



# **ATTACHMENTS**

**UNDER SEPARATE COVER**

**Ordinary Council Meeting**

**22 September 2020**



**NARRABRI SHIRE**  
DISCOVER THE POTENTIAL



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# AQUATIC FACILITIES MANAGEMENT PLAN

2020



**NARRABRI SHIRE**  
DISCOVER THE POTENTIAL

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## 1 Introduction

This Management Plan provides the necessary instruction for Council's staff to administer the routine functions of its public swimming facilities and provides a transparent means for the general public to understand the process.

The Management Plan aims to provide facilities which promote a healthy lifestyle and social interaction, for residents and visitors to the Region.

### 1.1 Commencement

This Management Plan will commence; 22 September 2020.

*It should be noted that this plan makes recommendations as to the adjustment of some of the annual fees and charges. It is recommended that these fees and charges be updated to reflect the current operational requirements predominantly around hire of lanes for swim clubs.*

### 1.2 Review Process

This document will be reviewed annually. Minor alterations will be at the discretion of the General Manager, major alteration or issues of community significant will require the endorsement of an ordinary Council meeting. Written submissions for review will be considered annually in accordance with the setting of the Fees and Charges up to the end display period.

### 1.3 Application

This Management Plan applies to all swimming pools operated and maintained by Narrabri Shire Council. A copy of the Plan will be available from;

- NSC swimming pools/centres;
- Download [www.narrabri.nsw.gov.au](http://www.narrabri.nsw.gov.au)

This Management Plan does not affect the operation of any Act or Regulation relating to the appropriate management of public swimming pools. The Act or Regulation shall have precedence.

NSW Department of Local Government Practice Note No. 15 - Water Safety, will provide guidance on standards not specifically discussed in this Plan.

Royal Life Saving Guidelines for Safe Pool Operation (GSPO) is recognised as an industry standard and as such will be used to assist in the provision of safe aquatic facilities.

### 1.4 Definitions

In this Policy:

Council;                      Narrabri Shire Council

#### **Aquatic Facilities**

Coordinator;	The Council Officer in charge, amongst other things, the oversight of all NSC public swimming facilities.
Pool Team Leader;	The qualified employee responsible for overall operation of an aquatic facility.
Pool Lifeguard;	The qualified employee primarily responsible for pool supervision, customer service and maintenance. A Pool Lifeguard of suitable experience can be temporarily appointed to the role of Pool Team Leader for the purpose of overseeing the operation of a facility in the absence of the Aquatic Facilities Coordinator. Minimum qualification is RLSSA Pool Lifeguard qualification
Pool Staff;	Any Council pool employee on duty at the swimming pool, including program staff, kiosk staff and approved volunteers.

#### **Aquatic Responsibility**

Code;	A local code designed to communicate the standard of behaviour required of users at NSC public swimming facilities.
Mass evacuation plan;	A plan designed to ensure the safe egress of people from an area of threat to an area of safety.
Business;	Any company, sole trader, incorporated group, sports group, school, charity, event organiser or similar.
Professional Coach/	Any person who charges a fee or is otherwise paid, whether by an individual, individuals, club or association for the provision of swim training and or coaching.
Aquatic Group;	Any swimming, water polo, triathlon club that regularly uses a NSC public swimming facility.
Facility;	Any NSC public swimming pool including the surrounding buildings, grounds and fence line.

## **2 Swimming Pools**

Council aims to provide the following facilities at their swimming centres.

### **2.1 Boggabri Memorial Swimming Pool**

- 33m swimming pool;
- Solar Heating and thermal pool blanket;
- Toddler pool;
- 1m springboard;
- 3m springboard;
- Kiosk facility;

- BBQ area;
- Change room facilities;
- Shade structures;
- Access- chair lift into main pool.

## 2.2 Narrabri Aquatic Centre

- 50m outdoor pool (seasonal operation);
- Outdoor splash pool;
- 25m indoor program pool;
- Observation stand;
- 1m diving board;
- BBQ facilities;
- Kiosk facility;
- Change room facilities;
- Multi-function room;
- Solar Heating and thermal (pool blanket indoor pool);
- Shade structures;
- Access; full disabled access.



## 2.3 Wee Waa Memorial Swimming Pool

- 33m swimming pool;
- Solar heating and thermal pool blanket;
- Pool Blanket Toddler pool;
- BBQ facilities;
- Kiosk facility;
- Shade structures;
- Change room facilities;
- Access- chair lift into main pool.

### 3 Emergencies

- a. The contact number for emergencies is 000;
- b. Council's Customer Service during operating hours (02) 6799 6866;
  - i. Boggabri Pool – (02) 6743-4379;
  - ii. Narrabri Pool – (02) 6799-6782;
  - iii. Wee Waa Pool – (02) 6795-4384
- c. Council's 24-hour Emergency Service number 0429 911 111.
  - i. Boggabri Pool – (02) 6743-4379;
  - ii. Narrabri Pool – (02) 6799-6782;
  - iii. Wee Waa Pool – (02) 6795-4384

### 4 Mass Evacuation Plans

Prior to any large event (e.g. a school carnival) Council staff will implement a mass evacuation plan. The plan will be included in a brief site induction for the event organisers and assistants. Refer Annexure 3 Template Narrabri.

### 5 Administration

#### 5.1 Records

- a. Staff will ensure all records for the operation of swimming pools are legible and are to be uploaded into Council's electronic records system on a regular basis.

#### 5.2 Records to be Maintained by Each Pool

- a. A daily running sheet where water analysis, chemical additions, events, maintenance and staff attendance will be recorded;
- b. Incident/accident reports;
- c. Daily, monthly and annual patronage;
- d. All local sales transactions e.g. season tickets and kiosk sales;
- e. Daily financial reports and banking;
- f. All other documentation required by Council's WHS system.

#### 5.3 General Compliance

- a. Staff, contractors and volunteers will comply with Council's WHS policies and procedures at all times;
- b. All incidents are to be reported, investigated and addressed in accordance with Council's WHS procedure.

## 6 Access to Council Resources

- a. The phone in the facility is for the use of Council staff to conduct Council business.
- b. The phone in the facility can be used for children to contact parents. An appropriate fee applies.
- c. The phone in the facility can be used for emergency calls by members of the general public if no pool staff member can be found or if the person has been directed to by pool staff.

## 7 Conditions of Entry

### 7.1 Aquatic Responsibility Code

The following is the wording from the Narrabri Shire Council Aquatic Responsibility Code which is a condition of entry that applies to all persons within Council's swimming pool grounds without written exemption from Council.

"Narrabri Shire Council is promoting the Aquatic Responsibility Code for patrons attending all Council operated swimming facilities. The code is a safety initiative introduced to keep all pool users safe. Regardless of how you enjoy your water activities, always show courtesy to others and be aware that there are inherent risks in all water-based recreation activities that common sense and personal awareness can reduce. These risks include shallow water, wet surfaces and patrons of varying age and swimming ability.

It is your responsibility to know and obey this code. Pool safety is a shared responsibility that requires a cooperative and community approach. Observe the code below and share with others the responsibility for a great experience at the Pool.

- a. Observe and obey all signs and warnings at the pool as well as all lawful directives given by Pool Lifeguards and Pool Staff;
- b. Always check the pool depth before entering the water. Enter the water in a safe manner and check for other swimmers before jumping in. You must avoid people already in the water;
- c. Always be respectful of other people and the nature of their pool activity;
- d. Never run on wet areas at the pool. Always move around the pool in a safe manner;
- e. If you are involved in, or witness an incident at the pool, remain at the scene and identify yourself to the Pool Lifeguard;
- f. Do not swim, bathe or undertake any other aquatic activity if your ability is impaired by drugs or alcohol;
- g. Always swim in water that is a safe depth for your capability. Take lessons from a qualified instructor to progress and learn swimming, first aid and resuscitation skills;
- h. Children under the age of 10 must always be actively supervised by a responsible person over the age of 16;
- i. Parents and carers must always communicate and establish responsibility for direct supervision of children around water. Designate at least one adult "Water Watcher" to supervise children around pools especially during social gatherings. Don't rely on older siblings or other children to supervise swimmers and don't rely on swimming lessons, flotation devices or other equipment to make a child "water safe";
- j. It is recommended that you always swim with a friend and keep a look out for your mates;

- k. Our Pool Lifeguards are at the pool all day to assist, educate and help you to understand the Aquatic Responsibility Code. This will ensure that all pool patrons enjoy themselves at Narrabri Shire Council Pools. Irresponsible, reckless and anti-social behaviour may result in immediate suspension from pool use and/or cancellation of season passes".

## 7.2 RLSSA – Keep Watch at Public Pools

Supervision of young children at public pools has been a concern for the aquatics industry for many years. There is often the misconception by parents and carers that the responsibility for supervision of young children lies solely with lifeguards. Lifeguards are employed on a 1:100 ratio based on the expectation that parents will provide direct supervision of children.

WA Coroner Alistair Hope in response to a drowning in a public aquatic facility said:

"Competent lifeguards acting responsibly should provide an important safety feature, but they are not intended to, and cannot be expected to, replace the close supervision of parents and teachers which is required for many children, particularly primary school age children."

Keep Watch at Public Pools is an important program that contributes significantly to ensuring safety and reducing risk at our public swimming pools. It provides a consistent message in line with best practice to the public about effective supervision of young children at public pools and demonstrates that the aquatics industry is organised and takes their responsibility for patron safety seriously.

The program is administered by Royal Life Saving Society of Australia- NSW Branch and was adopted into NSC swimming facilities in 2012. It promotes the following safe supervision policies which are additional conditions of entry:

- a. Children under 5 years must be accompanied into the centre by a responsible adult over 16 years of age and supervised at arm's reach at all times;
- b. Children under 5 years must wear a coloured armband whilst in the facility. Armbands are a visual aid to assist Pool Staff in identifying who should be within arm's reach of an adult and a reminder to parents and guardians about the importance of close supervision for small children;
- c. Children under 10 years must be accompanied into the centre by a responsible adult over 16 years and actively supervised at all times;
  - i. Procedure for assessment of unattended swimmers 10 years to 16 years (refer Annexure D).
- d. In order for parents or guardians to actively supervise they should be dressed ready to take immediate action, including unexpected entry into a pool.

## 7.3 Diving

The Royal Life Saving Society of Australia advises that there is a significant body of evidence to suggest that shallow water diving can lead to a range of injuries that include head injuries (broken teeth, scalp injuries and facial fractures), to the more significant spinal cord injury.

As such 'No Diving' and 'Shallow Water' signs have been positioned around Council's pools in locations where it is deemed dangerous.

Any group wishing to conduct dive starts into the shallow end of a competition pool (relays) must conduct a risk assessment of the activity beforehand and acknowledge responsibility for

consequences arising from the activity. The group acknowledges that the Royal Life Saving Society and Narrabri Shire Council have warned against diving in such areas and that significant injury could result.

#### 7.4 Additional Conditions of Entry

The following conditions of entry also apply to all persons entering swimming pool grounds without written exemption from Council.

A person must:

- a. Pay the entry fee on entering the facility or display a current season ticket;
- b. Comply with Section 10 Activities Requiring Approval- All Pools;
- c. Not partake in behaviour considered to be anti-social, provocative, abusive or violent;
- d. Not obstruct the entry/exit points to a pool;
- e. Not bring glass or glass containers into the facility;
- f. Not interfere with any pool safety equipment;
- g. Follow all directions for the safe use of any area of the facility including, springboards, water slides, inflatable play equipment and children's play equipment etc;
- h. Not enter a pump room, chemical storage area, plant room, kiosk or staff area;
- i. Not enter a first aid room except to receive first aid or at the invitation of pool staff;
- j. Provide evidence of age, if requested;
- k. Always wear an appropriate unsoiled bathing costume;
- l. Be unsoiled before entering a pool;
- m. Not urinate or defecate anywhere in the grounds other than in a public toilet;
- n. Not attempt to enter the swimming pool grounds whilst intoxicated or under the influence of drugs, nor bring or consume alcoholic or non-prescription drugs on pool grounds;
- o. Not cause or permit an animal that is under the person's control to enter or remain in swimming pools grounds. Guide dogs excepted (see Section 16, Access for People Living with a Disability);
- p. Not smoke in any area of a public swimming facility nor within 4 m of an entrance;
- q. Not take photographs, video or electronic recordings in change rooms;
- r. Not sit on, dive over, or otherwise interfere with lane ropes;
- s. Not damage, deface, interfere with or alter swimming pool infrastructure or signage;
- t. Not obstruct any authorised person or employee of, or contractor to perform their required duties.

### 8 Operating Standards

#### 8.1 Water Quality

- a. Water quality at NSC swimming pools will comply with guidelines set by the NSW Ministry of Health. Lengthy review processes have been known to lead to the Ministry's standards lagging current industry best practise. During these times the Aquatic Facilities Coordinator may, in conjunction with the Open Space Manager implement a regime outside of the Ministry's standards if they are widely considered by the aquatic industry to be better;
- b. Chemical concentrations will be automatically monitored and controlled;
- c. Pool staff will manually test chemical concentrations at least three times daily to confirm that automated equipment is properly calibrated and working correctly;

- d. Water turnover times will comply with guidelines set by the NSW Ministry of Health or to the capability of the pool's reticulation system i.e. a filtration system built in the 1960s can operate at maximum capacity but cannot achieve the turnover rates of modern filters;
- e. Microbiological sampling of pool water will be undertaken regularly and tested by a NATA (National Association of Testing Authorities) accredited laboratory for independent testing;
- f. The NSW Ministry of Health field officers are allowed free access to any facility to measure Council's compliance with the current health standards;
- g. If adequate sanitisation cannot be maintained for any reason the facility will be closed until the matter can be rectified.

## 8.2 Grounds Maintenance

Lawns will be kept to the standard of high-profile parkland. Lawn weeds and burs (e.g. bindii) will be eradicated quickly when detected. With regard to watering, facilities will comply with any water restrictions in place. These may differ from restrictions placed on domestic users.

Gardens will be kept tidy and free of weeds.

Trees will be periodically thinned to promote growth and longevity and to assist in the prevention of limb drop.

## 8.3 Building Maintenance

Buildings will be kept in a clean and serviceable state. Improvements to buildings will usually occur during quieter periods i.e. winter or pre-season establishment and as budgetary limitations allow, under the guidance of the NSC Open Space Manager.

## 8.4 Swimming Pool Maintenance

Programmed preventative maintenance of swimming pools is primarily carried out in the winter season or during pre-season establishment. Maintenance issues that arise during the operational season will be dealt with in a timely manner as possible.

## 8.5 Pool Supervision

Council currently use the minimum lifeguard to swimmer ration of 1:100 as outlined in Royal Life Saving's Guidelines for Safe Pool Operation (GSPO).

During periods of high patronage or higher risk, more pool supervision is provided.

Supervisors of visiting groups (e.g. schoolteachers) are responsible for the supervision of their charges. At least one trained Lifeguard will be on site at all times to assist and intervene should emergency action be required.

NSC has adopted the Keep Watch at Public Pools program detailed in 7.2 of this plan to promote direct supervision of young children.

## 8.6 Staff Qualifications

NSC aims to provide pool staff with the following qualifications as minimum aquatic industry requirements;

Aquatic Facilities Coordinator;

- Cert IV- Aquatic cluster of competencies from Community Recreation training package;
- RLSSA Pool Lifeguard Licence;
- WorkCover NSW approved first aid certificate.

Pool Team Leader

- Cert III- Aquatic cluster of competencies from Community Recreation training package;
- RLSSA Pool Lifeguard Licence;
- WorkCover NSW approved first aid certificate.

Pool Lifeguard

- RLSSA Pool Lifeguard Licence;
- WorkCover NSW approved first aid certificate.

Many staff have qualifications over the minimum level. External and in-house professional development is provided for staff to ensure currency of qualifications and competency of skills. Pool staff comply with all working with children legislation as part of their employment with Narrabri Shire Council.

## 9 Kiosk Facilities

Narrabri Aquatic centre – kiosk café hours will correspond with opening hours of the season kitchen or hot food hours will be to correspond to times of higher patronage and adequate staffing including qualified food handling staff.

Boggabri and Wee Waa pools – Kiosk hours will correspond with opening hours kitchen/hot food will only be offered when a kiosk staff is rostered on for events or times of high patronage. To maximise access to package foods and drinks Council will consider the installation of vending style machines to minimise the impact on staff (especially as on most occasions there is only one staff member on duty in either pool) being taken away for supervising the pool water.

## 10 Activities Requiring Approval – All Pools

A person must not do any of the following within swimming pool grounds without the written exemption from Council:

- a. Neither engage in trade or commerce nor distribute any circulars, advertisements, paper drawing or photographic material;
- b. Camp or reside on the land;
- c. Bring or leave any rubbish, refuse, scrap metal, rock, soil, sand or any other such substances onto swimming pool grounds;
- d. Remove any dead timber, logs, trees, flora, whether standing or fallen;
- e. Kill, capture or in any way interfere with any animal, bird, fish or other fauna, whether native or introduced, plant any tree, shrub, herbage or other plant without prior consent.

*Offenders will be prosecuted under relevant State or Federal Law.*

A person must not do any of the following within swimming pool grounds without approval from the Team Leader

- a. Bring or use inflatable devices such as air mattresses, domestic pool toys, or balls onto the grounds. This excludes PFD's (Personal Floatation Devices- Life jacket) and flotation devices specifically designed as a "learn to swim" aid;
- b. Use scuba diving fins;
- c. Play or conduct any unapproved sport or contest;
- d. Enter or leave the facility by any other means other than through the main entrance provided.

*Offenders may be requested to leave the facility.*

### 10.1 Swimming Lessons

To ensure an appropriate level of safety and quality for the community, Narrabri Shire Council requires people wanting to conduct private learn to swim lessons at our facilities, to apply in writing and provide copies of the following;

- a. Current AUSTSWIM Certificate or equivalent;
- b. Current CPR qualification;
- c. Certificate of Currency- Public Liability and Professional Indemnity; \$20,000,000 each;
- d. Working with Children Check- Certificate for Self Employed People; for more information visit [kids.nsw.gov.au](http://kids.nsw.gov.au)

Applications should state which pool they wish to do business at and any previous experience they have. Once an application has been received it can usually be assessed quickly and verbal approval given if everything is in order. To assist with this, all required documents must be submitted with the application and be current. Failure to do so may increase the application assessment time. Applicants will also receive a written determination.

Applications can be emailed, mailed or handed to the Pool Coordinator.

Once you have received approval you will be required to undertake a site induction of the facility and sign a site induction form. Please allow enough time (10 minutes) to complete this prior to your first lesson.

All learn to swim operators can leave their business details at facilities to be pass them onto patrons enquiring about learn to swim opportunities. Learn to swim instructors need to comply with all areas of this management plan.

Approval will only be granted where adequate lane space exists. Exclusive use of available lane space will attract the appropriate lane space charge.

## 11 Authority

All Pool Staff are authorised to:

- a. Refuse entry to school aged children during school hours unless they are accompanied by a parent or legal guardian;
- b. Request a person to leave the swimming pools facility if they do not comply with any part of this management plan; and
- c. Implement a temporary or permanent prohibition on entry to the facility.

If a person who is supervising others is requested to leave the facility, the person/s they are supervising will also be required to leave. Poorly behaved spectators, coaches, teachers, parents, visitors and other people may also be banned from a facility.

