



PLAN OF MANAGEMENT
BERRARA CREEK FLATS
RESERVE



COMMUNITY LAND PLAN NO. 9
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1. INTRODUCTION

The management of open space and recreation areas (parks and reserves) is one of the most important functions of any Council. However, prior to 1993 there were few specific guidelines describing the way in which this land should be managed.

The Local Government Act 1993 introduced new requirements on all Councils to ensure Council owned land is managed appropriately and that the community is actively involved in decisions affecting the management and use of Council owned land.

1.1 The Local Government Act 1993

The Local Government Act 1993, herein referred to as the Act, required Council to take and maintain an inventory of all land owned by Council. This land was then to be classified as either:

1. Community Land; or
2. Operational Land

Community Land was defined for the purposes of the Act to be that land which is set aside for community use, such as parks, sportsgrounds, beaches, community centres and walking tracks. Development and use of this land is subject to strict controls set out in the Act and described in Appendix One. In addition to these controls, any land identified as Community Land during the classification process must be governed by a Plan of Management.

Conversely, Operational Land comprises that land which serves a commercial or operational function (eg a depot or car park), or land which is being retained for commercial or strategic reasons. The range of controls which apply to Community Land do not apply to the use and management of Operational Land.

In 1998, the Local Government Act 1993 was amended with respect to Community Land. This amendment resulted in the Local Government Amendment (Community Land Management) Act 1998 and subsequently the Local Government (General) Amendment (Community Land Management) Regulation 1999.

Whilst the original Act required Councils to categorise all Community Land as either sportsground, park, natural area or general community use and to prepare a Plan of Management for all Community Land, no further guidelines were provided to assist with the categorisation or management process. The Act, as amended in 1998, has provided Councils with guidelines to ensure all community land is appropriately categorised and managed in accordance with identified management objectives, described in the Act as core objectives.

Community Land must now be categorised as one, or more, of the following:

- Sportsground;
- Park;
- General Community Use;
- Area of Cultural Significance; or
- Natural Area.

Natural Areas must be further categorised as:

- Foreshore;
- Bushland;
- Wetland;
- Escarpment; or
- Watercourse.

1.2 What is a Plan of Management?

A Plan of Management is a document which guides the management of particular categories, or specific areas, of Community Land.

The management orientation of Council's Parks and Recreation Unit is guided by the dominant community values for community land. Identified management issues are considered against stated values, and objectives are then developed to remedy issues of concern.

This Plan of Management expands upon this theme and in so doing, aims to develop a range of strategies and actions to assist with the improved management of Berrara Creek Flats Reserve.

The Plan of Management may be generic (ie covering more than one area of Community Land) or specific (covering one area only). The Berrara Creek Flats Reserve Plan of Management is a specific area Plan of Management.

A Plan of Management that applies to just one area of community land:

(a) must include a description of:

- (i) the condition of the land, and of any buildings or other improvements on the land, as at the date of adoption of the Plan of Management; and
- (ii) the use of the land and any such buildings or improvements as at that date; and

(b) must:

- (i) specify the purposes for which the land, and any such buildings or improvements, will be permitted to be used;
- (ii) specify the purposes for which any further development of the land will be permitted, whether under lease or licence or otherwise; and
- (iii) describe the scale and intensity of any such permitted use or development.

In addition to these requirements, this Plan of Management will also identify:

- (a) The category of the land;
- (b) The objectives and performance targets of the Plan with respect to the land;
- (c) The means by which Council proposes to achieve the Plan's objectives and performance targets; and
- (d) The manner in which Council proposes to assess its performance with respect to the Plan's objectives and performance targets.

1.3 Land to Which this Plan Applies

This Plan of Management applies to *Lot 3 DP 231481*, Berrara Road, Berrara, an area generally known as the Berrara Creek Flats. The location of the land is shown in Figure 1.

Council acquired Lot 3 DP231481 in 1999 for public recreation purposes.

In 2001 Council also became the Roads Authority for Berrara Road, throughout the full length of the reserve. As such, the road reserve has been considered as a part of the reserve in the development of objectives and actions in this Plan of Management, as well as in the Landscape Concept Plan.

However, the provisions in the Local Government Act 1993 which govern the use and management of Community Land do not apply to the road reserve.

1.4 Community Consultation

Effective community consultation and community input is essential to ensure that a Plan of Management meets the needs of the local community and has the support of the local community at the implementation stage.

Berrara Creek Flats Reserve was acquired by Council at the request of the local community to ensure public access to Berrara Creek and beach. At this time, members of the community made submissions to Council regarding the acquisition, covering a wide range of issues. The views represented in these submissions have been considered in the preparation of this Plan. Advice offered by both NSW Department of Land & Water Conservation and NSW National Parks & Wildlife Service has also been considered.

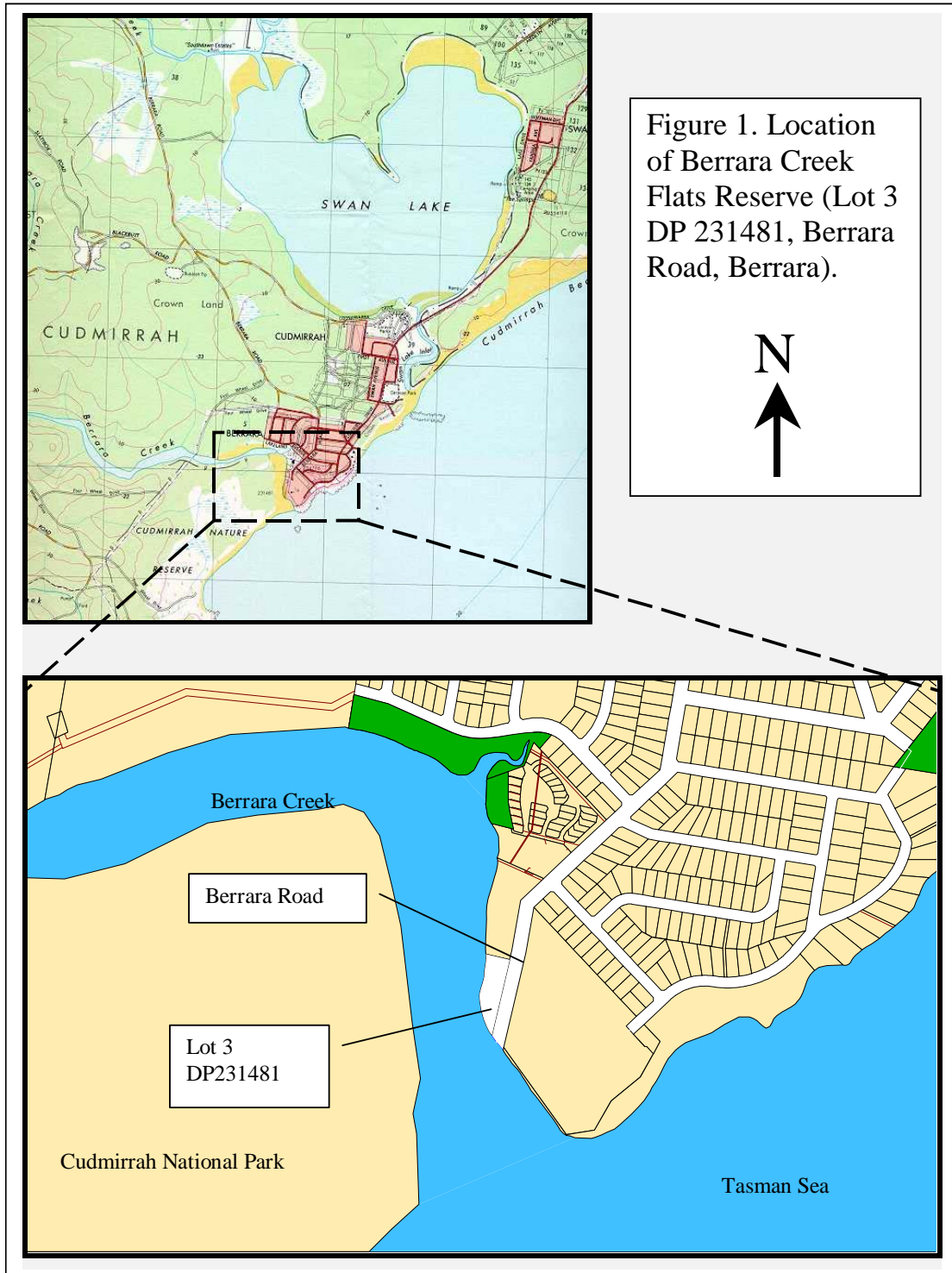
In January 2000, a public hearing was held to discuss the categorisation of the reserve, with Council initially proposing the category of Park. Various presentations to the public hearing and subsequent submissions from the community have indicated that the community does not wish the site to be developed for intensive recreational use. As such the category of Natural Area – Foreshore has been nominated for this reserve.

