
 - c) discrimination, disadvantage or adverse treatment in relation to employment
 - d) dismissal from, or prejudice in, employment
 - e) disciplinary proceedings.

Compliance with requirements under the Procedures

- 9.6 You must not engage in conduct that is calculated to impede or disrupt the consideration of a matter under the Procedures.
- 9.7 You must comply with a reasonable and lawful request made by a person exercising a function under the Procedures. A failure to make a written or oral

submission invited under the Procedures will not constitute a breach of this clause.

9.8 You must comply with a practice ruling made by the Office under the Procedures.

Disclosure of information about the consideration of a matter under the Procedures

9.9 All allegations of breaches of this code must be dealt with under and in accordance with the Procedures.

9.10 You must not allege breaches of this code other than by way of a complaint made or initiated under the Procedures.

9.11 You must not make allegations about, or disclose information about, suspected breaches of this code at council, committee or other meetings, whether open to the public or not, or in any other forum, whether public or not.

9.12 You must not disclose information about a complaint you have made alleging a breach of this code or any other matter being considered under the Procedures except for the purposes of seeking legal advice, unless the disclosure is otherwise permitted under the Procedures.

9.13 Nothing under this Part prevents a person from making a public interest disclosure to an appropriate public authority or investigative authority under the *Public Interest Disclosures Act* ~~1994~~2022.

Complaints alleging a breach of this Part

9.14 Complaints alleging a breach of this Part by a councillor, the general manager or an administrator are to be managed by the Office. This clause does not prevent the Office from referring an alleged breach of this Part back to the council for consideration in accordance with the Procedures.

9.15 Complaints alleging a breach of this Part by other council officials are to be managed by the general manager in accordance with the Procedures.

SCHEDULE 1: Disclosures of Interests and Other Matters in Written Returns Submitted Under Clause 4.21

Part 1: Preliminary

Definitions

1. For the purposes of the schedules to this code, the following definitions apply:

address means:

- a) in relation to a person other than a corporation, the last residential or business address of the person known to the councillor or designated person disclosing the address, or
- b) in relation to a corporation, the address of the registered office of the corporation in New South Wales or, if there is no such office, the address of the principal office of the corporation in the place where it is registered, or
- c) in relation to any real property, the street address of the property.

de facto partner has the same meaning as defined in section 21C of the *Interpretation Act 1987*.

disposition of property means a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, including the following:

- a) the allotment of shares in a company
- b) the creation of a trust in respect of property
- c) the grant or creation of a lease, mortgage, charge, easement, licence, power, partnership or interest in respect of property
- d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in respect of property
- e) the exercise by a person of a general power of appointment over property in favour of another person
- f) a transaction entered into by a person who intends by the transaction to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of another person.

gift means a disposition of property made otherwise than by will (whether or not by instrument in writing) without consideration, or with inadequate consideration, in money or money's worth passing from the person to whom the disposition was made to the person who made the disposition, but does not include a financial or other contribution to travel.

interest means:

- a) in relation to property, an estate, interest, right or power, at law or in equity, in or over the property, or
- b) in relation to a corporation, a relevant interest (within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth) in securities issued or made available by the corporation.

listed company means a company that is listed within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth.

occupation includes trade, profession and vocation.

professional or business association means an incorporated or unincorporated body or organisation having as one of its objects or activities the promotion of the economic interests of its members in any occupation.

property includes money.

return date means:

- a) in the case of a return made under clause 4.21(a), the date on which a person became a councillor or designated person
- b) in the case of a return made under clause 4.21(b), 30 June of the year in which the return is made
- c) in the case of a return made under clause 4.21(c), the date on which the councillor or designated person became aware of the interest to be disclosed.

relative includes any of the following:

- a) a person's spouse or de facto partner
- b) a person's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
- c) a person's spouse's or de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
- d) the spouse or de facto partner of a person referred to in paragraphs (b) and (c).

travel includes accommodation incidental to a journey.

Matters relating to the interests that must be included in returns

2. *Interests etc. outside New South Wales:* A reference in this schedule or in schedule 2 to a disclosure concerning a corporation or other thing includes any reference to a disclosure concerning a corporation registered, or other thing arising or received, outside New South Wales.
3. *References to interests in real property:* A reference in this schedule or in schedule 2 to real property in which a councillor or designated person has

an interest includes a reference to any real property situated in Australia in which the councillor or designated person has an interest.

4. *Gifts, loans etc. from related corporations:* For the purposes of this schedule and schedule 2, gifts or contributions to travel given, loans made, or goods or services supplied, to a councillor or designated person by two or more corporations that are related to each other for the purposes of section 50 of the *Corporations Act 2001* of the Commonwealth are all given, made or supplied by a single corporation.

Part 2: Pecuniary interests to be disclosed in returns

Real property

5. A person making a return under clause 4.21 of this code must disclose:
 - a) the street address of each parcel of real property in which they had an interest on the return date, and
 - b) the street address of each parcel of real property in which they had an interest in the period since 30 June of the previous financial year, and
 - c) the nature of the interest.
6. An interest in a parcel of real property need not be disclosed in a return if the person making the return had the interest only:
 - a) as executor of the will, or administrator of the estate, of a deceased person and not as a beneficiary under the will or intestacy, or
 - b) as a trustee, if the interest was acquired in the ordinary course of an occupation not related to their duties as the holder of a position required to make a return.
7. An interest in a parcel of real property need not be disclosed in a return if the person ceased to hold the interest prior to becoming a councillor or designated person.
8. For the purposes of clause 5 of this schedule, “interest” includes an option to purchase.

Gifts

9. A person making a return under clause 4.21 of this code must disclose:
 - a) a description of each gift received in the period since 30 June of the previous financial year, and
 - b) the name and address of the donor of each of the gifts.
10. A gift need not be included in a return if:
 - a) it did not exceed \$500, unless it was among gifts totalling more than \$500 made by the same person during a period of 12 months or less, or
 - b) it was a political donation disclosed, or required to be disclosed, under Part 3 of the *Electoral Funding Act 2018*, or
 - c) the donor was a relative of the donee, or

- d) subject to paragraph (a), it was received prior to the person becoming a councillor or designated person.

11. For the purposes of clause 10 of this schedule, the amount of a gift other than money is an amount equal to the value of the property given.

Contributions to travel

12. A person making a return under clause 4.21 of this code must disclose:

- a) the name and address of each person who made any financial or other contribution to the expenses of any travel undertaken by the person in the period since 30 June of the previous financial year, and
- b) the dates on which the travel was undertaken, and
- c) the names of the states and territories, and of the overseas countries, in which the travel was undertaken.

13. A financial or other contribution to any travel need not be disclosed under this clause if it:

- a) was made from public funds (including a contribution arising from travel on free passes issued under an Act or from travel in government or council vehicles), or
- b) was made by a relative of the traveller, or
- c) was made in the ordinary course of an occupation of the traveller that is not related to their functions as the holder of a position requiring the making of a return, or
- d) did not exceed \$250, unless it was among gifts totalling more than \$250 made by the same person during a 12-month period or less, or
- e) was a political donation disclosed, or required to be disclosed, under Part 3 of the *Electoral Funding Act 2018*, or
- f) was made by a political party of which the traveller was a member and the travel was undertaken for the purpose of political activity of the party in New South Wales, or to enable the traveller to represent the party within Australia, or
- g) subject to paragraph (d) it was received prior to the person becoming a councillor or designated person.

14. For the purposes of clause 13 of this schedule, the amount of a contribution (other than a financial contribution) is an amount equal to the value of the contribution.

Interests and positions in corporations

15. A person making a return under clause 4.21 of this code must disclose:

- a) the name and address of each corporation in which they had an interest or held a position (whether remunerated or not) on the return date, and
- b) the name and address of each corporation in which they had an interest or held a position in the period since 30 June of the previous financial year, and
- c) the nature of the interest, or the position held, in each of the corporations, and

- d) a description of the principal objects (if any) of each of the corporations, except in the case of a listed company.

16. An interest in, or a position held in, a corporation need not be disclosed if the corporation is:

- a) formed for the purpose of providing recreation or amusement, or for promoting commerce, industry, art, science, religion or charity, or for any other community purpose, and
- b) required to apply its profits or other income in promoting its objects, and
- c) prohibited from paying any dividend to its members.

17. An interest in a corporation need not be disclosed if the interest is a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company.

18. An interest or a position in a corporation need not be disclosed if the person ceased to hold the interest or position prior to becoming a councillor or designated person.

Interests as a property developer or a close associate of a property developer

19. A person making a return under clause 4.21 of this code must disclose whether they were a property developer, or a close associate of a corporation that, or an individual who, is a property developer, on the return date.

20. For the purposes of clause 19 of this schedule:

close associate, in relation to a corporation or an individual, has the same meaning as it has in section 53 of the *Electoral Funding Act 2018*.

property developer has the same meaning as it has in Division 7 of Part 3 of the *Electoral Funding Act 2018*.

Positions in trade unions and professional or business associations

21. A person making a return under clause 4.21 of the code must disclose:

- a) the name of each trade union, and of each professional or business association, in which they held any position (whether remunerated or not) on the return date, and
- b) the name of each trade union, and of each professional or business association, in which they have held any position (whether remunerated or not) in the period since 30 June of the previous financial year, and
- c) a description of the position held in each of the unions and associations.

22. A position held in a trade union or a professional or business association need not be disclosed if the person ceased to hold the position prior to becoming a councillor or designated person.

Dispositions of real property

23. A person making a return under clause 4.21 of this code must disclose particulars of each disposition of real property by the person (including the street address of the affected property) in the period since 30 June of the previous financial year, under which they wholly or partly retained the use and benefit of the property or the right to re-acquire the property.
24. A person making a return under clause 4.21 of this code must disclose particulars of each disposition of real property to another person (including the street address of the affected property) in the period since 30 June of the previous financial year, that is made under arrangements with, but is not made by, the person making the return, being a disposition under which the person making the return obtained wholly or partly the use of the property.
25. A disposition of real property need not be disclosed if it was made prior to a person becoming a councillor or designated person.

Sources of income

26. A person making a return under clause 4.21 of this code must disclose:
- a) each source of income that the person reasonably expects to receive in the period commencing on the first day after the return date and ending on the following 30 June, and
 - b) each source of income received by the person in the period since 30 June of the previous financial year.
27. A reference in clause 26 of this schedule to each source of income received, or reasonably expected to be received, by a person is a reference to:
- a) in relation to income from an occupation of the person:
 - (i) a description of the occupation, and
 - (ii) if the person is employed or the holder of an office, the name and address of their employer, or a description of the office, and
 - (iii) if the person has entered into a partnership with other persons, the name (if any) under which the partnership is conducted, or
 - b) in relation to income from a trust, the name and address of the settlor and the trustee, or
 - c) in relation to any other income, a description sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received.
28. The source of any income need not be disclosed by a person in a return if the amount of the income received, or reasonably expected to be received, by the person from that source did not exceed \$500, or is not reasonably expected to exceed \$500, as the case may be.
29. The source of any income received by the person that they ceased to receive prior to becoming a councillor or designated person need not be disclosed.
30. A fee paid to a councillor or to the mayor or deputy mayor under sections 248 or 249 of the LGA need not be disclosed.

Debts

31. A person making a return under clause 4.21 of this code must disclose the name and address of each person to whom the person was liable to pay any debt:
- a) on the return date, and
 - b) at any time in the period since 30 June of the previous financial year.
32. A liability to pay a debt must be disclosed by a person in a return made under clause 4.21 whether or not the amount, or any part of the amount, to be paid was due and payable on the return date or at any time in the period since 30 June of the previous financial year, as the case may be.
33. A liability to pay a debt need not be disclosed by a person in a return if:
- a) the amount to be paid did not exceed \$500 on the return date or in the period since 30 June of the previous financial year, as the case may be, unless:
 - (i) the debt was one of two or more debts that the person was liable to pay to one person on the return date, or at any time in the period since 30 June of the previous financial year, as the case may be, and
 - (ii) the amounts to be paid exceeded, in the aggregate, \$500, or
 - b) the person was liable to pay the debt to a relative, or
 - c) in the case of a debt arising from a loan of money the person was liable to pay the debt to an authorised deposit-taking institution or other person whose ordinary business includes the lending of money, and the loan was made in the ordinary course of business of the lender, or
 - d) in the case of a debt arising from the supply of goods or services:
 - (i) the goods or services were supplied in the period of 12 months immediately preceding the return date, or were supplied in the period since 30 June of the previous financial year, as the case may be, or
 - (ii) the goods or services were supplied in the ordinary course of any occupation of the person that is not related to their duties as the holder of a position required to make a return, or
 - e) subject to paragraph (a), the debt was discharged prior to the person becoming a councillor or designated person.

Discretionary disclosures

34. A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision of this Schedule.

SCHEDULE 2: Form of Written Return of Interests Submitted Under Clause 4.21

'Disclosures by councillors and designated persons' return

1. The pecuniary interests and other matters to be disclosed in this return are prescribed by Schedule 1 of the *Model Code of Conduct for Local Councils in NSW* (the Model Code of Conduct).
2. If this is the first return you have been required to lodge with the general manager after becoming a councillor or designated person, do not complete Parts C, D and I of the return. All other parts of the return should be completed with appropriate information based on your circumstances at the return date, that is, the date on which you became a councillor or designated person.
3. If you have previously lodged a return with the general manager and you are completing this return for the purposes of disclosing a new interest that was not disclosed in the last return you lodged with the general manager, you must complete all parts of the return with appropriate information for the period from 30 June of the previous financial year or the date on which you became a councillor or designated person, (whichever is the later date), to the return date which is the date you became aware of the new interest to be disclosed in your updated return.
4. If you have previously lodged a return with the general manager and are submitting a new return for the new financial year, you must complete all parts of the return with appropriate information for the 12-month period commencing on 30 June of the previous year to 30 June this year.
5. This form must be completed using block letters or typed.
6. If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.
7. If there are no pecuniary interests or other matters of the kind required to be disclosed under a heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.

Important information

This information is being collected for the purpose of complying with clause 4.21 of the Model Code of Conduct.

You must not lodge a return that you know or ought reasonably to know is false or misleading in a material particular (see clause 4.23 of the Model Code of Conduct). Complaints about breaches of these requirements are to be referred to the Office of Local Government and may result in disciplinary action by the

council, the Chief Executive of the Office of Local Government or the NSW Civil and Administrative Tribunal.

The information collected on this form will be kept by the general manager in a register of returns. The general manager is required to table all returns at a council meeting.

Information contained in returns made and lodged under clause 4.21 is to be made publicly available in accordance with the requirements of the *Government Information (Public Access) Act 2009*, the *Government Information (Public Access) Regulation 2009* and any guidelines issued by the Information Commissioner.

You have an obligation to keep the information contained in this return up to date. If you become aware of a new interest that must be disclosed in this return, or an interest that you have previously failed to disclose, you must submit an updated return within three months of becoming aware of the previously undisclosed interest.

Disclosure of pecuniary interests and other matters by [full name of councillor or designated person]

as at [return date]

in respect of the period from [date] to [date]

[councillor's or designated person's signature]
[date]

A. Real Property

Street address of each parcel of real property in which I had an interest at the return date/at any time since 30 June	Nature of interest

B. Sources of income

1 Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from an occupation at any time since 30 June

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)

2 Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from a trust since 30 June

Name and address of settlor	Name and address of trustee
-----------------------------	-----------------------------

3 Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June

Sources of other income I received at any time since 30 June

[Include description sufficient to identify the person from whom, or the circumstances in which, that income was received]

C. Gifts

Description of each gift I received at any time since 30 June	Name and address of donor
---	---------------------------

D. Contributions to travel

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time since 30 June	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel was undertaken
---	--------------------------------------	---

E. Interests and positions in corporations

Name and address of each corporation in which I had an interest (if interest or held a position at the return date/at any time since 30 June)	Nature of interest or position (if any)	Description of position (if any)	Description of principal objects (if any) of corporation (except in case of listed company)
---	---	----------------------------------	---

F. Were you a property developer or a close associate of a property developer on the return date? (Y/N)

G. Positions in trade unions and professional or business associations

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at the return date/at any time since 30 June	Description of position
---	-------------------------

H. Debts

Name and address of each person to whom I was liable to pay any debt at the return date/at any time since 30 June

I. Dispositions of property

1 Particulars of each disposition of real property by me (including the street address of the affected property) at any time since 30 June as a result of which I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time

2 Particulars of each disposition of property to a person by any other person under arrangements made by me (including the street address of the affected property), being dispositions made at any time since 30 June, as a result of which I obtained, either wholly or in part, the use and benefit of the property

J. Discretionary disclosures

SCHEDULE 3: Form of Special Disclosure of Pecuniary Interest Submitted Under Clause 4.37

1. This form must be completed using block letters or typed.
2. If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

Important information

This information is being collected for the purpose of making a special disclosure of pecuniary interests under clause 4.36(c) of the *Model Code of Conduct for Local Councils in NSW* (the Model Code of Conduct).

The special disclosure must relate only to a pecuniary interest that a councillor has in the councillor's principal place of residence, or an interest another person (whose interests are relevant under clause 4.3 of the Model Code of Conduct) has in that person's principal place of residence.

Clause 4.3 of the Model Code of Conduct states that you will have a pecuniary interest in a matter because of the pecuniary interest of your spouse or your de facto partner or your relative or because your business partner or employer has a pecuniary interest. You will also have a pecuniary interest in a matter because you, your nominee, your business partner or your employer is a member of a company or other body that has a pecuniary interest in the matter.

"Relative" is defined by clause 4.4 of the Model Code of Conduct as meaning your, your spouse's or your de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child and the spouse or de facto partner of any of those persons.

You must not make a special disclosure that you know or ought reasonably to know is false or misleading in a material particular. Complaints about breaches of these requirements are to be referred to the Office of Local Government and may result in disciplinary action by the Chief Executive of the Office of Local Government or the NSW Civil and Administrative Tribunal.

This form must be completed by you before the commencement of the council or council committee meeting at which the special disclosure is being made. The completed form must be tabled at the meeting. Everyone is entitled to inspect it. The special disclosure must be recorded in the minutes of the meeting.

Special disclosure of pecuniary interests by *[full name of councillor]*

in the matter of *[insert name of environmental planning instrument]*

which is to be considered at a meeting of the *[name of council or council committee (as the case requires)]*

to be held on the day of 20 .

Pecuniary interest	
Address of the affected principal place of residence of the councillor or an associated person, company or body (the identified land)	
Relationship of identified land to the councillor <i>[Tick or cross one box.]</i>	<input type="checkbox"/> The councillor has an interest in the land (e.g. is the owner or has another interest arising out of a mortgage, lease, trust, option or contract, or otherwise). <input type="checkbox"/> An associated person of the councillor has an interest in the land. <input type="checkbox"/> An associated company or body of the councillor has an interest in the land.
Matter giving rise to pecuniary interest ¹	
Nature of the land that is subject to a change in zone/planning control by the proposed LEP (the subject land) ² <i>[Tick or cross one box]</i>	<input type="checkbox"/> The identified land. <input type="checkbox"/> Land that adjoins or is adjacent to or is in proximity to the identified land.
Current zone/planning control <i>[Insert name of current planning instrument and identify relevant zone/planning control applying to the subject land]</i>	

¹ Clause 4.1 of the Model Code of Conduct provides that a pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter, or if the interest is of a kind specified in clause 4.6 of the Model Code of Conduct.

² A pecuniary interest may arise by way of a change of permissible use of land adjoining, adjacent to or in proximity to land in which a councillor or a person, company or body referred to in clause 4.3 of the Model Code of Conduct has a proprietary interest.

Proposed change of zone/planning control <i>[Insert name of proposed LEP and identify proposed change of zone/planning control applying to the subject land]</i>	
Effect of proposed change of zone/planning control on councillor or associated person <i>[Insert one of the following: "Appreciable financial gain" or "Appreciable financial loss"]</i>	

[If more than one pecuniary interest is to be declared, reprint the above box and fill in for each additional interest.]

Councillor's signature

Date

[This form is to be retained by the council's general manager and included in full in the minutes of the meeting]

Authorisation Details

Authorised by:	Council
Minute No:	201
Date:	20 December 2022
Review timeframe:	Within the first 12 months of the term of each new Council
Department:	Governance
Document Owner:	Governance Manager

Details Version History

Version No.	Date changed	Modified by	Amendments made
1	11/10/ <u>2022</u>	Business Improvement Officer	Reformatted to comply with Council's policy template. <u>Adopted by Council on 20/12/2022, minute number 201.</u>
<u>2</u>	<u>28/10/2024</u>	<u>Business Improvement Officer</u>	<u>Revised version for new Council term 2024-2028.</u> <u>Removed the model template notes and references to Joint Organisations from the introduction section.</u>



DRAFT Procedures for the Administration of the ~~Model~~ Code of Conduct

MSC34P

Authorisation Details

Authorised by:		Internal/External:	External
Date:		Minute No:	
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Community Strategic Plan Goal	6 Collaborative and responsive community leadership that meets the expectations and anticipates the needs of the community.		
Community Strategic Plan Strategy	6.2 Ensure Council is well managed, appropriately resourced, effective, efficient, accountable and responsive to its communities and stakeholders.		
Delivery Program activity	6.2.5 Implement a comprehensive and targeted business improvement program.		

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PART 1 Introduction

These procedures (“the Model Code Procedures”) are prescribed for the administration of the *Model Code of Conduct for Local Councils in NSW* (“the Model Code of Conduct”).

The Model Code of Conduct is made under section 440 of the *Local Government Act 1993* (“the LGA”) and the *Local Government (General) Regulation 2021~~05~~* (“the Regulation”). Section 440 of the LGA requires every council ~~(including county councils) and joint organisation~~ to adopt a code of conduct that incorporates the provisions of the Model Code of Conduct.

The Model Code Procedures are made under section 440AA of the LGA and the Regulation. Section 440AA of the LGA requires every ~~council~~ ~~council (including county councils) and joint organisation~~ to adopt procedures for the administration of their code of conduct that incorporate the provisions of the Model Code Procedures.