### 11.1 Time Out Notice

People who are banned from the pool may be issued a "Time Out Notice". The notice will outline the reason for the ban and the length of time which it is effective. People who return to the pool within the timeframe outlined may be charged with trespass and fined under the Enclosed Lands Protection Act NSW Section 4(1) 1901. Refer Annexure "Time Out Notice".

A ban at any one pool in the Council area applies to all pools operated within the Council area.

A ban will not interfere with a student's school education. As such any school activity which requires a student to attend the pool will not be included in the ban.

Before entering the facility after a ban, the patron must arrange to meet with the Aquatic Facilities Coordinator to confirm that the specified "time out" period has lapsed.

### 11.2 Refusal to Comply

A patron refusing to comply with the directions of Pool Staff may be banned from entering any Narrabri Shire Council swimming pool grounds and issued a Time Out Notice.

Pool Staff are to contact the NSW Police or Council's Compliance Department to arrange the forced removal of an offender who will not voluntarily leave. Offenders may be charged with trespassing and fined under the Enclosed Lands Protection Act NSW Section 4(1) 1901.

### 11.3 Appeals

A person who wishes to appeal the imposition of a ban is entitled to write to Council for a review and state their reasons why the ban should not be enforced.

A review will be conducted within 15 days of receipt of correspondence, and the appellant notified of the outcome in writing. The ban will remain in place during the appeals process.

### 11.4 Schools Suspension

During school hours, children who have been suspended from school, and released into the supervision of a carer will not be permitted into a facility without their designated carer.

Suspended children who are perceived by the Team Leader to have arrived at the pool with the intention of interrupting a school group or teacher will be requested to leave the facility.

## 12 Bookings / Events

### 12.1 General

- a. All bookings must be lodged on an "Event Booking", with all fields on the application completed. The event booking must be in accordance with the applicant's insurance coverage and risk assessment on ratio of event staff to number of persons booked for the event;
- b. It is preferable that applications are submitted at least one calendar month prior to a proposed event;
- c. When the swimming pools are closed (winter) all applications are received by the Aquatic Facilities Coordinator via mail (46-48 Maitland Street, Narrabri, 2390) or email ([council@narrabri.nsw.gov.au](mailto:council@narrabri.nsw.gov.au)) and are entered into the electronic booking system before being passed onto the relevant Pool Coordinator for action. Confirmations are sent in writing prior to the start of the next swimming season;
- d. Applications should be lodged at Narrabri Shire Councils Head Office directly, via mail (46-48 Maitland Street, Narrabri, 2390) or email ([council@narrabri.nsw.gov.au](mailto:council@narrabri.nsw.gov.au)). Confirmations of the booking will be either verbally or in writing from an authorised Team Leader;
- e. A "Facility User Agreement" between the group and Council must be entered into before an event can commence. The Agreement will outline any supporting documentation required e.g. certificate of currency for public liability;
- f. A risk assessment for the event and a site induction for the organisers must be completed before an event can commence;
- g. After hour's events will be considered and the appropriate fee payable if the event is approved;

## 12.2 Priorities for Bookings

Each request to use the facilities during approved operating hours will in most cases be approved according to the following priority:

1. An event approved by resolution of Council;
2. National/International events (including public holidays and days of national significance e.g. Australia Day festivities);
3. State events;
4. Regional events;
5. Local events;
6. Annual school swimming carnivals;
7. Relevant local incorporated swimming club events;
8. Activities organised by Federal or State Government Departments;
9. Non-swimming carnival school requests (e.g. school sport or physical education classes);
10. Community groups;
11. Charity fund raising events;
12. Private swimming instructors;
13. Commercial businesses activities;
14. Private functions.

Council will also take into consideration the order in which booking requests are received, event income and size of the event when allocating time and space to events.

## 12.3 Cancellation of Bookings

- a. Council has the right to cancel or change bookings at any time. Affected parties will be notified as soon as possible;
- b. Where a booking is cancelled, Council staff will endeavour to provide an acceptable alternative if available;
- c. Groups who need to cancel an event will let the respective Pool Manager know as soon as possible to allow for changes to staffing and programming of pool space.

## 12.4 Standing Bookings

Pools are to facilitate the following bookings each year subject to the receipt of an application and any mandatory supporting documentation.

- a. The Boggabri Swimming Club Inc. - Swim training, club nights, club championships held on a normal club night and one carnival per year;
- b. The Narrabri Swimming Club Inc. - Swim training, club nights, club championships held on a normal club night and one carnival per year;
- c. The Wee Waa Swimming Club Inc. - Swim training, club nights, club championships held on a normal club night and one carnival per year;
- d. One swimming carnival event per school located in the Narrabri Shire Local Government area;
- e. State / regional school swimming carnivals;
- f. Intensive swimming program (lessons) for schools.

Should a user group fail to adhere to a booking time, or their use of the Pool is not maintained for a period greater than two days without notification, the booking may be terminated, and no refund made.

### 12.5 Business Compliance

A person or business wishing to conduct trade at a swimming pool must apply in writing to Council and be able to provide evidence of:

- a. A current Workers Compensation policy, if they employ staff;
- b. Current child protection checks for staff;
- c. A current Public Liability Insurance policy (minimum value AUD \$20,000,000);
- d. Staff being adequately trained and qualified for the tasks they are proposing to undertake and ensure that:
  - i. Any equipment to be used at the pool is in good working order and designed and approved for the purpose for which it is intended;
  - ii. Operations comply with this Management Plan.

### 12.6 Limitations on Business Permitted

- a. A business may not compete against a similar service already offered at the pool without the consent of the Aquatic Facilities Coordinator, and the Licensee of that service if one exists;
- b. Council staff may prohibit any business which is not in keeping with this Management Plan or the principal purpose of a swimming pool;
- c. The mailing address of the pool is not to be provided as a point of contact for a business;
- d. The phone number at the pool is not to be provided as a point of contact for a business nor is it available for use by a business, excepting emergencies when pool staff are not available to make an emergency phone call.

## 13 Pool Lane Allocation

The following lane allocations are the default setting for a pool when there are no bookings:

- a. At least one (1) lane will remain available to the general public at all times when the pool is open to the public for general use. Provision of an edge is preferable for both elderly and young swimmers as it offers a quick point of respite in the event of fatigue;
- b. Lane ropes will be installed for lap swimmers where practical;
- c. The Pool team leaders can assign different swimming speeds to lanes e.g. slow, medium, fast;
- d. Lap swimmers are required to swim in a lane with swimmers of a similar speed and ability;
- e. The number of lap swimming lanes can be increased or reduced at the discretion of the Pool Coordinator;
- f. Lane configuration is at the discretion of the Pool Team leader;
- g. The lane configuration should provide maximum utilisation of the available space;
- h. Lap swimmers are required to keep to the left of a lane (swim clockwise);
- i. The Pool Team Leader may temporarily ban the use of flippers, hand paddles or other swimming devices if they are perceived to create a risk to other swimmers;
- j. Pools with moveable stair ways will have such structures in place whenever the programming of the pool allows.

## 14 Use by Aquatic Groups

### 14.1 General

- a. It is Council responsibility to provide a facility that is safe for occupation and play, and one that is regularly and appropriately maintained;
- b. If at any time a group perceives that the facility is or has become unsafe then all practical measures must be taken to ensure the safety of its members. A representative of the group will notify the Pool Coordinator immediately;
- c. Aquatic groups must abide by this Management Plan and actively promote all conditions of entry to their members and visitors;
- d. All members will endeavour to maintain cordial relations with pool patrons, other coaching personnel, pool staff and Council officers.

### 14.2 Employees and Volunteers

- a. Aquatic groups shall ensure that employees & volunteers of their group comply with NSW Child Protection Legislation;
- b. Aquatic groups will be required to take out and maintain appropriate Public Liability, Professional Indemnity as well as any other insurance required by the Workers Compensation Act, in regard to the conduct of activities of the group within the facility;
- c. Coaches, instructors and other predominant members of their organisation are required to complete a site induction with the Pool Team Leader at the beginning of each season. The site induction shall include the location of rescue equipment, fire extinguishers, telephone, emergency phone numbers, facility access and any other items relevant to the workplace and NSC's safety system. Site inducted persons are required to sign a site induction form;
- d. The group must ensure that any professional coach/instructors at the pool in their role as a professional coach/instructor holds:
  - i. A current WorkCover approved first aid qualification;
  - ii. CPR qualification;
  - iii. Level 1 Coaching qualification or equivalent as a minimum.
- e. From time to time Council may request copies of current qualifications to ensure compliance with this management plan and with any standing user agreement;
- f. Clubs must ensure that volunteer (unpaid) persons substituting, either long or short, for a professional coach/instructor satisfy all other areas of this management plan except clause 14.2 d iii. Council may request copies of the same from substitute coach/instructors performing duties at the facility;
- g. Supervision of participants under the direction of a coach, instructor or other predominant member of the club shall remain the responsibility of the aquatic group for the duration of the session. Before and after the session the group will ensure that any participant under the age of 10 years of age shall be under the active supervision of a person over the age of 16 at all times. Pool staff shall not be included in this type of supervision. The club, coach or group are responsible to collect all children upon entry and are responsible for the child to they depart the facility, or a parent guardian takes responsibility of the child;
- h. In the event of an aquatic emergency a coach, instructor or other predominant members of the group will be required to evacuate from the water all participants under their supervision. Those participants will be their primary consideration during the emergency.

Secondary shall be any assistance they can provide to pool staff up to the level of their training. Other members of the group may also be called upon by pool staff if further assistance is required.

### 14.3 Lane Space

- a. The Pool Coordinator has discretionary authority to alter standing bookings. Consideration needs to be given to safety, bather load and programming. Extra allocations can be rescinded at any time. The group shall not presume extra lane space will be available when programming sessions. Extra lane space will be charged at the rate set out in the Narrabri Shire Council's Revenue Policy and Fees for Service;
- b. Groups attending the pool during a booked time slot are not to use lanes set aside for members of the public without the permission of the Pool Coordinator;
- c. General members of the public may individually book lanes however priority will be given to Swim Clubs and Group training sessions where sufficient notice has been provided.

### 14.4 Equipment

- a. Except where disputed by the resident club, lane ropes, false start ropes, backstroke flags and starting platforms kept at a facility, are a Council asset. These will be maintained and insured by Council;
- b. Equipment such as that listed above will be made available to aquatic group users for use at training, swim camps, club nights, club championships and carnival type events;
- c. Being the primary user of the equipment aquatic user groups will be approached to discuss a co-contribution when equipment requires replacement and or upgrading.

### 14.5 Swim Clubs

- a. Council will allow the formation of one swim club per facility. The swim club will be provided storage facilities where possible and a preference for bookings. The current swim club at each pool is the preferred swim club and no other swim club will be recognised while these club exist;
- b. Not for profit Swim clubs will be allowed one lane per booking free of charge. Additional lanes will be charged under the adopted Council fees and charges all lane hire will be undertaken utilising the lane hire booking application form all booking must be done prior to the day of the session and to optimise acceptance of the booking prior to the season commencement;
  - i. Swimming Coaches and instructors will only be provided a dedicated lane if they hold either:
  - ii. Current AUSTSWIM Teacher of Swimming and Water Safety Certification, and a current CPR Certificate (where they will be teaching individuals how to swim);
  - iii. Or a bronze, silver, gold, or platinum coaching license and a current CPR Certificate (where they are providing lap swimming instruction - not learn to swim).

- c. The Swim Club must:
  - i. Be incorporated and have a constitution;
  - ii. Be run by an elected Committee that at least has the following individual office bearers President Secretary and Treasurer
- d. Parents or guardians must escort children 10 years old and under to and from Coaches/Instructors;
- e. These conditions apply to any activity at the pool where a fee is paid to the supervising individual or business;
- f. Have public liability insurance to the value 20 million dollars;
- g. Provide and maintain their own equipment Use of this equipment must be approved by the Pool Coordinator;
- h. Ensure sufficient supervision is provided to perform a custodial role for members under 10 years of age and not rely on Pool staff to do this role;
- i. Nominate a liaison person (committee member to represent the club to discuss operational matters with the use of the pool and these matters are only to be discuss with pool management and if the issue is non-urgent written correspondence would be the preferred method to enable Pool management to investigate the issue in a timely manner. The aim of this clause is to reduce confusion on any issue and to remove the involvement of pool staff.

#### 14.6 Swim Clubs Standard Bookings

- a. The Narrabri Swimming Club – weekly meet between October and March for the pool between the hours of 6.00pm and 8.00pm on an agreed business day weeknight;
- b. The Wee Waa Swimming Club - weekly meet between October and March for the pool between the hours of 5.00pm and 7.00pm on an agreed business day weeknight;
- c. The Boggabri Swimming Club - weekly meet between October and March for the pool between the hours of 5.00pm and 7.00pm on an agreed business day weeknight;
- d. One swimming carnival event per swimming club located in Narrabri Shire;
- e. One swimming carnival school event per school located in Narrabri Shire;
- f. State / regional school swimming carnivals.

Council's Learn to Swim, Squad and other programs will be given precedence for lane hire above private instructors.

#### 14.7 Swimming Club Lane Allocation and Payment

- a. The Council must receive payment of all fees either on a weekly or monthly term. Upon booking the User will be required to stipulate the term;

##### **Lane allocation**

- a. Lane allocation is made by staff in accordance with this User Agreement and their decision is final;

##### **Swimming Club:**

- a. Council will provide one lane free of charge for the purpose of swimming club instruction and training;
- b. A second lane can be booked by swimming clubs for use by lodging a booking application with the Council;

- c. A monthly fee for lane hire applies to swimming clubs;
- d. 50m Outdoor Pool Narrabri - \$765.00 per calendar month between October and March; extension into April will occur dependent on State Championships;
- e. 25m Indoor Pool Narrabri - \$550.00 per calendar month between April and September;
- f. 33m Outdoor Pool Boggabri and Wee Waa - \$250.00 per calendar month between October and March;
- g. At least Fifteen (15) swimming club members will be using a single lane prior to use of the second lane being approved. This is to maximise lane use and public access to the pool;
- h. Additional lane hire will incur a fee of:
  - i. 50m Outdoor Pool Narrabri – As per current Council Fees and Charges;
  - j. 25m Indoor Pool Narrabri - As per current Council Fees and Charges;
  - k. 33m Outdoor Pool Boggabri and Wee Waa - As per current Council Fees and Charges.

#### 14.8 Schools

- a. No lane hire fee on standard sports bookings;
- b. Gate admissions are required to be invoiced at the end of each booked session;
- c. Cash payments will not be accepted from schools for entry into the pool;
- d. All schools are to complete the Schools invoice form prior to arriving at the pool. An Invoice will then be sent for payment from Council.

### 15 Recreational Devices and Areas

#### 15.1 Springboards

Where springboards are provided these will operate at the discretion of Council staff. A springboard will be disabled (closed) by the placement of a sign and/or barrier between the end of the board and the route which a person using a springboard correctly, would normally enter. Users of springboards must obey all directives and instructions given by Pool Staff and on signage. Safety is the paramount consideration when using a springboard. A person who uses a springboard without authorisation, incorrectly or in a manner which endangers themselves or others may be requested to leave the facility.

#### 15.2 Inflatable Play Structures

Users of inflatable play equipment must obey all directives and instructions given by Pool Lifeguards and provided on signage. Noncompliance may result in the offender being requested to leave the facility.

#### 15.3 Children's Play Equipment

The use of any child play equipment is restricted to children under the age of 10 years. Noncompliance may result in the offender being requested to leave the facility.

## 15.4 Toddler and Wading Swim Pools

- a. Toddler's and wading swim pools are for children under the age of 10 with developing swimming ability. The pool coordinator may make exceptions to this upon request and with suitable reason;
- b. "Rough play" is not allowed;
- c. People who use the toddler and wading swim pools without regard for the safety of children may be requested to leave the facility.

A refund of the pool entry fee will not be given to a person instructed to leave the facility due to incorrect use of a recreational device or area.

## 16 Access for People Living with a Disability

### 16.1 Assistance

Staff are to provide all reasonable assistance to facilitate the enjoyment of the swimming pool facilities by all patrons.

### 16.2 Guide Dogs

Trained guide dogs are permitted inside the facility.

### 16.3 Pool Access

Council will aim to develop disabled access to each facility.

### 16.4 Limits on Manual Handling and Care of Impaired Persons

Due to the risks associated with manual handling of people, pool staff are not able to provide assistance to persons who require any kind of lifting as part of their everyday use of the facility.

### 16.5 Refund Entitlement

If staff are unable to provide the assistance required to facilitate access to the pool for a person with a disability a refund of pool entry is to be made.

## 17 Young Children

### 17.1 Supervision

Children under the age of 10 must be actively supervised by a responsible person over the age of 16 at all times; 'actively supervised' in this instance means that the supervising person shall be dressed in attire consistent with entering the water, and be in the vicinity of and maintain visual contact with the child.

Teachers and/or instructors given charge of students at an NSC swimming pool will provide supervision in accordance with supervision requirements set down by the NSW Department of Education and Training.

With regard to supervision of students, Lifeguards and Teachers on duty can be included as part of supervision ratios. However, Lifeguards often have other duties to perform around the facility that take them away from the pool. Alternative supervision will need to be arranged by the group during these times. Supervision of students must be constant, and distractions restricted so far as practically possible.

## 17.2 Clothing

All children must;

- a. Wear a clean (unsoiled) bathing costume;
- b. Non toilet trained children must wear a waterproof nappy at all times when in the pool grounds.

*Waterproof nappies are available from the kiosk.*

## 17.3 Change Rooms

Children up to the age of 7 years are allowed to enter the change room of the opposite sex so long as they are accompanied by a supervising adult. The Pool Coordinator has discretionary authority to make exceptions to this if requested, on a case by case basis.

## 17.4 Abandoned Children

Where a child under the age of 10 is identified as abandoned at the pool (i.e. without the required supervision), Pool Staff will firstly ensure the physical safety of the child and then attempt to contact the parent(s) or legal guardian via phone.

If a parent is unable to be contacted, refuses to collect the child or does not arrive within 30 minutes, Council staff will contact either the NSW Police Service or Department of Community Services (DOCS) to arrange the transfer of the child into their custody. The Aquatic Facilities Coordinator will be notified immediately.

The 24-hour contact number for DOCS Helpline is 132 111.

Any child abandonment incident is to be recorded on a near miss form and noted on the Daily Running Sheet.

# 18 Consultation

## 18.1 Supervision

Children under the age of 10 must be actively supervised by a responsible person over the age of 16 at all times; 'actively supervised' in this instance means that the supervising person shall be dressed in attire consistent with entering the water, and be in the vicinity of and maintain visual contact with the child.

Teachers and/or instructors given charge of students at a NSC swimming pool will provide supervision in accordance with supervision requirements set down by the NSW Department of Education and Training.

With regard to supervision of students, Lifeguards and Teachers on duty can be included as part of supervision ratios. However, Lifeguards often have other duties to perform around the facility that take them away from the pool. Alternative supervision will need to be arranged by the group during these times. Supervision of students must be constant, and distractions restricted so far as practically possible.

## 19 Fees and Charges

Swimming pool fees and charges will be in accordance with those set out in the Revenue Policy and Fees for Service of the current NSC Operational Plan.