The Berrara Creek Flats Plan of Management was advertised and exhibited for a period of 28 days with an additional 14 day submission period provided. Council considered all comments received regarding the draft prior to adoption of a final Plan.

In November 2001 Council formally adopted the Plan of Management.

In 2005 Council reviewed the adopted Plan in conjunction with further consultations and adopted, in principle, a number of proposed amendments which related to change in location of car park and amenities building, and provision of disabled parking.

The proposed amendments were placed on public exhibition and subsequently the proposed changes were adopted and master plan revised, in March 2006.



2. BASIS FOR MANAGEMENT

Management of land categorised as Natural Area - Foreshore in the Shoalhaven requires consideration and integration of a number of factors. These include the core objectives for natural area management as specified in the Act, identified community values and needs, and the range of legislation and policy which has been developed at Federal, State and local level to guide land use and management.

The following summarises the information used as a basis for managing Berrara Creek Flats Reserve.

2.1 Core Objectives

The Local Government Act, in an effort to ensure the appropriate and sustainable management of Community Land, identified core objectives for each category of Community Land.

2.1.1. Core Objectives for Community Land Categorised as Natural Area

The Core Objectives for management of community land categorised as a natural area are:

- NA1 To conserve biodiversity and maintain ecosystem function in respect of the land, or the feature or habitat in respect of which the land is categorised as a natural area; and
- NA2 To maintain the land, or that feature or habitat, in its natural state and setting; and
- NA3 To provide for restoration and regeneration of the land; and
- NA4 To provide for community use of and access to the land in such a manner as will minimise and mitigate any disturbance caused by human intrusion; and
- NA5 To assist in and facilitate the implementation of any provisions restricting the use and management of the land that are set out in a recovery plan or threat abatement plan prepared under the Threatened Species Conservation Act 1995 or the Fisheries Management Act 1994.

2.1.2 Core Objectives for Community Land Sub-Categorised as Foreshore

The Core Objectives for management of community land categorised as foreshore are:

- F1 To maintain the foreshore as a transition area between the aquatic and the terrestrial environment, and to protect and enhance all functions associated with the foreshores role as a transition area; and
- F2 To facilitate the ecologically sustainable use of the foreshore and to mitigate impact on the foreshore by community use.

2.2 Community Values

Adequate consideration of community values is essential when developing a Plan of Management. Community values are the attributes which make something (eg a reserve) important to the community as a whole. Values tend to change little over time and to be broad in nature.

An understanding of the values of Berrara Creek Flats Reserve to the local community has been established through representations to Council regarding the purchase, classification and categorisation of the reserve and community input into the Landscape Concept Plan for the reserve.

2.2.1 Recreational Values

Berrara Creek Flats Reserve provides a range of passive recreational and picnic opportunities, due to both its location and aspect. Situated at the end of Berrara Road, the reserve is on the desire line between an established residential area/tourist developments and Berrara Creek and Beach. The proximity of the reserve to a safe access point onto Berrara Beach also makes it very attractive to both residents and visitors. The views from the reserve are an attraction in themselves.

2.2.2 Environmental Values

Berrara Creek Flats Reserve provides an important buffer between residential development and Berrara Creek (which forms the border with Cudmirrah National Park).

The reserve supports remnants of native coastal vegetation and provides habitat for native animals of various kinds. Establishment of a healthy riparian buffer along the foreshore will stabilise the bank, thus reducing erosion and improving the water quality of the creek.

2.3 Legislative and Policy Framework

In addition to the requirements of the Local Government Act 1993 and Amendments, this Plan of Management must comply with all other relevant legislation and policy, across all three levels of government.

Examples of other legislation and policy which must be taken into account include the Environment Protection & Biodiversity Conservation Act 1999, the Environmental Planning and Assessment Act 1979, State Environmental Planning Policies, Coastal Policy, Crown Lands Act 1989, Native Vegetation Conservation Act 1997 and the Shoalhaven Local Environment Plan 1985. A description of these, and other relevant legislation and policy, is provided in Appendix One.

3. MANAGEMENT FRAMEWORK

3.1 Physical Characteristics of the Reserve

The reserve is a narrow, roughly triangular parcel of land between Berrara Creek and Berrara Road of 2832.8 m² (see Figure 1).

The northern boundary of the reserve with private property is approximately 34.4 metres long, whilst the eastern boundary with the road reserve is approximately 108 metres long. The Berrara Road reserve is 20 metres wide. The western boundary abuts Berrara Creek, which is part of the Cudmirrah National Park.

The land consists of a relatively flat terrace beside Berrara Creek, separated by a steep bank from another relatively flat area above (at road level).

The vegetation on the site is predominantly remnant Swamp Oak Coastal Forest and is dominated by Swamp Oak *Casuarina glauca*. Along the foreshore is a narrow band of saltmarsh that is dominated by sedges and rushes. At the southern end of the site, nearer to the sea, there is a small amount of coastal shrubland with Silver Banksia *Banksia integrifolia* and Tea-tree *Leptospermum laevigatum*. Plant species identified on the site are listed in Table 1.