In adopting procedures for the administration of their adopted codes of conduct, councils ~~and joint organisations~~ may supplement the Model Code Procedures. However, provisions that are not consistent with those prescribed under the Model Code Procedures will have no effect.

Note: ~~References in these procedures to councils are also to be taken as references to county councils and joint organisations.~~

Note: ~~In adopting the Model Code Procedures, joint organisations should adapt them to substitute the terms “board” for “council”, “chairperson” for “mayor”, “voting representative” for “councillor” and “executive officer” for “general manager”.~~

Note: ~~In adopting the Model Code Procedures, county councils should adapt them to substitute the term “chairperson” for “mayor” and “member” for “councillor”.~~

Note: Parts 6, 7, 8 and 11 of these procedures apply only to the management of code of conduct complaints about councillors (including the mayor) or the general manager.

PART 2 Definitions

In these procedures the following terms have the following meanings:

Term	Definition
administrator	an administrator of a council appointed under the LGA other than an administrator appointed under section 66
code of conduct	a code of conduct adopted under section 440 of the LGA
code of conduct complaint	a complaint that is a code of conduct complaint for the purposes of clauses 4.1 and 4.2 of these procedures

complainant	a person who makes a code of conduct complaint
complainant councillor	a councillor who makes a code of conduct complaint
complaints coordinator	a person appointed by the general manager under these procedures as a complaints coordinator
conduct reviewer	a person appointed under these procedures to review allegations of breaches of the code of conduct by councillors or the general manager
council	includes county councils and joint organisations
council committee	a committee established by a council comprising of councillors, staff or other persons that the council has delegated functions to and the council's audit, risk and improvement committee
council committee member	a person other than a councillor or member of staff of a council who is a member of a council committee other than a wholly advisory committee, and a person other than a councillor who is a member of the council's audit, risk and improvement committee
councillor	any person elected or appointed to civic office, including the mayor, and includes members and chairpersons of county councils and voting representatives of the boards of joint organisations and chairpersons of joint organisations
council official	any councillor, member of staff of council, administrator, council committee member, delegate of council and, for the purposes of clause 4.16 of the Model Code of Conduct, council adviser
delegate of council	a person (other than a councillor or member of staff of a council) or body, and the individual members of that body, to whom a function of the council is delegated
external agency	a state government agency such as, but not limited to, the Office, the ICAC, the NSW Ombudsman or the police
general manager	includes the executive officer of a joint organisation
ICAC	the Independent Commission Against Corruption
joint organisation	a joint organisation established under section 400O of the LGA
LGA	the <i>Local Government Act 1993</i>
mayor	includes the chairperson of a county council or a joint organisation
members of staff of a council	includes members of staff of county councils and joint organisations
the Office	the Office of Local Government
investigator	a conduct reviewer
the Regulation	the <i>Local Government (General) Regulation 2021</i> ⁹⁵
respondent	a person whose conduct is the subject of investigation by a conduct reviewer under these procedures

wholly advisory committee

a council committee that the council has not delegated any functions to

PART 3 Administrative Framework

The establishment of a panel of conduct reviewers

- 3.1 The council must establish a panel of conduct reviewers.
- 3.2 The council may enter into an arrangement with one or more other councils to share a panel of conduct reviewers including through a joint organisation or another regional body associated with the councils.
- 3.3 The panel of conduct reviewers is to be established following a public expression of interest process.
- 3.4 An expression of interest for members of the council's panel of conduct reviewers must, at a minimum, be advertised locally and in the Sydney metropolitan area.
- 3.5 To be eligible to be a conduct reviewer, a person must, at a minimum, meet the following requirements:
- a) an understanding of local government, and
 - b) knowledge of investigative processes including but not limited to procedural fairness requirements and the requirements of the *Public Interest Disclosures Act 1994*, and
 - c) knowledge and experience of one or more of the following:
 - i) investigations
 - ii) law
 - iii) public administration
 - iv) public sector ethics
 - v) alternative dispute resolution, and
 - d) meet the eligibility requirements for membership of a panel of conduct reviewers under clause 3.6.
- 3.6 A person is not eligible to be a conduct reviewer if they are:
- a) a councillor, or
 - b) a nominee for election as a councillor, or
 - c) an administrator, or
 - d) an employee of a council, or
 - e) a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or
 - f) a nominee for election as a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or
 - g) a person who has a conviction for an indictable offence that is not an expired conviction.
- 3.7 A person is not precluded from being a member of the council's panel of conduct reviewers if they are a member of another council's panel of conduct reviewers.
- 3.8 An incorporated or other entity may be appointed to a council's panel of conduct reviewers where the council is satisfied that all the persons who will be undertaking

the functions of a conduct reviewer on behalf of the entity meet the selection and eligibility criteria prescribed under this Part.

- 3.9 A panel of conduct reviewers established under this Part is to have a term of up to four years.
- 3.10 The council may terminate the panel of conduct reviewers at any time. Where a panel of conduct reviewers has been terminated, conduct reviewers who were members of the panel may continue to deal with any matter referred to them under these procedures prior to the termination of the panel until they have finalised their consideration of the matter.
- 3.11 When the term of the panel of conduct reviewers concludes or is terminated, the council must establish a new panel of conduct reviewers in accordance with the requirements of this Part.
- 3.12 A person who was a member of a previous panel of conduct reviewers established by the council may be a member of subsequent panels of conduct reviewers established by the council if they continue to meet the selection and eligibility criteria for membership of the panel.

The appointment of an internal ombudsman to a panel of conduct reviewers

- 3.13 Despite clause 3.6(d), an employee of a council who is the nominated internal ombudsman of one or more councils may be appointed to a council's panel of conduct reviewers with the Office's consent.
- 3.14 To be appointed to a council's panel of conduct reviewers, an internal ombudsman must meet the qualification requirements for conduct reviewers prescribed under clause 3.5 as modified by the operation of clause 3.13.
- 3.15 An internal ombudsman appointed to a council's panel of conduct reviewers may also exercise the functions of the council's complaints coordinator. For the purposes of clause 6.1, an internal ombudsman who is a council's complaints coordinator and has been appointed to the council's panel of conduct reviewers, may either undertake a preliminary assessment and investigation of a matter referred to them under clauses 5.26 or 5.33 or refer the matter to another conduct reviewer in accordance with clause 6.2.
- 3.16 Clause 6.4(c) does not apply to an internal ombudsman appointed to a council's panel of conduct reviewers.

The appointment of complaints coordinators

- 3.17 The general manager must appoint a member of staff of the council or another person (such as, but not limited to, a member of staff of another council or a member of staff of a joint organisation or other regional body associated with the council), to act as a complaints coordinator. Where the complaints coordinator is a member of staff of

the council, the complaints coordinator should be a senior and suitably qualified member of staff.

- 3.18 The general manager may appoint other members of staff of the council or other persons (such as, but not limited to, members of staff of another council or members of staff of a joint organisation or other regional body associated with the council), to act as alternates to the complaints coordinator.
- 3.19 The general manager must not undertake the role of complaints coordinator.
- 3.20 The person appointed as complaints coordinator or alternate complaints coordinator must also be a nominated disclosures coordinator appointed for the purpose of receiving and managing reports of wrongdoing under the *Public Interest Disclosures Act 1994*.
- 3.21 The role of the complaints coordinator is to:
- a) coordinate the management of complaints made under the council's code of conduct
 - b) liaise with and provide administrative support to a conduct reviewer
 - c) liaise with the Office, and
 - d) arrange the annual reporting of code of conduct complaints statistics.

PART 4 How may Code of Conduct Complaints be made?

What is a code of conduct complaint?

- 4.1 For the purpose of these procedures, a code of conduct complaint is a complaint that shows or tends to show conduct on the part of a council official in connection with their role as a council official or the exercise of their functions as a council official that would constitute a breach of the standards of conduct prescribed under the council's code of conduct if proven.
- 4.2 The following are not "code of conduct complaints" for the purposes of these procedures:
- a) complaints about the standard or level of service provided by the council or a council official
 - b) complaints that relate solely to the merits of a decision made by the council or a council official or the exercise of a discretion by the council or a council official
 - c) complaints about the policies or procedures of the council
 - d) complaints about the conduct of a council official arising from the exercise of their functions in good faith, whether or not involving error, that would not otherwise constitute a breach of the standards of conduct prescribed under the council's code of conduct.
- 4.3 Only code of conduct complaints are to be dealt with under these procedures. Complaints that do not satisfy the definition of a code of conduct complaint are to be dealt with under the council's routine complaints management processes.

When must a code of conduct complaint be made?

- 4.4 A code of conduct complaint must be made within 3 months of the alleged conduct occurring or within three months of the complainant becoming aware of the alleged conduct.
- 4.5 A complaint made after 3 months may only be accepted if the general manager or their delegate, or, in the case of a complaint about the general manager, the mayor or their delegate, is satisfied that the allegations are serious and compelling grounds exist for the matter to be dealt with under the code of conduct.

How may a code of conduct complaint about a council official other than the general manager be made?

- 4.6 All code of conduct complaints other than those relating to the general manager are to be made to the general manager in writing. This clause does not operate to prevent a person from making a complaint to an external agency.
- 4.7 Where a code of conduct complaint about a council official other than the general manager cannot be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.
- 4.8 In making a code of conduct complaint about a council official other than the general manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.9 The general manager or their delegate, or, where the complaint is referred to a conduct reviewer, the conduct reviewer, must consider the complainant's preferences in deciding how to deal with the complaint.
- 4.10 Notwithstanding clauses 4.6 and 4.7, where the general manager becomes aware of a possible breach of the council's code of conduct, they may initiate the process for the consideration of the matter under these procedures without a written complaint.

How may a code of conduct complaint about the general manager be made?

- 4.11 Code of conduct complaints about the general manager are to be made to the mayor in writing. This clause does not operate to prevent a person from making a complaint about the general manager to an external agency.
- 4.12 Where a code of conduct complaint about the general manager cannot be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.
- 4.13 In making a code of conduct complaint about the general manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.

- 4.14 The mayor or their delegate, or, where the complaint is referred to a conduct reviewer, the conduct reviewer, must consider the complainant's preferences in deciding how to deal with the complaint.
- 4.15 Notwithstanding clauses 4.11 and 4.12, where the mayor becomes aware of a possible breach of the council's code of conduct by the general manager, they may initiate the process for the consideration of the matter under these procedures without a written complaint.

PART 5 How are Code of Conduct Complaints to be Managed?

Delegation by general managers and mayors of their functions under this Part

- 5.1 A general manager or mayor may delegate their functions under this Part to a member of staff of the council or to a person or persons external to the council other than an external agency. References in this Part to the general manager or mayor are also to be taken to be references to their delegates.

Consideration of complaints by general managers and mayors

- 5.2 In exercising their functions under this Part, general managers and mayors may consider the complaint assessment criteria prescribed under clause 6.31.

What complaints may be declined at the outset?

- 5.3 Without limiting any other provision in these procedures, the general manager or, in the case of a complaint about the general manager, the mayor, may decline to deal with a complaint under these procedures where they are satisfied that the complaint:
- a) is not a code of conduct complaint, or
 - b) subject to clause 4.5, is not made within 3 months of the alleged conduct occurring or the complainant becoming aware of the alleged conduct, or
 - c) is trivial, frivolous, vexatious or not made in good faith, or
 - d) relates to a matter the substance of which has previously been considered and addressed by the council and does not warrant further action, or
 - e) is not made in a way that would allow the alleged conduct and any alleged breaches of the council's code of conduct to be readily identified.

How are code of conduct complaints about staff (other than the general manager) to be dealt with?

- 5.4 The general manager is responsible for the management of code of conduct complaints about members of staff of council (other than complaints alleging a

breach of the pecuniary interest provisions contained in Part 4 of the code of conduct) and for determining the outcome of such complaints.

- 5.5 The general manager must refer code of conduct complaints about members of staff of council alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct to the Office.
- 5.6 The general manager may decide to take no action in relation to a code of conduct complaint about a member of staff of council other than one requiring referral to the Office under clause 5.5 where they consider that no action is warranted in relation to the complaint.
- 5.7 Where the general manager decides to take no action in relation to a code of conduct complaint about a member of staff of council, the general manager must give the complainant reasons in writing for their decision and this shall finalise the consideration of the matter under these procedures.
- 5.8 Code of conduct complaints about members of staff of council must be managed in accordance with the relevant industrial instrument or employment contract and make provision for procedural fairness including the right of an employee to be represented by their union.
- 5.9 Sanctions for breaches of the code of conduct by staff depend on the severity, scale and importance of the breach and must be determined in accordance with any relevant industrial instruments or contracts.

How are code of conduct complaints about delegates of council, council advisers and council committee members to be dealt with?

- 5.10 The general manager is responsible for the management of code of conduct complaints about delegates of council and council committee members (other than complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct) and for determining the outcome of such complaints.
- 5.11 The general manager must refer code of conduct complaints about council advisers, delegates of council and council committee members alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct to the Office.
- 5.12 The general manager may decide to take no action in relation to a code of conduct complaint about a delegate of council or a council committee member other than one requiring referral to the Office under clause 5.11 where they consider that no action is warranted in relation to the complaint.
- 5.13 Where the general manager decides to take no action in relation to a code of conduct complaint about a delegate of council or a council committee member, the general

manager must give the complainant reasons in writing for their decision and this shall finalise the consideration of the matter under these procedures.

- 5.14 Where the general manager considers it to be practicable and appropriate to do so, the general manager may seek to resolve code of conduct complaints about delegates of council or council committee members, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour. The resolution of a code of conduct complaint under this clause is not to be taken as a determination that there has been a breach of the council's code of conduct.
- 5.15 Where the general manager resolves a code of conduct complaint under clause 5.14 to the general manager's satisfaction, the general manager must notify the complainant in writing of the steps taken to resolve the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.16 Sanctions for breaches of the code of conduct by delegates of council and/or council committee members depend on the severity, scale and importance of the breach and may include one or more of the following:
- a) censure
 - b) requiring the person to apologise to any person or organisation adversely affected by the breach in such a time and form specified by the general manager
 - c) prosecution for any breach of the law
 - d) removing or restricting the person's delegation
 - e) removing the person from membership of the relevant council committee.
- 5.17 Prior to imposing a sanction against a delegate of council or a council committee member under clause 5.16, the general manager or any person making enquiries on behalf of the general manager must comply with the requirements of procedural fairness. In particular:
- a) the substance of the allegation (including the relevant provision/s of the council's code of conduct that the alleged conduct is in breach of) must be put to the person who is the subject of the allegation, and
 - b) the person must be given an opportunity to respond to the allegation, and
 - c) the general manager must consider the person's response in deciding whether to impose a sanction under clause 5.16.

How are code of conduct complaints about administrators to be dealt with?

- 5.18 The general manager must refer all code of conduct complaints about administrators to the Office for its consideration.
- 5.19 The general manager must notify the complainant of the referral of their complaint in writing.

How are code of conduct complaints about councillors to be dealt with?

- 5.20 The general manager must refer the following code of conduct complaints about councillors to the Office:
- a) complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct
 - b) complaints alleging a failure to comply with a requirement under the code of conduct to disclose and appropriately manage conflicts of interest arising from political donations (see section 328B of the LGA)
 - c) complaints alleging a breach of the provisions relating to the maintenance of the integrity of the code of conduct contained in Part 9 of the code of conduct
 - d) complaints that are the subject of a special complaints management arrangement with the Office under clause 5.49.
- 5.21 Where the general manager refers a complaint to the Office under clause 5.20, the general manager must notify the complainant of the referral in writing.
- 5.22 The general manager may decide to take no action in relation to a code of conduct complaint about a councillor, other than one requiring referral to the Office under clause 5.20, where they consider that no action is warranted in relation to the complaint.
- 5.23 Where the general manager decides to take no action in relation to a code of conduct complaint about a councillor, the general manager must give the complainant reasons in writing for their decision within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.24 Where the general manager considers it to be practicable and appropriate to do so, the general manager may seek to resolve code of conduct complaints about councillors, other than those requiring referral to the Office under clause 5.20, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour. The resolution of a code of conduct complaint under this clause is not to be taken as a determination that there has been a breach of the council's code of conduct.
- 5.25 Where the general manager resolves a code of conduct complaint under clause 5.24 to the general manager's satisfaction, the general manager must notify the complainant in writing of the steps taken to resolve the complaint within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.26 The general manager must refer all code of conduct complaints about councillors, other than those referred to the Office under clause 5.20 or finalised under clause 5.23 or resolved under clause 5.24, to the complaints coordinator.

How are code of conduct complaints about the general manager to be dealt with?

- 5.27 The mayor must refer the following code of conduct complaints about the general manager to the Office:
- a) complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct
 - b) complaints alleging a breach of the provisions relating to the maintenance of the integrity of the code of conduct contained in Part 9 of the code of conduct
 - c) complaints that are the subject of a special complaints management arrangement with the Office under clause 5.49.
- 5.28 Where the mayor refers a complaint to the Office under clause 5.27, the mayor must notify the complainant of the referral in writing.
- 5.29 The mayor may decide to take no action in relation to a code of conduct complaint about the general manager, other than one requiring referral to the Office under clause 5.27, where they consider that no action is warranted in relation to the complaint.
- 5.30 Where the mayor decides to take no action in relation to a code of conduct complaint about the general manager, the mayor must give the complainant reasons in writing for their decision within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.31 Where the mayor considers it to be practicable and appropriate to do so, the mayor may seek to resolve code of conduct complaints about the general manager, other than those requiring referral to the Office under clause 5.27, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour. The resolution of a code of conduct complaint under this clause is not to be taken as a determination that there has been a breach of the council's code of conduct.
- 5.32 Where the mayor resolves a code of conduct complaint under clause 5.31 to the mayor's satisfaction, the mayor must notify the complainant in writing of the steps taken to resolve the complaint within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.33 The mayor must refer all code of conduct complaints about the general manager, other than those referred to the Office under clause 5.27 or finalised under clause 5.30 or resolved under clause 5.31, to the complaints coordinator.

How are complaints about both the general manager and the mayor to be dealt with?

- 5.34 Where the general manager or mayor receives a code of conduct complaint that alleges a breach of the code of conduct by both the general manager and the mayor, the general manager or mayor must either:

- a) delegate their functions under this part with respect to the complaint to a member of staff of the council other than the general manager where the allegation is not serious, or to a person external to the council, or
- b) refer the matter to the complaints coordinator under clause 5.26 and clause 5.33.

Referral of code of conduct complaints to external agencies

- 5.35 The general manager, mayor or a conduct reviewer may, at any time, refer a code of conduct complaint to an external agency for its consideration, where they consider such a referral is warranted.
- 5.36 The general manager, mayor or a conduct reviewer must report to the ICAC any matter that they suspect on reasonable grounds concerns or may concern corrupt conduct.
- 5.37 Where the general manager, mayor or conduct reviewer refers a complaint to an external agency under clause 5.35, they must notify the complainant of the referral in writing unless they form the view, on the advice of the relevant agency, that it would not be appropriate for them to do so.
- 5.38 Referral of a matter to an external agency shall finalise consideration of the matter under these procedures unless the council is subsequently advised otherwise by the referral agency.

Disclosure of the identity of complainants

- 5.39 In dealing with matters under these procedures, information that identifies or tends to identify complainants is not to be disclosed unless:
- a) the complainant consents in writing to the disclosure, or
 - b) it is generally known that the complainant has made the complaint as a result of the complainant having voluntarily identified themselves as the person who made the complaint, or
 - c) it is essential, having regard to procedural fairness requirements, that the identifying information be disclosed, or
 - d) a conduct reviewer is of the opinion that disclosure of the information is necessary to investigate the matter effectively, or
 - e) it is otherwise in the public interest to do so.
- 5.40 Clause 5.39 does not apply to code of conduct complaints made by councillors about other councillors or the general manager.
- 5.41 Where a councillor makes a code of conduct complaint about another councillor or the general manager, and the complainant councillor considers that compelling grounds exist that would warrant information that identifies or tends to identify them as the complainant not to be disclosed, they may request in writing that such information not be disclosed.

- 5.42 A request made by a complainant councillor under clause 5.41 must be made at the time they make a code of conduct complaint and must state the grounds upon which the request is made.
- 5.43 The general manager or mayor, and where the matter is referred to a conduct reviewer, the conduct reviewer, must consider a request made under clause 5.41 before disclosing information that identifies or tends to identify the complainant councillor, but they are not obliged to comply with the request.
- 5.44 Where a complainant councillor makes a request under clause 5.41, the general manager or mayor or, where the matter is referred to a conduct reviewer, the conduct reviewer, shall notify the councillor in writing of their intention to disclose information that identifies or tends to identify them prior to disclosing the information.

Code of conduct complaints made as public interest disclosures

- 5.45 These procedures do not override the provisions of the *Public Interest Disclosures Act 1994* 2022. Code of conduct complaints that are made as public interest disclosures under that Act are to be managed in accordance with the requirements of that Act, the council's ~~internal reporting~~ **Public Interest Disclosure** Policy, and any guidelines issued by the NSW Ombudsman that relate to the management of public interest disclosures.
- 5.46 Where a councillor makes a code of conduct complaint about another councillor or the general manager as a public interest disclosure, before the matter may be dealt with under these procedures, the complainant councillor must consent in writing to the disclosure of their identity as the complainant.
- 5.47 Where a complainant councillor declines to consent to the disclosure of their identity as the complainant under clause 5.46, the general manager or the mayor must refer the complaint to the Office for consideration. Such a referral must be made under section 2655 of the *Public Interest Disclosures Act 1994* 2022.

Special complaints management arrangements

- 5.48 The general manager may request in writing that the Office enter into a special complaints management arrangement with the council in relation to code of conduct complaints made by or about a person or persons.
- 5.49 Where the Office receives a request under clause 5.48, it may agree to enter into a special complaints management arrangement if it is satisfied that the number or nature of code of conduct complaints made by or about a person or persons has:
- a) imposed an undue and disproportionate cost burden on the council's administration of its code of conduct, or
 - b) impeded or disrupted the effective administration by the council of its code of conduct, or
 - c) impeded or disrupted the effective functioning of the council.