### 19.1 Single Entry Fees

- a. Fees will be charged for pool entry and pool services in accordance with Council's current Revenue Policy Fees for Service;
- b. A 'spectator' for the purpose of charging a single-entry fee is a person who enters the facility to supervise another patron, watch an event or use the facility, otherwise without entering the water;
- c. An 'adult' for the purpose of charging a single-entry fee is any person aged 18 years or older and who is no longer attends secondary education;
- d. A 'child' for the purpose of charging a single-entry fee is any person under the age of 18 and who is still enrolled in secondary education;
- e. Children aged 3 years and under are permitted free so long as they have a full fee-paying adult entering with them;
- f. A 'concession' is offered to those persons using the facility who are holders of, and can produce, a Centre Link issued Pension Card, or a Department of Veteran's Affairs Pension Card. A concession only applies to the holder of the card;
- g. Pool Staff required to hold a Pool Lifeguard Licence as an essential qualification and who are entering the facility for the reason of training for the physical component of their Licence, or supervision of swimmers will be admitted free;
- h. Teachers entering the facility for the purpose of supervising a school group at the pool will pay a fee per teacher or per school;
- i. Resident swimming club coaches will pay for entry to the facility;
- j. Carers of people living with a disability entering the facility for the purpose of directly supervising the person under their care will pay a spectator fee;
- k. Individual who are prohibited from a swimming facility because of unacceptable behaviour or other contravention of this plan are not entitled to a refund;
- l. Council may enter into an agreement with schools and groups for a payment method for entry fees other than cash at the pool i.e. invoice.

### 19.2 Season Tickets

- a. For the reason of setting season ticket prices to fairly reflect the service offered by a facility, two (2) levels of service have been established;
  - i. Level 1: Small and medium sized facilities open between 6-10 hrs per day. (The Boggabri & Wee Waa centres fall within this category);

- ii. Level 2: Larger facilities open more than 10 hours per day. (The Narrabri centre falls within this category).
- b. A "family" for the purpose of charging a fee for a family season ticket is a family unit of two adults in a relationship and their children up to the age of 18, and or listed on the family Medicare card. The Aquatic Facilities Coordinator has the delegation to consider personal circumstances which may require a variation from this definition. This will be done on a case by case basis for persons who request a variation and will be recorded via correspondence or a file note on Council's records system;
- c. Season tickets are issued to the designated person nominated on the season ticket application form and are not transferable. Unauthorised use of a season ticket by a person who is not the holder may result in the cancellation of the ticket with no refund;
- d. Season tickets are only valid for the swimming season in which they are purchased;
- e. Season ticket holders must have their ticket in their possession whilst at the facility and are required to use it to access the centre. Patrons who are not known to centre staff and who cannot produce their season ticket will be required to pay the relevant entry fee;
- f. At facilities where eftpos facilities are not available patrons can pay with cash or via eftpos at their nearest NSC Customer Service office. Season tickets can only be collected at the pool;
- g. Requests for refunds due to exceptional circumstances need to be in writing to Council and will be assessed on a case by case basis by the Aquatic Facilities Coordinator r who has the delegation to approve a refund.

### 19.3 Multi Entry Passes

- a. Use of a multi entry pass is not restricted to the purchaser and can be used for multiple people to access any Narrabri Shire Council swimming facility;
- b. Multi entry passes are valid across more than one season however, staff have the authority to prevent a person purchasing more than one multi entry passes near the end of the pool season, if they think a person is doing so to avoid an anticipated price rise of the next season.

### 19.4 Evidence of Age

- a. Children under the age of 10 years must be actively supervised at all times by a responsible person over the age of 16;
- b. Evidence of age can be requested as a condition of entry to a facility to:
  - i. Determine which fee to charge;
  - ii. Confirm they are 16 years old for the purpose of supervising children under the age of 10.;
  - iii. To determine if the person is able to stay unsupervised by a responsible person.
- c. Discretionary authority is given to Council staff to charge the appropriate fee if he/she is reasonably convinced that a person is not the age that they pertain to be and is:
  - i. Attempting to avoid paying the full fee; or
  - ii. Attempting to enter the pool unsupervised, (i.e. claiming to be over the age of 10); or
  - iii. Attempting to supervise another patron (claiming to be over the age of 16).
- d. Acceptable evidence of age will be a current "Proof of Age Card", Drivers Licence including Learner, or Australian Passport;
- e. A person who cannot provide evidence will be:
  - i. Charged the full entry fee;

- ii. Advised they are not eligible to supervise a person under the age of 10;
- iii. Advised they are ineligible to enter the pool whilst not unsupervised by a person over the age of 16 years.

### 19.5 Other Fees

- a. Lane hire fees are applicable for user groups who require exclusive use of lane space. The charging of a lane hire fee does not exclude the user from complying with any part of this Management Plan;
- b. An after-hour's fee (per hour) is applicable to groups who have permission to hold an event outside of the normal operating hours. The relevant entry fee still applies to each member of the group in addition to the after-hour's fee;
- c. Council may apply a fee to the use and hire of recreational devices (springboards, water slides, inflatable play equipment) which will be consistent with Council's Revenue Policy and Fees for Service;
- d. Council provides free entry to pools during official ceremonies for Australia Day;
- e. Council is able to provide one additional free entry day each year at each pool to celebrate a national or community event. Nomination of the free entry day will be approved by the General Manager;
- f. Council will allocate a set amount in each year's operational budget to cover the cost of waiving of fees. Requests for waiving of fees need to be made in writing to Council and approved by the General Manager within the annual budget allocation approved by Council.

## 20 Operating Hours

### 20.1 Pool Season and Hours of Operation

The summer swimming season will approximately align with terms 4 and 1 of the school years so long as weather conditions are favourable, and patronage is adequate.

The Narrabri Aquatic Centre will operate all year round, excluding any maintenance period required with the outdoor areas becoming available with the summer swimming season.

Discretion is given to the Open space Manager to make minor changes to season start finish dates as well as spread of hours. Major changes will be put to Council for review and consideration.

Opening dates will be advertised in The Narrabri Courier and on Council's website in the month prior to opening.

Each pool will have a permanent sign at the entrance displaying the start finish date of that centre. Those dates will also appear on Council's website for the duration of the season.

The spread of hours will generally be consistent with the two-tiered service delivery arrangement outlined in section 19.2 of this plan. The spread of hours will be set considering the requirements of key user groups, patrons, operational requirements and resource constraints.

## 20.2 Site Details

**Boggabri** summer season: second Monday in October to first Friday in April.  
October, March and April: 12.00noon- 6.00pm

November December, January and February: 12.00 noon- 7.00pm  
Public Holidays: 12.00 noon- 6.00pm  
Christmas Day and Boxing Day: Closed

**Narrabri summer** season: second Monday in October to the day before the first Saturday in April.  
Mon- Fri- Summer: 6.00am- 7.00pm  
Saturday- Summer season: 9.00am- 6.00pm  
Sunday- Summer season: 12.00noon- 6.00pm  
Summer season Completion 1 April End of Business Day

*Where a State or Regional carnival is scheduled for late April, consideration will be given to extending the summer period subject to numbers*

**Narrabri winter** season first Saturday in April to the day before second Monday in October.

Mon-Friday- Winter Season: 6.00am-6.00pm  
Saturday- Winter season: 12.00noon – 4.00pm  
Sunday- April, May and September: 12.00noon – 4.00pm  
Sunday- June, July and August: Closed  
Public Holidays Winter Season Closed  
Christmas Day & Boxing Day: Closed  
Good Friday to Easter Monday Closed

**Wee Waa** summer season: second Monday in October to first Friday in April.  
October, March and April: 12.00noon- 6.00pm

November, December, January and February: 12.00noon – 7.00pm  
6.00am- 8.00am (dependant on demand)  
Public Holidays: 12.00noon – 6.00pm  
Christmas Day and Boxing Day: Closed

*Where demand permits and qualified staff are available consideration will be given to extending morning and afternoon swimming times.*

## 20.3 Alterations to Usual Hours of Opening

All pools will be closed:

- a. 5.00pm Christmas eve;
- b. Christmas Day;
- c. Boxing Day;
- d. Good Friday through Easter Monday.

A pool may not open, may open late, or close early due to:

- a. Unfavourable weather resulting in absence or likely absence of swimmers e.g. rain;

- b. Safety reasons e.g. lightning, equipment failure, contamination, vandalism;
- c. Interruptions to power supply;
- d. In the event of imminent weather and or lightning Council Staff may close outdoor pool areas until such time as the weather is considered safely past. During such times patrons will be required to evacuate from the water and take appropriate cover until notified by Council staff that it is safe to return to the water;
- e. Aquatic Facilities Coordinator or Pool Team Leader is authorised to close any part of the facility or the entire facility to control a risk to patrons, colleagues or the facility if he or she considers the risk to be escalating toward high;
- f. The pool season may be extended to accommodate special events, training for State or National level swimming championships, school holidays or favourable weather. The pool hours may be adjusted during this time to suit the actual use;
- g. During periods of hot weather Aquatic Facilities Coordinator or Pool Team Leader have the authority to extend the opening times of the pool considering available staff and number of patron's present;
- h. The Aquatic Facilities Coordinator or Pool Team Leader will notify the organiser of any group booked in for an event of an alteration to usual hours as soon as possible;
- i. The Pool Team Leader will notify the Aquatic Coordinator Manager of changes to opening times as soon as possible;
- j. During brief power outages the pool can remain open if adequate disinfection levels, clarity and lighting etc. can be maintained. Other areas of the facility must also be able to continue to operate safely. During extended power outages the pool will be closed.

### Annexures

[ECM\\_1208582 Aquatic Facility Management Plan Narrabri Shire Council](#)

[ECM\\_1727464 Aquatic Centre Facilities Pool Emergency Action Plan](#)

[ECM\\_1724177 Swimming Pool User Agreement 2018](#)

[ECM\\_1724176 Aquatic Facilities Booking Application - All Activities](#)

[ECM\\_1724174 Application for Swimming Pool Lane Space](#)

[ECM\\_1727462 Aquatic Facilities Conditions of Entry](#)

[ECM\\_1727475 Wee Waa Aquatic Facility Site Plan](#)

[ECM\\_1727473 Narrabri Aquatic Facility Site Plan](#)

[ECM\\_1727476 Boggabri Aquatic Facility Site Plan](#)

www.  
**narrabri.**  
nsw.gov.au

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**From:** m.hartog-smith  
**Sent:** Fri, 14 Aug 2020 09:47:28 +1000  
**To:** Council  
**Cc:** Narrabri Swimming; Fiona Connell  
**Subject:** Aquatic Facilities Management Plan-Submission Narrabri Stingrays Swimming Club  
**Attachments:** Narrabri Stingrays Submission for Aquatic management Plan.pdf  
**Importance:** Normal

Dear Mr General Manager,

Please find attached our submissions regarding the Narrabri Shire Draft Aquatic Facilities Management Plan.

Regards  
Megan Hartog-Smith  
President  


Sent from my Samsung Galaxy smartphone.



**Narrabri Stingrays Swimming club**  
[www.narrabristingrays.com.au](http://www.narrabristingrays.com.au) [narrabristimming@gmail.com](mailto:narrabristimming@gmail.com)

**Narrabri Shire Council**  
 46-48 Maitland Street  
 Narrabri, NSW, 2390  
 02 67996866  
[council@narrabri.nsw.gov.au](mailto:council@narrabri.nsw.gov.au)

14 August 2020

RE: Submission on Aquatic Facilities Management Plan

**Dear Mr. General Manager,**

As a significant user of the Narrabri Shire Aquatic facilities, the Narrabri Stingrays Swimming Club wishes to make submissions regarding the proposed Management Plan.

#### Submission 1 – Section 7.3 Diving

Section 7.3 refers to the possibility of users conducting diving activities in the shallow end of the competition pool after appropriate risk assessment. We have no objection to this clause. Our concern is there is no provision for diving in the indoor 25meter pool. Currently diving in this pool in any form is prohibited. When this facility was built, it was constructed with the depth (at the deep end) that would allow diving. The pool depth is well within recommended diving depths from RLSSA. Being unable to dive at all during the winter months has a significant impact on the athletes training capacity. We have enclosed relevant documents for your reference.

Proposal – That the process of diving risk assessment be extended to include the indoor 25 meter pool.

#### Submission 2 – Section 14.7 Swimming Club Lane Allocation and Payment

Section 14.7 clause g refers to there being a requirement that 15 swimmers are required per lane before a second lane will be granted. As a club, we have serious concerns with this number. Our concern is predominately around athlete safety and training activity quality. 15 swimmers per lane places athletes at a high risk of collision and injury whilst severely impacting the quality and type of training activities that can be conducted. This risk is increased further with athlete age. The club is more than willing to demonstrate and discuss impacts if needed for further clarity. Furthermore, consideration should be made around the public patronage at the time of using this rule. At most non-peak times when the squads are training it is not necessary for this to be implemented as the public patronage is low.

Proposal – That clause g. be amended to read as follows “At least 10 swimming club members will be using a single lane prior to use of the second lane being approved. This is to be applied in times of high public patronage only. This is to maximise lane use and public access to the pool.”

Submission 3- Section 14.7 Swimming Club Lane Allocation and Payment

There is no provision in the plan for the club to negotiate which pool (indoor or outdoor) is to be used. Currently, when the outdoor pool is open, it is expected that the outdoor pool be used. There should be a clause whereby in times where water temperature, air quality and weather places athletes at risk, the club is able to negotiate with the pool co-ordinator and/or pool staff for the use of the indoor facility.

Proposal - Section 14.7 Swimming Club Lane Allocation and Payment – Lane allocation – b. include a clause to the effect “Club will be able to negotiate with pool staff the pool (outdoor or indoor) allocation based on the assessment of risk in regards to water temperature, air quality and weather”.

Furthermore, we ask that the council consider the need to include provisions in the plan for the risk assessment of air quality. During the recent bushfires, there was no process for pool staff and the club to assess the risk to athletes regarding air quality.

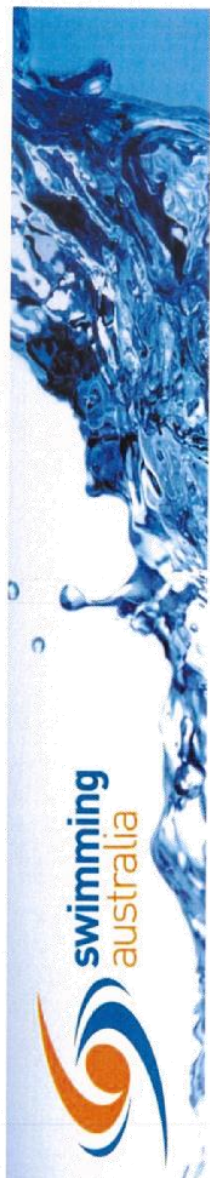
The Narrabri Stingrays Swimming Club appreciates Council and staff for the revision of this plan and look forward to discussing our proposals further. Please contact President Megan Harrog-Smith or Head Coach Fiona Connell for further information regarding our proposals.

Sincerely,

Megan Harrog-Smith  
President

Fiona Connell  
Head Coach

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## Dive Entry for Competitive Swimming Policy

### Policy Context

General dive entry into water bodies is an emotive subject given a history of incidents contributing to personal injury. The dive entry into swimming pools has undergone a number of reviews over the last fifteen years with some risk minimisation changes in the swimming pool depth considered suitable for dive entry. There has also been a clearer 'distinction' between the recommended minimum depths for recreational swimmers as opposed to swimmers in a competition or training environment. The Swimming Australia Pool Depths Guidelines (adopted 2006) confirms Swimming Australia's policy position in relation to dive entries into swimming pools.

### Policy Scope

The scope of this policy relates to the conduct of dive entry for swimming competition and swimming training under the supervision of a qualified coach, official or water safety teacher. The policy relates to dive entry into swimming pools that meet all health industry standards for water clarity and visibility. The policy does not relate to: dive entry for novice or recreation swimmers; dive entry without supervision of a coach, official or water safety teacher; or dive entry for open water environments.

### Policy Purpose

The purpose of the policy is to inform swimming clubs, swimming facilities and swimming coaches or water safety teachers of Swimming Australia's position in relation to dive entry for swimming competition or swimming training. The policy is to assist Clubs, facilities, coaches and water safety teachers undertaking swimming events and training activities to make decisions and to issue directives to ensure safety of participants.

### Policy

#### 1. Preparation Guidelines

The following guidelines must be followed prior to undertaking dive entry for competition or training activities

- a. Swimming dive entry activities into a water depth less than 1.8metres must be supervised by an accredited ASCTA Swimming coach or under the control of an accredited Swimming Technical Official.
- b. A risk assessment checklist must be undertaken prior to the undertaking of dive entry activities at all pool facilities where the coach, technical official or swimmers are unfamiliar with the venue or the current facility condition.
- c. Swimmers must be able to consistently demonstrate shallow dive entry technique in water above 1.8 metres in depth and deemed competent in dive technique before undertaking dive entries at minimum SAL guideline depths.



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## 2. Dive Entry Depth Guidelines

- a) Less than 1.0 metre - No dives
- b) 1.0 metre to less than 1.2 metre - Concourse dive (providing concourse is not more than 0.4 metre above the water surface)
- c) 1.2 metre to less than 1.35 metre – Concourse dive or Platform dive (As long as the platform is not more than 0.75 metre above the water surface)
- d) 1.35 metre and more - As per FINA Rule FR2.7

## 3. Shallow water starts in competition

If the water depth at the start end prevents compliance with the rules relating to dive starts, all competitors shall commence the race in the water and shall be positioned in the water with one hand on the wall and shall have both feet on the wall.

In relay races where the water depth is less than 1.0 metre the changeover shall be from the water, with the competitor having one hand and both feet on the wall at the point of changeover

### Application

Swimming Australia will utilise this "Dive Entry for Competitive Swimming Policy" to inform clubs, coaches, facility operators, officials and facility owners of the adopted position of the sport. As such the policy will be:

- Displayed on the Swimming Australia website for reference;
- Distributed to state and territory associations, officials networks and club networks;
- Utilised as the reference for responding to all enquiries from clubs, facility operators, swimming officials and facility owners on specific swimming pool dive entry circumstances; &
- Applied to discussions with aquatic industry peak bodies in relation to the application of common standards where SAL is not directly involved.

### Consultation

The "Dive Entry for Competitive Swimming Policy 2018" is consistent with the Royal Life Saving Society (RLSS) - "Sp8 Starting Blocks (Starting Platforms)" and "SD 7.3 Water Depths" which relate to the conduct of dives for competition and training under the supervision of a coach or water safety teacher. The policy incorporates the advice of the Australian Swim Coaches and Teachers Association (ASCTA) and is representative of the industry guidelines. ASCTA, RLSS, the State & Territory Swimming Associations and a number of aquatic facility partners were all engaged in the adoption of the policy.

### Policy Review

This policy is due for review by Swimming Australia in June 2020



## Diving Depths

Whilst not wanting to stir up the debate over the issue of what should be the minimum depth of water for safe diving, the issue continues to arise regularly and questions continue to be asked.

### Disclaimer:

ASCTA do not provide advice or offer accreditation for any high diving platforms or activities. Unless otherwise specifically stated in writing the industry insurers, Marsh does not offer coverage for high diving platforms or activities unless specifically noted in writing in the policy document. This discussion relates to entries from the pool edge or starting platforms only.

### Facts:

**FINA** ([www.fina.org](http://www.fina.org)) states the following in relation to depths for pools used for competition:

- **FR 2.3 Depth** – A minimum depth of 1.35 metres, extending from 1.0 metre to at least 6.0 metres from the end wall is required for pools with starting blocks. A minimum depth of 1.0 metre is required else where.
- **FR 2.7 Starting Platforms.** The height of the platform above the water surface shall be from 0.5 metre to 0.75 metre..... The water depth from a distance of 1.0 metre to 6.0 metres from the end wall must be at least 1.35 metres where starting platforms are installed.