Table 1: Plant species identified at Lot 3 DP 231481, Berrara (*denotes introduced species)

SCIENTIFIC NAME	COMMON NAME
<i>Acacia longifolia</i>	Sydney Golden Wattle
<i>Banksia integrifolia</i>	Silver Banksia
<i>Cakile edentula</i> *	American Sea Rocket
<i>Carpobrotus glaucescens</i>	Pigface
<i>Casuarina glauca</i>	Swamp Oak
<i>Centella asiatica</i>	Indian Pennywort
<i>Coprosma repens</i> *	Mirror Plant
<i>Dianella</i> sp.	
<i>Exocarpos cupressiformis</i>	Native Cherry
<i>Hydrocotyle bonariensis</i> *	Californian Pennywort
<i>Isolepis nodosa</i>	Isolepis
<i>Juncus kraussii</i>	Sea Rush
<i>Leptospermum laevigatum</i>	Coastal Tea-tree
<i>Leucopogon parviflorus</i>	Coastal Beard-heath
<i>Lomandra longifolia</i>	Spiny-headed Mat-rush
<i>Nephrolepis cordifolia</i>	Fishbone Fern
<i>Parsonsia straminea</i>	Monkey Rope
<i>Patersonia sericea</i>	Silky Purple Flag
<i>Pelargonium capitatum</i> *	African Geranium
<i>Pennisetum clandestinum</i>	Kikuyu
<i>Rhagodia candolleana</i>	Seaberry Saltbush
<i>Scaevola albida</i>	Beach Fan Flower
<i>Senna pendula</i> *	Cassia
<i>Smilax australis</i>	Austral Sarsaparilla
<i>Spinifex sericeus</i>	Beach Spinifex

SCIENTIFIC NAME	COMMON NAME
<i>Stenotaphrum secundatum</i> *	Buffalo Grass
<i>Taraxacum officinale</i>	Dandelion
<i>Tetragonia tetragonoides</i>	New Zealand Spinach
<i>Tradescantia fluminensis</i> *	Wandering Jew
<i>Urtica sp.</i> *	Nettle
<i>Viola sieberana</i>	Native Violet

The fauna habitats available on the site are those generally associated with Swamp Oak Forest, sand flats and creek mouths.

The Hooded Plover, which is listed as an endangered species in Schedule 1 of the Threatened Species Conservation Act 1995, was recorded on the opposite side of Berrara Creek in 1998 and it may utilise the sand flats and rocky shores adjacent to the western boundary of the reserve.

The property has been severely disturbed, with most of the indigenous understorey and groundcover vegetation having been removed over many years. Exotic plants have been used in landscaping, particularly on the steep bank between the upper and lower levels and in patches along the foreshore. Many weeds are also present.

Bank erosion is evident in some places along the boundary with Berrara Creek and landfill consisting of concrete, bricks etc has been used in an attempt to stabilise the bank. In addition, steps have been formed in the creek bank with concrete and treated pine in some places. Preliminary measures have been taken to remove dangerous access points and stabilise the creek bank in an effort to minimise risks to users of the reserve. In undertaking this work, some invasive weeds were removed, the foreshore area was mulched and sediment fencing/pollution control devices were installed.

3.2 Current Level of Development

The reserve is mostly vacant land, however there are remnant structures from the previous use of the land as a private caravan park. These include:

- A gravel road down to the lower level;
- An unsealed parking area;
- Informal walking tracks;
- Stairways from the lower level of the reserve to the creek;
- Sewage pumping station;
- Power poles and light; and
- Water supply.

Berrara Road is not formed all the way to the beach end of the road reserve, but ends in a roughly formed gravel turning area and car park approximately 60 metres from the beach.

The table drain beside Berrara Road is eroding, as is the gravel road where it passes down the steep slope on the reserve. Sediment is being deposited on the lower level of the subject land and in Berrara Creek. A gully that carries water from these drains has been partly filled near the creek.

A concrete pathway extends from the car park to the beach. This forms the beginning and end of a looped walking track through the Cudmirrah National Park. The concrete pathway is mostly within the road reserve. The end of the path nearest the creek has been undermined where the creek bank has receded as a result of erosion.

3.3 Current Usage of the Reserve

Berrara Creek Flats reserve is currently used by both residents and visitors to:

- Gain access to Berrara Creek and Berrara Beach; and
- Undertake passive recreational activities such as picnicking, nature appreciation, fishing, prawning and informal play.

The land is not an off-leash area for dog exercise (the disruption of nests and predation by domestic pets is an identified threat to the Hooded Plover, a threatened species known to occur adjacent to the reserve). However dogs on leads are permitted within the reserve.

3.4 Purposes for which the Reserve may be Developed

As previously stated, the majority of Berrara Creek Flats Reserve is currently included within the 7 (d2) (Environmental Protection “D2” (Special Scenic) Zone) in accordance with the Shoalhaven LEP (1985).

Table 2 provides information on the activities permissible within this zone.

Table 2: Activities permissible within the 7(d2) zone

Objective of zone	The objective is to preserve and enhance scenic quality.
What can be done without development consent?	Nil.
What can be done only with development consent?	Agriculture; dams; home activities; land clearing and cultivation; roads; utility installations (other than gas holders or generating works).
What is prohibited?	Any purpose other than a purpose for which development may be carried out only with development consent.

However, Clause 54(C) of the Shoalhaven LEP (1985) permits Council to undertake certain developments on Community Land without Development Consent. These include, but are not limited to, the erection of bins, park furniture, viewing platforms, pedestrian paths, signage and the like. Further information with regard to Clause 54(c) is provided in Appendix Two.

The Landscape Concept Plan (Figure 2) depicts the proposed level and nature of development on this reserve. This plan is provided as a concept only and the exact location of facilities will need to be determined at the time of construction giving consideration to site constraints. However, Council does not propose to develop the reserve with any additional numbers or types of facilities.

It is important to note that Berrara Road Reserve is unzoned and therefore there are less restrictions on permissible activities.

3.5 Purposes for which the Reserve may be Used

Council intends that Berrara Creek Flats Reserve be developed and maintained to meet the stated needs of the community as articulated in the community consultation, whilst ensuring that the use is environmentally and socially sustainable. The Landscape Concept Plan has been developed to better provide for the anticipated use, in both peak and off-peak seasons.

Periodically, Council may be approached by individuals or organisations wishing to hire the reserve for short periods. Council may, giving due consideration to the environmental sensitivity and scenic location of this reserve, grant permits for the reserve to be used for the following purposes/types of purposes:

- A public performance (that is, a theatrical, musical or other entertainment for the amusement of the public);
- Playing of a musical instrument, or singing, for fee or reward;
- Engaging in a trade or business;
- Delivering a public address;
- Commercial photographic sessions;
- Picnics and private celebrations such as weddings and family gatherings (50 + people);
- Filming for cinema or television.