- 5.50 A special complaints management arrangement must be in writing and must specify the following:
- a) the code of conduct complaints the arrangement relates to, and
 - b) the period that the arrangement will be in force.
- 5.51 The Office may, by notice in writing, amend or terminate a special complaints management arrangement at any time.
- 5.52 While a special complaints management arrangement is in force, an officer of the Office (the assessing OLG officer) must undertake the preliminary assessment of the code of conduct complaints specified in the arrangement in accordance with the requirements of Part 6 of these procedures.
- 5.53 Where, following a preliminary assessment, the assessing OLG officer determines that a code of conduct complaint warrants investigation by a conduct reviewer, the assessing OLG officer shall notify the complaints coordinator in writing of their determination and the reasons for their determination. The complaints coordinator must comply with the recommendation of the assessing OLG officer.
- 5.54 Prior to the expiry of a special complaints management arrangement, the Office may, at the request of the general manager, review the arrangement to determine whether it should be renewed or amended.
- 5.55 A special complaints management arrangement shall expire on the date specified in the arrangement unless renewed under clause 5.54.

PART 6 Preliminary Assessment of Code of Conduct Complaints About Councillors or the General Manager by Conduct Reviewers

Referral of code of conduct complaints about councillors or the general manager to conduct reviewers

- 6.1 The complaints coordinator must refer all code of conduct complaints about councillors or the general manager that have not been referred to an external agency or declined or resolved by the general manager, mayor or their delegate and that have been referred to them under clauses 5.26 or 5.33, to a conduct reviewer within 21 days of receipt of the complaint by the general manager or the mayor.
- 6.2 For the purposes of clause 6.1, the complaints coordinator will refer a complaint to a conduct reviewer selected from:
- a) a panel of conduct reviewers established by the council, or
 - b) a panel of conduct reviewers established by an organisation approved by the Office.

- 6.3 In selecting a suitable conduct reviewer, the complaints coordinator may have regard to the qualifications and experience of members of the panel of conduct reviewers. Where the conduct reviewer is an incorporated or other entity, the complaints coordinator must also ensure that the person assigned to receive the referral on behalf of the entity meets the selection and eligibility criteria for conduct reviewers prescribed under Part 3 of these procedures.
- 6.4 A conduct reviewer must not accept the referral of a code of conduct complaint where:
- a) they have a conflict of interest in relation to the matter referred to them, or
 - b) a reasonable apprehension of bias arises in relation to their consideration of the matter, or
 - c) they or their employer has entered into one or more contracts with the council (other than contracts relating to the exercise of their functions as a conduct reviewer) in the 2 years preceding the referral, and they or their employer have received or expect to receive payments under the contract or contracts of a value that, when aggregated, exceeds \$100,000, or
 - d) at the time of the referral, they or their employer are the council's legal service provider or are a member of a panel of legal service providers appointed by the council.
- 6.5 For the purposes of clause 6.4(a), a conduct reviewer will have a conflict of interest in a matter where a reasonable and informed person would perceive that they could be influenced by a private interest when carrying out their public duty (see clause 5.2 of the Model Code of Conduct).
- 6.6 For the purposes of clause 6.4(b), a reasonable apprehension of bias arises where a fair-minded observer might reasonably apprehend that the conduct reviewer might not bring an impartial and unprejudiced mind to the matter referred to the conduct reviewer.
- 6.7 Where the complaints coordinator refers a matter to a conduct reviewer, they will provide the conduct reviewer with a copy of the code of conduct complaint and any other information relevant to the matter held by the council, including any information about previous proven breaches and any information that would indicate that the alleged conduct forms part of an ongoing pattern of behaviour.
- 6.8 The complaints coordinator must notify the complainant in writing that the matter has been referred to a conduct reviewer, and advise which conduct reviewer the matter has been referred to.
- 6.9 Conduct reviewers must comply with these procedures in their consideration of matters that have been referred to them and exercise their functions in a diligent and timely manner.

- 6.10 The complaints coordinator may at any time terminate the referral of a matter to a conduct reviewer and refer the matter to another conduct reviewer where the complaints coordinator is satisfied that the conduct reviewer has failed to:
- a) comply with these procedures in their consideration of the matter, or
 - b) comply with a lawful and reasonable request by the complaints coordinator, or
 - c) exercise their functions in a timely or satisfactory manner.
- 6.11 Where the complaints coordinator terminates a referral to a conduct reviewer under clause 6.10, they must notify the complainant and any other affected person in writing of their decision and the reasons for it and advise them which conduct reviewer the matter has been referred to instead.

Preliminary assessment of code of conduct complaints about councillors or the general manager by a conduct reviewer

- 6.12 The conduct reviewer is to undertake a preliminary assessment of a complaint referred to them by the complaints coordinator for the purposes of determining how the complaint is to be managed.
- 6.13 The conduct reviewer may determine to do one or more of the following in relation to a complaint referred to them by the complaints coordinator:
- a) to take no action
 - b) to resolve the complaint by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour
 - c) to refer the matter back to the general manager or, in the case of a complaint about the general manager, the mayor, for resolution by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour
 - d) to refer the matter to an external agency
 - e) to investigate the matter.
- 6.14 In determining how to deal with a matter under clause 6.13, the conduct reviewer must have regard to the complaint assessment criteria prescribed under clause 6.31.
- 6.15 The conduct reviewer may make such enquiries the conduct reviewer considers to be reasonably necessary to determine what options to exercise under clause 6.13.
- 6.16 The conduct reviewer may request the complaints coordinator to provide such additional information the conduct reviewer considers to be reasonably necessary to determine what options to exercise in relation to the matter under clause 6.13. The complaints coordinator will, as far as is reasonably practicable, supply any information requested by the conduct reviewer.

- 6.17 The conduct reviewer must refer to the Office any complaints referred to them that should have been referred to the Office under clauses 5.20 and 5.27.
- 6.18 The conduct reviewer must determine to take no action on a complaint that is not a code of conduct complaint for the purposes of these procedures.
- 6.19 The resolution of a code of conduct complaint under clause 6.13, paragraphs (b) or (c) is not to be taken as a determination that there has been a breach of the council's code of conduct.
- 6.20 Where the conduct reviewer completes their preliminary assessment of a complaint by determining to exercise an option under clause 6.13, paragraphs (a), (b) or (c), they must provide the complainant with written notice of their determination and provide reasons for it, and this will finalise consideration of the matter under these procedures.
- 6.21 Where the conduct reviewer refers a complaint to an external agency, they must notify the complainant of the referral in writing unless they form the view, on the advice of the relevant agency, that it would not be appropriate for them to do so.
- 6.22 The conduct reviewer may only determine to investigate a matter where they are satisfied as to the following:
- a) that the complaint is a code of conduct complaint for the purposes of these procedures, and
 - b) that the alleged conduct is sufficiently serious to warrant the formal censure of a councillor under section 440G of the LGA or disciplinary action against the general manager under their contract of employment if it were to be proven, and
 - c) that the matter is one that could not or should not be resolved by alternative means.
- 6.23 In determining whether a matter is sufficiently serious to warrant formal censure of a councillor under section 440G of the LGA or disciplinary action against the general manager under their contract of employment, the conduct reviewer is to consider the following:
- a) the harm or cost that the alleged conduct has caused to any affected individuals and/or the council
 - b) the likely impact of the alleged conduct on the reputation of the council and public confidence in it
 - c) whether the alleged conduct was deliberate or undertaken with reckless intent or negligence
 - d) any previous proven breaches by the person whose alleged conduct is the subject of the complaint and/or whether the alleged conduct forms part of an ongoing pattern of behaviour.

- 6.24 The conduct reviewer must complete their preliminary assessment of the complaint within 28 days of referral of the matter to them by the complaints coordinator and notify the complaints coordinator in writing of the outcome of their assessment.
- 6.25 The conduct reviewer is not obliged to give prior notice to or to consult with any person before making a determination in relation to their preliminary assessment of a complaint, except as may be specifically required under these procedures.

Referral back to the general manager or mayor for resolution

- 6.26 Where the conduct reviewer determines to refer a matter back to the general manager or to the mayor to be resolved by alternative and appropriate means, they must write to the general manager or, in the case of a complaint about the general manager, to the mayor, recommending the means by which the complaint may be resolved.
- 6.27 The conduct reviewer must consult with the general manager or mayor prior to referring a matter back to them under clause 6.13(c).
- 6.28 The general manager or mayor may decline to accept the conduct reviewer's recommendation. In such cases, the conduct reviewer may determine to deal with the complaint by other means under clause 6.13.
- 6.29 Where the conduct reviewer refers a matter back to the general manager or mayor under clause 6.13(c), the general manager or, in the case of a complaint about the general manager, the mayor, is responsible for implementing or overseeing the implementation of the conduct reviewer's recommendation.
- 6.30 Where the conduct reviewer refers a matter back to the general manager or mayor under clause 6.13(c), the general manager, or, in the case of a complaint about the general manager, the mayor, must advise the complainant in writing of the steps taken to implement the conduct reviewer's recommendation once these steps have been completed.

Complaints assessment criteria

- 6.31 In undertaking the preliminary assessment of a complaint, the conduct reviewer must have regard to the following considerations:
- a) whether the complaint is a code of conduct complaint for the purpose of these procedures
 - b) whether the complaint has been made in a timely manner in accordance with clause 4.4, and if not, whether the allegations are sufficiently serious for compelling grounds to exist for the matter to be dealt with under the council's code of conduct
 - c) whether the complaint is trivial, frivolous, vexatious or not made in good faith
 - d) whether the complaint discloses prima facie evidence of conduct that, if proven, would constitute a breach of the code of conduct

- e) whether the complaint raises issues that would be more appropriately dealt with by an external agency
- f) whether there is or was an alternative and satisfactory means of redress available in relation to the conduct complained of
- g) whether the complaint is one that can be resolved by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour
- h) whether the issue/s giving rise to the complaint have previously been addressed or resolved
- i) any previous proven breaches of the council's code of conduct
- j) whether the conduct complained of forms part of an ongoing pattern of behaviour
- k) whether there were mitigating circumstances giving rise to the conduct complained of
- l) the seriousness of the alleged conduct (having regard to the criteria specified in clause 6.23)
- m) the significance of the conduct or the impact of the conduct for the council
- n) how much time has passed since the alleged conduct occurred
- o) such other considerations that the conduct reviewer considers may be relevant to the assessment of the complaint.

PART 7 Investigations of Code of Conduct Complaints About Councillors or the General Manager

What matters may a conduct reviewer investigate?

- 7.1 A conduct reviewer (hereafter referred to as an “investigator”) may investigate a code of conduct complaint that has been referred to them by the complaints coordinator and any matters related to or arising from that complaint.
- 7.2 Where an investigator identifies further separate possible breaches of the code of conduct that are not related to or do not arise from the code of conduct complaint that has been referred to them, they are to report the matters separately in writing to the general manager, or, in the case of alleged conduct on the part of the general manager, to the mayor.
- 7.3 The general manager or the mayor or their delegate is to deal with a matter reported to them by an investigator under clause 7.2 as if it were a new code of conduct complaint in accordance with these procedures.

How are investigations to be commenced?

- 7.4 The investigator must at the outset of their investigation provide a written notice of investigation to the respondent. The notice of investigation must:
 - a) disclose the substance of the allegations against the respondent, and

- b) advise of the relevant provisions of the code of conduct that apply to the alleged conduct, and
 - c) advise of the process to be followed in investigating the matter, and
 - d) advise the respondent of the requirement to maintain confidentiality, and
 - e) invite the respondent to make a written submission in relation to the matter within a period of not less than 14 days specified by the investigator in the notice, and
 - f) provide the respondent the opportunity to address the investigator on the matter within such reasonable time specified in the notice.
- 7.5 The respondent may, within 7 days of receipt of the notice of investigation, request in writing that the investigator provide them with such further information they consider necessary to assist them to identify the substance of the allegation against them. An investigator will only be obliged to provide such information that the investigator considers reasonably necessary for the respondent to identify the substance of the allegation against them.
- 7.6 An investigator may at any time prior to issuing a draft report, issue an amended notice of investigation to the respondent in relation to the matter referred to them.
- 7.7 Where an investigator issues an amended notice of investigation, they must provide the respondent with a further opportunity to make a written submission in response to the amended notice of investigation within a period of not less than 14 days specified by the investigator in the amended notice.
- 7.8 The investigator must also, at the outset of their investigation, provide written notice of the investigation to the complainant, the complaints coordinator and the general manager, or in the case of a complaint about the general manager, to the complainant, the complaints coordinator and the mayor. The notice must:
- a) advise them of the matter the investigator is investigating, and
 - b) in the case of the notice to the complainant, advise them of the requirement to maintain confidentiality, and
 - c) invite the complainant to make a written submission in relation to the matter within a period of not less than 14 days specified by the investigator in the notice.

Written and oral submissions

- 7.9 Where the respondent or the complainant fails to make a written submission in relation to the matter within the period specified by the investigator in their notice of investigation or amended notice of investigation, the investigator may proceed to prepare their draft report without receiving such submissions.
- 7.10 The investigator may accept written submissions received outside the period specified in the notice of investigation or amended notice of investigation.

- 7.11 Prior to preparing a draft report, the investigator must give the respondent an opportunity to address the investigator on the matter being investigated. The respondent may do so in person or by telephone or other electronic means.
- 7.12 Where the respondent fails to accept the opportunity to address the investigator within the period specified by the investigator in the notice of investigation, the investigator may proceed to prepare a draft report without hearing from the respondent.
- 7.13 Where the respondent accepts the opportunity to address the investigator in person, they may have a support person or legal adviser in attendance. The support person or legal adviser will act in an advisory or support role to the respondent only. They must not speak on behalf of the respondent or otherwise interfere with or disrupt proceedings.
- 7.14 The investigator must consider all written and oral submissions made to them in relation to the matter.

How are investigations to be conducted?

- 7.15 Investigations are to be undertaken without undue delay.
- 7.16 Investigations are to be undertaken in the absence of the public and in confidence.
- 7.17 Investigators must make any such enquiries that may be reasonably necessary to establish the facts of the matter.
- 7.18 Investigators may seek such advice or expert guidance that may be reasonably necessary to assist them with their investigation or the conduct of their investigation.
- 7.19 An investigator may request that the complaints coordinator provide such further information that the investigator considers may be reasonably necessary for them to establish the facts of the matter. The complaints coordinator will, as far as is reasonably practicable, provide the information requested by the investigator.

Referral or resolution of a matter after the commencement of an investigation

- 7.20 At any time after an investigator has issued a notice of investigation and before they have issued their final report, an investigator may determine to:
- a) resolve the matter by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour, or
 - b) refer the matter to the general manager, or, in the case of a complaint about the general manager, to the mayor, for resolution by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour, or

c) refer the matter to an external agency.

- 7.21 Where an investigator determines to exercise any of the options under clause 7.20 after the commencement of an investigation, they must do so in accordance with the requirements of Part 6 of these procedures relating to the exercise of these options at the preliminary assessment stage.
- 7.22 The resolution of a code of conduct complaint under clause 7.20, paragraphs (a) or (b) is not to be taken as a determination that there has been a breach of the council's code of conduct.
- 7.23 Where an investigator determines to exercise any of the options under clause 7.20 after the commencement of an investigation, they may by written notice to the respondent, the complainant, the complaints coordinator and the general manager, or in the case of a complaint about the general manager, to the respondent, the complainant, the complaints coordinator and the mayor, discontinue their investigation of the matter.
- 7.24 Where the investigator discontinues their investigation of a matter under clause 7.23, this shall finalise the consideration of the matter under these procedures.
- 7.25 An investigator is not obliged to give prior notice to or to consult with any person before making a determination to exercise any of the options under clause 7.20 or to discontinue their investigation except as may be specifically required under these procedures.

Draft investigation reports

- 7.26 When an investigator has completed their enquiries and considered any written or oral submissions made to them in relation to a matter, they must prepare a draft of their proposed report.
- 7.27 The investigator must provide their draft report to the respondent and invite them to make a written submission in relation to it within a period of not less than 14 days specified by the investigator.
- 7.28 Where the investigator proposes to make adverse comment about any other person (an affected person) in their report, they must also provide the affected person with relevant extracts of their draft report containing such comment and invite the affected person to make a written submission in relation to it within a period of not less than 14 days specified by the investigator.
- 7.29 The investigator must consider written submissions received in relation to the draft report prior to finalising their report in relation to the matter.
- 7.30 The investigator may, after consideration of all written submissions received in relation to their draft report, make further enquiries into the matter. If, as a result of

making further enquiries, the investigator makes any material change to their proposed report that makes new adverse comment about the respondent or an affected person, they must provide the respondent or affected person as the case may be with a further opportunity to make a written submission in relation to the new adverse comment.

- 7.31 Where the respondent or an affected person fails to make a written submission in relation to the draft report within the period specified by the investigator, the investigator may proceed to prepare and issue their final report without receiving such submissions.
- 7.32 The investigator may accept written submissions in relation to the draft report received outside the period specified by the investigator at any time prior to issuing their final report.

Final investigation reports

- 7.33 Where an investigator issues a notice of investigation, they must prepare a final report in relation to the matter unless the investigation is discontinued under clause 7.23.
- 7.34 An investigator must not prepare a final report in relation to the matter at any time before they have finalised their consideration of the matter in accordance with the requirements of these procedures.
- 7.35 The investigator's final report must:
- a) make findings of fact in relation to the matter investigated, and,
 - b) make a determination that the conduct investigated either,
 - i. constitutes a breach of the code of conduct, or
 - ii. does not constitute a breach of the code of conduct, and
 - c) provide reasons for the determination.
- 7.36 At a minimum, the investigator's final report must contain the following information:
- a) a description of the allegations against the respondent
 - b) the relevant provisions of the code of conduct that apply to the alleged conduct investigated
 - c) a statement of reasons as to why the matter warranted investigation (having regard to the criteria specified in clause 6.23)
 - d) a statement of reasons as to why the matter was one that could not or should not be resolved by alternative means
 - e) a description of any attempts made to resolve the matter by use of alternative means
 - f) the steps taken to investigate the matter
 - g) the facts of the matter
 - h) the investigator's findings in relation to the facts of the matter and the reasons for those findings
 - i) the investigator's determination and the reasons for that determination

j) any recommendations.

7.37 Where the investigator determines that the conduct investigated constitutes a breach of the code of conduct, the investigator may recommend:

- a) in the case of a breach by the general manager, that disciplinary action be taken under the general manager's contract of employment for the breach, or
- b) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the LGA, or
- c) in the case of a breach by a councillor, that the council resolves as follows:
 - i. that the councillor be formally censured for the breach under section 440G of the LGA, and
 - ii. that the matter be referred to the Office for further action under the misconduct provisions of the LGA.

7.38 Where the investigator proposes to make a recommendation under clause 7.37(c), the investigator must first consult with the Office on their proposed findings, determination and recommendation prior to finalising their report, and must take any comments by the Office into consideration when finalising their report.

7.39 Where the investigator has determined that there has been a breach of the code of conduct, the investigator may, in addition to making a recommendation under clause 7.37, recommend that the council revise any of its policies, practices or procedures.

7.40 Where the investigator determines that the conduct investigated does not constitute a breach of the code of conduct, the investigator may recommend:

- a) that the council revise any of its policies, practices or procedures
- b) that a person or persons undertake any training or other education.

7.41 The investigator must provide a copy of their report to the complaints coordinator and the respondent.

7.42 At the time the investigator provides a copy of their report to the complaints coordinator and the respondent, the investigator must provide the complainant with a written statement containing the following information:

- a) the investigator's findings in relation to the facts of the matter and the reasons for those findings
- b) the investigator's determination and the reasons for that determination
- c) any recommendations, and
- d) such other additional information that the investigator considers may be relevant.

7.43 Where the investigator has determined that there has not been a breach of the code of conduct, the complaints coordinator must provide a copy of the investigator's report to the general manager or, where the report relates to the general manager's conduct, to the mayor, and this will finalise consideration of the matter under these procedures.

- 7.44 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation under clause 7.37, the complaints coordinator must, where practicable, arrange for the investigator's report to be reported to the next ordinary council meeting for the council's consideration, unless the meeting is to be held within the 4 weeks prior to an ordinary local government election, in which case the report must be reported to the first ordinary council meeting following the election.
- 7.45 Where it is apparent to the complaints coordinator that the council will not be able to form a quorum to consider the investigator's report, the complaints coordinator must refer the investigator's report to the Office for its consideration instead of reporting it to the council under clause 7.44.

Consideration of the final investigation report by council

- 7.46 The role of the council in relation to a final investigation report is to impose a sanction if the investigator has determined that there has been a breach of the code of conduct and has made a recommendation in their final report under clause 7.37.
- 7.47 The council is to close its meeting to the public to consider the final investigation report in cases where it is permitted to do so under section 10A of the LGA.
- 7.48 Where the complainant is a councillor, they must absent themselves from the meeting and take no part in any discussion or voting on the matter. The complainant councillor may absent themselves without making any disclosure of interest in relation to the matter unless otherwise required to do so under the code of conduct.
- 7.49 Prior to imposing a sanction, the council must provide the respondent with an opportunity to make a submission to the council. A submission may be made orally or in writing. The respondent is to confine their submission to addressing the investigator's recommendation.
- 7.50 Once the respondent has made their submission they must absent themselves from the meeting and, where they are a councillor, take no part in any discussion or voting on the matter.
- 7.51 The council must not invite submissions from other persons for the purpose of seeking to rehear evidence previously considered by the investigator.
- 7.52 Prior to imposing a sanction, the council may by resolution:
- a) request that the investigator make additional enquiries and/or provide additional information to it in a supplementary report, or
 - b) seek an opinion from the Office in relation to the report.
- 7.53 The council may, by resolution, defer further consideration of the matter pending the receipt of a supplementary report from the investigator or an opinion from the Office.