FINA also requires the following for Olympic Games and World Championships:

- **FR 3.3 Depth:** 2. Metres (minimum); 3 metres recommended.
- **FR 3.9 Starting Platforms:** as in FR 2.7.

**Swimming Australia** ([www.swimming.org.au](http://www.swimming.org.au)) [SAL] has a set of facility rules with the following disclaimer: "The Facilities Rules are intended to provide the best possible environment for competitive use and training. These Rules are not intended to govern issues related to the general public. It is the responsibility of the owner or controller of a facility to provide supervision of activities of the public."

SAL rules related to diving depth are a mirror of FINA FR 2.3 noted above.

The September 2006 issue of 'Swimming in Australia' magazine introduced strategies for teaching a safe and effective dive entry into the pool. In addition, to understanding teaching strategies, all coaches (and ergo Teachers- Ed) should be aware of Swimming Australia Ltd.'s "Safe Pool Depth for Diving" policy. This policy has been adapted from current Royal Life Saving Society Guidelines for Safe Pool Operations (GSP0) on depth as they apply to all competitive swimmers.



## Diving Depths

In summary the policy restricts diving under these pool conditions:

- i. Less than 0.9 metre water depth – **absolutely NO dive entry**;
- ii. 0.9 metre to less than 1.0 metre water depth – **concourse dive allowed**; providing concourse is not elevated more than 0.2 metre above the water surface;
- iii. 1.0 metre to less than 1.2 metre water depth – **concourse or platform dive**, providing concourse or platform is not elevated more than 0.4 metre above the water surface;
- iv. 1.2 metre or more water depth – **platform dive**, provided the platform is not elevated more than 0.75 metre above the water surface.

In addition, pool depth should extend for a distance of 5.0 metres from the endwall where the dive entry is made.

In all cases, teachers and coaches should supervise all diving activities by pupils and athletes and exercise prudent risk management strategies. It's important to teach competitive swimmers when and where they can safely perform a dive entry into the pool as well as monitoring their diving technique.

Royal Life Saving Society: Coaches should also note that Royal Life guidelines for 'recreational swimmers' (i.e. those not under the close supervision of a trained teacher or coach) allow for more generous (i.e. deeper) pool depth tolerance when diving.

ASCTA and Royal Life (in summary of the GSP0) recommend the following when teaching diving to learners. (Diving is defined as an entry into water where the upper body enters first i.e. the hands, arms and head are followed by the torso and lower limbs.)

- Before teaching diving, the Teacher should be cognisant of safety issues, especially the depth of water where the learner will enter.
- Learners should be taught safety factors for a entry into known and unknown depths of water such as rivers, lakes, dams and creeks.
- Information should include –
  - o the possibility that depths can change, (e.g. due to drought, tide, flooding etc);
  - o to always check the depth before entry (e.g. with a stick or slide in entry);
  - o to make sure the entry point is well clear of other people, lane ropes or obstructions;
  - o check for depth markers or warning signs;
  - o to enter, jump or dive away from the edge.
- The recommended minimum depth for diving instruction suitable for a learner is 1.5 metres. RLSSA states "The water depth should ideally be at least 1500mm (1.5m). However this must only be considered as exemplary, as some pools may not be able to provide appropriate water depths. It is suggested the above be used as guidance only and be followed where possible. If the preferred minimum water depth is not available the deepest water available should be used with the exercise of additional caution".
- Prudent risk management would also suggest that with adult learners or children with a height greater than 1.5 metres, the minimum water depth should be at least equivalent to the learner's height.
- Until a learner can successfully dive or perform a specific entry a number of times from a sitting, squatting and standing position under the supervision of an accredited teacher or coach, they

This policy represents an agreed industry view determined through consensus, research findings, peer review and ongoing good practice.  
This policy is subject to change without notice. Current as at 18/11/2014  
P.O. Box 158, Beerwah Qld 4519 T +61 7 5494 9649 F + 61 7 5494 9022 www.ascta.com



## Diving Depths

should not progress to diving or other entries off starting blocks. At each step in the learning sequence, Learners should make first attempts at new entry skill, one at a time under the close supervision of a Teacher.

- Diving activities should take place in an area segregated from swimming activities.
- A prudent risk assessment should be undertaken. This risk assessment should take into account factors (among others) such as the age, swimming ability and health of the participants, previous incidents, the activities to be undertaken during the training or tuition session, the layout of the pool and the facility, the location of the facility, the availability of rescue equipment, first aid facilities and trained water safety personnel. If the risk assessment indicates that a pool lifeguard, spotter or extra staff should be present, then steps should be taken to achieve this.
- Regardless of the outcome of the risk assessment, an Emergency Action Plan (EAP) should be developed so that if something unfortunately does go wrong, it can be dealt with in an effective and timely manner. The EAP should then be disseminated to all involved so that each person is aware of the role they are expected to play.

Issues related to diving by the general public in community pools is a whole other topic. The book, Diving Injuries: Research Findings and Recommendations for Reducing Catastrophic Injuries (Hardcover) by Milton Gabrielsen (Editor) examines 440 diving related spinal injuries and makes very interesting reading on this topic.

### References:

Swimming in Australia: ASCTA September 2006

[www.swimming.org.au](http://www.swimming.org.au)

RLSSA Guidelines for Safe Pool Operations

PR 9 Teaching of Water Entry and Diving

FD 6 Swimming Lane Design

FD24 Design of Starting Blocks (Starting Platforms)

FD 3 Pool Depth Markings


Safe Diving Practices: Competitive Applications (Keith McElroy), J Blitvich et al, 1999.

Dive depth and Water depth in Competitive Swim Starts, J Blitvich et al, 2000

[www.fina.org](http://www.fina.org)

Letter from RLSSA to ASCTA re squad supervision: 7 November 2008





**REFERENCE GROUP**

David Power - NSW Department of Education and Training – Sport Unit

Ross Morrison - NSW Department of Education and Training – Sport Unit

Gary Penfold - Aquatic and Recreation Institute / Warringah Council

Michael Ilinsky - Royal Life Saving

Steve Eccleston - Royal Life Saving

Melissa Rickwood - AUSTSWIM

Selwyn Brown - NSW Department of Education and Training – St Clair High School

Jenny Blitvich - University of Ballarat (Diving Expert)

**FURTHER INFORMATION**

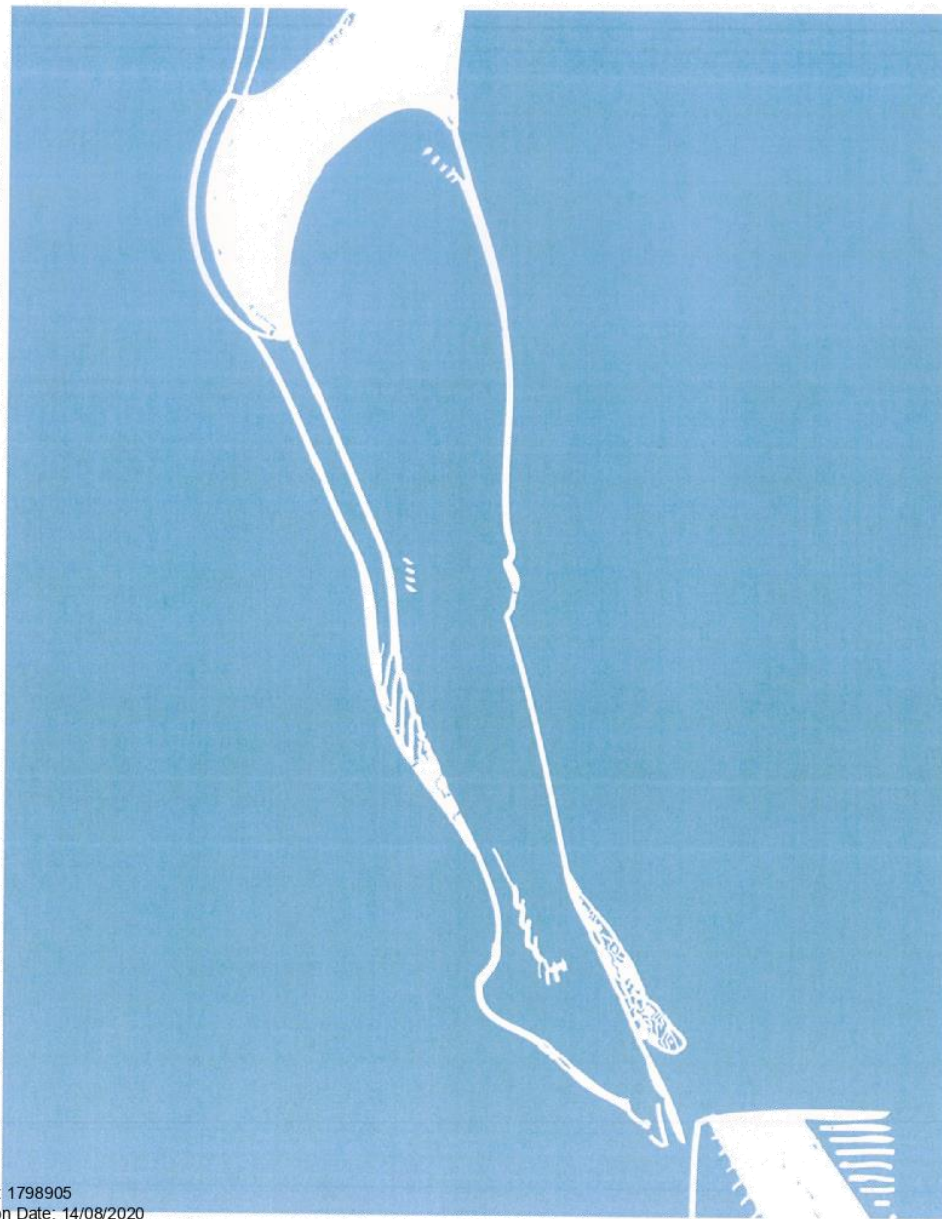
Royal Life Saving NSW, PO Box 8307, BAULKHAM HILLS  
BC NSW 2153 – telephone (02) 9634 3700

All support documents can be found at [www.royalnsw.com.au](http://www.royalnsw.com.au)

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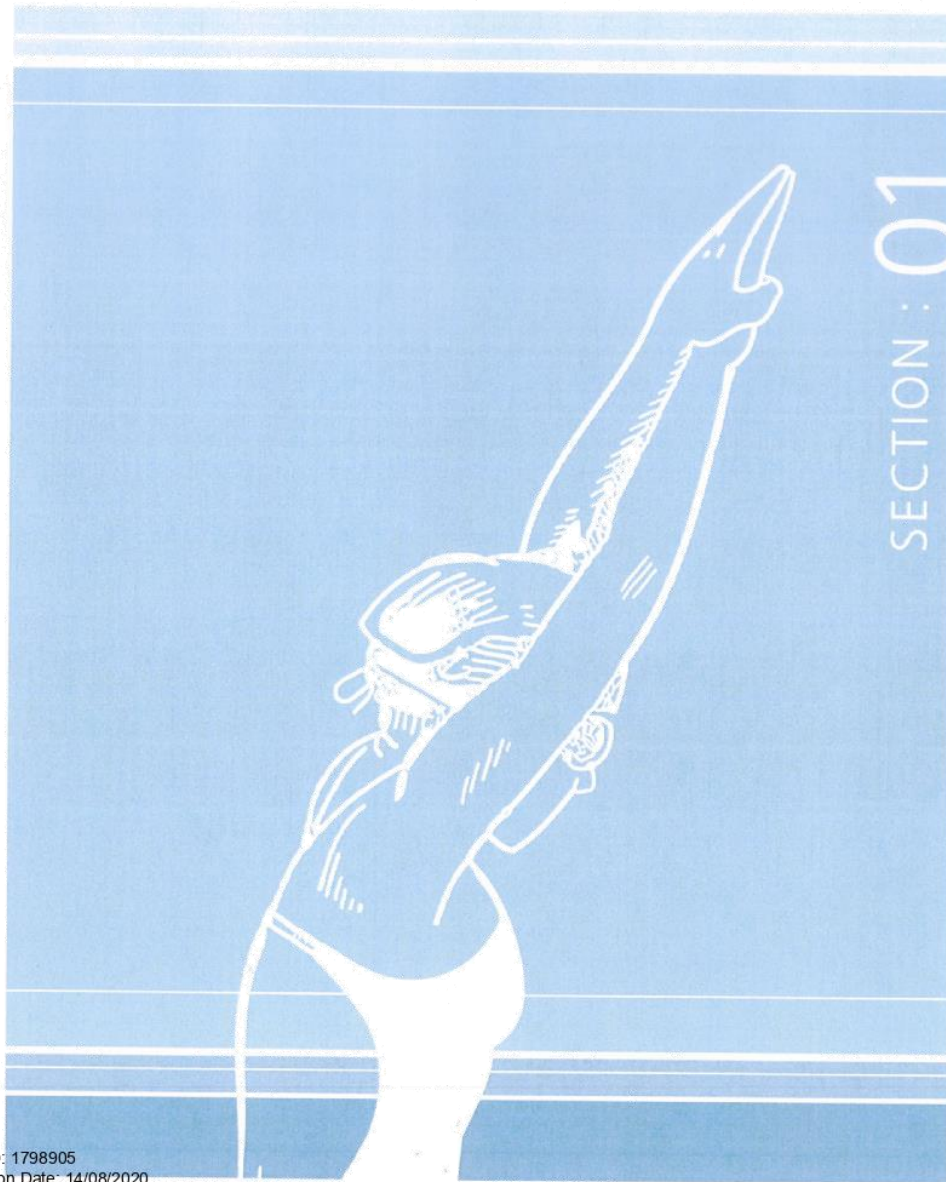
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There is a significant body of evidence to suggest that shallow water diving can lead to a range of injuries that include head injuries (broken teeth, scalp injuries and facial fractures) to the more significant spinal cord injury.



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From 2008 all NSW Department of Education and Training Schools will seek to obtain from Aquatic Facilities a recommendation on whether dive entries are permissible for the purpose of swimming carnivals. This document will assist Aquatic Facilities implement newly developed School Guidelines through the provision of templates and support documents.

For further information or assistance please do not hesitate to contact your nearest Royal Life Saving Office.

#### BACKGROUND

There is a significant body of evidence to suggest that shallow water diving can lead to a range of injuries that include head injuries (broken teeth, scalp injuries and facial fractures) to the more significant spinal cord injury. Spinal cord injury is sudden and unexpected. It can be devastating and costly in human and social terms.

Each year in Australia, about 300 – 400 new incident cases occur. Water related events accounted for 10% (n=25) of persisting spinal cord injury cases reported during 2003-04. Ninety six percent (n=23) of water related spinal cord injury reported had injury to the cervical spinal segments, with 25% sustaining complete injury to the cord after diving into bodies of water without being aware of the depth.

**Aquatic Guidelines – Safe Water Entry for Competitions – Competitive Dive Starts** has been developed in response to the Royal Life Saving Society Australia – Guidelines for Safe Pool Operation SU22 – Safe Water Entry for Competitions. Royal Life Saving Society Australia produced these Guidelines in 2006 as a result of a number of head and spinal injuries that had occurred during scheduled activities such as swimming carnivals and recreational swimming.

A competitive dive start is defined as entry into water from the side of the pool (flush or raised) or from a starting block for the purpose of starting a swimming based competition or training for a swimming based competition.

Diving is a common entry method for swimming carnival events. Diving into shallow water is a complex skill and is generally taught through structured education and training programs. Many competitors participating in swimming carnivals across NSW have not had the opportunity to undertake a progressive education program on diving.

**Aquatic Guidelines – Safe Water Entry for Competitions – Competitive Dive Starts** provides guidance to Aquatic Facility personnel to ensure Principals and Swimming Carnival Coordinators receive appropriate information on safe water entry for competitors during competition.

Specifically the Guidelines will provide aquatic centres with information (documentation and templates) and a risk management approach to establish what type of water entry is appropriate at their facility with reference to competitive dive starts.

## STEPS TO IMPLEMENT AQUATIC GUIDELINES-SAFE WATER ENTRY FOR COMPETITORS

Aquatic Facilities are responsible for providing standard information (as detailed in Appendix 1) to NSW Department of Education and Training Schools who wish to utilise the facility for carnival purposes.

### STEP 1.

#### COMPLETE THE SHALLOW WATER DIVING INFORMATION & RISK ASSESSMENT

Aquatic Facilities will need to complete the Shallow Water Diving Information and Risk Assessment form and have it have it available for distribution to Schools upon request.

The Shallow Water Diving Information and Risk Assessment form provides Principals and Carnival Coordinators with the following information:

**PART 1: The Water Depth** (in metres and centimetres) of the competition pool form both ends where entry may occur and a height (millimetres) measurement from water level to concourse or starting block. This information then needs to be applied to a Diving Depth Matrix by the Aquatic Facility operator (Appendix 3) to provide a "suggested entry" statement for Principals and Carnival Coordinators. The recommended diving depths outlined in the Diving Depth Matrix are based on the Royal Life Saving Australia Guideline SU 22 Safe Water Entry for Competitions (Appendix 5).

The suggested entry statement will either identify:

1. **An in-water start recommendation** (based on the depth of the competition pool and concourse height the recommendation is to commence events in the water – no diving permissible).
  2. **Competitive dive starts permitted** (based on the depth of the competition pool and concourse height a competitive dive start is permissible).
- Principals and Carnival Coordinators should then utilise the information in the Shallow Water Diving Information and Risk Assessment form and confirm the type of entry suitable for the swimming carnival.
- Principals and Carnival Coordinators can be reminded that "in-water" starts are a genuine option for carnivals with novice-swimmers. In-water starts significantly reduce the opportunity for a diving or spinal related injury.

**PART 2: Risk Identification, Assessment and Control**  
Procedures as compiled by the host Aquatic Facility. This section outlines the hazard description, current controls, likelihood details and consequence details together with a level of risk for the purpose of shallow water diving. This level of risk will be determined by utilising the Risk Management Matrix at Appendix 4.

This section will also identify key responsible people from the host Aquatic Facility and any actions that may be required.

#### SUPPORT DOCUMENTS:

Appendix 1: Shallow Water Diving Information and Risk Assessment

Appendix 2: Shallow Water Diving Information and Risk Assessment – SAMPLE from Warringah Aquatic Centre

Appendix 3: Water Depth Matrix

Appendix 4: Risk Management Matrix

Appendix 5: Royal Life Saving "Guidelines for Safe Pool Operation" SU22 Safe Water Entry for Competitions – Competitive Dive Start.