In addition to the above mentioned purposes, Council may consider the granting of a lease or licence for occupation of Berrara Creek Flats Reserve in a manner consistent with the requirements of the Local Government Act 1993. These are provided in full in Appendix Three.

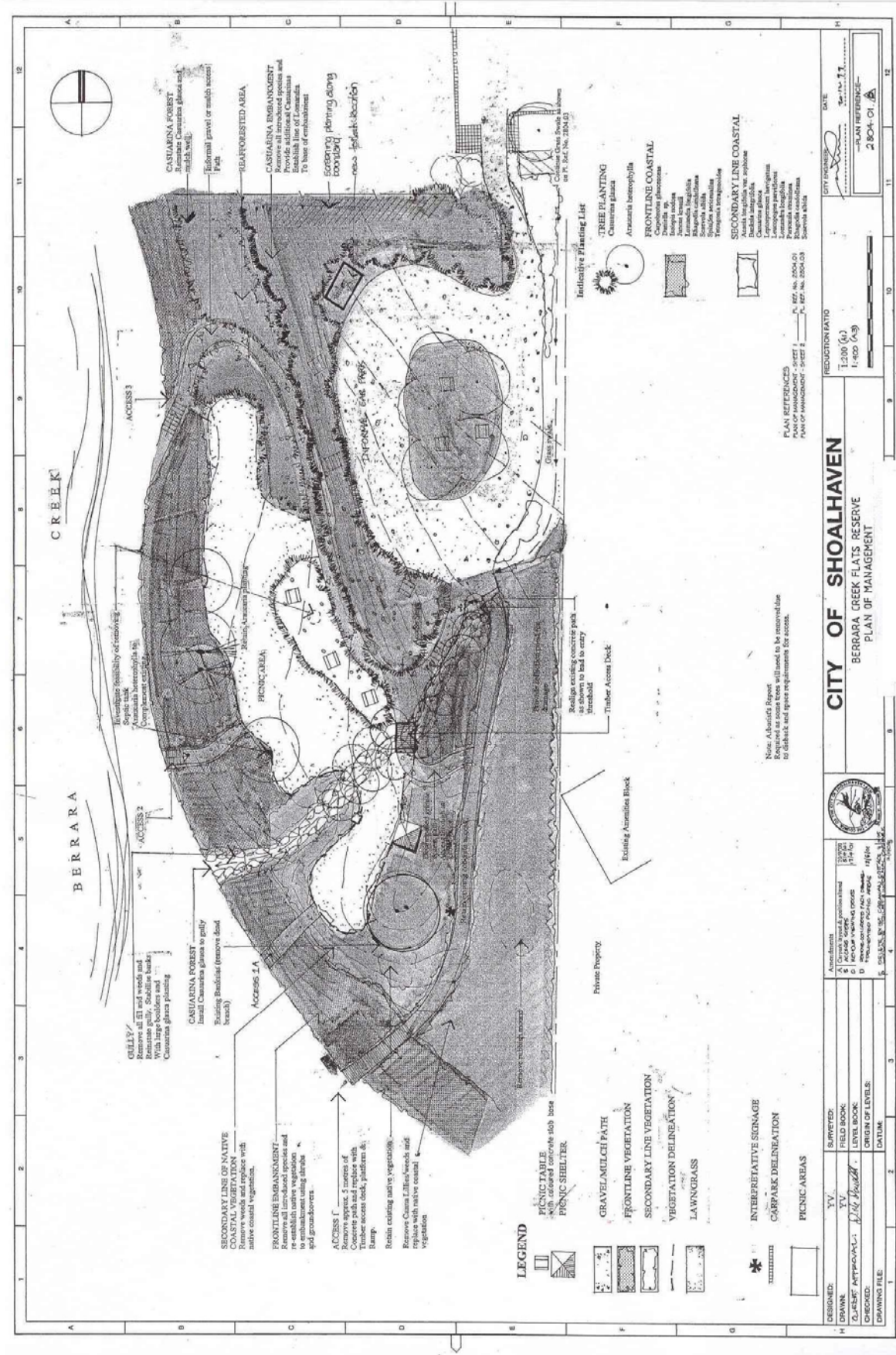
Any lease or licence granted for use of the site will only be given after an assessment of likely environmental impacts of the proposed use has been undertaken.

3.6 Community Involvement in Plan Implementation

A high degree of community involvement is now required to implement this Plan. This will drive Council's resources further and will have the added benefit of engendering community spirit and pride of place.

Council will support the formation of a locally based Foreshore Care Group. The purpose of the group is to organise volunteer assistance in the management of the reserve. Weed removal, track maintenance and revegetation are all areas where the group could be usefully involved. Registration is required in order to ensure that the work that community members undertake is authorised and that volunteers are covered for insurance purposes. Further, the group could undertake a public education role and monitor the impact of activities on the reserve.

People wishing to work in the reserve should approach Council for registration as part of such a group. Implementation of this Plan is discussed further in Section 4.



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DRAWN: YV	FIELD BOOK: YV	CITY ENGINEER: [Signature]
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	DATUM: [Signature]	DATE: 11/11/05
CITY OF SHOALHAVEN BERRARA CREEK FLATS RESERVE PLAN OF MANAGEMENT		
PLAN REFERENCES: PART OF MANAGEMENT PLAN 1: 2004 (A) PART OF MANAGEMENT PLAN 2: 2004 (B)		
REDUCTION RATIO: 1:200 (A) 1:500 (B)		
CITY ENGINEER: [Signature] DATE: 11/11/05		

4. ACTION PLAN

Proper identification of management issues is required in order to develop management objectives and strategies which will promote appropriate management, and to counter potential or actual negative impacts on the reserve.

The Local Government Act requires the Plan of Management to identify objectives and performance targets for the subject land, including specific actions and assessment criteria. Shoalhaven City Council has also defined approximate time frames and responsibilities for the achievement of these objectives.

The action plan that follows sets out a range of management objectives aimed at addressing and ultimately remedying issues of concern.

Issues, objectives, targets, priorities and responsibilities are presented in the form of a matrix. The following explanations will be useful to understand the matrix.

ST	Short Term	1-2 years
MT	Medium Term	3-4 years
LT	Long Term	5+ years
O	Ongoing	
C	Commenced	
CT	Completed	

In some cases actions will assist Council to meet more than one objective. For ease of reference, each action has been included only once.

Council will have met the objectives of the Plan of Management if all the targets identified are met, within the allocated time frame.

Implementation of this Plan of Management will be reviewed on an annual basis, with a complete review of the Plan as required.