- 7.54 The investigator may make additional enquiries for the purpose of preparing a supplementary report.
- 7.55 Where the investigator prepares a supplementary report, they must provide copies to the complaints coordinator who shall provide a copy each to the council and the respondent.
- 7.56 The investigator is not obliged to notify or consult with any person prior to submitting the supplementary report to the complaints coordinator.
- 7.57 The council is only required to provide the respondent a further opportunity to make an oral or written submission on a supplementary report if the supplementary report contains new information that is adverse to them.
- 7.58 A council may by resolution impose one of the following sanctions on a respondent:
- a) in the case of a breach by the general manager, that disciplinary action be taken under the general manager's contract of employment for the breach, or
 - b) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the LGA, or
 - c) in the case of a breach by a councillor:
 - i. that the councillor be formally censured for the breach under section 440G of the LGA, and
 - ii. that the matter be referred to the Office for further action under the misconduct provisions of the LGA.
- 7.59 Where the council censures a councillor under section 440G of the LGA, the council must specify in the censure resolution the grounds on which it is satisfied that the councillor should be censured by disclosing in the resolution, the investigator's findings and determination and/or such other grounds that the council considers may be relevant or appropriate.
- 7.60 The council is not obliged to adopt the investigator's recommendation. Where the council proposes not to adopt the investigator's recommendation, the council must resolve not to adopt the recommendation and state in its resolution the reasons for its decision.
- 7.61 Where the council resolves not to adopt the investigator's recommendation, the complaints coordinator must notify the Office of the council's decision and the reasons for it.

PART 8 Oversight and Rights of Review

The Office's powers of review

- 8.1 The Office may, at any time, whether or not in response to a request, review the consideration of a matter under a council's code of conduct where it is concerned that a person has failed to comply with a requirement prescribed under these procedures or has misinterpreted or misapplied the standards of conduct prescribed under the code of conduct in their consideration of a matter.
- 8.2 The Office may direct any person, including the council, to defer taking further action in relation to a matter under consideration under the council's code of conduct pending the completion of its review. Any person the subject of a direction must comply with the direction.
- 8.3 Where the Office undertakes a review of a matter under clause 8.1, it will notify the complaints coordinator and any other affected persons, of the outcome of the review.

Complaints about conduct reviewers

- 8.4 The general manager or their delegate must refer code of conduct complaints about conduct reviewers to the Office for its consideration.
- 8.5 The general manager must notify the complainant of the referral of their complaint about the conduct reviewer in writing.
- 8.6 The general manager must implement any recommendation made by the Office as a result of its consideration of a complaint about a conduct reviewer.

Practice rulings

- 8.7 Where a respondent and an investigator are in dispute over a requirement under these procedures, either person may make a request in writing to the Office to make a ruling on a question of procedure (a practice ruling).
- 8.8 Where the Office receives a request in writing for a practice ruling, the Office may provide notice in writing of its ruling and the reasons for it to the person who requested it and to the investigator, where that person is different.
- 8.9 Where the Office makes a practice ruling, all parties must comply with it.
- 8.10 The Office may decline to make a practice ruling. Where the Office declines to make a practice ruling, it will provide notice in writing of its decision and the reasons for it to the person who requested it and to the investigator, where that person is different.

Review of decisions to impose sanctions

- 8.11 A person who is the subject of a sanction imposed under Part 7 of these procedures other than one imposed under clause 7.58, paragraph (c), may, within 28 days of the sanction being imposed, seek a review of the investigator's determination and recommendation by the Office.
- 8.12 A review under clause 8.11 may be sought on the following grounds:
- a) that the investigator has failed to comply with a requirement under these procedures, or
 - b) that the investigator has misinterpreted or misapplied the standards of conduct prescribed under the code of conduct, or
 - c) that in imposing its sanction, the council has failed to comply with a requirement under these procedures.
- 8.13 A request for a review made under clause 8.11 must be made in writing and must specify the grounds upon which the person believes the investigator or the council has erred.
- 8.14 The Office may decline to conduct a review, in cases where the grounds upon which the review is sought are not sufficiently specified.
- 8.15 The Office may undertake a review of a matter without receiving a request under clause 8.11.
- 8.16 The Office will undertake a review of the matter on the papers. However, the Office may request that the complaints coordinator provide such further information that the Office considers reasonably necessary for it to review the matter. The complaints coordinator must, as far as is reasonably practicable, provide the information requested by the Office.
- 8.17 Where a person requests a review under clause 8.11, the Office may direct the council to defer any action to implement a sanction. The council must comply with a direction to defer action by the Office.
- 8.18 The Office must notify the person who requested the review and the complaints coordinator of the outcome of the Office's review in writing and the reasons for its decision. In doing so, the Office may comment on any other matters the Office considers to be relevant.
- 8.19 Where the Office considers that the investigator or the council has erred, the Office may recommend that a decision to impose a sanction under these procedures be reviewed. Where the Office recommends that the decision to impose a sanction be reviewed:
- a) the complaints coordinator must, where practicable, arrange for the Office's determination to be tabled at the next ordinary council meeting unless the meeting is to be held within the 4 weeks prior to an ordinary local government

election, in which case it must be tabled at the first ordinary council meeting following the election, and

- b) the council must:
 - i. review its decision to impose the sanction, and
 - ii. consider the Office's recommendation in doing so, and
 - iii. resolve to either rescind or reaffirm its previous resolution in relation to the matter.

8.20 Where, having reviewed its previous decision in relation to a matter under clause 8.19(b), the council resolves to reaffirm its previous decision, the council must state in its resolution its reasons for doing so.

PART 9 Procedural Irregularities

9.1 A failure to comply with these procedures does not, on its own, constitute a breach of the code of conduct, except as may be otherwise specifically provided under the code of conduct.

- 9.2 A failure to comply with these procedures will not render a decision made in relation to a matter invalid where:
- a) the non-compliance is isolated and/or minor in nature, or
 - b) reasonable steps are taken to correct the non-compliance, or
 - c) reasonable steps are taken to address the consequences of the non-compliance.

PART 10 Practice Directions

10.1 The Office may at any time issue a practice direction in relation to the application of these procedures.

10.2 The Office will issue practice directions in writing, by circular to all councils.

10.3 All persons performing a function prescribed under these procedures must consider the Office's practice directions when performing the function.

PART 11 Reporting Statistics on Code of Conduct Complaints About Councillors and the General Manager

11.1 The complaints coordinator must arrange for the following statistics to be reported to the council within 3 months of the end of September of each year:

- a) the total number of code of conduct complaints made about councillors and the general manager under the code of conduct in the year to September (the reporting period)
- b) the number of code of conduct complaints referred to a conduct reviewer during the reporting period
- c) the number of code of conduct complaints finalised by a conduct reviewer at the preliminary assessment stage during the reporting period and the outcome of those complaints
- d) the number of code of conduct complaints investigated by a conduct reviewer during the reporting period
- e) without identifying particular matters, the outcome of investigations completed under these procedures during the reporting period
- f) the number of matters reviewed by the Office during the reporting period and, without identifying particular matters, the outcome of the reviews, and
- g) the total cost of dealing with code of conduct complaints made about councillors and the general manager during the reporting period, including staff costs.

11.2 The council is to provide the Office with a report containing the statistics referred to in clause 11.1 within 3 months of the end of September of each year.

PART 12 Confidentiality

- 12.1 Information about code of conduct complaints and the management and investigation of code of conduct complaints is to be treated as confidential and is not to be publicly disclosed except as may be otherwise specifically required or permitted under these procedures.
- 12.2 Where a complainant publicly discloses information on one or more occasions about a code of conduct complaint they have made or purported to make, the general manager or their delegate may, with the consent of the Office, determine that the complainant is to receive no further information about their complaint and any future code of conduct complaint they make or purport to make.
- 12.3 Prior to seeking the Office's consent under clause 12.2, the general manager or their delegate must give the complainant written notice of their intention to seek the Office's consent, invite them to make a written submission within a period of not less than 14 days specified by the general manager or their delegate, and consider any submission made by them.
- 12.4 In giving its consent under clause 12.2, the Office must consider any submission made by the complainant to the general manager or their delegate.
- 12.5 The general manager or their delegate must give written notice of a determination made under clause 12.2 to:
- a) the complainant

- b) the complaints coordinator
- c) the Office, and
- d) any other person the general manager or their delegate considers should be notified of the determination.

12.6 Any requirement under these procedures that a complainant is to be provided with information about a code of conduct complaint that they have made or purported to make, will not apply to a complainant the subject of a determination made by the general manager or their delegate under clause 12.2.

12.7 Clause 12.6 does not override any entitlement a person may have to access to council information under the *Government Information (Public Access) Act 2009* or to receive information under the *Public Interest Disclosures Act 1994* in relation to a complaint they have made.

Authorisation Details

Authorised by:	Council
Minute No:	201
Date:	20 December 2022
Review timeframe:	Within the first 12 months of the term of each new Council
Department:	Governance
Document Owner:	Governance Manager

DetailsVersion History

Version No.	Date changed	Modified by	Amendments made
1	11/10/22	Business Improvement Officer	Reformatted to comply with Council's procedure template. <u>Adopted by Council on 20/12/2022, minute number 201.</u>
<u>2</u>	<u>28/10/2024</u>	<u>Business Improvement Officer</u>	<u>Revised version for new Council term 2024-2028. Removed the model template notes and references to Joint Organisations from the introduction section.</u>
<u>3</u>	<u>16/01/2024</u>	<u>Business Improvement Officer</u>	<u>Updated legislation references in sections 5.45 and 5.47.</u>

**10.3.5. Draft Borrowing Policy for Public Exhibition**

Responsible Officer: Derek Finnigan - General Manager

Author: Financial Controller

Community Strategic Plan: 6 - *Community Leadership*

Collaborative and responsive leadership that meets the expectations and anticipates the needs of the community

Delivery Program Goal: 6.2.1 - Maintain a strong focus on financial discipline to enable Council to properly respond to the needs of the communities it serves.
6.2.5 - Implement a comprehensive and targeted business improvement program.

Operational Plan Action: 6.2.1.5 - Seek continuous improvement opportunities to achieve better value for money in Council's day-to-day procurement operations.
6.2.5.3 - Develop and review policies in accordance with statutory and operational requirements.

Attachments: 1. DRAFT Borrowing Policy MSC13E [10.3.5.1 - 12 pages]

PURPOSE

To request Council's endorsement to place the attached *DRAFT Borrowing Policy* on public exhibition as notice of intention to adopt.

OFFICER'S RECOMMENDATION

1. Council provides notice of intention to adopt the *DRAFT Borrowing Policy*, by placing it on public exhibition via Council's website for a period of 28 days; and
2. A further report be submitted to Council for consideration of submissions received during the exhibition period.

Moved: _____ **Seconded:** _____

EXECUTIVE SUMMARY

A review of the *Borrowing Policy* has been undertaken, with minimal amendments that included the addition of a risks being addressed section, legislation updates, and updated formatting. All amendments are shown as tracked changes in attachment 1. The draft policy has been endorsed by Manex for submission to Council for public exhibition.

PREVIOUS RESOLUTIONS

The *Borrowing Policy* was previously adopted by Council on 5 April 2022.



BACKGROUND

The *DRAFT Borrowing Policy MSC13E* (the policy) sets out Council's loan borrowing requirements, both internal and external and the use of any overdraft facility, with consideration given to the following primary objectives:

- Ensure that all borrowings (both internal and external) are in accordance with relevant legislative provisions.
- Ensure the total amount of the loan borrowings is sustainable in terms of Council's ability to meet future repayments and budgetary obligations.
- To detail Council's planned financial management strategy for existing and future debt.
- Minimise the cost of borrowing.
- Meeting industry best practice in respect to Council's Debt Service Ratio.
- Have regard to the long term and cumulative effects of Council's decisions.
- Exercise reasonable care and diligence that a prudent person would exercise when borrowing funds.

The policy was last adopted by Council on 5 April 2022 and is one of Council's key financial policies that is required to be reviewed and readopted within the first 12 months of the term of each new Council.

CONSULTATION

Chief Financial Officer

Financial Controller

Senior Financial Accountant

Business Improvement Officer(s)

MANEX – 16 December 2024

REPORT

A review of the *Borrowing Policy* has been undertaken with minimal amendments that included the Risks being addressed section added, legislation updates, and formatting. All amendments are shown as tracked changes in attachment 1.

On 16 December 2024, Manex endorsed the draft policy to be submitted to Council for Public Exhibition.

FINANCIAL CONSIDERATIONS

Ongoing Operational and Maintenance Costs Implications Associated with Capital Project

1. Financial Implications – Capital

Nil.

2. Financial Implications – Operational

Nil.

POLICY IMPLICATIONS

This policy was reviewed in line with Council's Policy Management Framework.



STATUTORY / LEGISLATIVE IMPLICATIONS

Local Government Act 1993

Local Government (General) Regulation 2021

Minister's Borrowing Order

Australian Accounting Standards

NSW Office of Local Government – Local Government Code of Accounting Practice & Financial Reporting

RISK MANAGEMENT IMPLICATIONS

The *DRAFT Borrowing Policy* addresses the following risks:

- Ensures borrowing aligns with the council's capacity to repay within a sustainable financial framework.
- Prevents excessive debt levels that could jeopardise long-term financial sustainability.
- Ensures the council maintains sufficient liquidity to meet its financial obligations, including loan repayments and operational expenses.
- Ensures compliance with the *Local Government Act 1993* (NSW) and relevant guidelines, such as the Office of Local Government's (OLG) Capital Expenditure Guidelines.
- Provides strategies for managing fixed vs. variable interest rate loans to minimise financial exposure from fluctuating interest rates.
- Promotes proper decision-making, transparency, and accountability in borrowing decisions.
- Minimises the risk of mismanagement or unauthorised borrowing.

COMMUNITY CONSULTATION / COMMUNICATIONS

Public exhibition of 28 days via Council's website will provide the community with an opportunity to make submissions.



muswellbrook shire council

DRAFT Borrowing Policy

MSC13E

Adopted by Council:

Date: 05/04/2022

Minute No. 279

Authorisation Details

Authorised by:		Internal/External:	External
Date:		Minute No:	
Review timeframe:	Within the first 12 months of the term of each new Council	Review due date:	
Department:	Finance		
Document Owner:	Chief Financial Officer		
Community Strategic Plan Goal	6. Collaborative and responsive community leadership that meets the expectations and anticipates the needs of the community.		
Community Strategic Plan Strategy	6.2 Ensure Council is well managed, appropriately resourced, effective, efficient, accountable and responsive to its communities and stakeholders.		
Delivery Program activity	6.2.1 Maintain a strong focus on financial discipline to enable Council to properly respond to the needs of the communities it serves.		

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1 IntroductionPolicy Objective

This policy sets out Muswellbrook Shire Council's (Council's) loan borrowing requirements, both internal and external, and the use of any overdraft facility, with consideration given to the following primary objectives:

- Ensure that all borrowings (both internal and external) are in accordance withinwith relevant legislative provisions.
- Ensure the total amount of the loan borrowings is sustainable in terms of Council's ability to meet future repayments and budgetary obligations.
- To detail Council's planned financial management strategy for existing and future debt.
- Minimise the cost of borrowing.
- Meeting industry best practice in respect to Council's Debt Service Ratio.
- Have regard to the long term and cumulative effects of Council's decisions.
- Exercise reasonable care and diligence that a prudent person would exercise when borrowing funds.

2 Risks being addressed

2.1 Risks Addressed by the Borrowing Policy:

- Ensures borrowing aligns with the council's capacity to repay within a sustainable financial framework.
- Prevents excessive debt levels that could jeopardise long-term financial sustainability.
- Ensures the council maintains sufficient liquidity to meet its financial obligations, including loan repayments and operational expenses.
- Ensures compliance with the *Local Government Act 1993* (NSW) and relevant guidelines, such as the Office of Local Government's (OLG) Capital Expenditure Guidelines.
- Provides strategies for managing fixed vs. variable interest rate loans to minimise financial exposure from fluctuating interest rates.
- Promotes proper decision-making, transparency, and accountability in borrowing decisions.
- Minimises the risk of mismanagement or unauthorised borrowing.

2.2 Risks of Not Complying with the Policy:

- Non-compliance could lead to excessive debt accumulation, impacting the council's ability to fund essential services and projects.
- Potential cash flow issues may result in the council being unable to meet its financial obligations.
- Breaching the *Local Government Act* or failing to adhere to regulatory requirements may result in penalties, audits, or legal disputes.
- Non-compliance and mismanagement of borrowed funds could erode public trust in the Council's governance and financial stewardship.

- Poor borrowing decisions or failure to secure competitive rates may lead to higher costs, reducing funds available for community projects.
- Non-compliance with financial policies could harm the eCouncil's reputation and limit its ability to access favourable credit terms in the future.

2.3 Why Do We Have This Policy?

- To comply with the Ministerial Revised Borrowing Order and the *Local Government Act 1993* (NSW), which mandates councils to manage their financial resources responsibly and transparently.
- To ensure borrowing decisions are made within a framework of sustainability, supporting long-term financial health while delivering infrastructure and community services.
- To establish clear processes and responsibilities for borrowing, ensuring transparency and accountability in decision-making.
- To demonstrate sound financial management, reinforcing public confidence in the council's ability to manage resources effectively.
- To ensure borrowing supports the delivery of strategic objectives, such as funding critical infrastructure and community development projects.

3 Policy Statement and Scope

3.1 Principles

Borrowings are not a form of revenue and do not replace the need for Council to generate sufficient operating revenue to service its operating requirements.

Council aims to finance capital works and new assets to the greatest extent possible from revenue, grants, subsidies or any specific reserves primarily established to fund capital works.

It is Council's aspiration to fund depreciation, and restrict those funds into an internal reserve, for the purpose of funding capital works.

Existing assets, that are due for renewal are to be replaced from the funding of depreciation costs, with the exception of except for "lumpy" assets, where borrowing may be used, and the funded depreciation used to repay the loan, both principal and interest.

Council will not enter into enter any financing arrangements which involve the repayment of interest only.

Council will restrict all borrowings to expenditure on identified capital projects that are considered by Council to be of the highest priority, and which are unable to be funded from revenue. Under no circumstances will Council borrow funds for recurrent expenditure.

New assets, that are income producing, may be funded from debt.

Where a capital project for a service that is funded by user charges (e.g. waste, water or sewer) is determined to be funded by way of loans, the user charge should reflect the cost of providing the service (including any loan repayments).

Other specific capital projects, not funded by user charges, will only be considered for loan funding where the project is considered by Council to be beneficial to the majority of most ratepayers.

Financing of major infrastructure assets requires a strategic approach to evaluate the risk exposure to Council.

In considering the impact of borrowing on council's budget, council will be guided by:

- The ~~Long Term~~Long-Term Financial Plan resourcing the Community Strategic Plan.
- The relevant Asset Management Plan or Integrated Water Cycle Management Plan informing the Community Strategic Plan.
- Achieving the benchmark Operating Result Ratio.
- Achieving the benchmark Asset Renewal Ratio.
- Debt service ratios.

3.2 Scope

The following provides some context for the above principle points.

When to use debt?

The use of debt is ~~closely~~ linked to the concept of intergenerational equity. Operating and asset renewal expenses should be paid by current residents and therefore current revenue. Expenditures that provide benefits over many years should be paid for by users that benefit from the works over its economic life. This cannot be achieved by accumulating current revenues for future expenditure but is achieved by using current revenues to fund loan repayments over the life of the asset.

Debt is also appropriate where the expenditure results in a reduction of operating costs or an increase in operating revenues that cover the cost of borrowing. There may also be emergency situations where works are required urgently to avoid significant risks or escalations in remediation costs.

How will a project be approved for funding?

Assessment of a project will follow Council's Investment Logic Mapping process, and incorporate the following mandatory analysis:

- Council Priorities - Does the project outcome support an objective of Council's Strategic Priorities?
- Community Expectations - The project outcome must align to an action adopted under the Community Strategic Plan and Council's Delivery Program.
- Asset Management - Is the expenditure programmed in the appropriate Asset Management Plan adopted by Council under the integrated planning and reporting provisions of the *Local Government Act*? Will the project contribute to Council maintaining its Asset Renewal Ratio at or above the industry Asset Renewal Ratio benchmark?
- Financial Management - Have the operating and capital cost of a project been accurately assessed and ~~entered into~~included in Council's Long Term Financial Plan to determine the financial impact of a project and the capacity for Council to maintain a positive Operating ~~Result~~Performance Ratio?
- Risk Management - All projects shall be evaluated under the Project Risk Assessment Matrix and identified risks will be mitigated or managed as documented in the risk assessment.

When is debt affordable?

- Debt affordability - Debt is affordable where the works are self-funding either from reduced operating costs or an increase in revenues or the net result of both. Alternatively, debt is only affordable if the relevant fund has an operating surplus sufficient to cover the loan repayments. Operating revenues should be able to cover cash operating expenses as well as non-cash accruals for leave entitlements, depreciation and remediation, before committing to loan repayments, for the fund to be financially sustainable. The fund is required to maintain a positive Operating Result Ratio to achieve industry benchmarks.
- ~~What are appropriate~~ Appropriate sources and terms of debt? - The Office of Local Government will set controls for borrowings which may change at any time and Council needs to keep aware of these through the related legislation and references below. Council will not indulge in speculative debt arrangements and will adhere to standard table loans with set monthly, quarterly or bi-annual instalments and rates fixed for at least five years. Repayment periods will not exceed the economic life of the works to ensure intergenerational equity.