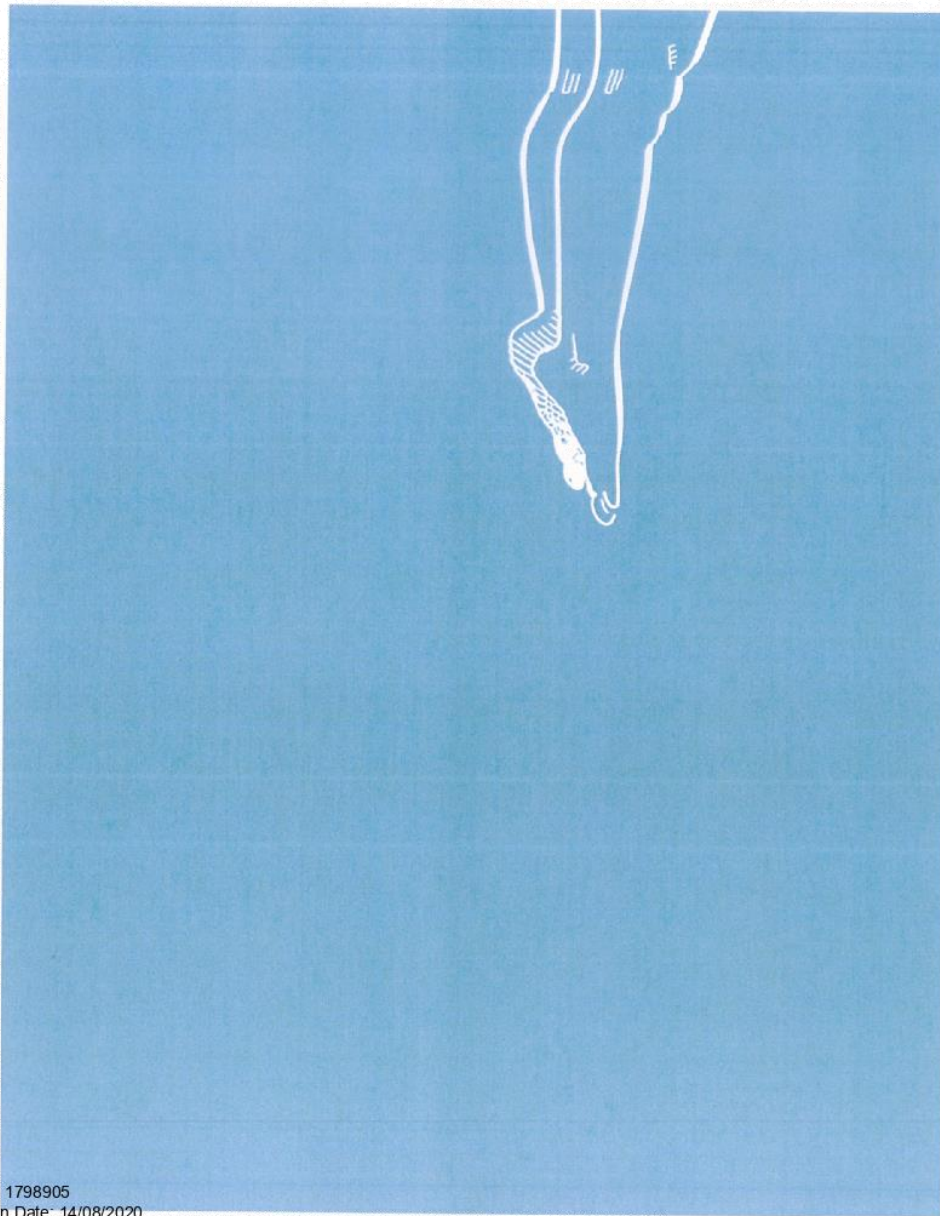
The information provided to Schools (Appendix 1) should be considered a minimum. Any additional policies or Guidelines should also be supplied to schools in accordance with standard operating procedures for each individual facility.

For more information on Royal Life Saving Guidelines for Safe Pool Operation please contact:

Ph: 02 9634 3700

Fx: 02 9634 8529

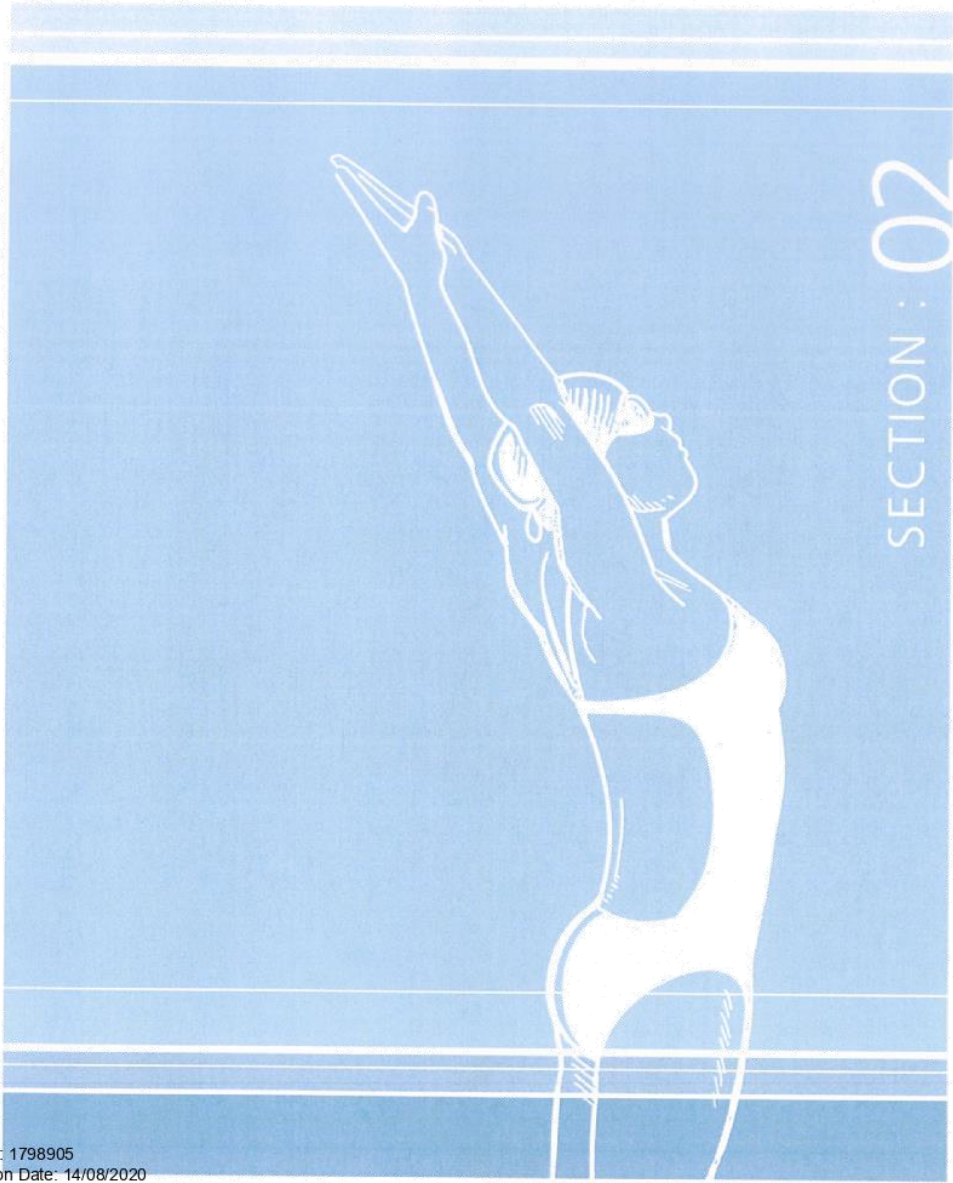
Email: nsw@royalnsw.com.au



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SUPPORT DOCUMENTS

- Appendix 1: Shallow Water Diving Information and Risk Assessment
- Appendix 2: Shallow Water Diving Information and Risk Assessment – COMPLETED SAMPLE
- Appendix 3: Water Depth Matrix
- Appendix 4: Risk Management Matrix
- Appendix 5: Royal Life Saving “Guideline for Safe Pool Operation” SU22 Safe Water Entry for Competitions – Competitive Dive Start.

## APPENDIX 1 – SHALLOW WATER DIVING INFORMATION & RISK ASSESSMENT

### ATTENTION: Principal and Carnival Coordinator

Please ensure you read and understand all PARTS to this document prior to signing and agreeing to terms and conditions.

#### PART 1 – WATER DEPTH

After consultation with Royal Life Saving NSW, the Aquatic and Recreation Institute and the NSW Department of Education and Training (DET) it has been deemed important that ..... provide you with information on shallow water diving. This is particularly pertinent to relay events or other activities where diving in shallow water may be a scheduled carnival event or activity.

#### CARNIVAL POOL –

DEEP END DEPTH (or location)	Metres	SHALLOW END DEPTH (or location)	Metres
Concourse / Starting Block height above water	mm	Concourse / Starting Block height above water	mm

#### OTHER INFORMATION

#### SUGGESTED SAFE WATER ENTRY TECHNIQUE

Based on the Royal Life Saving Guidelines for Safe Pool Operation Guideline SU22 the following entry is suggested.

DEEP END (or location)	SHALLOW END(or location)
------------------------	--------------------------

OTHER INFORMATION If you undertake Competitive Dive starts please ensure appropriate induction, training and competitor announcements are undertaken in accordance with DET requirements.

#### PART 2 - RISK IDENTIFICATION / ASSESSMENT / CONTROL

DATE	LOCATION
IDENTIFICATION	
ASSESSORS	
WORK AREA	
HAZARD DESCRIPTION	
ASSESSMENT	
CURRENT CONTROLS	
LIKELIHOOD DETAILS	
CONSEQUENCE DETAILS	LEVEL OF RISK
PROPOSED CONTROLS	BY DATE
ELIMINATION	
SUBSTITUTION	
ENGINEERING	
ADMINISTRATION	
LIKELIHOOD DETAILS (After proposed controls implementation)	
CONSEQUENCE DETAILS (After proposed controls implementation)	
	LEVEL OF RISK

#### APPROVAL TO IMPLEMENT CONTROLS & RESPONSIBLE PERSON

RESPONSIBLE PERSON	NAME	BY DATE	STATUS
ADDITIONAL ACTIONS TO BE TAKEN			

## APPENDIX 2 – SHALLOW WATER DIVING INFORMATION & RISK ASSESSMENT (SAMPLE)

ATTENTION: Principal and Aquatic Carnival Coordinator

Please ensure you read and understand all PARTS to this document prior to signing and agreeing to terms and conditions.

### PART 1 – WATER DEPTH

After consultation with Royal Life Saving NSW, the Aquatic and Recreation Institute and the NSW Department of Education and Training (DET) it has been deemed important that **WARINGAH AQUATIC CENTRE** provide you with information on shallow water diving. This is particularly pertinent to relay events or other activities where diving in shallow water may be a scheduled carnival event or activity.

### CARNIVAL POOL –

DEEP END DEPTH (or location)	1.8 Metres	SHALLOW END DEPTH (or location)	1.01 Metres
Concourse / Starting Block height above water	750 mm	Concourse / Starting Block height above water	300 mm
OTHER INFORMATION If boom is to be utilised for entry please consult with Lifeguard staff			

### SUGGESTED SAFE WATER ENTRY TECHNIQUE

Based on the Royal Life Saving Guidelines for Safe Pool Operation Guideline SU22 the following entry is suggested.

DEEP END (or location)	Copetitive Dive Start Permissible	SHALLOW END(or location)	Copetitive Dive Start Permissible
OTHER INFORMATION If you undertake Competitive Dive starts please ensure appropriate induction, training and competitor announcements are undertaken in accordance with DET requirements.			

### PART 2 – RISK IDENTIFICATION / ASSESSMENT / CONTROL

DATE	12th May 2007	LOCATION	25 metre Carnival Pool (Shallow end)
IDENTIFICATION			
ASSESSORS	(INSERT KEY STAFF UNDERTAKING RISK ASSESSMENT)		
WORK AREA	Shallow end		
HAZARD DESCRIPTION	Risk of steep dive into shallow end of pool causing possible head/neck injury		
ASSESSMENT			
CURRENT CONTROLS	Non-elite swimmers require clearance from Principal		
LIKELIHOOD DETAILS	Very likely – could happen at anytime		
CONSEQUENCE DETAILS	Permanent disability or ill health (possible death)		
	LEVEL OF RISK	1	

PROPOSED CONTROLS	BY DATE
ELIMINATION	
SUBSTITUTION	
ENGINEERING	
ADMINISTRATION	
LIKELIHOOD DETAILS (After proposed controls implementation)	Portable dive blocks are not offered for carnivals at shallow end. Basic carnivals are a deep end start
CONSEQUENCE DETAILS (After proposed controls implementation)	Very unlikely – could happen but probably never will Death or permanent disability or ill health
	LEVEL OF RISK
	3

### APPROVAL TO IMPLEMENT CONTROLS & RESPONSIBLE PERSON

RESPONSIBLE PERSON	NAME	BY DATE	STATUS
MANAGER/TEAM LEADER	(NAME OF MANAGER)	(INSERT DATE)	IMPLEMENTED
ADDITIONAL ACTIONS TO BE TAKEN D2.1 Terms & Conditions – shallow end pool depth is 1 metre-signage indicates no diving permitted. Hirers requesting the use of shallow end start to complete own risk assessment. D2.2 Inclusion of RLSSA "Guidelines for Safe Pool Operation" in terms and conditions.			

APPENDIX 3 – DEPTH MATRIX

The following information is provided for schools who undertake their own water depth assessment. Please ensure you add depth details to Appendix 1 with a corresponding "SUGGESTED SAFE WATER ENTRY TECHNIQUE".

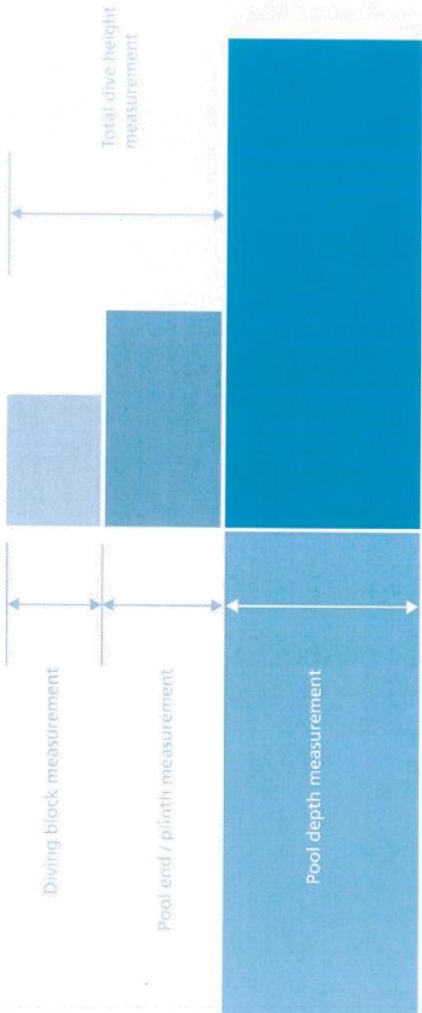
DIVING DEPTH MATRIX

Water depths for starts for competition swimming and training (for trained competitors)

DEPTH	COMMENT	ENTRY
Less than 900mm	Dive starts should not be permitted	All events should be commenced in the water
900 – 1000mm	Concourse level to a maximum height above water of 200mm	Competitive dive starts may be permitted
	If concourse level greater than 200mm	In-water start
1000 – 1200mm	Concourse level to a maximum height above water of 400mm	Competitive dive starts may be permitted
	If concourse level greater than 400mm	In-water start
1200mm or greater	Maximum height of 750mm	Competitive dive starts may be permitted
	If greater than 750mm	In-water start

Please ensure you read RLSSA GSPO SU22 in its entirety prior to providing information to schools.

MEASUREMENT DIAGRAM



## APPENDIX 4 – RISK MANAGEMENT MATRIX

The following information is provided for schools who undertake their own risk assessment. Please ensure you add appropriate details to Appendix 1 PART 2 RISK IDENTIFICATION / ASSESSMENT / CONTROL

A matrix can be used to give each individual risk a numerical rating, allowing the risks to be categorised according to severity. The first step is to determine the level of consequence (harm) should something happen. The second step is to determine how likely it is for something to happen.

### CONSEQUENCE

Classify the category of the consequence using the following table: Table 1.

CATEGORY	CONSEQUENCE (HARM)	DESCRIPTION
1	Catastrophic	Fatalities
2	Major	Serious injury, such as permanent disability
3	Moderate	Medical treatment or lost time injury
4	Minor	Minor injury, such as first aid
5	Insignificant	No injury

### LIKELIHOOD

Estimate how likely the consequence is to happen as a result of exposure to the hazard using the following table: Table 2.

CATEGORY	PROBABILITY	DESCRIPTION
A	Almost certain, common	Is expected to occur in most circumstances
B	Likely, has happened	Will probably occur in most circumstances
C	Possible, could happen	Might occur at some time
D	Unlikely, not likely	Could occur at some time
E	Rare, practically impossible	May occur only in exceptional circumstances

A risk score can be determined by cross referencing the potential consequence with the likelihood of the consequence being realised in the following table: Table 3.

		CONSEQUENCE (HARM)				
LIKELIHOOD	A	B	C	D	E	
	1	2	4	7	11	1
3	5	8	12	16	20	2
6	9	13	17	21	25	3
10	14	18	22	24	25	4
15		19	22	24	25	5

The risk score can provide a ranking that will give an indication of the priority and the qualitative level of risk and the need to take remedial action.

**HIGH** – immediate correction required. Consider discontinuing

**MEDIUM** – attention needed, correction required

– perhaps acceptable as is

The level of acceptable risk varies with all hazards, the ways and available means of reducing risk and the skills and competencies of persons managing the risks.

## APPENDIX 5 – GUIDELINES FOR SAFE POOL OPERATION SU22

### 1. TITLE: SAFE WATER ENTRY FOR COMPETITIONS - COMPETITIVE DIVE STARTS

2. DATE ISSUED: 1st April 2006

ISSUE: 2

3. PURPOSE: To provide guidance on safe water entry (Competitive Dive Starts) for competitors during competitions and training for competition.

### 4. DEFINITION:

4.1 Dive entry is defined as entry into water where the upper body (the hands, arms and head are followed by the torso and lower limbs) enters first during activities, which are conducted under aquatic programming such as:

- swimming and related (triathlon, distance swimming) squad training and competition
- lifesaving classes.

4.2 Competitive dive start is defined as entry into water from the side of the pool (flush or raised) or from a starting block for the purpose of starting a swimming based competition or training for a swimming based competition that may include the following:

- swimming and related (triathlon, distance swimming) squad training;
- swimming competition instruction;
- swimming competitions/meets for swimming clubs, schools and other groups;
- lifesaving classes.

4.3 Starting blocks (starting platforms) are defined as raised platforms at the edge of a swimming pool, located in line with the mid point of each swimming lane, for the purpose of competitive swimming water entry and may also be used for housing the backstroke start handgrips.

### 5. DESCRIPTION:

#### 5.1 Administration

- (a) All coaches/teachers and instructors or club officials should keep a record of competency of safe diving technique, and competitive starts.
- (b) Prior to participating in swimming events swimmers should be advised and warned of the water depth into which they may be required to enter during the course of any competition.

Note : Competition entry forms and promotional material should clearly advise competitors of the water depth in which competition(s) will be held.

#### 5.2 Instruction in Safe Water Entry (see also Guideline PR 9 in Program section)

- (a) All persons who wish to participate in swimming or similar (e.g. Lifesaving) competitions should be instructed in the principles of safe water entry and diving techniques, and competitive dive starts in a progressive education program under the instruction of an appropriately qualified Coach or Instructor.
- (b) All participants in swimming or like competition should receive appropriate instruction prior to participating in any swimming or like competitions.