Natural Areas Core Objective 1: To conserve biodiversity and maintain ecosystem function in respect of the land, or the feature of habitat in respect of which the land is categorised as a natural area			
Objective	Performance Target	Means of Achievement (Action)	Manner of Assessment (Timeframe)
To protect native animals on the reserve	Continued presence of native animals	Provide suitable habitat for native animals known to be present in the area through establishment of endemic vegetation communities	Areas revegetated as shown in Landscape Concept Plan (O)

Natural Areas Core Objective 2: To maintain the land, or that feature or habitat, in its natural state and setting			
Objective	Performance Target	Means of Achievement (Action)	Manner of Assessment (Timeframe)
To protect existing native vegetation growing beside Berrara Creek	Native vegetation protected and continuing to establish	Prevent removal of existing native vegetation in the area shown shaded in Landscape Concept Plan.	Retention of existing native vegetation. (O)
		Remove weeds from the reserve	Weeds present in no more than 10% of riparian vegetation (O)
		Encourage residents and visitors to not dump rubbish and garden refuse in the reserve and road reserve	No dumping of rubbish (O)

Natural Areas Core Objective 3: To provide for restoration and regeneration of the land			
Objective	Performance Target	Means of Achievement (Action)	Manner of Assessment (Timeframe)
To revegetate parts of the reserve as described on the Landscape Concept Plan	Identified areas of the reserve revegetated	Form a Berrara Foreshore Care Group to work on improvement/maintenance tasks under Council guidelines	Foreshore Care group formed and working to re-vegetate identified areas (CT)
		Revegetate those parts of the area shown shaded in Landscape Concept Plan that currently have little native vegetation	Revegetation work undertaken as detailed in the Landscape Concept Plan (CT)
		Excavate existing rubbish mound and revegetate	Rubbish mound removed and revegetated (CT)
To reduce the incidence of erosion within the reserve	Improved water quality in Berrara Creek	Stabilise surface of former road leading to lower level of reserve	Surface stabilised and erosion controlled (CT)
		Stabilise the drainage channel adjacent to Berrara Road	Stabilisation work undertaken (CT)
		Restore drainage channel adjacent to Berrara Creek to prevent flooding of the reserve's lower level	Drainage channel restored (LT)
To provide for the safety of all reserve users	No reported incidents or accidents arising from legitimate use of the reserve	Maintain the reserve and reserve infrastructure in accordance with the Parks Service Level Agreement and relevant Council policies	Reserve maintained in accordance with Council's established standards (O)

Natural Areas Core Objective 4: To provide for community use of and access to the land in such a manner as will minimise and mitigate any disturbance caused by human intrusion

Objective	Performance Target	Means of Achievement (Action)	Manner of Assessment (Timeframe)
To provide for appropriate access to Berrara Beach and Berrara Creek	Safe and environmentally sensitive access points to Berrara Beach and Creek established	Repair existing concrete footpath where it meets the beach	Pathway extended and repaired as indicated on the Landscape Concept Plan (C)
		Provide walkways and access ways to the creek as indicated in Landscape Concept Plan.	Walkways and access ways installed (CT)
To provide appropriate access to and within the reserve	Access to and within the reserve provided as outlined in the Landscape Concept Plan	Relocate and upgrade car parking area as shown on Landscape Concept Plan	Car park relocated and upgraded (C)
To provide facilities for users of the reserve which meet local needs and are sensitive to the environment of the reserve	All user facilities provided as shown in the Landscape Concept Plan	Install park furniture	Park furniture installed as indicated on Landscape Concept Plan (C)
		Install toilet block as funding becomes available through the Public Toilet Strategy	Public toilet facilities provided in accordance with the Public Toilet Strategy (CT)
To provide recreational facilities which are minimal impact and provide opportunities to appreciate the natural environment of the reserve	All facilities provided as shown in the Landscape Concept Plan	All infrastructure in the reserve is designed and constructed to complement the natural environment	Furniture designed and installed as indicated on Landscape Concept Plan (LT)
To minimise impacts from the use of the reserve on the banks and water quality of Berrara Creek	No further erosion of the creek bank and water quality maintained or improved	Rationalise and formalise access points to the Creek as indicated in the Landscape Concept Plan	Access provided as indicated on Landscape Concept Plan (CT)
	The integrity of foreshore vegetation is maintained	Revegetate breaches in foreshore vegetation	Foreshore buffer is intact (O)

Natural Areas Core Objective 5: To assist in and facilitate the implementation of any provisions restricting the use and management of the land that are set out in a recovery plan or threat abatement plan prepared under the Threatened Species Conservation Act 1995 or the Fisheries Management Act 1994

There are no Recovery Plans or Threat Abatement Plans developed for the area including Berrara Creek Flats Reserve

LIST OF RELEVANT DATES AND AMENDMENTS

Amendment Number	Adopted For Exhibition	Exhibited	Adopted	Notes
Adopted Plan	31 July 2001	8 August 2001 – 4 September 2001	23 October 2001	
Amendments to Plan	29 November 2005	December 2005 – February 2006	28 March 2006	

APPENDIX ONE - LEGISLATIVE AND POLICY FRAMEWORK

The management of Community Land requires compliance with existing government legislation and policy. The main aspects of current legislation and policy affecting the management of Community Land are outlined below:

The Local Government Act, 1993

The Local Government Act 1993 includes a range of requirements on the management and use of public land.

Council owned land must be classified as either Community Land or Operational Land.

Section 35 of the Act requires that Community Land is used and managed in accordance with the following:

- The Plan of Management applying to the land;
- Any law permitting the use of the land for a specified purpose or otherwise regulating the use of the land; and
- This Division.

Section 38 of the Act requires that Council give public notice of a draft Plan of Management. The Plan must be exhibited for at least 28 days with a submission period totalling 42 days. Any relevant supplementary material must also be exhibited. A public hearing is only required if the Plan of Management proposes that Community Land be re-categorised.

Section 45 of the Act dictates the dealings a Council can have in community land, as follows.

1. A Council has no power to sell, exchange or otherwise dispose of Community Land;
2. A Council may grant a lease or licence of community land, but only in accordance with this Division;
3. A Council may grant any other estate in community land to the extent permitted by this Division or under the provisions of another Act; and
4. This section does not prevent a Council from selling, exchanging or otherwise disposing of Community Land for the purpose of enabling that land to become, or be added to, a Crown Reserve or to become, or be added to, land that is reserved or dedicated under the National Parks and Wildlife Act 1974.

Sections 46 and 47 of the Act provide clear guidelines for Council with respect to the granting of leases, licences and other estates on community land. This includes permissible uses, means of granting leases, licences and other estates, timeframes and subleases, development and dedication of community land as public road.

The Local Government Act 1993 also considers acts of vandalism in public places (eg injuring plants and animals or defacing property) and gives Councils the power to establish and enforce alcohol free zones.

The Fisheries Management Act, 1994

Under Section 205 of the Act, the Minister's consent is required for any cutting, removal, damage or destruction of mangroves, seagrasses or any other prescribed marine vegetation on public land.

Native Vegetation Conservation Act 1997

This Act replaces SEPP 46 and incorporates native vegetation clearing controls previously contained in SEPP 46, the Soil Conservation Act 1938, the Western Lands Act 1901, the Crown Lands (Continued Tenures) Act 1989 and the Forestry Act 1916. The Act provides for the development of Regional Vegetation Management Plans by community based Regional Vegetation Committees. Among other things, the Plan will highlight areas where the condition of native vegetation should be improved and recommend areas that should be revegetated.