3.3 External Loans

In considering the need for new loans, the following criteria will be analysed:

- Any proposed borrowing amounts must be contained in Council's Long Term Financial Plan, Delivery Program and Operational Plan.
- Current and estimated future revenues - Where possible loans should only be raised for income producing products, however this will not apply to non-income generating assets such as roads and stormwater drainage, these works will only be considered if the project can demonstrate long term savings by bringing works forward.
- Strategic planning for the future of the Council covering short, medium and long term.
- Inter-generational equity considerations in terms of ratepayers who benefit from the expenditure and, therefore, on a user pay basis, who should pay for the costs associated with such expenditure.
- Current and future funding needs for both operating and capital expenditures.
- Potential movements in interest rates and associated debt servicing costs.
- Ensure, where possible, that the structure of the borrowing is appropriate for the nature of the asset being funded.
- Any other strategic imperative that is linked to revenue and expenditure capacities.

3.4 Terms of Loans

The term of the loan should not exceed the expected economic life of the asset being funded, subject to the maximum periods below.

Borrowing Amount	Term
\$500,000 to \$1,000,000	Maximum 5 years
\$1,000,000 to \$2,000,000	10 years
\$2,000,000 to \$5,000,000	20 years
Greater than \$5,000,000	30 years

3.5 Determination of Appropriate Lending Institution

Once borrowing has been approved by Council, within its Delivery Plan, Operational Plan and annual budget, a quotation process will be conducted whereby appropriate lending institutions (ADIs) will be invited to submit written quotations on Council's borrowing requirements.

Quotations/Tenders will be sought from ADIs with a long-term credit rating of A- or above in order to determine the appropriate lending institution for any new or renewal loan borrowings.

Written quotations/tenders must include:

- Interest rate - may be fixed or variable for the term of the loan;
- Term of the loan;
- Repayment intervals (monthly, quarterly or bi-annually);
- Repayment instalment amount (principal and interest only);
- Any applicable fees;
- Appropriate and acceptable documentation must be provided to Council by any prospective lender during the quotation/tender process; and
- The calculation for any loan break costs must be clearly set out in the loan documentation.

As Muswellbrook Shire Council has been deemed "Fit" under the NSW Government Local Government Reforms, Council is able to access the Statement Government borrowing facility. This borrowing facility is managed by NSW Treasury Corporation (TCorp). The minimum TCorp loan is \$1,000,000 and Council would also need to meet TCorp's rules in relation to its investment portfolio credit rating breakdown across the financial institutions it invests with.

3.6 Borrowing Authorisation

The authority to authorise loans and/or Council funding requirements is vested with Council by virtue of the *Local Government Act, 1993*. No officer of Council is authorised to undertake the establishment of a new loan facility without the authorisation of Council.

Council must have resolved to borrow funds as part of its Delivery Plan, Operational Plan, emergency circumstances and annual budget, before funds are borrowed.

The General Manager has the authority to accept loan offers, subject to the borrowing amount being previously approved by Council and the requirements of this policy being adhered to.

Council will be advised of the terms of the loan once finalised.

The Borrowings Return form must be submitted to The Office of Local Government (OLG) by July each year, outlining Council approved loan borrowings for the following financial year.

The Finance team will periodically review the debt portfolio to ascertain if there is an opportunity for refinancing which will deliver positive outcomes to Council.

3.7 Legislative Authority for Investments

The following legislation, ~~circulares~~ or guidelines are relevant to Councils when considering loan borrowing

- Local Government Act 1993

- Local Government (General) Regulation 2005~~21~~
- Minister's Borrowing Order
- ~~Local Government Circular 09-21~~
- [NSW TCorp Loan Facilities Guides for Local Councils September 2019](#)

3.8 Limitations

Current borrowing restrictions are prescribed in the Local Government Borrowing Order which states:

A council shall not borrow from any source outside the Commonwealth of Australia nor in any ~~other~~ currency other than Australian currency.

Council has also determined that in addition to this the following limitations will apply:

- That the total amount of borrowings outstanding assets, excluding the Future Fund, is not to exceed 2.5 times the total amount of Ordinary Rates, including Special Rates and Annual Charges, in any one year, and
- That the total amount of borrowings is not to exceed a Debt Service Ratio of 20% (as disclosed in the Fit for the Future documentation).

3.9 Internal Borrowing

From Externally Restricted Funds

Internal loans from externally restricted funds do not need to be included in the Office of Local Government (OLG) "requested borrowing" return. Internal loans from externally restricted funds must have Ministerial approval before the internal loan can be drawn.

Section 410(3) of the *Local Government Act, 1993* NSW states:

"Money that is not yet required for the purpose for which it was received may be lent (by way of internal loan) for use by the council for any other purpose if, and only if, its use for that other purpose is approved by the Minister."

From Internally Restricted Funds

The use of internally restricted funds is not considered to be an internal loan by the OLG. The use of internally restricted cash for a purpose that is different from its original purpose requires a resolution of Council.

Council has determined funds can be borrowed from Internally Restricted Reserves as a replacement for an external loan borrowing, on the basis:

- That the interest rate to be charged is pegged at 0.25% below the external rate
- Funds can be borrowed internally, within the Section 7.11 Reserve, only for the purpose of other Section 7.11 works and cannot be used to fund works that are not part of the Section 7.11 works schedule

3.10 Borrowing Redemption

When surplus funds exist, the decision to repay borrowings shall be made on the facts available at the time with consideration of impact on Council's Long Term Financial Plan and giving due regard to minimising the overall cost to the organisation.

Loans will only be paid out early if there is a significant net financial benefit to Council.

3.11 Overdraft

Council has an overdraft facility of \$750,000 established with Westpac Banking Corporation.

The overdraft facility is only used for short term unavoidable and essential cash flow purposes.

Council's finance staff will generally avoid the use of the overdraft facility via careful cash management practices that ensures sufficient funds are available to fund daily expenditure requirements.

3.12 Compliance and Monitoring

A reconciliation of all borrowings, including the weighted average interest rate of borrowings and accrual of interest, will be completed by the Responsible Accounting Officer and reported quarterly to the Finance Committee.

4 Dispute Resolution

The General Manager is the interpreter of this policy and shall be the sole arbiter in respect to the application of this policy.

5 Related Documents

5.1 Legislation and Guidelines

- Australian Accounting Standards
- NSW Office of Local Government – Local Government Code of Accounting Practice & Financial Reporting
- NSW Office of Local Government Borrowing Circulars
- NSW Office of Local Government Capital Expenditure Guidelines
- Local Government (General) Regulation 2005~~21~~²¹
- Local Government Act 1993
- Minister's Borrowing Order (gazetted)

5.2 Policies and Procedures

- Code of Conduct
- Financial Management Policy
- Procurement Policy
- Disciplinary Policy & Procedures
- Internal Reporting Public Interest Disclosures Policy
- Fraud and Corruption Prevention Strategy

5.3 Other Supporting Documents

- N/A

46 Definitions

Term	Meaning
Annual charges	Has the same meaning as determined by the Local Government Act.
Asset renewal ratio	$\frac{\text{Asset Renewals}}{\text{Depreciation, Amortisation \& Impairment Expense}}$ <p>This ratio measures Council's ability to renew assets at a rate equivalent to or greater than the consumption expense of Council's assets each year. Industry benchmarks require a ratio of 1 or above.</p>
Borrowing	Cash received from another party in exchange for future payment of the principal, interest and other finance charges.
Borrowing costs	Interest and other costs that an entity incurs in connection with the borrowing of funds.
Borrowing facility	A loan that is not drawn down (borrowed against) completely when approved but allows for a series of timed borrowings, over a period of time, up to the maximum of the facility. These are generally used for property development.
Debt service ratio	<p>The debt service cover ratio is calculated as:</p> $\frac{\text{Operating result before capital excluding interest and depreciation/impairment/amortisation}}{\text{Principal repayments (Statement of Cash Flows) plus borrowing costs (Income Statement)}}$ <p>This ratio measures the availability of operating cash to service debt including interest, principal and lease payments (The OLG consolidated key performance indicator is greater than 2)</p>
Emergency circumstances	An unforeseen, serious, unexpected or dangerous situation requiring immediate action.
External borrowings	Includes raising and obtaining, in any way, money, credit and other financial accommodations from sources external to Council.
Loan break costs	Costs associated with paying out a loan prior to the loan expiry date.
Loan facility	A line of credit providing access to borrow money up to a particular amount.
Long term credit rating	A forward-looking opinion about credit risk, by a recognised and reputable rating agency, as allowed under the Ministerial Investment Order.
Long Term Financial Plan	Council's Ten (10) year budget maintained in its resourcing strategy in accordance with Section 403 Local Government Act, 1993
Lumpy assets	Assets that when due for renewal will require funding that is greater than two years of renewal funding for that particular assets those assets, as defined in the Asset Management Plan (AMP) and Sub-Plans. An example would be the replacing the roof on a building.

Term	Meaning
Operating result ratio	$\frac{\text{Operating Revenue excluding Capital grants \& Contributions less Operating Expenses}}{\text{Operating Revenue excluding Capital grants \& Contributions}}$ <p>This ratio measures Council's achievement of containing operating expenditure within operating revenue. The industry benchmark is greater than or equal to break even average over three years.</p>
Ordinary rates	Has the same meaning as determined by the <i>Local Government Act</i> .
Overdraft facility	A flexible line of credit providing access to funds to manage the day to <u>day-to-day</u> cash flow needs of an organisation
Security	In accordance with the <i>Local Government Act</i> , security for any loan will only be given over the future Ordinary Rates of Council.
Renewal funding	The annual amount of funding that is required to be raised and held, that is equivalent to straight line depreciation of the total value of the asset over the useful life of the asset, being the renewal intervention life. For roads it is 45 years, whilst 50 years is considered the failure point.
Variable interest	Interest that fluctuates over the life of the loan and is usually pegged to a benchmark rate, such as the bond rate.

5—Authorisation Details

6 —Authorised by:	7 —Council
8 —Minute No:	9 —279
10 —Date:	11 —05/04/2022
12 —Review timeframe:	13 —Within the first 12 months of the term of each new Council
14 —Department:	15 —Finance
16 —Document Owner:	17 —Chief Financial Officer

~~187~~—DetailsVersion History

Version No.	Date changed	Modified by	Amendments made
1.	05/04/2022	Council Minute no 279	Adopted 05/04/22 minute number 279. Public Exhibition from 6/04/22 for 28 days, no submissions received therefore adopted by Council on 05/04/22.

2	02/12/2024	CFO, and Financial Controller	Reviewed for new Council Term 2024-2028.

DRAFT

**10.3.6. Monthly Financial Report - December 2024**

Responsible Officer: General Manager

Author: Finance Business Partner

Community Strategic Plan: 6 - Community Leadership

Collaborative and responsive leadership that meets the expectations and anticipates the needs of the community.

Delivery Program Goal: 6.2.1 - Maintain a strong focus on financial discipline to enable Council to properly respond to the needs of the communities it serves.

Operational Plan Action: 6.2.1.1 - Provide transparent reporting to the community about Council's finances.

Attachments: 1. Monthly Report - December 2024 [**10.3.6.1** - 11 pages]

PURPOSE

To provide an overview of the monthly financial performance of Council's General, Water, Sewer, and Future Funds, and to identify and explain any material variances against Council's approved budget for the month ending 31 December 2024.

OFFICER'S RECOMMENDATION

Council notes the Financial Reports for the month ending 31 December 2024.

Moved: _____ **Seconded:** _____

REPORT

Please refer to the attachment for December 2024 details of:

- Monthly & Year-to-Date operating performance by Fund;
- Capital Project Spend; and
- Outstanding Debtor Balances.

Overview

The preparation of the 2025-2026 Budget is currently in progress, in addition to the December 2024 Quarterly Budget Review.

The rates and charges are budgeted and levied in the month of July for the whole year. Presently, revenue shows variance against budget, which is expected to be received later in the year.



Material Exceptions:

General Fund

Revenue:

- Rates and Charges are budgeted and recognised in July.
- Total revenue is \$42.34M against the December budget of \$38.76M, resulting in a negative variance of \$3.57M.
- User Charges and Fees show an unfavourable variance due to timing with the Transport for NSW ordered works program, which is expected to be received later in the financial year. The total orders received \$3.17M, only \$478k has been received during the month of December.
- Under operating grants, 85% of Financial Assistance Grant was received in advance and was transferred to the reserve.

Expenses:

- Overall costs are 40% against annual budgets, having a favourable variance of \$6.2M, with the major contribution from materials (principally, Roads & Drainage, Property & Building and Waste Management).
- The variance under the above includes \$2.3M from Transport for NSW ordered works. Works are expected to be expended later during the year, according to the work order schedule.

Water Fund

- Water User Charges and Fees revenue show an unfavourable variance after the first water billing cycle. The deficit is expected to be recovered in the following next two billing cycles: December 2024 and April 2025 water meter readings.
- Expenses show a favourable variance of \$1M due to the timing in the receipt of invoices.

Sewer Fund

- Overall, Sewer Costs show a favourable variance against budget of \$1.21M.
- Revenue is under by \$0.50M. This is expected to be covered by non-residential sewer charges throughout the remainder of the year.

Future Fund

Revenue:

- The variance of \$0.14M in income is contributed by the Commercial leased property income.

Expenses:

- Overall expenses show a favourable variance of \$0.21M.

Capital Projects

- YTD Capital Spend is \$11.02M, which equates to 19% of the total Capital Budget, including carryovers.

Muswellbrook Shire Council

Financial Report - December 2024



Council Consolidated								
Account Group	YTD Actuals	YTD Budget	YTD Var	YTD % Spend vs Budget	Full-Year Original Budget	September Review Budget	YTD as % of FY Budget	Variance Commentary (By material exception)
	YTD				Full Year			
Revenue								
Rates and Charges	\$35,950,268	\$36,423,336	(\$473,068)	-1%	\$35,993,634	\$36,423,336	99%	* Rates and charges budgets are allocated and levied in July. Revenue is showing an unfavourable variance against budget. This is due to lower ordered works for Transport for NSW for the period and 85% of Financial Assistance Grant (FAG) has been received in the 2024 in advance. These monies were transferred to the FAG Reserve.
User Charges and Fees	\$7,921,317	\$10,605,372	(\$2,684,055)	-25%	\$21,294,328	\$21,219,231	37%	
Interest and Investments Revenues	\$2,227,311	\$1,754,233	\$473,078	27%	\$3,509,869	\$3,509,869	63.46%	
Other Revenues	\$907,878	\$1,291,101	(\$383,223)	-30%	\$2,545,098	\$2,583,236	35%	
Operating Grants and Contributions	\$3,338,645	\$4,864,415	(\$1,525,770)	-31%	\$9,465,797	\$9,732,724	34%	
Internal Revenue	\$2,386,664	\$3,213,794	(\$827,130)	-26%	\$5,780,160	\$6,430,160	37%	See individual funds for commentary specific to that fund
Total Revenue	\$52,732,083	\$58,152,251	(\$5,420,168)	-9%	\$78,588,886	\$79,898,556	66%	
Expenses								
Wages and Salaries	\$8,105,067	\$9,081,128	\$976,061	11%	\$18,002,105	\$18,169,523	45%	Overall costs have a favourable variance against the annual budget after the September Quarterly Budget Review. There is a favourable variance in Wages and Salaries due to staff vacancies. Materials and Contracts is showing favourable variance due to delays for Transport for NSW ordered works and some other projects. In addition, the timing of the DECC levy is yet to be received.
Materials and Contracts	\$9,243,790	\$13,800,151	\$4,556,361	33%	\$26,265,790	\$27,611,347	33%	
Other Costs	\$3,214,888	\$4,311,509	\$1,096,621	25%	\$7,650,613	\$7,427,570	43%	
Borrowing Costs	\$1,102,556	\$1,336,604	\$234,048	18%	\$2,674,278	\$2,674,278	41%	
Overheads	\$2,386,664	\$2,958,090	\$571,426	19%	\$5,918,547	\$5,918,547	40%	
Depreciation	\$7,678,065	\$8,122,819	\$444,754	5%	\$16,252,138	\$16,252,138	47%	See individual funds for commentary specific to that fund
Total Expenses	\$31,731,030	\$39,610,301	\$7,879,271	20%	\$76,763,471	\$78,053,403	41%	
Result	\$21,001,053	\$18,541,950	\$2,459,103		\$1,825,415	\$1,845,153		

Muswellbrook Shire Council

Financial Report - December 2024



General Fund								
Account Group	YTD Actuals	YTD Budget	YTD Var	YTD % Spend vs Budget	Full-Year Original Budget	September Review Budget	YTD as % of FY Budget	Variance Commentary (By material exception)
Revenue	YTD				Full Year			
Rates and Charges	\$27,193,874	\$27,115,706	\$78,168	0%	\$26,686,004	\$27,115,706	100%	
User Charges and Fees	\$3,167,932	\$4,301,343	(\$1,133,411)	-26%	\$8,598,475	\$8,606,129	36.81%	*Rates and charges budgets are allocated and levied in July.
Interest and Investments Revenues	\$1,770,400	\$1,280,837	\$489,563	38%	\$2,562,699	\$2,562,699	69%	*Overall revenue is short of YTD budgets by 8%. Under User Charges and Fees, deficit is due to budget for Transport NSW works program, which is expected to be received later. In addition, 85% of FAG monies received in advance and has been transferred to the Reserve.
Other Revenues	\$907,598	\$1,290,301	(\$382,703)	-30%	\$2,541,456	\$2,581,634	35%	
Operating Grants and Contributions	\$3,336,895	\$4,930,045	(\$1,593,150)	-32%	\$9,597,109	\$9,864,036	34%	
Internal Revenue	\$2,386,664	\$3,419,999	(\$1,033,335)	-30%	\$6,192,736	\$6,842,736	35%	
Total Revenue	\$38,763,363	\$42,338,232	(\$3,574,869)	-8%	\$56,178,479	\$57,572,940	67%	
Expenses								
Wages and Salaries	\$7,041,582	\$7,740,537	\$698,955	9%	\$15,319,851	\$15,487,269	45.47%	
Materials and Contracts	\$6,973,140	\$11,167,546	\$4,194,406	38%	\$20,970,931	\$22,344,030	31%	
Other Costs	\$2,284,673	\$3,002,033	\$717,360	24%	\$5,339,911	\$5,174,117	44.16%	Overall costs have a favourable variance of 40% against annual budgets.
Borrowing Costs	\$175,767	\$380,981	\$205,214	54%	\$762,266	\$762,266	23%	
Overheads	\$1,115,556	\$1,150,038	\$34,482	3%	\$2,300,997	\$2,300,997	48%	
Depreciation	\$5,362,236	\$5,739,965	\$377,729	7%	\$11,484,523	\$11,484,523	47%	
Total Expenses	\$22,952,954	\$29,181,099	\$6,228,145	21%	\$56,178,479	\$57,553,202	40%	
Result	\$15,810,409	\$13,157,132	\$2,653,277		\$0	\$19,738		

Muswellbrook Shire Council

Financial Report - December 2024



Water Fund								
Account Group	YTD Actuals	YTD Budget	YTD Var	YTD % Spend vs Budget	Full-Year Original Budget	September Review Budget	YTD as % of FY Budget	Variance Commentary (By material exception)
Revenue	YTD				Full Year			
Rates and Charges	\$2,378,467	\$2,379,111	(\$644)	0%	\$2,379,111	\$2,379,111	100%	
User Charges and Fees	\$1,333,268	\$2,718,960	(\$1,385,692)	-51%	\$5,440,096	\$5,440,096	25%	*Rates and charges budgets are allocated and levied in July.
Interest and Investments Revenues	\$296,927	\$318,598	(\$21,671)	-7%	\$637,451	\$637,451	47%	*Water User Charges and Fees revenue show an unfavourable variance, due to water billing cycles. The first water account has been raised in Sep 24. The second water account will be raised in Jan 2025.
Other Revenues	\$0	\$0	\$0	0%	\$0	\$0	0%	
Operating Grants and Contributions	\$1,750	\$19,131	(\$17,381)	-91%	\$38,277	\$38,277	5%	
Internal Revenue	\$0	(\$206,205)	\$206,205	-100%	(\$412,576)	(\$412,576)	0%	
Total Revenue	\$4,010,412	\$5,229,594	(\$1,219,182)	-23%	\$8,082,359	\$8,082,359	50%	
Expenses								
Wages and Salaries	\$647,387	\$729,777	\$82,390	11%	\$1,460,138	\$1,460,138	44%	
Materials and Contracts	\$1,282,820	\$1,228,761	(\$54,059)	-4%	\$2,458,506	\$2,458,506	52%	
Other Costs	\$130,094	\$300,377	\$170,283	57%	\$541,556	\$541,556	24%	* Overall, costs show a favourable variance of 47% against annual budgets.
Borrowing Costs	\$0	\$0	\$0	0%	\$0	\$0	0%	
Overheads	\$603,823	\$603,583	(\$240)	0%	\$1,207,649	\$1,207,649	50%	
Depreciation	\$1,056,143	\$1,091,048	\$34,905	3%	\$2,182,969	\$2,182,969	48%	
Total Expenses	\$3,720,267	\$3,953,546	\$233,279	6%	\$7,850,818	\$7,850,818	47%	
Result	\$290,145	\$1,276,049	(\$985,904)		\$231,541	\$231,541		