#### 5.3 Water Depths for Starts for Competition Swimming and Training (for Trained competitors)

- (a) In water depth less than 900mm dive starts should not be permitted. All events should be commenced in the water.
- (b) In water depths 900mm to 1000mm:
  - competitive dive starts may be permitted from concourse level to a maximum height above water of 200mm
  - if concourse height is greater than 200mm above the surface of the water, starts should be commenced in the water.
- (c) In water depths greater than 1000mm and less than 1200mm:
  - competitive dive starts may be permitted from concourse level to a maximum height above water of 400mm
  - if concourse height is greater than 400mm above the surface of the water, starts should be commenced in the water.
- (d) In water depths 1200mm or greater, competitive dive starts may be permitted from a maximum height of 750mm.

5.4 In swimming pools where recreational and competition / training or learn to swim is being conducted side by side, a warning sign should be prominently displayed adjacent to those areas in which dive entries are being performed by trained (in safe dive entry) swimmers; which reads:

“Warning: Dive Entries Permitted by Trained Swimmers Under Coach’s Supervision Only”, or similar,

Note : A sign is not necessary where the pool is being used solely for competition swimming/training or learn to swim under supervision.

5.5 Use of Starting Blocks (Refer also FD 6 Swimming Lane Design)

- (a) Starting blocks should be inspected prior to each use to ensure they are correctly fitted, sturdy and free of any potential hazards
- (b) Starting blocks should only be available for use by those persons deemed as competent at executing a safe forward dive entry.
- (c) Only a qualified swim coach, lifesaving instructor (excepting beach life saving), or swim instructor (e.g. AUSTSWIM) should assess competency.
- (d) In pools where non-complementary activities are being conducted, starting blocks should be isolated from use when not used for competition or instruction.

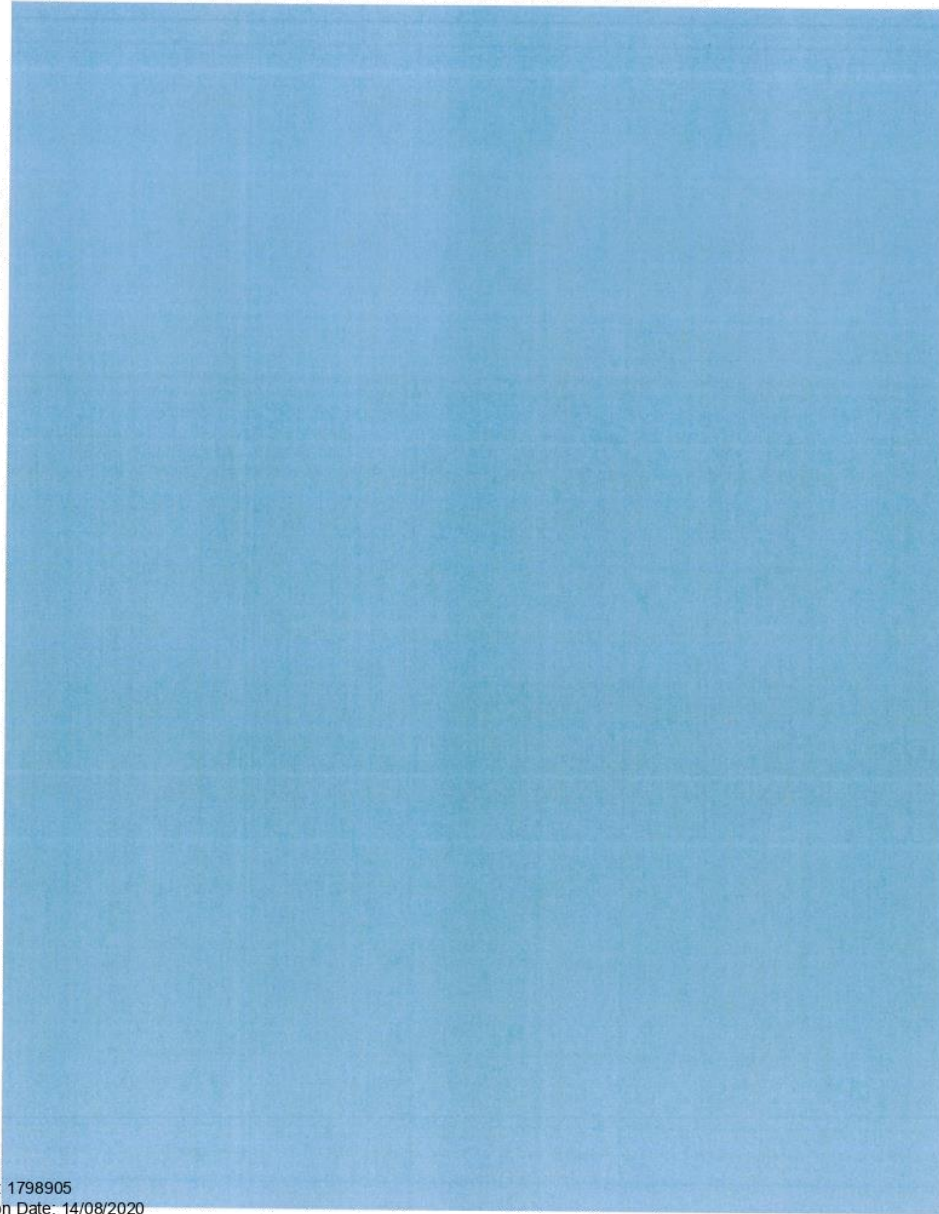
6. REFERENCES / FURTHER INFORMATION:

- Guideline PR 9 Teaching of Water Entry and Diving
- Guideline FD 6 Swimming Lane Design
- Guideline FD24 Design of Starting Blocks (Starting Platforms)
- Guideline FD 3 Pool Depth Markings
- Dive depth and water depth in competitive swim starts, J Blitvich et al, 2000
- FINA Handbook 2002-2005. FINA, Lausanne.
- Safe Diving Practices: Competitive Applications (Keith McElroy), J Blitvich et al, 1999.

7. PREVIOUS VERSIONS

Guideline SU21 Safe Water Entry for Competitions – Competitive Dive Starts, Issue 1, Nov 2002

Guideline SU21 Supervision of Competitive Events Issue 1, November 1997



Document Set ID: 1798905  
Version: 1, Version Date: 14/08/2020

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**From:** Wee Waa Chamber of Commerce  
**Sent:** Thu, 25 Jun 2020 22:15:03 +1000  
**To:** Council  
**Subject:** Draft Aquatic Facilities Management Plan & Wee Waa Pool

Dear Council

The Wee Waa Chamber of Commerce would like to make the following submission with regard to the above draft plan. At Section 20 - Operating Hours of Wee Waa Pool, we request the following hours:-

Nov to Feb - 6am to 8am Mon to Fri and 10am to 7pm each day

Oct, Mar & Apr - 6am to 8am Mon to Fri and 12 noon to 6pm each day.

We submit that the early morning hours in the shoulder season as proposed in the draft plan are insufficient to accommodate the keen early swimmers, as highlighted by the outcry from Wee Waa swimmers late last year when hours were reduced. We also note that Council has recently gone to the trouble and expense of installing a new heating element and blankets at Wee Waa Pool, and the extension of longer opening hours into the shoulder season would enable swimmers to make better use of Council's investment.

We also submit that the opening time of 12 noon is too late during the months Nov to Feb, given the limitation this places on schools, swimming instructors & those wishing to enjoy weekends and school holidays, particularly given increasing temperatures and the fact that health authorities warn against exposure to the sun in the middle of the day.

As Wee Waa is a small, isolated community with limited exercise and entertainment facilities, we highly value those facilities we are lucky enough to have, including our town pool. It is a prized community facility, and to limit our access to it by restricting hours just doesn't make sense. Our pool is also important in maintaining the physical and mental health of our residents.

We understand that Council faces challenges in staffing the facility. We request that Council redouble its efforts in this area, and look at whether any more can be done by examining what is working well at the Narrabri Aquatic Centre and whether this can be replicated at Wee Waa.

We are also aware that a number of services and facilities within Narrabri and Boggabri benefit from corporate support, whilst Wee Waa generally misses out in this regard. As such, we believe it is only fair to the residents of Wee Waa for Council to focus more on addressing the relative disadvantage that Wee Waa suffers as a result. We see providing greater access to our pool as one small way in which Council can do this.

We request that Council take due consideration of our submission.

Thank you & regards

Sonia Fogarty - Secretary

**Wee Waa Chamber of Commerce**

# AQUATIC FACILITIES MANAGEMENT PLAN

Narrabri Shire Council  
2020



**NARRABRI SHIRE**  
DISCOVER THE POTENTIAL

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# 1 INTRODUCTION

This Management Plan provides the necessary instruction for Council's staff to administer the routine functions of its public swimming facilities and provides a transparent means for the general public to understand the process.

The Management Plan aims to provide facilities which promote a healthy lifestyle and social interaction, for residents and visitors to the Region.

## 1.1 COMMENCEMENT

This Management Plan will commence; **XXXXXX** *(Subject to exhibition period).*

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*It should be noted that this plan makes recommendations as to the adjustment of some of the annual fees and charges. It is recommended that these fees and charges be updated to reflect the current operational requirements predominantly around hire of lanes for swim clubs.*

## 1.2 REVIEW PROCESS

This document will be reviewed annually. Minor alterations will be at the discretion of the General Manager, major alteration or issues of community significant will require the endorsement of an ordinary Council meeting. Written submissions for review will be considered annually in accordance with the setting of the Fees and Charges up to the end display period.

## 1.3 APPLICATION

This Management Plan applies to all swimming pools operated and maintained by Narrabri Shire Council. A copy of the Plan will be available from;

- NSC swimming pools/centres.
- Download [www.narrabri.nsw.gov.au](http://www.narrabri.nsw.gov.au)

Patrons are encouraged to read and make written contribution to the plan during the **consolation** period.

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This Management Plan does not affect the operation of any Act or Regulation relating to the appropriate management of public swimming pools. The Act or Regulation shall have precedence.

NSW Department of Local Government Practice Note No. 15- Water Safety, will provide guidance on standards not specifically discussed in this Plan.

Royal Life Saving Guidelines for Safe Pool Operation (GSPO) is recognised as an industry standard and as such will be used to assist in the provision of safe aquatic facilities.

## 1.4 DEFINITIONS

In this Policy:

Council; Narrabri Shire Council

Aquatic Facilities

Coordinator;

The Council Officer in charge, amongst other things, the oversight of all NSC public swimming facilities.

Pool Team Leader;

The qualified employee responsible for overall operation of an aquatic facility.

Pool Lifeguard;

The qualified employee primarily responsible for pool supervision, customer service and maintenance. A Pool Lifeguard of suitable experience can be

	temporarily appointed to the role of Pool Lifeguard for the purpose of overseeing the operation of a facility in the absence of the Aquatic Facilities Coordinator. Minimum qualification is RLSSA Pool Lifeguard qualification
Pool Staff;	Any Council pool employee on duty at the swimming pool, including program staff, kiosk staff & approved volunteers.
Aquatic Responsibility Code;	A local code designed to communicate the standard of behaviour required of users at NSC public swimming facilities.
Mass evacuation plan;	A plan designed to ensure the safe egress of people from an area of threat to an area of safety.
Business;	Any company, sole trader, incorporated group, sports group, school, charity, event organiser or similar.
Professional Coach/Instructor;	Any person who charges a fee or is otherwise paid, whether by an individual, individuals, club or association for the provision of swim training and or coaching.
Aquatic Group;	Any swimming, water polo, triathlon club that regularly uses a NSC public swimming facility.
Facility;	Any NSC public swimming pool including the surrounding buildings, grounds and fence line.

## 2 SWIMMING POOLS

Council aims to provide the following facilities at their swimming centres.

### 2.1 BOGGABRI MEMORIAL SWIMMING POOL

- 33m swimming pool.
- Solar Heating and thermal pool blanket.
- Toddler's pool.
- 1m springboard.
- 3m springboard.
- Kiosk facility.
- BBQ area.
- Change room facilities.
- Shade structures.
- Access- chair lift into main pool.

## 2.2 NARRABRI AQUATIC CENTRE

- 50m outdoor pool (seasonal operation)
- Outdoor splash pool.
- 25m indoor program pool.
- Observation stand.
- 1m diving board.
- BBQ facilities.
- Kiosk facility.
- Change room facilities.
- Multi-function room.
- Solar Heating and thermal (pool blanket indoor pool).
- Shade structures.
- Access; full disabled access.



## 2.3 WEE WAA MEMORIAL SWIMMING POOL

- 33m swimming pool.
- Solar Heating and thermal pool blanket.
- Pool Blanket Toddler's pool.
- Children's play equipment.
- BBQ facilities.
- Kiosk facility.
- Shade structures.
- Change room facilities.
- Access- chair lift into main pool.

### 3 EMERGENCIES

- a. The contact number for emergencies is 000.
- b. Council's Customer Service during operating hours (02) 6799 6866.
  - i. Boggabri Pool – (02) 6743-4379
  - ii. Narrabri Pool – (02) 6799-6782
  - iii. Wee Waa Pool – (02) 6795-4384
- c. Council's 24 hour Emergency Service number 0429 911 111.

### 4 MASS EVACUATION PLANS

Prior to any large event (e.g. a school carnival) Council staff will implement a mass evacuation plan. The plan will be included in a brief site induction for the event organisers and assistants. Refer Annexure 3 Template Narrabri.

### 5 ADMINISTRATION

#### 5.1 RECORDS

- a) Staff will ensure all records for the operation of swimming pools are legible, and are to be uploaded into Council's electronic records system on a regular basis

#### 5.2 RECORDS TO BE MAINTAINED BY EACH POOL

- a) A daily running sheet where water analysis, chemical additions, events, maintenance & staff attendance will be recorded.
- b) Incident/accident reports.
- c) Daily, monthly and annual patronage.
- d) All local sales transactions e.g. season tickets & kiosk sales.
- e) Daily financial reports and banking.
- f) All other documentation required by Council's WHS system.

#### 5.3 GENERAL COMPLIANCE

- a) Staff, contractors & volunteers will comply with Council's WHS policies and procedures at all times.
- b) All incidents are to be reported, investigated and addressed in accordance with Council's WHS procedure.

### 6 ACCESS TO COUNCIL RESOURCES

- a. The phone in the facility is for the use of Council staff to conduct Council business.
- b. The phone in the facility is able to be used for children to contact parents. An appropriate fee applies.
- c. The phone in the facility is able to be used for emergency calls by members of the general public if no pool staff member can be found or if the person has been directed to by pool staff.

## 7 CONDITIONS OF ENTRY

### 7.1 AQUATIC RESPONSIBILITY CODE

The following is the wording from the Narrabri Shire Council Aquatic Responsibility Code which is a condition of entry that applies to all persons within Council's swimming pool grounds without written exemption from Council.

"Narrabri Shire Council is promoting the Aquatic Responsibility Code for patrons attending all Council operated swimming facilities. The code is a safety initiative introduced to keep all pool users safe. Regardless of how you enjoy your water activities, always show courtesy to others and be aware that there are inherent risks in all water based recreation activities that common sense and personal awareness can reduce. These risks include shallow water, wet surfaces and patrons of varying age and swimming ability.

It is your responsibility to know and obey this code. Pool safety is a shared responsibility that requires a cooperative and community approach. Observe the code below and share with others the responsibility for a great experience at the Pool.

- a) Observe and obey all signs and warnings at the pool as well as all lawful directives given by Pool Lifeguards and Pool Staff.
- b) Always check the pool depth before entering the water. Enter the water in a safe manner and check for other swimmers before jumping in. You must avoid people already in the water.
- c) Always be respectful of other people and the nature of their pool activity.
- d) Never run on wet areas at the pool. Always move around the pool in a safe manner.
- e) If you are involved in, or witness an incident at the pool, remain at the scene and identify yourself to the Pool Lifeguard.
- f) Do not swim, bathe or undertake any other aquatic activity if your ability is impaired by drugs or alcohol.
- g) Always swim in water that is a safe depth for your capability. Take lessons from a qualified instructor to progress and learn swimming, first aid and resuscitation skills.
- h) Children under the age of 10 must be actively supervised at all times by a responsible person over the age of 16.
- i) Parents and carers must communicate and establish responsibility for direct supervision of children at all times around water. Designate at least one adult "Water Watcher" to supervise children around pools especially during social gatherings. Don't rely on older siblings or other children to supervise swimmers and don't rely on swimming lessons, flotation devices or other equipment to make a child "water safe."
- j) **Always swim with a friend and keep a look out for your mates.**
- k) Our Pool Lifeguards are at the pool all day to assist, educate and help you to understand the Aquatic Responsibility Code. This will ensure that all pool patrons enjoy themselves at Narrabri Shire Council Pools. Irresponsible, reckless and anti-social behaviour may result in immediate suspension from pool use and/or cancellation of season passes."

Commented [EP1]: Will this requirement preclude swimming alone?

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### 7.2 RLSSA- KEEP WATCH AT PUBLIC POOLS

Supervision of young children at public pools has been a concern for the aquatics industry for many years. There is often the misconception by parents and carers that the responsibility for supervision of young children lies solely with lifeguards. Lifeguards are employed on a 1:100 ratio based on the expectation that parents will provide direct supervision of children.

WA Coroner Alistair Hope in response to a drowning in a public aquatic facility said:

"Competent lifeguards acting responsibly should provide an important safety feature, but they are not intended to, and cannot be expected to, replace the close supervision of parents and teachers which is required for many children, particularly primary school age children."

Keep Watch at Public Pools is an important program that contributes significantly to ensuring safety and reducing risk at our public swimming pools. It provides a consistent message in line with best practice to the

public about effective supervision of young children at public pools and demonstrates that the aquatics industry is organised and takes their responsibility for patron safety seriously. The program is administered by Royal Life Saving Society of Australia- NSW Branch and was adopted into NSC swimming facilities in 2012. It promotes the following safe supervision policies which are additional conditions of entry:

- a. Children under 5 years must be accompanied into the centre by a responsible adult over 16 years of age and supervised at arm's reach at all times.
- b. Children under 5 years must wear a coloured armband whilst in the facility. Armbands are a visual aid to assist Pool Staff in identifying who should be within arm's reach of an adult and a reminder to parents & guardians about the importance of close supervise for small children.
- c. Children under 10 years must be accompanied into the centre by a responsible adult over 16 years and actively supervised at all times.
  - i. Procedure for assessment of unattended swimmers 10 years to 16 years (refer Annexure D).
- d. In order for parents or guardians to actively supervise they should be dressed ready to take immediate action, including unexpected entry into a pool.

### 7.3 DIVING

The Royal Life Saving Society of Australia advises that there is a significant body of evidence to suggest that shallow water diving can lead to a range of injuries that include head injuries (broken teeth, scalp injuries and facial fractures), to the more significant spinal cord injury.

As such 'No Diving' and 'Shallow Water' signs have been positioned around Council's pools in locations where it is deemed dangerous.

Any group wishing to conduct dive starts into the shallow end of a competition pool (relays) must conduct a risk assessment of the activity beforehand and acknowledge responsibility for consequences arising from the activity. The group acknowledges that the Royal Life Saving Society and Narrabri Shire Council have warned against diving in such areas and that significant injury could result.

### 7.4 ADDITIONAL CONDITIONS OF ENTRY

The following conditions of entry also apply to all persons entering swimming pool grounds without written exemption from Council.