Section 7 provides that a person shall not ringbark, cut down, poison, top lop, remove, injure or otherwise destroy any tree or cause such to be done on any protected land in or within 20 metres of the bed or bank of any part of a river, stream, lake, lagoon or swamp, etc, without prior approval from the Department of Land and Water Conservation.

Protected lands which are identified as prescribed streams in the Shoalhaven are:

- * Clyde River and 8 tributaries
- * Coonemia Creek
- * Croobyar Creek
- * Crookhaven River
- * Currumbene Creek
- * Parma creek
- * Shoalhaven River and 28 tributaries including
- * Kangaroo river
- * Brogers Creek
- * Broughton Creek
- * Yalwal Creek
- * Wandandian Creek

National Parks and Wildlife Act, 1974 (as amended)

The National Parks and Wildlife Act, Part 8A, 118A states that:

1. "A person must not buy, sell, or have in possession or control any threatened species or endangered population."
2. "A person must not pick any threatened species, population or ecological community, being a plant."

A number of plants and animals that are not threatened are also protected by the National Parks and Wildlife Act.

This applies on community land as well as National Park or Crown land.

Threatened Species Conservation Act 1995

The objectives of this Act are:

- a) *To conserve biological diversity and promote ecologically sustainable development;*
- b) *To prevent the extinction and promote the recovery of threatened species, populations and ecological communities;*
- c) *To protect the critical habitat of those threatened species, populations and ecological communities that are endangered;*
- d) *To eliminate or manage certain processes which threaten the survival of evolutionary development of threatened species, populations and ecological communities;*
- e) *To ensure that the impact of any action affecting threatened species, populations and ecological communities is properly assessed;*
- f) *To encourage the conservation of threatened species, populations and ecological communities by the adoption of measures involving co-operative management.*

Species Impact Assessments must be written for all proposed new work that is 'likely to significantly affect threatened species, populations or ecological communities or their habitats'.

Rural Fires Act 1997

Section 63(1) states:

“It is the duty of a Public Authority to take the notified steps (if any) and any other practicable steps to prevent the occurrence of bush fires on, and to minimise the spread of a bush fire on or from:

- (a) any land vested in or under its control or management; or
- (b) any highway, road, street, land or thoroughfare, the maintenance of which is charged to the authority.”

One of the objects of the Rural Fire Act is to provide “for the protection of the environment by requiring certain activities to be carried out having regard to the priorities of ecologically sustainable development described in Section 6(2) of the Protection of Environment Administration Act 1991”

NSW Environmental Planning & Assessment Act 1979

The EP&A Act has the following objectives:

- To encourage the proper management, development and conservation of natural resources ...for the purpose of promoting the social and economic welfare of the community and a better environment; and
- The protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities and their habitats.

Zoning

Any land use proposed for an area must be consistent with the zoning that is applied to the land by Council's Local Environment Plan.

Environmental Assessment

Environment Assessment must be carried out for any proposed activity or development. Any change in the use of a reserve area requires a development application (DA) and environmental assessment of the proposed activity under Part 4 of the EP&A Act forms part of the DA. A review of environmental Factors (REF) under Part 5 of the EP&A Act must also be written for those proposed activities which do not require development consent.

Protection of Environment Operations Act 1997

This legislation replaces the Clean Air Act 1961, Clean Waters Act 1970, Pollution Control Act 1970, Noise Control Act 1975, and the Environmental Offences and Penalties Act 1989. It is an offence for a person to discharge pollutants to waters unless they hold an environment protection licence.

Crown Lands Act, 1989

Many of the Crown reserves managed by Council have been categorised, for management purposes, as Natural Area. The Crown Lands Act requires that Council, in managing this land, must observe environmental protection principles; conserve natural resources (including water, soil, flora, fauna and scenic quality) wherever possible; encourage, where appropriate, multiple use, including public use and enjoyment; and where appropriate, sustain, in perpetuity, the land and its resources. Council must manage the land in the best interests of the people of New South Wales.

Water Management Act 2000

The objects of this Act are to provide for the sustainable and integrated management of the water sources of the State for the benefit of both present and future generations and, in particular:

- (a) To apply the principles of ecologically sustainable development;
- (b) To protect, enhance and restore water sources, their associated ecosystems, ecological processes and biological diversity and their water quality;
- (c) To recognise and foster the sufficient social and economic benefits to the State that result from the sustainable and efficient use of water, including:

- (i) benefits to the environment;
 - (ii) benefits to urban communities, agriculture, fisheries, industry and recreation;
 - (iii) benefits to culture and heritage; and
 - (iv) benefits to the Aboriginal people in relation to their spiritual, social, customary and economic use of the land and water;
- (d) To recognise the role of the community, as a partner with the government, in resolving issues relating to the management of water sources;
 - (e) To provide for the orderly, efficient and equitable sharing of water from water sources;
 - (f) To integrate the management of water sources with the management of other aspects of the environment, including the land, its soil, its native vegetation and its native fauna;
 - (g) To encourage the sharing of responsibility for the sustainable and efficient use of water between the Government and water users; and
 - (h) To encourage best practice in the management and use of water.

Part 3A Protection of Rivers and Lakes (covered under Rivers and Foreshores Improvement Act 1948)

Protected land – the bank, bed or shore of protected waters; not more than 40m from top of the bank or shore of protected waters; material deposited on or under the abovementioned land.

Protected waters – a river, lake (associated with river), coastal lake or lagoon (including any permanent/temporary channel between a coastal lake or lagoon and the sea).

A permit is required to excavate on, in, under protected land; remove material from protected land; do anything which obstructs/detrimentally affects flow of protected waters (or is likely to do so).

This does not apply to Council. However if the Constructing Authority believes that work conducted by/for Council has:

- (a) damaged or detrimentally affected or is likely to damage or detrimentally affect protected land; or
- (b) caused or is likely to cause, whether directly or indirectly, protected waters to contain their course;

then they may require Council to undertake specified works in a specified time.

Environment Protection and Biodiversity Conservation Act 1999

This Act provides protection for matters which are considered to be of national environmental significance (NES). Specifically:

- World Heritage properties;
- RAMSAR wetlands;
- Nationally threatened species and communities;
- Internationally protected migratory species;
- Commonwealth areas;
- Nuclear actions.

The EPBC Act establishes a new legislative framework to protect and conserve nationally important aspects of the environment and to conserve biodiversity.

The Act is triggered only if there is a direct action (on-ground) involved, if there is an effect on a NES matter and if the impact is significant.

Should the Act be triggered, all State Government approvals are firstly required before the matter is referred to the Federal Government for final approval.

NSW Coastal Policy 1997

The overriding vision of the 1997 Coastal Policy is the ecological sustainability of the NSW coast. The natural environment of the coastal zone must be protected, rehabilitated, and improved whilst providing for ecologically sustainable development and use of resources, including appropriate public access and use.