Muswellbrook Shire Council

Financial Report - December 2024



Sewer Fund								
Account Group	YTD Actuals	YTD Budget	YTD Var	YTD % Spend vs Budget	Full-Year Original Budget	September Review Budget	YTD as % of FY Budget	Variance Commentary (By material exception)
Revenue	YTD				Full Year			
Rates and Charges	\$6,377,927	\$6,928,519	(\$550,592)	-8%	\$6,928,519	\$6,928,519	92%	*Rates and charges budgets are allocated and levied in July. However non residential water and sewer charges are expected to be received throughout the year.
User Charges and Fees	\$202,045	\$232,656	(\$30,611)	-13%	\$465,498	\$465,498	43%	
Interest and Investments Revenues	\$159,984	\$154,798	\$5,186	3%	\$309,719	\$309,719	52%	
Other Revenues	\$0	\$0	\$0	0%	\$0	\$0	0%	
Operating Grants and Contributions	\$0	(\$84,761)	\$84,761	-100%	(\$169,589)	(\$169,589)	0%	
Internal Revenue	\$0	\$0	\$0	0%	\$0	\$0	0%	
Total Revenue	\$6,739,956	\$7,231,212	(\$491,256)	-7%	\$7,534,147	\$7,534,147	89%	
Expenses								
Wages and Salaries	\$336,220	\$477,570	\$141,350	30%	\$955,523	\$955,523	35%	* Overall, costs show a favourable variance of 35% against annual budgets. There have some delays with the receipt of invoices during the December period.
Materials and Contracts	\$435,706	\$798,143	\$362,437	45%	\$1,596,924	\$1,596,924	27%	
Other Costs	\$314,820	\$456,821	\$142,001	31%	\$817,889	\$817,889	38%	
Borrowing Costs	\$300,329	\$293,429	(\$6,900)	-2%	\$587,093	\$587,093	51%	
Overheads	\$48,233	\$585,663	\$537,430	92%	\$1,171,795	\$1,171,795	4%	
Depreciation	\$1,164,686	\$1,196,844	\$32,158	3%	\$2,394,646	\$2,394,646	49%	
Total Expenses	\$2,599,994	\$3,808,471	\$1,208,477	32%	\$7,523,870	\$7,523,870	35%	
Result	\$4,139,962	\$3,422,741	\$717,221		\$10,277	\$10,277		

Muswellbrook Shire Council

Financial Report - December 2024



Future Fund								
Account Group	YTD Actuals	YTD Budget	YTD Var	YTD % Spend vs Budget	Full-Year Original Budget	September Review Budget	YTD as % of FY Budget	Variance Commentary (By material exception)
	YTD				Full Year			
Revenue								
Rates and Charges	\$0	\$0	\$0	0%	\$0	\$0	0%	
User Charges and Fees	\$3,218,072	\$3,352,412	(\$134,340)	-4%	\$6,790,259	\$6,707,508	48%	
Interest and Investments Revenues	\$0	\$0	\$0	0%	\$0	\$0	0%	* The revenue is slightly less due to lease rentals and usage charges expected to be recovered later.
Other Revenues	\$280	\$801	(\$521)	-65%	\$3,642	\$1,602	17%	
Operating Grants and Contributions	\$0	\$0	\$0	0%	\$0	\$0	0%	
Internal Revenue	\$0	\$0	\$0	0%	\$0	\$0	0%	
Total Revenue	\$3,218,352	\$3,353,213	(\$134,861)	-4%	\$6,793,901	\$6,709,110	48%	
Expenses								
Wages and Salaries	\$79,878	\$133,243	\$53,365	40%	\$266,593	\$266,593	30%	
Materials and Contracts	\$552,124	\$605,701	\$53,577	9%	\$1,239,429	\$1,211,887	46%	
Other Costs	\$485,301	\$552,279	\$66,978	12%	\$951,257	\$894,008	54%	* Overall, costs show a favourable variance sitting at 48% against YTD budgets.
Borrowing Costs	\$626,460	\$662,195	\$35,735	5%	\$1,324,919	\$1,324,919	47%	
Overheads	\$619,052	\$618,805	(\$247)	0%	\$1,238,106	\$1,238,106	50%	
Depreciation	\$95,000	\$94,962	(\$38)	0%	\$190,000	\$190,000	50%	
Total Expenses	\$2,457,815	\$2,667,185	\$209,370	8%	\$5,210,304	\$5,125,513	48%	
Result	\$760,537	\$686,028	\$74,509		\$1,583,597	\$1,583,597		

Muswellbrook Shire Council
Financial Report - December 2024
Capital Costs (Incl. Loan Repayments & excl. Revenue)



	YTD Actuals	Carry Overs	Total Budget	Sep Review Change	September Review Budget	YTD % Spend	Over Budget	Comments
General Fund Projects								
Planning, Community and Corporate Services Projects								
Adventure Playground - Wollombi Road	25,977	21,200	21,200	2,800	24,000	123%	(1,977)	To be revised and adjusted in the December QBR
Aquatic Centres Programme	144,427	89,953	409,953	-	409,953	35%		
Art Acquisitions	8,039	-	70,000	-	70,000	11%		
Art Centre Offsite Storage	-	-	821,893	-	821,893	0%		
Buildings New and Replacement	49,278	1,523,248	2,023,248	(250,000)	1,773,248	2%		
Bushfire Assets	-	-	-	-	-	0%		
Capital Works Contingency	46,845	-	130,000	-	130,000	36%		
CBD Stage 7 (Town Centre)	-	-	-	-	-	0%		
Civic Precinct (Town Square)	269,928	1,705,062	3,085,362	-	3,085,362	9%		
Corporate Services General Programme	-	-	-	-	-	0%		
COVID 19	70,701	-	142,749	-	142,749	50%		
Denman Childrens Centre - Expansion (Contribution)	-	-	-	-	-	0%		
Denman Heritage Shed	-	-	-	-	-	0%		
Denman Netball Courts	-	-	280,173	(280,173)	-	0%		
Denman Tourist Park	47,998	-	546,766	-	546,766	9%		
Future Fund Contribution	-	-	775,000	-	775,000	0%		
General Design Program	-	45,513	95,513	-	95,513	0%		
Hunter Beach	-	10,161	10,161	-	10,161	0%		
Information Technology Strategy	12,856	-	200,000	-	200,000	6%		
Karoola Park Citizens Walk Pathway	-	9,004	9,004	-	9,004	0%		
Karoola Park-Community Assets Program (CAP)	3,431	-	-	1,569,375	1,569,375	0%		
Library Books General Capital Purchases (General)	23,578	18,403	108,403	-	108,403	22%		
Library Subsidy Projects	30,840	106,668	106,668	-	106,668	29%		
Local Priority Grant	14,791	61,943	72,943	-	72,943	20%		
Loan - Staff Housing	20,006	-	40,013	-	40,013	50%		
Loan - 140 Bridge Street	2,669	-	5,414	-	5,414	49%		
Loan - 88 Bridge Street	26,727	-	54,210	-	54,210	49%		
Loan - Campbells Corner	111,022	-	225,180	-	225,180	49%		
Loan - Donald Home	112,763	-	229,044	-	229,044	49%		
Major Landcare Projects	46,293	-	75,000	-	75,000	62%		
Muscle Creek Catchment Strategy	340	82,081	82,081	-	82,081	0%		
Muscle Creek Emergency Stabilisation	-	-	250,000	-	250,000	0%		
Purchase Paxton Street Denman	-	-	-	-	-	0%		
Mbk and Dnm Indoor Sports Centre Upgrades	-	-	-	-	-	0%		
MSC Depot	-	-	-	-	-	0%		
Olympic Park Project	2,590	459,362	5,064,705	-	5,064,705	0%		
Performance and Convention Centre	7,257	502,747	3,102,747	-	3,102,747	0%		
Public Art Sculpture	-	-	-	-	-	0%		
Purchase of Land - Companion Animal Impounding Facilit	13,626	-	150,000	-	150,000	9%		
Recreation Capital Works	722,835	891,888	1,266,888	(2,800)	1,264,088	57%		
Resources for Regions 9 - Denman Rec Area	863,259	1,832,546	1,832,546	613,517	2,446,063	47%		
Resources for Regions 9 - Depot	67,758	313,714	4,513,714	-	4,513,714	2%		
Resources for Regions 9 - Campbells Corner	25,480	167,521	867,521	-	867,521	3%		
STEM Equipment Replacement	-	140,324	250,324	-	250,324	0%		
Simpson Park	-	-	403,871	-	403,871	0%		
Waste Flip Screen	-	102,960	102,960	-	102,960	0%		
Sport and Recreation Small Capital Grants Program	-	-	-	-	-	0%		

Muswellbrook Shire Council
Financial Report - December 2024
Capital Costs (Incl. Loan Repayments & excl. Revenue)



	YTD Actuals	Carry Overs	Total Budget	Sep Review Change	September Review Budget	YTD % Spend	Over Budget	Comments
Total Planning, Community and Corporate Services	2,771,314	8,084,298	27,425,254	1,652,719	29,077,973	10%	(1,977)	Variance due to Adventure Playground - Wollombi Rd to be reviewed and adjusted in the December QBR

Muswellbrook Shire Council
Financial Report - December 2024
Capital Costs (Incl. Loan Repayments & excl. Revenue)



	YTD Actuals	Carry Overs	Total Budget	Sep Review Change	September Review Budget	YTD % Spend	Over Budget	Comments
Roads and Drainage Projects								
Bridge St Footpath	34,747	-	69,926	-	69,926	50%		
Bridges Renewal Programme	-	92,496	342,496	-	342,496	0%		
Carpark Renewal Programme	-	-	100,000	-	100,000	0%		
CPTIGS - Bus Shelter	-	198,916	198,916	-	198,916	0%		
Drainage	-	-	-	-	-	0%		
Drainage Devices Programme	27,869	-	500,000	-	500,000	6%		
Dry Creek Road-Replacement of Road Causeway	131,746	-	-	705,157	705,157	0%		
Flood Warning Systems	61,690	147,856	147,856	-	147,856	42%		
FOGO - Design and EIS	-	-	-	-	-	0%		
Footpath and Cycleway Renewal Programme	181,135	-	200,000	-	200,000	91%		
Heavy Patching Programme	256,051	-	750,000	(33,056)	716,944	34%		
Hunter Beach to CBD Pathway	-	-	600,000	-	600,000	0%		
Kamilaroi, Cassidy, Thompson Shared Path	-	-	-	100,625	100,625	0%		
Palace Street Rehabilitation	-	-	-	1,510,954	1,510,954	0%		
Resilience Works Karoola Park	12,640	443,014	443,014	-	443,014	3%		
Kerb and Gutter Replacement Programme	181,196	-	535,000	-	535,000	34%		
Kirk and Peberdy Bridges	-	-	-	-	-	0%		
Large Plant Items	276,009	1,223,878	1,923,878	-	1,923,878	14%		
Leachate Dam	-	25,795	475,795	-	475,795	0%		
LISF - Roads Infrastructure Backlog	-	-	-	-	-	0%		
ARGN 960 Natural Disaster Event - Baerami Creek Caus	-	672,039	672,039	-	672,039	0%		
New Footpath and Cycleway Programme	310	-	145,000	-	145,000	0%		
Purchase of Vehicles	290,978	207,993	607,993	-	607,993	48%		
Rainbow Creek Bridge	7,066	274,687	374,687	291,426	666,113	2%		
Regional Road Renewal Programme	-	-	69,000	-	69,000	0%		
Resources for Regions - Round 5	-	-	-	-	-	0%		
Resources for Regions- Round 7	593,846	828,733	828,733	-	828,733	72%		
Resources for Regions 9	1,276,101	1,687,822	1,687,822	-	1,687,822	76%		
Road Resealing Programme	286,847	-	1,000,000	-	1,000,000	29%		
Roads Capital Contingency	-	-	150,000	-	150,000	0%		
Roads to Recovery Program	688,734	577,898	1,155,796	(404,526)	751,270	60%		
Rosebrook Bridge	-	-	-	-	-	0%		
Rural Road Regravelling Programme	64,499	-	250,000	-	250,000	26%		
Rural Road Renewal Programme	343,871	264,886	764,886	-	764,886	45%		
Safety Device Renewal Programme	-	-	-	-	-	0%		
Stormwater Drainage (new)	-	-	150,000	-	150,000	0%		
Transport Vehicles	157,266	160,000	360,000	-	360,000	44%		
Urban Road Renewal Programme	290,495	355,132	755,132	-	755,132	38%		
Victoria Street Rehab	-	-	-	-	-	0%		
Widden Creek Stabilisation Works	-	144,880	144,880	-	144,880	0%		
Widden Bridge/Traffic Singals/Kenilworth St	-	-	90,250	-	90,250	0%		
Wilkinson Bridge	56,104	-	112,617	-	112,617	50%		
Yarraman Road Upgrade	2,280	71,882	71,882	-	71,882	3%		
Footpath - Turtle St Denman	-	-	-	-	-	0%		
Total Roads and Drainage	5,221,480	7,377,907	15,677,598	2,170,580	17,848,178	33%	-	
Total General Fund	7,992,794	15,462,205	43,102,852	3,823,299	46,926,151	19%	(1,977)	

Muswellbrook Shire Council
Financial Report - December 2024
Capital Costs (Incl. Loan Repayments & excl. Revenue)



	YTD Actuals	Carry Overs	Total Budget	Sep Review Change	September Review Budget	YTD % Spend	Over Budget	Comments
Future Fund Projects								
Donald Horne Building	-	-	-	-	-	0%		
Brook Street Plaza	37,496	-	74,993	-	74,993	50%		
Town Education Campus	24,997	-	49,995	-	49,995	50%		
Seven Hills	220,278	-	446,776	-	446,776	49%		
Marketplace	1,135,809	-	1,056,040	-	1,056,040	108%	(79,769)	Loan to be reviewed and adjusted in the December QBR
Renewal of Existing Assets/New Acquisitions	302,894	264,618	665,412	-	665,412	46%		
Throsby ACT	259,999	-	520,000	-	520,000	50%		
Upgrade of Loxton House	-	-	-	-	-	0%		
Total Future Fund	1,981,473	264,618	2,813,216	-	2,813,216	70%	(79,769)	
Sewer Fund								
Access & Security Improvements RWTW	13,500	-	150,000	-	150,000	9%		
Mains Renewal and Replacement	7,206	-	200,000	-	200,000	4%		
Operations Contingency Project	14,316	-	50,000	-	50,000	29%		
Sewer Plant and Equipment	-	80,000	180,000	-	180,000	0%		
Solar Array	-	699,622	699,622	-	699,622	0%		
System Plant Asset Renewals	30,286	108,017	528,017	-	528,017	6%		
Transportation System Improvement	140,041	95,964	595,964	-	595,964	23%		
Loan - Sewer RWTW	351,887	-	712,698	-	712,698	49%		
Upgrade Sewer Pump Station 1	-	87,094	1,987,094	-	1,987,094	0%		
CCTV Inspection on of Mains	-	-	-	-	-	0%		
Skellatar Main	51,518	-	104,299	-	104,299	49%		
Total Sewer Fund	608,472	1,070,697	5,207,694	-	5,207,694	12%	-	

Muswellbrook Shire Council
Financial Report - December 2024
Capital Costs (Incl. Loan Repayments & excl. Revenue)



	YTD Actuals	Carry Overs	Total Budget	Sep Review Change	September Review Budget	YTD % Spend	Over Budget		Comments
Water Fund									
Asbestos, Earthworks, Security	11,993	-	150,000	-	150,000	8%			
Laboratory Equipment	12,615	-	20,000	-	20,000	63%			
Mains Renewal and Replacement (inc Carryover)	177,457	390,285	890,285	-	890,285	20%			
Office Upgrade	-	-	-	-	-	0%			
Operations Contingency Project	-	-	50,000	-	50,000	0%			
Replacement of Water Meters Programme	33,765	-	65,000	-	65,000	52%			
GLE Pipeline	5,358	1,362,625	18,362,625	(17,000,000)	1,362,625	0%			
South Muswellbrook Reservoir	-	-	-	-	-	0%			
System Plant Asset Renewals	148,945	331,398	881,398	-	881,398	17%			
Upgrade Fluoride Dosing System WTP	-	150,598	150,598	-	150,598	0%			
Vehicle-Equipment Replacement	32,354	65,000	165,000	-	165,000	20%			
Water Stop Valve Replacement	11,150	-	200,000	-	200,000	6%			
Total Water Fund	433,637	2,299,906	20,934,906	(17,000,000)	3,934,906	2%	-		
Consolidated Total	11,016,376	19,097,426	72,058,668	(13,176,701)	58,881,967	15%	(81,746)	Variance due to Marketplace loan, to be reviewed and adjusted in the Dec QBR	

Debtor Balances as at 31 December 2024

Account	120 days	90 days	60 days	30 days	Current	Balance
Waste Depot Charges	\$26,995	\$2,017	\$3,782	\$15,278	\$221,595	\$269,667
Inspection Fees	\$20,426	\$0	\$0	(\$477)	\$0	\$19,949
Sam Adams College Rent	\$0	\$0	\$0	\$9,045	\$7,971	\$17,016
Council Properties - Future Fund *	\$14,389	\$13,368	\$66,505	\$77,732	(\$43,685)	\$128,309
Council Properties - Marketplace *	\$165,704	(\$5,902)	\$216,471	(\$89,149)	(\$572)	\$286,551
Council Properties - Education Fund	\$4,811	\$0	\$0	\$1,210	\$0	\$6,021
Recreation	\$229	\$0	\$182	(\$162)	\$3,789	\$4,038
Sundries**	\$92,044	(\$4,357)	\$243,054	\$393,960	\$12,640	\$737,341
Water Tanker Sales	\$4,394	\$1,055	\$755	\$95	\$22,972	\$29,270
Trade Waste Charges	\$342	\$0	\$0	\$0	\$0	\$342
Muswellbrook Sewer	\$8,473	\$0	\$0	\$0	\$23,335	\$31,808
GST Tax Debtor	(\$103,667)	\$0	\$0	(\$56,491)	\$0	(\$160,158)
TOTAL	\$234,140	\$6,180	\$530,749	\$351,041	\$248,044	\$1,370,154

* Balances include rent deferrals due to COVID, and other commercial receivables currently with debt recovery/legal services.

**10.3.7. Report on Investments held as at 31 December 2024**

Responsible Officer: General Manager

Author: Financial Controller

Community Strategic Plan: 6 - *Community Leadership*

24.1 - Maintain a strong focus on financial discipline to enable Council to properly respond to the needs of the communities it serves.

Delivery Program Goal: 6.2.1 - Maintain a strong focus on financial discipline to enable Council to properly respond to the needs of the communities it serves.

Operational Plan Action: 6.2.1.1 - Provide transparent reporting to the community about Council's finances.

Attachments:

1. Portfolio Valuation Report - 31 December 2024 [10.3.7.1 - 3 pages]
2. Trading Limit Report - 31 December 2024 [10.3.7.2 - 8 pages]

PURPOSE

To submit for Council's information the list of financial investments currently held by Council in accordance with the Regulation.

OFFICER'S RECOMMENDATION

Council NOTES Council's Investments as at 31 December 2024.

Moved: _____ **Seconded:** _____

REPORT

Clause 212 (1) of the *Local Government (General) Regulation 2005* requires details of funds invested, as at the end of the preceding month, to be reported to an ordinary meeting of Council.

Funds invested under Section 625 of the *Local Government Act 1993*, as at 31 December 2024, are shown in the attachments.

COMMENT:

As at 31 December 2024, Council held \$101.4M in cash and investments, with a weighted running yield of 5.28%.

The Responsible Accounting Officer certifies that the investments listed have been made in accordance with the Act, the Regulations, and Council's Investment Policy. This includes investments that have been made in accordance with the Minister's Orders that have been subsequently amended. "Grandfathering" provisions still allow the holding of these investments. A detailed list of investments is attached.