A person must:

- a. Pay the entry fee on entering the facility or display a current season ticket.
- b. Comply with Section 10 Activities Requiring Approval- All Pools.
- c. Not partake in behaviour considered to be anti-social, provocative, abusive or violent.
- d. Not obstruct the entry/exit points to a pool.
- e. Not bring glass or glass containers into the facility.
- f. Not interfere with any pool safety equipment.
- g. Follow all directions for the safe use of any area of the facility including, springboards, water slides, inflatable play equipment and children's play equipment etc.
- h. Not enter a pump room, chemical storage area, plant room, kiosk or staff area.
- i. Not enter a first aid room except to receive first aid or at the invitation of pool staff.
- j. Provide evidence of age, if requested.
- k. Always wear an appropriate unsoiled bathing costume.
- l. Be unsoiled before entering a pool.
- m. Not urinate or defecate anywhere in the grounds other than in a public toilet.
- n. Not attempt to enter the swimming pool grounds whilst intoxicated or under the influence of drugs, nor bring or consume alcoholic or non-prescription drugs on pool grounds.
- o. Not cause or permit an animal that is under the person's control to enter or remain in swimming pools grounds. Guide dogs excepted (see Section 16, Access for People Living with a Disability)
- p. Not smoke in any area of a public swimming facility nor within 4 m of an entrance.
- q. Not take photographs, video or electronic recordings in change rooms.

- r. Not sit on, dive over, or otherwise interfere with lane ropes.
- s. Not damage, deface, interfere with or alter swimming pool infrastructure or signage.
- t. Not obstruct any authorised person or employee of, or contractor to perform their required duties.

## 8 OPERATING STANDARDS

### 8.1 WATER QUALITY

- a. Water quality at NSC swimming pools will comply with guidelines set by the NSW Ministry of Health. Lengthy review processes have been known to lead to the Ministry's standards lagging current industry best practise. During these times the Aquatic Facilities Coordinator may, in conjunction with the Open Space Manager implement a regime outside of the Ministry's standards if they are widely considered by the aquatic industry to be better.
- b. Chemical concentrations will be automatically monitored and controlled.
- c. Pool staff will manually test chemical concentrations at least three times daily to confirm that automated equipment is properly calibrated and working correctly.
- d. Water turnover times will comply with guidelines set by the NSW Ministry of Health or to the capability of the pool's reticulation system i.e. a filtration system built in the 1960s can operate at maximum capacity but cannot achieve the turnover rates of modern filters.
- e. Microbiological sampling of pool water will be undertaken regularly and tested by a NATA (National Association of Testing Authorities) accredited laboratory for independent testing.
- f. The NSW Ministry of Health field officers are allowed free access to any facility to measure Council's compliance with the current health standards.
- g. If adequate sanitisation cannot be maintained for any reason the facility will be closed until the matter can be rectified.

### 8.2 GROUNDS MAINTENANCE

Lawns will be kept to the standard of high profile parkland. Lawn weeds and burs (e.g. bindii) will be eradicated quickly when detected. With regard to watering, facilities will comply with any water restrictions in place. These may differ from restrictions placed on domestic users.

Gardens will be kept tidy and free of weeds.

Trees will be periodically thinned to promote growth and longevity and to assist in the prevention of limb drop.

### 8.3 BUILDING MAINTENANCE

Buildings will be kept in a clean and serviceable state. Improvements to buildings will usually occur during quieter periods i.e. winter or pre-season establishment and as budgetary limitations allow, under the guidance of the NSC Open Space Manager.

### 8.4 SWIMMING POOL MAINTENANCE

Programmed preventative maintenance of swimming pools is primarily carried out in the winter season or during pre-season establishment. Maintenance issues that arise during the operational season will be dealt with in a timely manner as possible.

### 8.5 POOL SUPERVISION

Council currently use the minimum lifeguard to swimmer ration of 1:100 as outlined in Royal Life Saving's Guidelines for Safe Pool Operation (GSPO).

During periods of high patronage or higher risk, more pool supervision is provided.

Supervisors of visiting groups (e.g. schoolteachers) are responsible for the supervision of their charges. At least one trained Lifeguard will be on site at all times to assist and intervene should emergency action be required.

NSC has adopted the Keep Watch at Public Pools program detailed in 7.2 of this plan to promote direct supervision of young children.

### 8.6 STAFF QUALIFICATIONS

NSC aims to provide pool staff with the following qualifications as minimum aquatic industry requirements; Aquatic Facilities Coordinator;

- Cert IV- Aquatic cluster of competencies from Community Recreation training package.
- RLSSA Pool Lifeguard Licence.
- WorkCover NSW approved first aid certificate.

#### Pool Team Leader

- Cert III- Aquatic cluster of competencies from Community Recreation training package.
- RLSSA Pool Lifeguard Licence.
- WorkCover NSW approved first aid certificate.

#### Pool Lifeguard

- RLSSA Pool Lifeguard Licence.
- WorkCover NSW approved first aid certificate.

Many staff have qualifications over the minimum level. External and in-house professional development is provided for staff to ensure currency of qualifications and competency of skills.

Pool staff comply with all working with children legislation as part of their employment with Narrabri Shire Council.

## 9 KIOSK FACILITIES

Narrabri Aquatic centre – kiosk café hours will correspond with opening hours of the season kitchen or hot food hours will be to correspond to times of higher patronage and adequate staffing including qualified food handling staff.

Boggabri and Wee Waa pools – Kiosk hours will correspond with opening hours kitchen/hot food will only be offered when a kiosk staff is rostered on for events or times of high patronage. To maximise access to package foods and drinks Council will consider the installation of vending style machines to minimise the impact on staff (especially as on most occasions there is only one staff member on duty in either pool) being taken away for supervising the pool water.

## 10 ACTIVITIES REQUIRING APPROVAL - ALL POOLS

A person must not do any of the following within swimming pool grounds without the written exemption from Council:

- Neither engage in trade or commerce nor distribute any circulars, advertisements, paper drawing or photographic material.
- Camp or reside on the land.
- Bring or leave any rubbish, refuse, scrap metal, rock, soil, sand or any other such substances onto swimming pool grounds.
- Remove any dead timber, logs, trees, flora, whether standing or fallen.
- Kill, capture or in any way interfere with any animal, bird, fish or other fauna, whether native or introduced, plant any tree, shrub, herbage or other plant without prior consent.

*Offenders will be prosecuted under relevant State or Federal Law.*

A person must not do any of the following within swimming pool grounds without approval from the Team Leader

- a. Bring or use inflatable devices such as air mattresses, domestic pool toys, or balls onto the grounds. This excludes PFD's (Personal Floatation Devices- Life jacket) and flotation devices specifically designed as a "learn to swim" aid.
- b. Use scuba diving fins.
- c. Play or conduct any unapproved sport or contest.
- d. Enter or leave the facility by any other means other than through the main entrance provided.

*Offenders may be requested to leave the facility.*

### 10.1 SWIMMING LESSONS

To ensure an appropriate level of safety and quality for the community, Narrabri Shire Council requires people wanting to conduct private learn to swim lessons at our facilities, to apply in writing and provide copies of the following:

- a. Current AUSTSWIM Certificate or equivalent.
- b. Current CPR qualification.
- c. Certificate of Currency- Public Liability & Professional Indemnity; \$20,000,000 each.
- d. Working with Children Check- Certificate for Self Employed People; for more information visit [kids.nsw.gov.au](http://kids.nsw.gov.au)

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Applications should state which pool they wish to do business at and any previous experience they have. Once an application has been received it can usually be assessed quickly and verbal approval given if everything is in order. To assist with this, all required documents must be submitted with the application and be current. Failure to do so may increase the application assessment time. Applicants will also receive a written determination.

Applications can be emailed, mailed or handed to the Pool Coordinator.

Once you have received approval you will be required to undertake a site induction of the facility and sign a site induction form. Please allow enough time (10 minutes) to complete this prior to your first lesson.

All learn to swim operators can leave their business details at facilities to be pass them onto patrons enquiring about learn to swim opportunities. Learn to swim instructors need to comply with all areas of this management plan.

Approval will only be granted where adequate lane space exists. Exclusive use of available lane space will attract the appropriate lane space charge.

## 11 AUTHORITY

All Pool Staff are authorised to:

- a. Refuse entry to school aged children during school hours unless they are accompanied by a parent or legal guardian.
- b. Request a person to leave the swimming pools facility if they do not comply with any part of this management plan; and
- c. Implement a temporary or permanent prohibition on entry to the facility.

If a person who is supervising others is requested to leave the facility, the person/s they are supervising will also be required to leave. Poorly behaved spectators, coaches, teachers, parents, visitors and other people may also be banned from a facility.

### 11.1 TIME OUT NOTICE

People who are banned from the pool may be issued a "Time Out Notice". The notice will outline the reason for the ban and the length of time which it is effective. People who return to the pool within the timeframe outlined may be charged with trespass and fined under the Enclosed Lands Protection Act NSW Section 4(1) 1901. Refer Annexure "Time Out Notice".

A ban at any one pool in the Council area applies to all pools operated within the Council area.

A ban will not interfere with a student's school education. As such any school activity which requires a student to attend the pool will not be included in the ban.

Before entering the facility after a ban, the patron must arrange to meet with the Aquatic Facilities [Coordinator](#) to confirm that the specified "time out" period has lapsed.

### 11.2 REFUSAL TO COMPLY

A patron refusing to comply with the directions of Pool Staff may be banned from entering any Narrabri Shire Council swimming pool grounds and issued a Time Out Notice.

Pool Staff are to contact the NSW Police or Council's Compliance Department to arrange the forced removal of an offender who will not voluntarily leave. Offenders may be charged with trespassing and fined under the Enclosed Lands Protection Act NSW Section 4(1) 1901.

### 11.3 APPEALS

A person who wishes to appeal the imposition of a ban is entitled to write to Council for a review and state their reasons why the ban should not be enforced.

A review will be conducted within 15 days of receipt of correspondence, and the appellant notified of the outcome in writing. The ban will remain in place during the appeals process.

### 11.4 SCHOOLS SUSPENSION

During school hours, children who have been suspended from school, and released into the supervision of a carer will not be permitted into a facility without their designated carer.

Suspended children who are perceived by the Team Leader to have arrived at the pool with the intention of interrupting a school group or teacher will be requested to leave the facility.

## 12 BOOKINGS / EVENTS

### 12.1 GENERAL

- a) All bookings must be lodged on an "Event Booking", with all fields on the application completed. The event booking must be in accordance with the applicant's insurance coverage and risk assessment on ratio of event staff to number of persons booked for the event.
- b) It is preferable that applications are submitted at least one calendar month prior to a proposed event.
- c) When the swimming pools are closed (winter) all applications are received by the Aquatic Facilities Coordinator via mail (46-48 Maitland Street, Narrabri, 2390) or email ([council@narrabri.nsw.gov.au](mailto:council@narrabri.nsw.gov.au)) and are entered into the electronic booking system before being passed onto the relevant Pool Coordinator for action. Confirmations are sent in writing prior to the start of the next swimming season.
- d) Applications should be lodged at Narrabri Shire Councils Head Office directly, via mail (46-48 Maitland Street, Narrabri, 2390) or email ([council@narrabri.nsw.gov.au](mailto:council@narrabri.nsw.gov.au)). Confirmations of the booking will be either verbally or in writing from an authorised Team Leader.
- e) A Facility User Agreement between the group and Council must be entered into before an event can commence. The Agreement will outline any supporting documentation required e.g. certificate of currency for public liability.
- f) A risk assessment for the event and a site induction for the organisers must be completed before an event can commence.
- g) After hour's events will be considered and the appropriate fee payable if the event is approved.

### 12.2 PRIORITIES FOR BOOKINGS

Each request to use the facilities during approved operating hours will in most cases be approved according to the following priority:

1. An event approved by resolution of Council

2. National / International events (including public holidays and days of national significance e.g. Australia Day festivities).
3. State events
4. Regional events
5. Local events
6. Annual school swimming carnivals
7. Relevant local incorporated swimming club events
8. Activities organised by Federal or State Government Departments
9. Non-swimming carnival school requests (e.g. school sport or physical education classes)
10. Community groups
11. Charity fund raising events
12. Private swimming instructors
13. Commercial businesses activities
14. Private functions

Council will also take into consideration the order in which booking requests are received, event income and size of the event when allocating time & space to events.

### 12.3 CANCELLATION OF BOOKINGS

- a) Council has the right to cancel or change bookings at any time. Affected parties will be notified as soon as possible.
- b) Where a booking is cancelled, Council staff will endeavour to provide an acceptable alternative if available.
- c) Groups who need to cancel an event will let the respective Pool Manager know as soon as possible to allow for changes to staffing & programming of pool space.

### 12.4 STANDING BOOKINGS

Pools are to facilitate the following bookings each year subject to the receipt of an application and any mandatory supporting documentation.

- a) The Boggabri Swimming Club Inc. - Swim training, club nights, club championships held on a normal club night and one carnival per year.
- b) The Narrabri Swimming Club Inc. - Swim training, club nights, club championships held on a normal club night and one carnival per year.
- c) The Wee Waa Swimming Club Inc. - Swim training, club nights, club championships held on a normal club night and one carnival per year.
- d) One swimming carnival event per school located in the Narrabri Shire Local Government area.
- e) State / regional school swimming carnivals.
- f) Intensive swimming program (lessons) for schools.

Should a user group fail to adhere to a booking time or their use of the Pool is not maintained for a period greater than two days without notification the booking may be terminated and no refund made.

### 12.5 BUSINESS COMPLIANCE

A person or business wishing to conduct trade at a swimming pool must apply in writing to Council and be able to provide evidence of:

- a) A current Workers Compensation policy, if they employ staff.
- b) Current child protection checks for staff.
- c) A current Public Liability Insurance policy (minimum value AUD \$20,000,000);
- d) Staff being adequately trained and qualified for the tasks they are proposing to undertake and ensure that:
  - i. Any equipment to be used at the pool is in good working order and designed and approved for the purpose for which it is intended;
  - ii. Operations comply with this Management Plan.

### 12.6 LIMITATIONS ON BUSINESSES PERMITTED

- a. A business may not compete against a similar service already offered at the pool without the consent of the Aquatic Facilities Coordinator, and the Licensee of that service if one exists.
- b. Council staff may prohibit any business which is not in keeping with this Management Plan or the principal purpose of a swimming pool.
- c. The mailing address of the pool is not to be provided as a point of contact for a business.

- d. The phone number at the pool is not to be provided as a point of contact for a business nor is it available for use by a business, excepting emergencies when pool staff are not available to make an emergency phone call.

## 13 POOL LANE ALLOCATION

The following lane allocations are the default setting for a pool when there are no bookings:

- a. At least one (1) lane will remain available to the general public at all times when the pool is open to the public for general use. Provision of an edge is preferable for both elderly and young swimmers as it offers a quick point of respite in the event of fatigue.
- b. Lane ropes will be installed for lap swimmers where practical.
- c. The Pool team leaders can assign different swimming speeds to lanes e.g. slow, medium, fast.
- d. Lap swimmers are required to swim in a lane with swimmers of a similar speed and ability.
- e. The number of lap swimming lanes can be increased or reduced at the discretion of the Pool Coordinator.
- f. Lane configuration is at the discretion of the Pool Team leader.
- g. The lane configuration should provide maximum utilisation of the available space.
- h. Lap swimmers are required to keep to the left of a lane (swim clockwise).
- i. The Pool Team leader may temporarily ban the use of flippers, hand paddles or other swimming devices if they are perceived to create a risk to other swimmers.
- j. Pools with moveable stair ways will have such structures in place whenever the programming of the pool allows.

## 14 USE BY AQUATIC GROUPS

### 14.1 GENERAL

- a. It is Council responsibility to provide a facility that is safe for occupation and play, and one that is regularly and appropriately maintained.
- b. If at any time a group perceives that the facility is or has become unsafe then all practical measures must be taken to ensure the safety of its members. A representative of the group will notify the Pool Coordinator immediately.
- c. Aquatic groups must abide by this Management Plan and actively promote all conditions of entry to their members and visitors.
- d. All members will endeavour to maintain cordial relations with pool patrons, other coaching personnel, pool staff and Council officers.

### 14.2 EMPLOYEES & VOLUNTEERS

- a. Aquatic groups shall ensure that employees & volunteers of their group comply with NSW Child Protection Legislation.
- b. Aquatic groups will be required to take out and maintain appropriate Public Liability, Professional Indemnity as well as any other insurance required by the Workers Compensation Act, in regard to the conduct of activities of the group within the facility.
- c. Coaches, instructors and other predominant members of their organisation are required to complete a site induction with the Pool Team Leader at the beginning of each season. The site induction shall include the location of rescue equipment, fire extinguishers, telephone, emergency phone numbers, facility access and any other items relevant to the workplace and NSC's safety system. Site inducted persons are required to sign a site induction form.
- d. The group must ensure that any professional coach/instructors at the pool in their role as a professional coach/instructor holds;
  - i. A current WorkCover approved first aid qualification.
  - ii. CPR qualification.
  - iii. Level 1 Coaching qualification or equivalent as a minimum.

- e. From time to time Council may request copies of current qualifications to ensure compliance with this management plan and with any standing user agreement.
- f. Clubs must ensure that volunteer (unpaid) persons substituting, either long or short, for a professional coach/instructor satisfy all other areas of this management plan except clause 14.2 d iii. Council may request copies of the same from substitute coach/instructors performing duties at the facility.
- g. Supervision of participants under the direction of a coach, instructor or other predominant member of the club shall remain the responsibility of the aquatic group for the duration of the session. Before and after the session the group will ensure that any participant under the age of 10 years of age shall be under the active supervision of a person over the age of 16 at all times. Pool staff shall not be included in this type of supervision. The club, coach or group are responsible to collect all children upon entry and are responsible for the child to they depart the facility, or a parent guardian takes responsibility of the child.
- h. In the event of an aquatic emergency a coach, instructor or other predominant members of the group will be required to evacuate from the water all participants under their supervision. Those participants will be their primary consideration during the emergency. Secondary shall be any assistance they can provide to pool staff up to the level of their training. Other members of the group may also be called upon by pool staff if further assistance is required.

#### 14.3 LANE SPACE

- a. The pPool eCoordinators has discretionary authority to alter standing bookings. Consideration needs to be given to safety, bather load and programming. Extra allocations can be rescinded at any time. The group shall not presume extra lane space will be available when programming sessions. Extra lane space will be charged at the rate set out in the Narrabri Shire Council's Revenue Policy and Fees for Service.
- b. Groups attending the pool during a booked time slot are not to use lanes set aside for members of the public without the permission of the Pool Coordinator.

#### 14.4 EQUIPMENT

- a. Except where disputed by the resident club, lane ropes, false start ropes, backstroke flags and starting platforms kept at a facility, are a Council asset. These will be maintained and insured by Council.
- b. Equipment such as that listed above will be made available to aquatic group users for use at training, swim camps, club nights, club championships and carnival type events.
- c. Being the primary user of the equipment aquatic user groups will be approached to discuss a co-contribution when equipment requires replacement and or upgrading.

#### 14.5 SWIM CLUBS

- a. Council will allow the formation of one swim club per facility, tthe swim club will be provided storage facilities where possible and a preference for bookings. The current swim club at each pool is the preferred swim club and no other swim club will be recognised while these club exist.
- b. Swim clubs will be allowed one lane per booking free of charge. Aadditional lanes will be charged under the adopted Council fees and charges all lane hire will be undertaken utilising the lane hire booking application form all booking must be done prior to the day of the session and to optimise acceptance of the booking prior to the season commencement.
- c. The swim club must:
- d. Be incorporated and have a constitution
- e. Be run by an elected committee that at least has the following individual office bearers President Secretary and treasurer
- f. Ccertification
- g. Swimming coaches and instructors will only be provided a dedicated lane if they hold either:
- h.f. Current AUSTSWIM Teacher of Swimming and Water Safety Certification, and a current CPR Certificate (where they will be teaching individuals how to swim).
- ig. Or a bronze, silver, gold, or platinum coaching license and a current CPR Certificate (where they are providing lap swimming instruction - not learn to swim).