NSW Wetlands Management Policy 1996

The NSW Wetlands Policy encourages the management of wetlands so as to halt or, where possible, reverse loss of wetland vegetation; declining water quality; declining natural productivity; loss of biological diversity; and declining natural flood mitigation.

Shoalhaven City Council Recreation Strategy (1999)

Council adopted a Recreation Strategy in late 1999 which aims to:

“Improve the quality of life in the Shoalhaven by creating a diversity of recreation opportunities whilst protecting and enhancing the natural and built environment”.

The Recreation Strategy identifies a range of actions to meet this goal, based on the following:

The provision of recreation facilities, programs and services is to:

- (a) Be based upon an assessment of current and future needs;
- (b) Be realistic in terms of Council’s (and the community’s) ability to operate and maintain them;
- (c) Ensure the achievement of equity of opportunity for all individuals and groups within the city, regardless of age, ability, ethnicity or economic capacity;
- (d) Avoid unnecessary duplication of opportunities;
- (e) Be based upon efficiency, quality and continuous improvement principles and approaches;
- (f) Be based upon meaningful community consultation;
- (g) Incorporate resource sustainability practices and principles;
- (h) Incorporate best practice risk management processes to reduce public risk; and
- (i) Include the encouragement and support of community and commercial initiatives in the provision and management of recreation opportunities.

Shoalhaven City Council Policy for the Provision of Local Skateboard Facilities (1999)

Council adopted a policy in late 1999 to assist local communities in the development of local skateboard facilities.

This policy states that:

- (a) A needs assessment will be undertaken by Council before Council commits support to the project;
- (b) Council will only contribute 50% of the cost of the facility (up to \$40,000);
- (c) Allocation of resources depends on annual budget allocations;
- (d) In-kind donations will not be accepted for construction; and
- (e) A total project cost must be determined (this is to include the cost of landscaping, signage, shade, garbage bins and the like).

**APPENDIX TWO - SECTION 54C OF SHOALHAVEN CITY
COUNCIL LOCAL ENVIRONMENTAL PLAN 1985
(AS AMENDED)**

Notwithstanding clause 9, development consent is not required for:

- (a) The erection or installation of bins, bus shelters, fencing, lighting (excluding sportsgrounds), minor shelters, park and street furniture, seats or viewing platforms (not exceeding 25m² in area); or
- (b) The erection in public parks, recreation areas and reserves of barbeques, buildings or structures for the purpose of bridges, boardwalks or staircases, picnic tables or playground equipment; or
- (c) The erection or installation of goal posts, sight screens and similar ancillary sporting structures on sporting or playing facilities (excluding grandstands, dressing sheds and the like); or
- (d) The construction of pedestrian paths and cycleways; or
- (e) The erection or installation of signs (including name, directional, interpretive and regulatory warning signs in parks, foreshores and natural areas);

By or on behalf of the Council.

APPENDIX THREE – LEASES, LICENCES AND OTHER ESTATES

[s 45] What dealings can Council have in community land?

- 45 (1) [No power to sell] A council has no power to sell, exchange or otherwise dispose of community land.
- (2) [Lease or licence] A council may grant a lease or licence of community land, but only in accordance with this Division.
[subs (2) am Act of 1998 s3 and sch 1]
- (3) [Grants] A council may grant any other estate in community land to the extent permitted by this Division or under the provisions of another Act.
Note: The word estate has a meaning. See the Interpretation Act of 1987, Section 21 (1)
[Note Insrt Act 140 of 1998 s3 and sch 1]
[subs (3) subst Act 140 of 1998 s 3 and sch 1]
- (4) [Reserved or dedicated land] This section does not prevent a council from selling, exchanging or otherwise disposing of community land for the purpose of enabling that land to become, or be added to, a Crown reserve or to become, or be added to, land that is reserved or dedicated under National Parks and Wildlife Act 1974.

[s 46] Leases, licences and other estates in respect of community land – generally

- 46 (1) [Requirements] A lease, licence or other estate in respect of community land:
- (a) may be granted for the provision of public utilities and work associated with or ancillary to public utilities; or
 - (b) may be granted, in accordance with express authorisation in the plan of management and such provisions of the plan of management as apply to the granting of the lease, licence or other estate:
 - (i) for the purpose prescribed by subsection (4), or for the purpose prescribed by any of sections 36E to 36N as a core objective of the categorisation of the land concerned; or
 - (ii) for a purpose prescribed by the regulations, if the plan of management applies to several areas of community land; or
 - (iii) for a short-term, casual purpose prescribed by the regulations; or
 - (iv) for a residential purpose in relation to housing owned by the council; or
 - (v) for the purpose of providing pipes, conduits or other connections under the surface of the ground for the connection of premises adjoining the community land to a facility of the council or other public utility provider that is situated on the community land, but may not otherwise be granted.
- (2) [Limitation on purposes] Despite subsection (1), a lease, or licence or other estate in respect of community land may be granted for a purpose mentioned in subsection (1)(b) only if the purpose for which it is granted is consistent with the core objectives, as prescribed in this part of its categorisation.
- (3) [Time limit] A Council must not grant a lease or licence for a period (including any period for which the lease or licence could be renewed by the exercise of an option) exceeding 21 years.

(4) [Prescribed purposes] The following purposes are prescribed for the purposes of subsection (1)(b)(I):

(a) the provision of goods, services and facilities, and the carrying out of activities, appropriate to the current future needs within the local community and of the wider public in relation to any of the following:

- (i) public recreation;
 - (ii) the physical, cultural, social and intellectual welfare or development of persons;
- and

(b) the provision of public roads.

(5) [Purposes included] Purposes prescribed by subsection (4) in relation to the matters mentioned in subsection (4)(a)(ii) included, but are not limited to maternity welfare centres, infant welfare centres, kindergartens, nurseries, child care centres, family day-care centres, surf life saving clubs, restaurants or refreshment kiosks.

(6) [Void] A plan of management is void to the extent that it purports to authorise the grant of a lease, licence or other estate in contravention of this section.

[s 46A] Means of granting leases, licences and other estates

46A (1) [By tender] A plan of management is to specify, in relation to the community land to which it applies, any purpose for which a lease, licence or other estate may be granted only by tender in accordance with Division 1 of Part 3.

(2) [No preclusions] Nothing in this section precludes a council from applying a tender process in respect of the grant of any particular lease, licence or estate.

(3) [Over 5 year term] A lease or licence for a term exceeding 5 years may be granted only by tender in accordance with Division 1 of Part 3, unless it is granted to a non-profit organisation.

[s 46A insrt Act 140 of 1998 s 3 and sch 1].