	Fixed Interest Security	ISIN	Face Value Original	Bond Factor	Face Value Current	Capital Price	Accrued Interest Price	Market Value	% Total Value	Running Yield	Weighted Running Yield
At Call Deposit											
	Westpac Bus Prem At Call		2,799,628.98	1.00000000	2,799,628.98	100.000	0.000	2,799,628.98	2.81%	4.44%	
	Westpac Muswellbrook Trading Acct At Call		681,264.53	1.00000000	681,264.53	100.000	0.000	681,264.53	0.68%	0.00%	
			3,480,893.51		3,480,893.51			3,480,893.51	3.49%		3.57%
Fixed Rate Bond											
	BOQ 4.7 27 Jan 2027 Fixed	AU3CB0296168	4,000,000.00	1.00000000	4,000,000.00	99.930	2.005	4,077,400.00	4.09%	4.77%	
	BOQ 5.3 30 Apr 2029 Fixed	AU3CB0308955	2,000,000.00	1.00000000	2,000,000.00	101.617	0.903	2,050,400.00	2.06%	5.31%	
	JUDO 6.4 26 Sep 2025 Fixed	AU3CB0292480	500,000.00	1.00000000	500,000.00	99.995	1.697	508,460.00	0.51%	6.44%	
	NTTC 1.1 15 Dec 2025 - Issued 31 August 2021 - Muswellbrook Council Fixed		2,000,000.00						0.00%	1.10%	
	NTTC 1.1 15 Dec 2025 - Issued 6 September 2021 - Muswellbrook Council Fixed		1,500,000.00						0.00%	1.10%	
			10,000,000.00		6,500,000.00			6,636,260.00	6.66%		3.67%
Floating Rate Note											
	AMP 1.27 13 Sep 2027 FRN	AU3FN0091674	1,000,000.00	1.00000000	1,000,000.00	100.310	0.283	1,005,930.00	1.01%	5.71%	
	Auswide 1.5 07 Nov 2025 FRN	AU3FN0073037	1,000,000.00	1.00000000	1,000,000.00	100.323	0.875	1,011,980.00	1.02%	5.92%	
	Auswide 1.5 17 Mar 2026 FRN	AU3FN0076352	2,000,000.00	1.00000000	2,000,000.00	100.389	0.229	2,012,360.00	2.02%	5.97%	
	Auswide 1.6 22 Mar 2027 FRN	AU3FN0086104	1,500,000.00	1.00000000	1,500,000.00	100.614	0.133	1,511,205.00	1.52%	6.05%	
	Auswide 1.33 13 Sep 2027 FRN	AU3FN0091575	1,000,000.00	1.00000000	1,000,000.00	100.009	0.286	1,002,950.00	1.01%	5.78%	
	BAL 1.55 22 Feb 2027 FRN	AU3FN0075461	5,500,000.00	1.00000000	5,500,000.00	101.044	0.638	5,592,510.00	5.61%	5.94%	
	BAL 1.7 21 Feb 2028 FRN	AU3FN0085031	2,000,000.00	1.00000000	2,000,000.00	101.439	0.671	2,042,200.00	2.05%	6.08%	
	CUA 1.65 09 Feb 2027 FRN	AU3FN0074787	6,000,000.00	1.00000000	6,000,000.00	101.461	0.831	6,137,520.00	6.16%	6.01%	
	CACU 1.7 21 Sep 2026 FRN	AU3FN0081287	1,750,000.00	1.00000000	1,750,000.00	100.008	0.135	1,752,502.50	1.76%	6.15%	
	MACQ 0.48 09 Dec 2025 FRN	AU3FN0057709	3,000,000.00	1.00000000	3,000,000.00	100.024	0.297	3,009,630.00	3.02%	4.93%	
	MYS 0.65 16 Jun 2025 FRN	AU3FN0061024	3,000,000.00	1.00000000	3,000,000.00	99.941	0.210	3,004,530.00	3.02%	5.11%	
	NPBS 1.12 04 Feb 2025 FRN	AU3FN0052627	4,500,000.00	1.00000000	4,500,000.00	100.054	0.865	4,541,355.00	4.56%	5.54%	
	NPBS 1.85 14 Feb 2029 FRN	AU3FN0085023	2,000,000.00	1.00000000	2,000,000.00	102.440	0.808	2,064,960.00	2.07%	6.19%	
	PCU 1.15 08 Nov 2027 FRN	AU3FN0093423	1,000,000.00	1.00000000	1,000,000.00	99.844	0.809	1,006,530.00	1.01%	5.57%	
	Qld Police 1.35 19 May 2025 FRN	AU3FN0069175	750,000.00	1.00000000	750,000.00	100.219	0.680	756,742.50	0.76%	5.78%	
	Qld Police 1.75 06 Dec 2025 FRN	AU3FN0073979	2,000,000.00	1.00000000	2,000,000.00	100.833	0.423	2,025,120.00	2.03%	6.18%	
	Qld Police 1.65 18 Sep 2026 FRN	AU3FN0081295	3,000,000.00	1.00000000	3,000,000.00	101.235	0.218	3,043,590.00	3.06%	6.12%	
	UBS Aust 0.87 30 Jul 2025 FRN	AU3FN0055307	1,650,000.00	1.00000000	1,650,000.00	100.271	0.894	1,669,222.50	1.68%	5.18%	
	UBS Aust 1.55 12 May 2028 FRN	AU3FN0077970	4,000,000.00	1.00000000	4,000,000.00	102.296	0.801	4,123,880.00	4.14%	5.87%	
			46,650,000.00		46,650,000.00			47,314,717.50	47.50%		5.80%
Term Deposit											
	AMP 5.75 21 Jan 2025 550DAY TD		1,250,000.00	1.00000000	1,250,000.00	100.000	2.552	1,281,900.69	1.29%	5.75%	
	AMP 5.2 30 Apr 2025 292DAY TD		1,000,000.00	1.00000000	1,000,000.00	100.000	2.450	1,024,504.11	1.03%	5.20%	
	AMP 5.35 16 Jun 2025 732DAY TD		4,000,000.00	1.00000000	4,000,000.00	100.000	2.888	4,115,501.36	4.13%	5.35%	

Fixed Interest Security	ISIN	Face Value Original	Bond Factor	Face Value Current	Capital Price	Accrued Interest Price	Market Value	% Total Value	Running Yield	Weighted Running Yield
AMP 5.2 17 Jun 2025 308DAY TD		1,500,000.00	1.00000000	1,500,000.00	100.000	1.995	1,529,917.82	1.54%	5.20%	
AMP 5.25 01 Dec 2025 732DAY TD		1,000,000.00	1.00000000	1,000,000.00	100.000	5.710	1,057,102.74	1.06%	5.25%	
BOQ 4.9 01 Oct 2025 761DAY TD		3,000,000.00	1.00000000	3,000,000.00	100.000	1.611	3,048,328.77	3.06%	4.90%	
BVIC 5.1 13 Nov 2025 335DAY TD		3,000,000.00	1.00000000	3,000,000.00	100.000	0.252	3,007,545.21	3.02%	5.10%	
DFB 5.45 04 Dec 2025 730DAY TD		2,000,000.00	1.00000000	2,000,000.00	100.000	0.403	2,008,063.02	2.02%	5.45%	
JUDO 5.7 06 Jan 2025 557DAY TD		2,000,000.00	1.00000000	2,000,000.00	100.000	8.605	2,172,093.16	2.18%	5.70%	
JUDO 5 04 Mar 2025 203DAY TD		1,000,000.00	1.00000000	1,000,000.00	100.000	1.918	1,019,178.08	1.02%	5.00%	
JUDO 5.7 11 Jul 2025 730DAY TD		1,000,000.00	1.00000000	1,000,000.00	100.000	2.686	1,026,860.27	1.03%	5.70%	
PCUSA 5.11 27 Nov 2025 365DAY TD		1,500,000.00	1.00000000	1,500,000.00	100.000	0.476	1,507,140.00	1.51%	5.11%	
RABO 4.75 25 Feb 2025 180DAY TD		1,500,000.00	1.00000000	1,500,000.00	100.000	1.614	1,524,205.49	1.53%	4.75%	
RABO 5 30 Apr 2025 184DAY TD		1,000,000.00	1.00000000	1,000,000.00	100.000	0.877	1,008,767.12	1.01%	5.00%	
RABO 5.05 15 May 2025 275DAY TD		1,500,000.00	1.00000000	1,500,000.00	100.000	1.937	1,529,054.79	1.54%	5.05%	
RABO 5.04 29 Jul 2025 274DAY TD		1,000,000.00	1.00000000	1,000,000.00	100.000	0.884	1,008,837.26	1.01%	5.04%	
RABO 5.33 30 Jul 2025 365DAY TD		2,000,000.00	1.00000000	2,000,000.00	100.000	2.249	2,044,976.44	2.05%	5.33%	
RABO 5.31 30 Sep 2025 425DAY TD		3,000,000.00	1.00000000	3,000,000.00	100.000	2.211	3,066,338.64	3.08%	5.31%	
RABO 5 28 Oct 2025 365DAY TD		1,000,000.00	1.00000000	1,000,000.00	100.000	0.877	1,008,767.12	1.01%	5.00%	
RABO 5.25 05 Jul 2027 1096DAY TD		2,000,000.00	1.00000000	2,000,000.00	100.000	2.589	2,051,780.82	2.06%	5.25%	
RABO 5.2 31 Jul 2028 1462DAY TD		1,000,000.00	1.00000000	1,000,000.00	100.000	2.194	1,021,939.73	1.03%	5.20%	
RABO 5.07 27 Oct 2028 1460DAY TD		1,000,000.00	1.00000000	1,000,000.00	100.000	0.889	1,008,889.86	1.01%	5.07%	
RABO 5.4 04 Jul 2029 1826DAY TD		2,000,000.00	1.00000000	2,000,000.00	100.000	2.663	2,053,260.28	2.06%	5.40%	
RABO 5.25 30 Jul 2029 1826DAY TD		1,000,000.00	1.00000000	1,000,000.00	100.000	2.215	1,022,150.68	1.03%	5.25%	
SCC 5.37 13 Jun 2025 365DAY TD		1,000,000.00	1.00000000	1,000,000.00	100.000	2.957	1,029,571.78	1.03%	5.37%	
		41,250,000.00		41,250,000.00			42,176,675.23	42.34%		5.24%
Fixed Interest Total		101,380,893.51		97,880,893.51			99,608,546.24	100.00%		5.28%

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Report Code: TBSBP100EXT-01.20
Report Description: Portfolio Valuation As At Date
Parameters:
Term Deposit Interest Included
Cash Excluded
Settlement Date-Based Balances

1 Issuer Trading Limits

Issuer	Issuer Rating Group (Long Term)	Issuer Parent	Already Traded (with Issuer Group) Face Value Notional	Limit For Book or Entity	Trading Limit	Trading Limit Type	Trading Limit Value	Trading Limit Used (%)	Trading Limit Available (%)	Trading Limit Available (Value)	Trading Limit Exceeded (%)	Trading Limit Exceeded (\$)
AMP Bank Ltd	BBB+ to BBB-		9,750,000.00	Book	10.00	% of 101,380,893.51	10,138,089.35	96.00	4.00	388,089	0.00	0
ANZ Banking Group Ltd	AA+ to AA-		0.00	Book	30.00	% of 101,380,893.51	30,414,268.05	0.00	100.00	30,414,268	0.00	0
Australian Unity Bank (BPSS20)	BBB+ to BBB-		0.00	Book	10.00	% of 101,380,893.51	10,138,089.35	0.00	100.00	10,138,089	0.00	0
Auswide Bank Limited	BBB+ to BBB-		5,500,000.00	Book	10.00	% of 101,380,893.51	10,138,089.35	54.00	46.00	4,638,089	0.00	0
Bank Australia Limited	BBB+ to BBB-		7,500,000.00	Book	10.00	% of 101,380,893.51	10,138,089.35	74.00	26.00	2,638,089	0.00	0
Bank of Melbourne	AA+ to AA-	Westpac Banking Corporation Ltd	3,480,893.51	Book	30.00	% of 101,380,893.51	30,414,268.05	11.00	89.00	26,933,375	0.00	0
Bank of Queensland Ltd	A+ to A-		9,000,000.00	Book	10.00	% of 101,380,893.51	10,138,089.35	89.00	11.00	1,138,089	0.00	0
BankSA	AA+ to AA-	Westpac Banking Corporation Ltd	3,480,893.51	Book	30.00	% of 101,380,893.51	30,414,268.05	11.00	89.00	26,933,375	0.00	0
BankVic	BBB+ to BBB-		3,000,000.00	Book	10.00	% of 101,380,893.51	10,138,089.35	30.00	70.00	7,138,089	0.00	0
BankWest Ltd	AA+ to AA-	Commonwealth Bank of Australia Ltd	0.00	Book	30.00	% of 101,380,893.51	30,414,268.05	0.00	100.00	30,414,268	0.00	0
Bendigo & Adelaide Bank Ltd	A+ to A-		0.00	Book	10.00	% of 101,380,893.51	10,138,089.35	0.00	100.00	10,138,089	0.00	0
Beyond Bank Australia Ltd	BBB+ to BBB-		0.00	Book	10.00	% of 101,380,893.51	10,138,089.35	0.00	100.00	10,138,089	0.00	0
Commonwealth Bank of Australia Ltd	AA+ to AA-		0.00	Book	30.00	% of 101,380,893.51	30,414,268.05	0.00	100.00	30,414,268	0.00	0
Credit Suisse Sydney	BBB+ to BBB-		0.00	Book	20.00	% of 101,380,893.51	20,276,178.70	0.00	100.00	20,276,179	0.00	0
Credit Union Australia Ltd t/as Great Southern Bank	BBB+ to BBB-		6,000,000.00	Book	10.00	% of 101,380,893.51	10,138,089.35	59.00	41.00	4,138,089	0.00	0
Defence Bank Ltd	BBB+ to BBB-		2,000,000.00	Book	10.00	% of 101,380,893.51	10,138,089.35	20.00	80.00	8,138,089	0.00	0
Greater Bank - a division of Newcastle Greater Mutual Group Limited	BBB+ to BBB-	Newcastle Greater Mutual Group Ltd	6,500,000.00	Book	10.00	% of 101,380,893.51	10,138,089.35	64.00	36.00	3,638,089	0.00	0
Heritage and People's Choice Limited	BBB+ to BBB-		0.00	Book	10.00	% of 101,380,893.51	10,138,089.35	0.00	100.00	10,138,089	0.00	0
Illawarra Credit Union Ltd	BBB+ to BBB-		1,750,000.00	Book	10.00	% of 101,380,893.51	10,138,089.35	17.00	83.00	8,388,089	0.00	0
ING Bank Australia Limited	A+ to A-		0.00	Book	10.00	% of 101,380,893.51	10,138,089.35	0.00	100.00	10,138,089	0.00	0
Investec Bank Australia Limited	A+ to A-		0.00	Book	10.00	% of 101,380,893.51	10,138,089.35	0.00	100.00	10,138,089	0.00	0
Judo Bank	BBB+ to BBB-		4,500,000.00	Book	10.00	% of 101,380,893.51	10,138,089.35	44.00	56.00	5,638,089	0.00	0
Macquarie Bank Ltd	A+ to A-		3,000,000.00	Book	20.00	% of 101,380,893.51	20,276,178.70	15.00	85.00	17,276,179	0.00	0
ME Bank - a division of Bank of Queensland Ltd	A+ to A-	Bank of Queensland Ltd	9,000,000.00	Book	10.00	% of 101,380,893.51	10,138,089.35	89.00	11.00	1,138,089	0.00	0
Members Banking Group Limited t/as RACQ Bank	BBB+ to BBB-		0.00	Book	10.00	% of 101,380,893.51	10,138,089.35	0.00	100.00	10,138,089	0.00	0
MyState Bank Ltd	BBB+ to BBB-		3,000,000.00	Book	10.00	% of 101,380,893.51	10,138,089.35	30.00	70.00	7,138,089	0.00	0
National Australia Bank Ltd	AA+ to AA-		0.00	Book	30.00	% of 101,380,893.51	30,414,268.05	0.00	100.00	30,414,268	0.00	0
Newcastle Greater Mutual Group Ltd	BBB+ to BBB-		6,500,000.00	Book	10.00	% of 101,380,893.51	10,138,089.35	64.00	36.00	3,638,089	0.00	0
Northern Territory Treasury Corporation	AA+ to AA-		3,500,000.00	Book	30.00	% of 101,380,893.51	30,414,268.05	12.00	88.00	26,914,268	0.00	0
NSW Treasury Corporation	AA+ to AA-		0.00	Book	100.00	% of 101,380,893.51	101,380,893.51	0.00	100.00	101,380,894	0.00	0

1 Issuer Trading Limits

Issuer	Issuer Rating Group (Long Term)	Issuer Parent	Already Traded (with Issuer Group) Face Value Notional	Limit For Book or Entity	Trading Limit	Trading Limit Type	Trading Limit Value	Trading Limit Used (%)	Trading Limit Available (%)	Trading Limit Available (Value)	Trading Limit Exceeded (%)	Trading Limit Exceeded (\$)
P&N Bank Ltd	BBB+ to BBB-		0.00	Book	10.00	% of 101,380,893.51	10,138,089.35	0.00	100.00	10,138,089	0.00	0
Police Bank Ltd	BBB+ to BBB-		1,000,000.00	Book	10.00	% of 101,380,893.51	10,138,089.35	10.00	90.00	9,138,089	0.00	0
Police Credit Union	N/R		1,500,000.00	Book	5.00	% of 101,380,893.51	5,069,044.68	30.00	70.00	3,569,045	0.00	0
QPCU LTD t/a QBANK	BBB+ to BBB-		5,750,000.00	Book	10.00	% of 101,380,893.51	10,138,089.35	57.00	43.00	4,388,089	0.00	0
Rabobank Australia Ltd	A+ to A-		18,000,000.00	Book	20.00	% of 101,380,893.51	20,276,178.70	89.00	11.00	2,276,179	0.00	0
Rabobank Nederland Australia Branch	A+ to A-		0.00	Book	20.00	% of 101,380,893.51	20,276,178.70	0.00	100.00	20,276,179	0.00	0
Royal Bank of Scotland	A+ to A-		0.00	Book	5.00	% of 101,380,893.51	5,069,044.68	0.00	100.00	5,069,045	0.00	0
Rural Bank Ltd	A+ to A-	Bendigo & Adelaide Bank Ltd	0.00	Book	10.00	% of 101,380,893.51	10,138,089.35	0.00	100.00	10,138,089	0.00	0
Southern Cross CU	N/R		1,000,000.00	Book	5.00	% of 101,380,893.51	5,069,044.68	20.00	80.00	4,069,045	0.00	0
St George Bank Limited	AA+ to AA-	Westpac Banking Corporation Ltd	3,480,893.51	Book	30.00	% of 101,380,893.51	30,414,268.05	11.00	89.00	26,933,375	0.00	0
Suncorp Bank (Norfina Ltd) - Subsidiary of ANZ	AA+ to AA-	ANZ Banking Group Ltd	0.00	Book	20.00	% of 101,380,893.51	20,276,178.70	0.00	100.00	20,276,179	0.00	0
UBS Australia Ltd	AA+ to AA-		5,650,000.00	Book	20.00	% of 101,380,893.51	20,276,178.70	28.00	72.00	14,626,179	0.00	0
Westpac Banking Corporation Ltd	AA+ to AA-		3,480,893.51	Book	30.00	% of 101,380,893.51	30,414,268.05	11.00	89.00	26,933,375	0.00	0
			127,323,574.04				755,287,656.65			627,964,079		0
			(Excluding Parent Group Duplicates)									
			101,380,893.51									

2 Security Rating Group Trading Limits

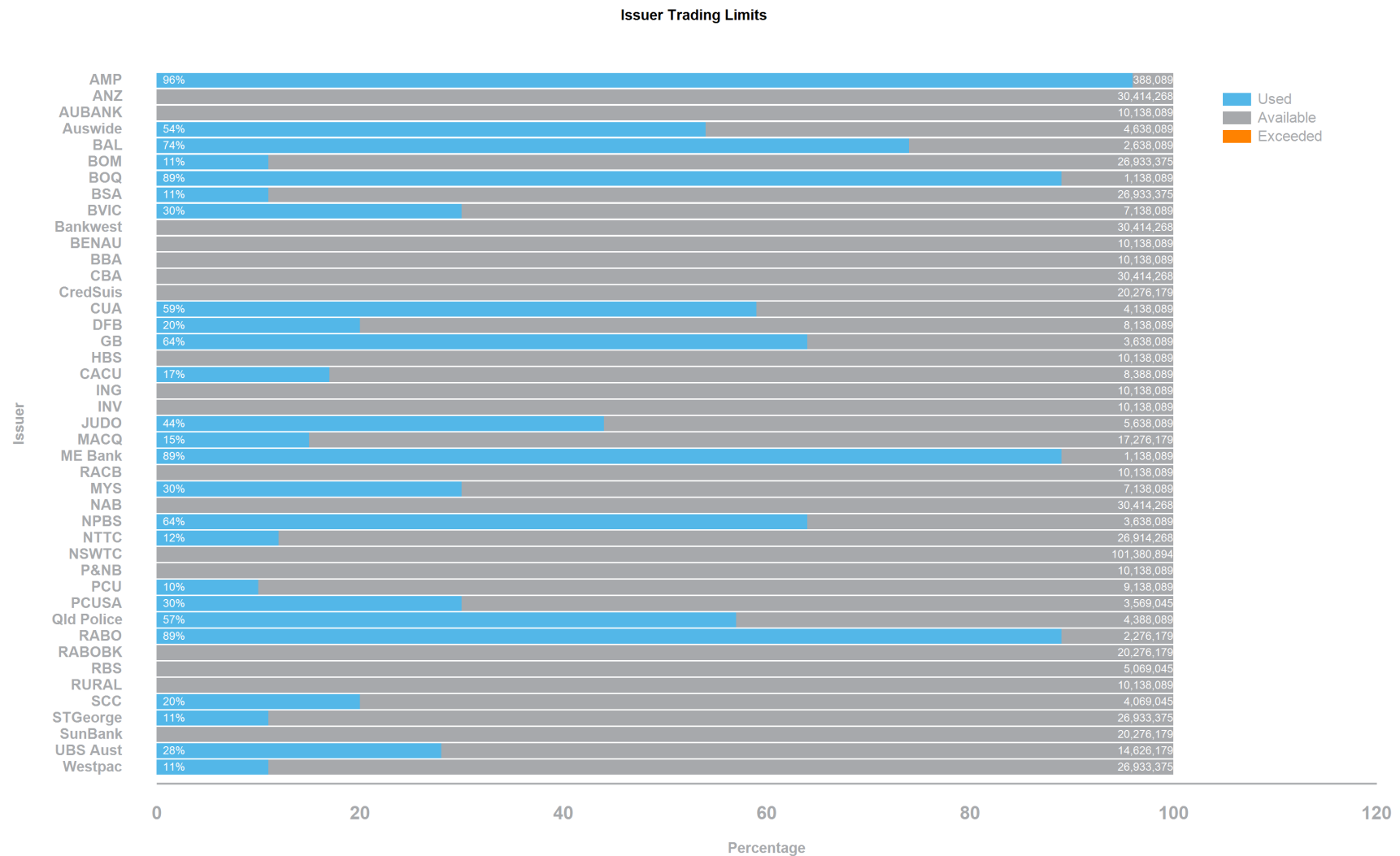
Security Rating Group	Already Traded Face Value Notional	Limit For Book or Trading Entity	Trading Limit	Trading Limit Type	Trading Limit Value	Trading Limit Used (%)	Trading Limit Available (%)	Trading Limit Available (Value)	Trading Limit Exceeded (%)	Trading Limit Exceeded (\$)
AAA	0.00	Book	100.00	% of 101,380,893.51	101,380,893.51	0.00	100.00	101,380,894	0.00	0
AA+ to AA-	0.00	Book	100.00	% of 101,380,893.51	101,380,893.51	0.00	100.00	101,380,894	0.00	0
A+ to A-	17,000,000.00	Book	70.00	% of 101,380,893.51	70,966,625.46	24.00	76.00	53,966,625	0.00	0
A1+	3,480,893.51	Book	100.00	% of 101,380,893.51	101,380,893.51	3.00	97.00	97,900,000	0.00	0
A1	15,650,000.00	Book	100.00	% of 101,380,893.51	101,380,893.51	15.00	85.00	85,730,894	0.00	0
A2	36,000,000.00	Book	70.00	% of 101,380,893.51	70,966,625.46	51.00	49.00	34,966,625	0.00	0
A3	0.00	Book	60.00	% of 101,380,893.51	60,828,536.11	0.00	100.00	60,828,536	0.00	0
BBB+ to BBB-	26,750,000.00	Book	60.00	% of 101,380,893.51	60,828,536.11	44.00	56.00	34,078,536	0.00	0
N/R	2,500,000.00	Book	10.00	% of 101,380,893.51	10,138,089.35	25.00	75.00	7,638,089	0.00	0
	101,380,893.51				679,251,986.52			577,871,093		0

Notes

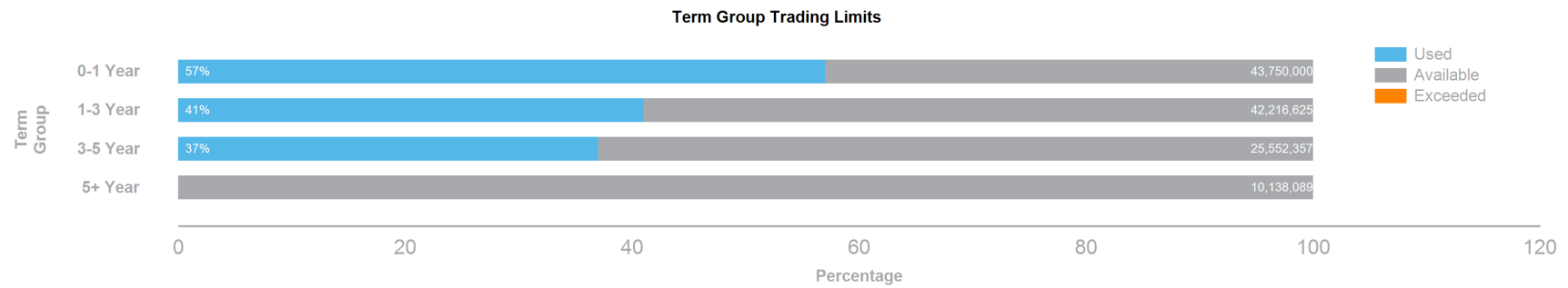
1. In instances where long securities have a term remaining which is less than 365 days, the issuer's short term rating is used instead of the security's (presumably long term) rating.

3 Term Group Trading Limits

Term Group	Already Traded Face Value Notional	Limit For Book or Trading Entity	Trading Limit	Trading Limit Type	Trading Limit Value	Trading Limit Used (%)	Trading Limit Available (%)	Trading Limit Available (Value)	Trading Limit Exceeded (%)	Trading Limit Exceeded (\$)
0-1 Year	57,630,893.51	Book	100.00	% of 101,380,893.51	101,380,893.51	57.00	43.00	43,750,000	0.00	0
1-3 Year	28,750,000.00	Book	70.00	% of 101,380,893.51	70,966,625.46	41.00	59.00	42,216,625	0.00	0
3-5 Year	15,000,000.00	Book	40.00	% of 101,380,893.51	40,552,357.40	37.00	63.00	25,552,357	0.00	0
5+ Year	0.00	Book	10.00	% of 101,380,893.51	10,138,089.35	0.00	100.00	10,138,089	0.00	0
	101,380,893.51				223,037,965.72			121,657,071		0







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Report Code: TBSBP125EXT-00.16
Report Description: Trading Limit Performance As At Date
Parameters:
As At/Scenario Date: 31 December 2024
Balance Date: 1 January 2025 (but 31 Dec 2024 used instead)
Trading Entity: Muswellbrook Shire Council
Trading Book: Muswellbrook Shire Council
Report Mode: BalOnly
Using Face Value
Trading Entity and Book Limits
Effects of Parent/Child Issuers Not Ignored



10.4. Community and Economy

10.4.1. Notification of Change in the Opening Hours of Denman Library

Responsible Officer: Director - Community & Economy

Author: Head Librarian

Community Strategic Plan: 2 - *Social Equity and Inclusion*
4 - *Cultural Vitality*

An inclusive and interconnected community where everyone enjoys full participation

A culturally rich and diverse Community with strong identities, history and sense of belonging

Delivery Program Goal: *Not Applicable*

Operational Plan Action: Not applicable

Attachments: Nil

OFFICER'S RECOMMENDATION

The information contained in this report be noted.

Moved: _____ **Seconded:** _____

REPORT

The Denman Library is currently open 19.5 hours per week. It is proposed that the Library be closed on Wednesdays, with the 2.5 hours of normal opening hours reallocated to dedicated programming and outreach activities.

The Denman Library's current operating hours are as follows:

Monday	10am-1pm and 2:00pm-4:30pm
Tuesday	2pm-4:30pm
Wednesday	2pm-4:30pm
Thursday	10:30am-2:00pm
Friday	10am-1pm and 2:00pm-4:30pm

The proposed revised opening hours will be:

Monday	10am-1pm and 2:00pm-4:30pm
Tuesday	2pm -4:30pm
Wednesday	Closed
Thursday	10:30am-2:00pm
Friday	10am-1pm and 2:00pm-4:30pm

Benefits to the Community of the proposed change:

1. Expanded Outreach services to Denman and surrounding areas, including increased capacity to conduct off-site programs within schools, community, and aged care facilities, and increased capacity to deliver Home Library services within the community.



2. Designated programming time to align more closely with community needs.
3. Improved efficiency – changes will enable the Denman Library to maintain a high-quality service, while managing resources effectively, ensuring that peak usage hours are prioritised for in-library services.

The adjustment in opening hours will enable the Denman Library to expand its impact within the community by prioritising time to provide outreach services and enhanced programming within the Denman Community and surrounding areas. These changes reflect the library's commitment to meeting evolving community needs and fostering greater engagement. The changes will commence from Monday 3 February 2025.

FINANCIAL CONSIDERATIONS

The proposed changes will be implemented within the library's existing budget.

COMMUNITY CONSULTATION / COMMUNICATIONS

The proposed changes will be advertised through the Library and Council websites, social media, and in-branch notices.

**10.4.2. Muswellbrook Shire Council Events Program**

Responsible Officer: Director - Community & Economy

Author: Manager - Economy and Tourism

Community Strategic Plan: 6 - Community Leadership

Collaborative and responsive leadership that meets the expectations and anticipates the needs of the community

Delivery Program Goal:

- 1.1.1 - Facilitate the expansion of and establishment of new industries and business.
- 1.2.1 - Facilitate the diversification of the Shire's economy and support growth of existing industry and business enterprise.
- 2.5.1 - Raise awareness of the local Aboriginal Community and an appreciation of their traditions and culture.
- 4.3.1 - Develop and implement a program of Shire events to engage more locals and attract more visitors

Operational Plan Action:

- 1.2.1.3 - Progress opportunities to grow the visitor economy.
- 4.3.1.1 - Work in partnership to deliver events which support the community and attract visitors to the Shire.

Attachments:

- 1. Denman Food, Wine and Film Affair - Event Report [10.4.2.1 - 4 pages]

PURPOSE

To request Council's approval to prepare, deliver, and resource an Events Program for Muswellbrook Shire which responds to the needs of the community and builds on the success of recent events.

OFFICER'S RECOMMENDATION

Council:

1. Notes the report and supports, in principle, the 2025/2026 Event Program provided in the report; and
2. Requests a further report to be submitted to Council, providing a resourcing strategy, including funding and staffing requirements, to deliver the Event Program, and for the funding strategy to be included in the development of the 2025/2026 Operational Plan and Budget.

Moved: _____ **Seconded:** _____



EXECUTIVE SUMMARY

Events play a crucial role in the liveability and attractiveness of the region, generating community pride and showcasing local talent and produce. Events also bring visitors to the area, encourage return visitation, overnight stays, and support the local economy.

Council officers are proposing a range of new and existing free events be delivered in 2025/2026 to meet the expectations of the community. In council's recent community satisfaction survey, 83 percent of respondents rated Local Festivals and Events as important. As the Shire's economy changes, events and tourism will play an increasingly important role, bringing new economic opportunities and additional revenue into the Shire.

Council's endorsement of the proposed Events Strategy will give clarity to Council and the community on the type and frequency of events to be delivered in the Shire. It will ensure that these events are properly resourced, funded, planned, and delivered to meet community expectations.

PREVIOUS RESOLUTIONS

Nil.

BACKGROUND

Prior to 2023, Muswellbrook Shire Council sporadically delivered a range of events, the majority of which were community events. Post COVID, Council accessed Connecting Regional Community Grant Funding to deliver Rock'n the Brook and 2022 New Years Eve. The delivery of these two major events was managed by Council's Economic Development Team with the support of an external event management company.

Again in 2024, grant funding became available through the Transport for NSW Open Streets Program, which saw the return of the Denman Wine and Food Affair, incorporating the Blue Heeler Film Festival, to become the Denman Wine, Food and Film Affair.

To be able to successfully deliver the planned events program, Council put in place a temporary events team structure to ensure there was appropriate resources and to build capacity amongst Council internal staff to deliver events. This temporary structure is in place until 30 May 2025 and has delivered, to a very high standard, the following events:

- Denman Wine and Food;
- Blue Heeler Film Festival; and
- 2024 New Years Eve.

The team is currently working towards delivery of the following important community events:

- Australia Day; and
- Easter Family Fun Day.

Council also provides in-kind support to a number of community events delivered by other entities, including:

- ANZAC Day;
- Sandy Hollow Westpac Charity Horse Ride
- Denman Diesel, Dust and Rust;
- TV and Movie Nostalgia Festival;
- Sandy Hollow Charity Motorfest;
- Denman Westpac Charity Horse Ride;
- Cattle Dog Muster; and
- other community events and activities.

The community has come to depend upon the support and expertise of Council's team to assist with the planning and delivery of the broad range of events conducted in Muswellbrook Shire. The team is small, extremely dedicated, and high performing. An



important consideration of the resourcing of the Events Program will be to ensure that staffing levels are appropriate so that the team's health and wellbeing is included as a critically important element of the Program.

The 2024/2025 events budget and resourcing are funded by Voluntary Planning Agreement Funding, existing general revenue budget, the allocation of existing resources, and grant funding.

CONSULTATION

Director Community and Economy.

Manager Economy and Tourism

Tourism and Events Coordinator

Community Partnerships Officer.

REPORT

Events play a crucial role in the liveability and attractiveness of the region, generating community pride and showcasing local talent and produce. Events also bring visitors to the area, encourage return visitation, overnight stays and support the local economy.

In council's recent community satisfaction survey the community told us that:

- 83 percent of respondents rated Local Festivals and Events as Important;
- 72 percent indicated that they were satisfied with Local Festivals and Events; and
- Agreed that events improved lifestyle and improved the economy.

Events are particularly important for Muswellbrook Shire as our economy changes. Events and tourism will play an increasingly important role, bring new economic opportunities, and attract additional revenue into the Shire.

In 2024/2025, Council delivered a number of highly successful events which were well attended and positively received by the community. With the grant funding received from Transport for NSW, Council worked with the Denman Chamber of Commerce to revive the Denman Wine and Food Affair, incorporating the Blue Heeler Film festival. This free licensed event attracted over 10,000 people, showcasing local wine makers and producers and local products. Entertainment included Mitch Tambo and a number of local and national talent on three different stages, a flash mob, kids entertainment, and wood chopping.

The event drew people from across NSW; please see **attachment 1** mobile phone data showing weekend increases by location. Camping was available for caravans and glamping tents were sold out. REMPLAN economic modelling shows that if each attendee spent \$50 at the event, on accommodation, or on retail at the event, that this would have a direct and supply chain impact of \$1.2M. Council will continue to work with the Denman Chamber of Commerce and the community to discuss the future of the Denman Wine and Food Affair.

New Years Year 2024 specifically targeted a younger demographic offering a free family friendly event headlining DJ Tigerlilly and featuring fireworks at 9pm. This is the only new years eve event from Tamworth to Maitland and was well received by all members of the community. New Years Eve is an important event on the Muswellbrook events calendar and will continue to grow to attract a broader catchment of attendees as its reputation grows.

Muswellbrook Shire needs to continue to grow its event calendar to provide major signature events which attract visitors into the Shire and a range of community and local focused events. The proposed events calendar for 2025/2026 is as follows:



Date	Type	Description	Target	Attendance
Blue Heeler Film Festival				
October 2025	Signature	National film competition and mentoring program cumulating in a live stream awards night.	Locals Local film makers National emerging film makers and their families Secondary School Students	250 Awards Night 500 screenings 1000 online
Sun Filled Nights				
Spring/ Summer Weekends	Community	Six free community markets showcasing local products and produce and entertainment.	Workers Business Families	500
Denman Wine and Food Affair				
November 2025	Signature Partnership	Street event showcasing local food and wine producers.	Visitors within 1.5 hrs travel Locals 25 to 55 Families	10,000
New Years Eve				
31 December	Major	Free family friendly event featuring live entertainment.	Families – Tamworth to Lower Hunter Locals – teens to mid 30's	4,000
Australia Day Celebrations				
26 January	Community	Official proceedings held in Muswellbrook or Denman Free pool entry (opportunity to grow pool party theme).	Community leaders families	1,000



Date	Type	Description	Target	Attendance
Rock'n the Brook				
March 2026	Major	Free or low cost outdoor music event and camping, licenced, headline act with local development stage and showcasing local products.	Visitors within 3 hr travel time Locals 25 to 65	5,000
Easter Family Fun Day				
Easter Saturday	Community	Free family inclusive event showcasing Muswellbrook support services and facilities.	Youth Families	4,000

These events will continue to grow and change to respond to changing community needs, opportunities and event success.

Having a range of events aimed at different demographics such as families, 18 to 39, 40 to 65+, will increase the community's level of pride in where they live and being part of the community, and will result in improved community satisfaction. According to the recent community satisfaction survey, more events will increase the number of 18 to 39 year olds who feel proud of where they live and feel part of the community.

An Events Strategy will give clarity to Council and the community on the type and frequency of events to be delivered in the Shire. It will ensure that these events are properly resourced, funded, planned, and delivered to meet community expectations and grow opportunities for increased visitation and overnight stays.

FINANCIAL CONSIDERATIONS

Financial Implications – Operational

The delivery of the proposed events is to be funded by Voluntary Planning Agreement funding and existing budget allocations. The resource requirements will be subject to internal review and establishment in consultation with the General Manager and Council's finance team.

In the 2024/25 Budget there is \$400k of VPA funding allocated towards events. There is also a significant spend in staff salaries and time. An additional report will be submitted to Council with details of the financial implications.

POLICY IMPLICATIONS

Council's draft Event Policy will be reviewed in line with proposed changes and to reflect strategy outcomes.

STATUTORY / LEGISLATIVE IMPLICATIONS

Nil.

RISK MANAGEMENT IMPLICATIONS

Having the available funding and resources to meet the expectations of the community.

COMMUNITY CONSULTATION / COMMUNICATIONS

Nil.





Methodology

This report examines the devices that were observed at the Denman Food, Wine and Film Affair, from the 1st - 2nd of November 2024.

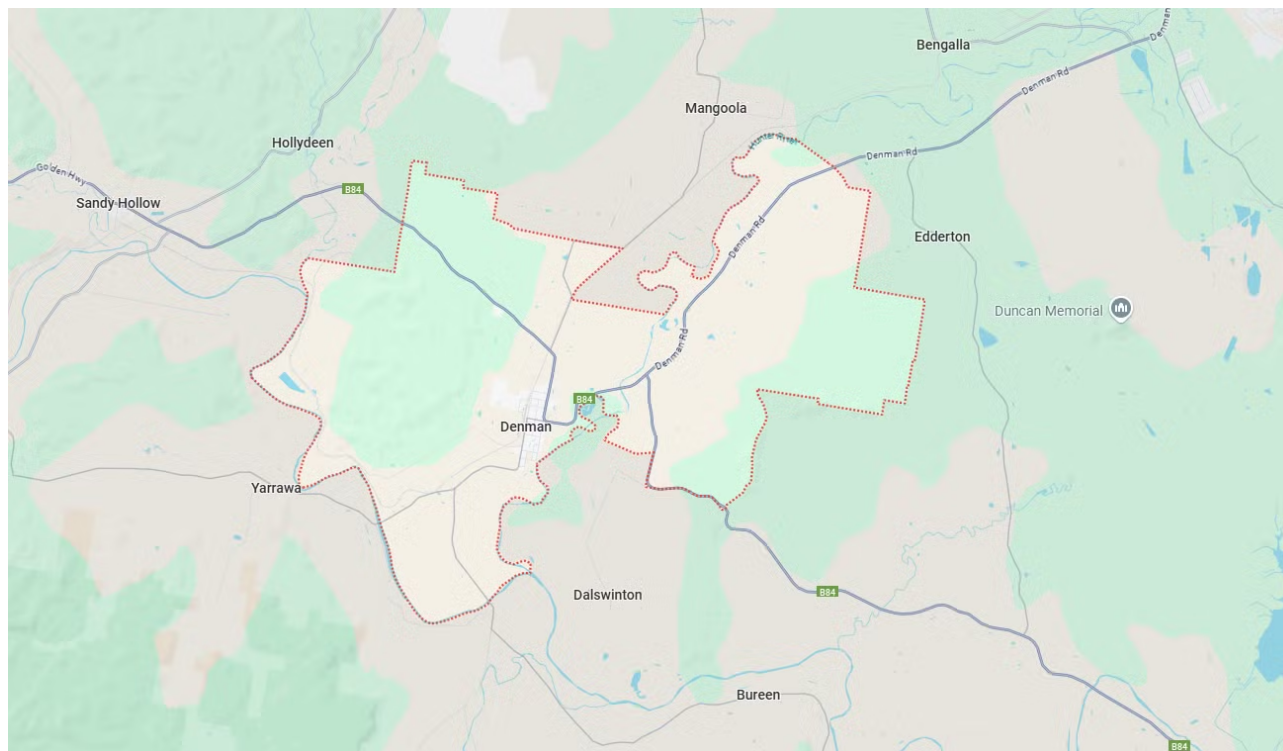
While Localis endeavours to ensure the methodologies and data used in this report are best practice and as accurate as possible, it is agreed and understood that the client accepts sole responsibility for how the data is used. Localis accepts no responsibility for any loss incurred as a result of using this data.

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Geofencing

The area highlighted below is the geofence that was used for collection of mobility data.



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Visitor Origins

This section examines the unique devices that were observed at the Food, Wine and Film Affair with a comparison to a non-event period the month prior from the 4 -5 of October 2024. For the purposes of this study the Muswellbrook local devices have been excluded to view only visitors. **Lake Macquarie had the largest uptick in visitation with a +50.23% increase**, when compared to a non-event period. The tables below show the top 10 LGAs and suburbs that visited.

Top 10 Local Government Areas

Local Government Area	Non-Event Period	Event	Percent Change
Lake Macquarie	8.65%	12.99%	+50.23%
Newcastle	6.76%	8.82%	+30.49%
Central Coast (NSW)	5.81%	6.50%	+11.80%
Cessnock	6.49%	6.50%	+0.15%
Dubbo	3.78%	4.87%	+28.77%
Maitland	10.27%	4.18%	-59.34%
Upper Hunter	7.84%	3.94%	-49.68%
Port Stephens	2.43%	3.25%	+33.54%
Singleton	6.35%	3.02%	-52.51%
Mid-Western	4.32%	2.78%	-35.61%

Top 10 Suburbs

Local Government Area	Non-Event Period	Event	Percent Change
Dubbo	3.38%	4.41%	+30.49%
Mudgee	1.89%	2.55%	+34.90%
Belmont North	0.14%	1.86%	+1273.55%
Caves Beach	-	1.39%	-
Greta (NSW)	0.81%	1.39%	+71.69%
Coolah	0.14%	1.16%	+758.47%
Floraville	0.54%	1.16%	+114.62%
Hunternview	-	1.14%	-
Nabiac	-	1.12%	-
Orange	0.41%	1.05%	+159.02%



11. Minutes of Committee Meetings

Nil

12. Notices of Motion

Nil

13. Councillors Reports

14. Written Questions

Nil

15. Questions for Next Meeting

16. Adjournment into Closed Council

In accordance with the Local Government Act 1993, and the Local Government (General) Regulation 2005, business of a kind referred to in Section 10A(2) of the Act should be dealt with in a Confidential Session of the Council meeting closed to the press and public.

17. Closed Council

RECOMMENDATION

Council adjourn into Closed Session and members of the press and public be excluded from the meeting of the Closed Session, and access to the correspondence and reports relating to the items considered during the course of the Closed Session be withheld unless declassified by separate resolution. This action is taken in accordance with Section 10A(2) of the Local Government Act, 1993 as the items listed come within the following provisions:

Moved: _____ **Seconded:** _____



17.1. Contract 2023-2024-0604 Muswellbrook Indoor Sports and Youth Centre Construction - Tender Negotiation

This report is CONFIDENTIAL under the provisions of Section 10A(2)(c) of the Local Government Act 1993, as it relates to information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.

Council considers that discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

17.2. Affix Council Seal and Signatures to Release Easement for Rail Loop Purposes

This report is CONFIDENTIAL under the provisions of Section 10A(2)(d) of the Local Government Act 1993, as it relates to commercial information of a confidential nature that would, if disclosed: (i) prejudice the commercial position of the person who supplied it, or (ii) confer a commercial advantage on a competitor of the council, or (iii) reveal a trade secret.

Council considers that discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

17.3. Stormwater Drainage Condition Assessment Contract

This report is CONFIDENTIAL under the provisions of Section 10A(2)(d) of the Local Government Act 1993, as it relates to commercial information of a confidential nature that would, if disclosed: (i) prejudice the commercial position of the person who supplied it, or (ii) confer a commercial advantage on a competitor of the council, or (iii) reveal a trade secret.

Council considers that discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

17.4. Intention to Elect to be Appointed Crown Land Managers of Lot 213 DP 752484

This report is CONFIDENTIAL under the provisions of Section 10A(2)(d) of the Local Government Act 1993, as it relates to commercial information of a confidential nature that would, if disclosed: (i) prejudice the commercial position of the person who supplied it, or (ii) confer a commercial advantage on a competitor of the council, or (iii) reveal a trade secret.

Council considers that discussion of the matter in an open meeting would be, on balance, contrary to the public interest.



18. Resumption of Open Council

The meeting return to Open Council.

19. Closure

Date of Next Meeting: 25 February, 2025