[S 47] Leases, licences and other estates in respect of community land – terms greater than 5 years

47 (1) [Notice] If a council proposes to grant a lease, licence or other estate in respect of community land for a period (including any period for which the lease, licence or other estate could be renewed by the exercise of an option) exceeding 5 years, it must:

- (a) give public notice of the proposal; and
- (b) exhibit notice of the proposal on the land to which the proposal relates; and
- (c) give notice of the proposal to such persons as appear to own or occupy the land adjoining the community land; and

- (d) give notice of the proposal to any other person, appearing to the council to be the owner, occupier of land in the vicinity of the community land, if in the opinion of the council the land subject to the proposal is likely to form the primary focus of the person's enjoyment of the land.

[subs (2) am Act 140 of 1998 s3 and sch 1]

(2) [Contents of notice] A notice of the proposal must include:

- Information sufficient to identify the community land concerned;
- The purpose for which the land will be used under the proposed lease, licence or other estate;
- The term of the proposed lease, licence or other estate (including particulars of any option for renewal);
- The name of the person to whom it is proposed to grant the lease, licence or other estate (if known);
- A statement that submissions in writing may be made to council concerning the proposal within a period, not less than 28 days, specified in the notice.

[subs (1) am Act 140 of 1998 s3 and sch 1]

(3) [Submissions] Any person may make a submission in writing to the council during the period specified for the purpose of the notice.

(4) [Consideration of submissions] Before granting the lease, licence, or other estate the council must consider all submissions duly made to it.

(5) [Minister's consent] If a person makes a submission by way of objection to the proposal, the council must not grant the lease, licence or other estate except with the Minister's consent.

[subs (5) am Act 140 of 1998 s3 and sch 1]

(6) [Application for consent] If the council applies for the Minister's consent, it must forward with its application:

- A copy of the plan of management of the land;
- Details of all objections received and a statement setting out, for each objection, the council's decision and the reasons for its decision;
- A statement setting out all the facts concerning the proposal to grant the lease, licence or other estate;
- A copy of the newspaper notice of the proposal;
- A statement setting out the manner in which and the extent to which the public interest would, in the council's opinion, be affected by the granting of the proposed lease, licence or other estate, including the manner in which and the extent to which the needs of the area with respect to the community land would, in the council's opinion, be adversely affected by the granting of the proposed lease, licence or other estate.

[subs (6) am Act 140 of 1998 s3 and sch 1]

(7) [Director's report] On receipt of the application, the Minister must request the Director of Planning to furnish a report concerning the application within such a period as the Minister specifies.

(8) [Terms and Conditions] After considering the application and any report of the Director of Planning, the Minister, if satisfied that:

- (a) subsections (1), (2) and (6) have been complied with; and
- (b) such consent would not contravene section 46; and
- (c) in all circumstances, it is desirable to grant consent;

may consent to the granting of a lease, licence or other estate in respect of the whole or part of the land to which the application relates, subject to such terms and conditions as the Minister specifies.

[subs (8) subsrt Act 140 of 1998 s3 and sch 1]

(9) [Statement of reasons] On request by any person, the Minister must provide that person, within 14 days of that request, with a written statement of reasons for consenting to, or refusing to, the granting of a lease, licence or other estate in accordance with subsection (8).

[subs (9) insrt Act 140 of 1998 s 3 and sch 1]

(10) [Option for renewal] For the purpose of this section, any provision made by a lease or licence, or by an instrument granting any other estate, in respect of community land, according to which the council:

- (a) would suffer disadvantage or penalty if the same or similar lease, licence or other estate were not to be granted, for a further term, after the expiry date of the current lease, licence or other estate;
- (b) would enjoy an advantage or benefit if the same or similar lease, licence or other estate were to be so granted;

is taken to confer an option for renewal for a term equal to the further term.

[s 47A] Leases, licences and other estates in respect of community land – terms of 5 years or less

47A(1) [Applications] This section applies to a lease, licence or other estate in respect of community land granted for a period that (including any period for which the lease, licence or other estate could be renewed by the exercise of an option) does not exceed 5 years, other than a lease, licence or other estate exempted by the regulations.

(2) [Applicable provisions] If a council proposes to grant a lease, licence or other estate to which this section applies:

- (a) the proposal must be notified and exhibited in the manner prescribed by section 47; and
- (b) the provisions of section 47(3) and (4) apply to the proposal; and
- (c) on receipt by the council of a written request from the Minister, the proposal is referred to the Minister, who is to determine whether or not the provisions of section 47(5)-(9) are to apply to the proposal.

(3) [Ministerial determination] If the Minister, under subsection (2)(c), determines that the provisions of section 47(5)-(9) are to apply to the proposal:

- (a) the Council, the Minister and the Director of Planning are to deal with the proposal in accordance with the provisions of section 47(1)-(8); and
- (b) section 47(9) has effect with respect to the Minister's consent.

[s 47A insrt Act 140 of 1998 s3 and sch 1]

[s 47B] Lease or licence in respect of natural area

47B(1) [Restrictions] A lease, licence or other estate must not be granted, in respect of community land categorised as a natural area:

- (a) to authorise the erection or use of a building or structure that is not a building or structure of the kind prescribed by this section, or the regulations; or
- (b) to authorise the erection or use of a building or structure that is not for a purpose prescribed by this section or the regulations.

(2) [Void] A lease, licence or instrument granting any other estate is void to the extent that its provisions are inconsistent with this section.

(3) [Erection] In this section, erection of a building or structure includes rebuilding or replacement of a building or structure.

(4) [Prescribed subs (1)(a)] The following purposes are prescribed for the purposes of subsection (1)(a):

- (a) walkways;
- (b) pathways;
- (c) bridges;
- (d) causeways;
- (e) observation platforms;
- (f) signs.

(3) [Prescribed subs (1)(b)] The following purposes are prescribed for the purposes of subsection (1)(b):

- (a) information kiosks;
- (b) refreshment kiosks (but not restaurants);
- (c) work sheds or storage sites required in connection with the maintenance of the land;
- (d) toilets or restrooms.

[s 47B insrt Act 140 of 1998 s3 and sch 1]

[s 47C] Sublease of Community Land

(1) [Further Restrictions] In addition to any restrictions created by the lease, community land that is the subject of a lease cannot be sublet for a purpose other than:

- (a) the purpose for which, as notified under Section 47(2), the land was to be used under the lease; or
- (b) a purpose prescribed by the regulations.

(2) [Void] A lease is void to the extent that its provisions are inconsistent with this section.

[s47C insrt Act 140 of 1998 s 3 and sch 1]

[s 47D] Occupation of Community Land otherwise than by Lease or Licence

(1) [Prohibition] The exclusive occupation or exclusive use by any person of community land otherwise than in accordance with:

- (a) a lease, licence or estate to which Section 47 or 47A applies; or
- (b) a sublease or other title directly or indirectly derived from the holder of such a lease, licence or estate;

is prohibited.

(2) [Application] This section does not apply to:

- (a) the occupation or use of part of the site for a senior citizens centre or home or community care facility by a duly appointed manager of the centre; or
- (b) the occupation or use of community land by persons, and in circumstances, prescribed by the regulations.

[s 47D insrt Act 140 of 1998 s 3 and sch 1]