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- j.h. Parents or guardians must escort children 10 years old and under to and from Coaches/Instructors.
- k.i. These conditions apply to any activity at the pool where a fee is paid to the supervising individual or business.
- l.j. Have public liability insurance to the value \$20 million dollars
- m.k. Provide and maintain their own equipment. Use of this equipment must be approved by the Pool Coordinator
- n.l. Ensure sufficient supervision is provided to perform a custodial role for members under 10 years of age and not rely on Pool staff to do this role
- o.m. Nominate a liaison person (committee member) to represent the club to discuss operational matters with the use of the pool and these matters are only to be discuss with pool management and if the issue is non-urgent written correspondence would be the preferred method to enable Pool management to investigate the issue in a timely manner. The aim of this clause is to reduce confusion on any issue and to remove the involvement of pool staff.

#### 14.6 SWIM CLUBS STANDARD BOOKINGS

- a. The Narrabri Swimming Club – weekly meet between October and March for the pool between the hours of 6pm and 8pm on an agreed business day weeknight.
- b. The Wee Waa Swimming Club - weekly meet between October and March for the pool between the hours of 5pm and 7pm on an agreed business day weeknight.
- c. The Boggabri Swimming Club - weekly meet between October and March for the pool between the hours of 5pm and 7pm on an agreed business day weeknight.
- d. One swimming carnival event per swimming club located in Narrabri Shire.
- e. One swimming carnival school event per school located in Narrabri Shire.
- f. State / regional school swimming carnivals.

Council's Learn to Swim, Squad and other programs will be given precedence for lane hire above private instructors.

#### 14.7 SWIMMING CLUB LANE ALLOCATION AND PAYMENT

- a. The Council must receive payment of all fees either on a weekly or monthly term. Upon booking the User will be required to stipulate the term.

##### Lane allocation

- a. Lane allocation is made by staff in accordance with this User Agreement and their decision is final.

##### Swimming Club:

- a. Council will provide one lane free of charge for the purpose of swimming club instruction and training.
- b. A second lane can be booked by swimming clubs for use by lodging a booking application with the Council.
- c. A monthly fee for lane hire applies to swimming clubs:
- d. 50m Outdoor Pool Narrabri - \$765.00 per calendar month between October and March; extension into April will occur dependent on State Championships.
- e. 25m Indoor Pool Narrabri - \$550.00 per calendar month between April and September.
- f. 33m Outdoor Pool Boggabri and Wee Waa - \$250.00 per calendar month between October and March.
- g. At least Fifteen (15) swimming club members will be using a single lane prior to use of the second lane being approved. This is to maximise lane use and public access to the pool.
- h. Additional lane hire will incur a fee of:
- i. 50m Outdoor Pool Narrabri - ~~as per current Council fees and charges~~ \$20.00 per hour
- j. 25m Indoor Pool Narrabri - ~~as per current Council fees and charges~~ \$25.00 per hour
- k. 33m Outdoor Pool Boggabri and Wee Waa - ~~as per current Council fees and charges~~ \$15.00 per hour

#### 14.8 SCHOOLS

- a. No lane hire fee on standard sports bookings.
- b. Gate admissions are required to be invoiced at the end of each booked session.
- c. Cash payments will not be accepted from schools for entry into the pool.

- d. All schools are to complete the Schools invoice form prior to arriving at the pool. An Invoice will then be sent for payment from Council.

## 15 RECREATIONAL DEVICES & AREAS

### 15.1 SPRINGBOARDS

Where springboards are provided these will operate at the discretion of Council staff. A springboard will be disabled (closed) by the placement of a sign and/or barrier between the end of the board and the route which a person using a springboard correctly, would normally enter. Users of springboards must obey all directives and instructions given by Pool Staff and on signage. Safety is the paramount consideration when using a springboard. A person who uses a springboard without authorisation, incorrectly or in a manner which endangers themselves or others may be requested to leave the facility.

### 15.2 INFLATABLE PLAY STRUCTURES

Users of inflatable play equipment must obey all directives and instructions given by Pool Lifeguards and provided on signage. Noncompliance may result in the offender being requested to leave the facility.

### 15.3 CHILDREN'S PLAY EQUIPMENT

The use of any child play equipment is restricted to children under the age of 10 years. Noncompliance may result in the offender being requested to leave the facility.

### 15.4 TODDLER'S & WADING SWIM POOLS

- a. Toddler's and wading swim pools are for children under the age of 10 with developing swimming ability. The pool coordinator may make exceptions to this upon request and with suitable reason.
- b. "Rough play" is not allowed.
- c. People who use the toddler's & wading swim pools without regard for the safety of children may be requested to leave the facility.

A refund of the pool entry fee will not be given to a person instructed to leave the facility due to incorrect use of a recreational device or area.

## 16 ACCESS FOR PEOPLE LIVING WITH A DISABILITY

### 16.1 ASSISTANCE

Staff are to provide all reasonable assistance to facilitate the enjoyment of the swimming pool facilities by all patrons.

### 16.2 GUIDE DOGS

Trained guide dogs are permitted inside the facility.

### 16.3 POOL ACCESS

Council will aim to develop disabled access to each facility.

### 16.4 LIMITS ON MANUAL HANDLING & CARE OF IMPAIRED PERSONS

Due to the risks associated with manual handling of people, pool staff are not able to provide assistance to persons who require any kind of lifting as part of their everyday use of the facility.

#### 16.5 REFUND ENTITLEMENT

If staff are unable to provide the assistance required to facilitate access to the pool for a person with a disability a refund of pool entry is to be made.

### 17 YOUNG CHILDREN

#### 17.1 SUPERVISION

Children under the age of 10 must be actively supervised by a responsible person over the age of 16 at all times; 'actively supervised' in this instance means that the supervising person shall be dressed in attire consistent with entering the water, and be in the vicinity of and maintain visual contact with the child. Teachers and/or instructors given charge of students at an NSC swimming pool will provide supervision in accordance with supervision requirements set down by the NSW Department of Education and Training. With regard to supervision of students, Lifeguards and Teachers on duty can be included as part of supervision ratios. However, Lifeguards often have other duties to perform around the facility that take them away from the pool. Alternative supervision will need to be arranged by the group during these times. Supervision of students must be constant, and distractions restricted so far as practically possible.

#### 17.2 CLOTHING

All children must;

- a. Wear a clean (unsoiled) bathing costume,
- b. Non toilet trained children must wear a waterproof nappy at all times when in the pool grounds.

*Waterproof nappies are available from the kiosk.*

#### 17.3 CHANGE ROOMS

Children up to the age of 7 years are allowed to enter the change room of the opposite sex so long as they are accompanied by a supervising adult. The Pool Coordinator has discretionary authority to make exceptions to this if requested, on a case by case basis.

#### 17.4 ABANDONED CHILDREN

Where a child under the age of 10 is identified as abandoned at the pool (i.e. without the required supervision), Pool Staff will firstly ensure the physical safety of the child and then attempt to contact the parent(s) or legal guardian via phone.

If a parent is unable to be contacted, refuses to collect the child or does not arrive within 30 minutes, Council staff will contact either the NSW Police Service or Department of Community Services (DOCS) to arrange the transfer of the child into their custody. The Aquatic Facilities Coordinator will be notified immediately.

The 24-hour contact number for DOCS Helpline is 132 111.

Any child abandonment incident is to be recorded on a near miss form and noted on the Daily Running Sheet.

### 18 CONSULTATION

#### 18.1 SUPERVISION

Children under the age of 10 must be actively supervised by a responsible person over the age of 16 at all times; 'actively supervised' in this instance means that the supervising person shall be dressed in attire consistent with entering the water, and be in the vicinity of and maintain visual contact with the child. Teachers and/or instructors given charge of students at a NSC swimming pool will provide supervision in accordance with supervision requirements set down by the NSW Department of Education and Training. With regard to supervision of students, Lifeguards and Teachers on duty can be included as part of supervision ratios. However, Lifeguards often have other duties to perform around the facility that take them away from the pool. Alternative supervision will need to be arranged by the group during these times. Supervision of students must be constant, and distractions restricted so far as practically possible.

## 19 FEES & CHARGES

Swimming pool fees and charges will be in accordance with those set out in the Revenue Policy and Fees for Service of the current NSC Operational Plan.

### 19.1 SINGLE ENTRY FEES

- a) Fees will be charged for pool entry and pool services in accordance with Council's current Revenue Policy Fees for Service.
- b) A 'spectator' for the purpose of charging a single-entry fee is a person who enters the facility to supervise another patron, watch an event or use the facility, otherwise without entering the water.
- c) An 'adult' for the purpose of charging a single-entry fee is any person aged 18 years or older and who is no longer attends secondary education.
- d) A 'child' for the purpose of charging a single-entry fee is any person under the age of 18 and who is still enrolled in secondary education.
- e) Children aged 3 years and under are permitted free so long as they have a full fee paying adult entering with them.
- f) A 'concession' is offered to those persons using the facility who are holders of, and can produce, a Centre Link issued Pension Card, or a Department of Veteran's Affairs Pension Card. A concession only applies to the holder of the card.
- g) Pool Staff required to hold a Pool Lifeguard Licence as an essential qualification and who are entering the facility for the reason of training for the physical component of their Licence, or supervision of swimmers will be admitted free.
- h) Teachers entering the facility for the purpose of supervising a school group at the pool will pay a fee per teacher or per school.
- i) Resident swimming club coaches will pay for entry to the facility.
- j) Carers of people living with a disability entering the facility for the purpose of directly supervising the person under their care will pay a spectator fee.
- k) Individual who are prohibited from a swimming facility because of unacceptable behaviour or other contravention of this plan are not entitled to a refund.
- l) Council may enter into an agreement with schools and groups for a payment method for entry fees other than cash at the pool i.e. invoice.

### 19.2 SEASON TICKETS

- a) For the reason of setting season ticket prices to fairly reflect the service offered by a facility, Two (2) levels of service have been established.
  - i. Level 1: Small and medium sized facilities open between 6-10 hrs per day. (The Boggabri & Wee Waa centres fall within this category.)
  - ii. Level 2: Larger facilities open more than 10 hours per day. (The Narrabri centre falls within this category.)
- b) A 'family' for the purpose of charging a fee for a family season ticket is a family unit of two adults in a relationship and their children up to the age of 18, and or listed on the family Medicare card. The Aquatic Facilities Coordinator has the delegation to consider personal circumstances which may require a variation from this definition. This will be done on a case by case basis for persons who request a variation and will be recorded via correspondence or a file note on Council's records system.
- c) Season tickets are issued to the designated person nominated on the season ticket application form and are not transferable. Unauthorised use of a season ticket by a person who is not the holder may result in the cancellation of the ticket with no refund.
- d) Season tickets are only valid for the swimming season in which they are purchased.
- e) Season ticket holders must have their ticket in their possession whilst at the facility and are required to use it to access the centre. Patrons who are not known to centre staff and who cannot produce their season ticket will be required to pay the relevant entry fee.

- f) At facilities where eftpos facilities are not available patrons can pay with cash or via eftpos at their nearest NSC Customer Service office. Season tickets can only be collected at the pool.
- g) Requests for refunds due to exceptional circumstances need to be in writing to Council and will be assessed on a case by case basis by the Aquatic Facilities Coordinator who has the delegation to approve a refund.

### 19.3 MULTI ENTRY PASSES

- a) Use of a multi entry pass is not restricted to the purchaser and can be used for multiple people to access any Narrabri Shire Council swimming facility.
- b) Multi entry passes are valid across more than one season however, staff have the authority to prevent a person purchasing more than one multi entry passes near the end of the pool season, if they think a person is doing so to avoid an anticipated price rise of the next season.

### 19.4 EVIDENCE OF AGE

- a) Children under the age of 10 years must be actively supervised at all times by a responsible person over the age of 16.
- b) Evidence of age can be requested as a condition of entry to a facility to;
  - i. Determine which fee to charge.
  - ii. Confirm they are 16 years old for the purpose of supervising children under the age of 10.
  - iii. To determine if the person is able to stay unsupervised by a responsible person.
- c) Discretionary authority is given to Council staff to charge the appropriate fee if he/she is reasonably convinced that a person is not the age that they pertain to be and is;
  - i. Attempting to avoid paying the full fee, or
  - ii. Attempting to enter the pool unsupervised, (i.e. claiming to be over the age of 10) or
  - iii. Attempting to supervise another patron (claiming to be over the age of 16)
- d) Acceptable evidence of age will be a current "Proof of Age Card", Drivers Licence including Learner, or Australian Passport.
- e) A person who cannot provide evidence will be;
  - i. Charged the full entry fee.
  - ii. Advised they are not eligible to supervise a person under the age of 10.
  - iii. Advised they are ineligible to enter the pool whilst not unsupervised by a person over the age of 16 years.

### 19.5 OTHER FEES

- a) Lane hire fees are applicable for user groups who require exclusive use of lane space. The charging of a lane hire fee does not exclude the user from complying with any part of this Management Plan.
- b) An after-hour's fee (per hour) is applicable to groups who have permission to hold an event outside of the normal operating hours. The relevant entry fee still applies to each member of the group in addition to the after-hour's fee.
- c) Council may apply a fee to the use and hire of recreational devices (spring boards, water slides, inflatable play equipment) which will be consistent with Council's Revenue Policy and Fees for Service.
- d) Council provides free entry to pools during official ceremonies for Australia Day.
- e) Council is able to provide one additional free entry day each year at each pool to celebrate a national or community event. Nomination of the free entry day will be approved by the General Manager.
- f) Council will allocate a set amount in each year's operational budget to cover the cost of waiving of fees. Requests for waiving of fees need to be made in writing to Council and approved by the General Manager within the annual budget allocation approved by Council.

## 20 OPERATING HOURS

### 20.1 POOL SEASON AND HOURS OF OPERATION

The summer swimming season will approximately align with terms 4 and 1 of the school years so long as weather conditions are favourable, and patronage is adequate.

The Narrabri Aquatic Centre will operate all year round, excluding any maintenance period required with the outdoor areas becoming available with the summer swimming season.

Discretion is given to the Open space Manager to make minor changes to season start finish dates as well as spread of hours. Major changes will be put to Council for review and consideration.

Opening dates will be advertised in The Narrabri Courier and on Council's website in the month prior to opening.

Each pool will have a permanent sign at the entrance displaying the start finish date of that centre. Those dates will also appear on Council's website for the duration of the season.

The spread of hours will generally be consistent with the two-tiered service delivery arrangement outlined in section 19.2 of this plan. The spread of hours will be set considering the requirements of key user groups, patrons, operational requirements and resource constraints.

### 20.2 ~~SITE DETAILS~~ SITE DETAILS

**Boggabri** summer season: 2<sup>nd</sup> Monday in October till 1<sup>st</sup> Friday in April.  
October, March and April: 12:00 noon- 6:00pm

November December, January and February: 12:00 noon- 7:00pm  
Public Holidays: 12:00 noon- 6:00pm  
Christmas Day & Boxing Day: Closed

**Narrabri summer** season: 2<sup>nd</sup> Monday in October till day before the 1<sup>st</sup> Saturday in April

Mon- Fri- Summer: 6:00am- 7:00pm  
Saturday- Summer season: 9:00am- 6:00pm  
Sunday- Summer season: 12:00 noon- 6:00pm  
Summer season Completion 1<sup>st</sup> of April: End of Business Day

**Narrabri winter** season 1<sup>st</sup> Saturday in April till day before 2<sup>nd</sup> Monday in October.

Mon-Friday- Winter Season: 6:00am-6pm  
Saturday- Winter season: 12:00noon - 4:00pm  
Sunday- April, May and September: 12:00noon - 4:00pm  
Sunday- June, July and August: Closed  
Public Holidays Winter Season: Closed  
Christmas Day & Boxing Day: Closed  
Good Friday to Easter Monday: Closed

**Wee Waa** summer season: 2<sup>nd</sup> Monday in October till 1<sup>st</sup> Friday in April.

October, March and April: 12:00noon- 6:00pm

November, December, January and February: 12:00 noon - 7:00pm  
6:00am- 8:00am (dependant on demand)

**Commented [EP3]:** Request the April 50m closing date be extended to mid-April to allow for continued squad training for S titles

**Formatted:** Highlight

Public Holidays: 12:00 noon - 6:00pm  
Christmas Day & Boxing Day: Closed

### 20.3 ALTERATIONS TO USUAL HOURS OF OPENING

All pools will be closed;

- a) 5pm Christmas eve.
- b) Christmas Day.
- c) Boxing Day.
- d) Good Friday through Easter Monday.

A pool may not open, may open late, or close early due to:

- a) Unfavourable weather resulting in absence or likely absence of swimmers e.g. rain.
- b) Safety reasons e.g. lightning, equipment failure, contamination, vandalism.
- c) Interruptions to power supply.
- d) In the event of imminent weather and or lightning Council Staff may close outdoor pool areas until such time as the weather is considered safely past. During such times patrons will be required to evacuate from the water and take appropriate cover until notified by Council staff that it is safe to return to the water.
- e) Aquatic Facilities Coordinator or Pool Team Leader is authorised to close any part of the facility or the entire facility to control a risk to patrons, colleagues or the facility if he or she considers the risk to be escalating toward high.
- f) The pool season may be extended to accommodate special events, training for State or National level swimming championships, school holidays or favourable weather. The pool hours may be adjusted during this time to suit the actual use.
- g) During periods of hot weather Aquatic Facilities Coordinator or Pool Team Leader have the authority to extend the opening times of the pool considering available staff and number-quantity of patron's present.
- h) The Aquatic Facilities Coordinator or Pool Team Leader will notify the organiser of any group booked in for an event of an alteration to usual hours as soon as possible.
- i) The Pool Team Leader will notify the Aquatic Coordinator Manager of changes to opening times as soon as possible.
- j) During brief power outages the pool can remain open if adequate disinfection levels, clarity and lighting etc. can be maintained. Other areas of the facility must also be able to continue to operate safely. During extended power outages the pool will be closed.

## Annexures

[ECM\\_1208582 Aquatic Facility Management Plan Narrabri Shire Council](#)

[ECM\\_1727464 Aquatic Centre Facilities Pool Emergency Action Plan](#)

[ECM\\_1724177 Swimming Pool User Agreement 2018](#)

[ECM\\_1724176 Aquatic Facilities Booking Application - All Activities](#)

[ECM\\_1724174 Application for Swimming Pool Lane Space](#)

[ECM\\_1727462 Aquatic Facilities Conditions of Entry](#)

[ECM\\_1727475 Wee Waa Aquatic Facility Site Plan](#)

[ECM\\_1727473 Narrabri Aquatic Facility Site Plan](#)

[ECM\\_1727476 Boggabri Aquatic Facility Site Plan](#)



Aquatic Facilities Management Plan – Narrabri Shire Council

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View of Cooloolobindi.

## **ABORIGINAL CULTURAL HERITAGE STUDY**

### **PART ONE: REPORT**

### **NARRABRI LOCAL GOVERNMENT AREA**

SEPTEMBER 2020

Report prepared by  
OzArk Environment & Heritage  
for Narrabri Shire Council



# **NARRABRI SHIRE**

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### **Acknowledgement**

OzArk and Narrabri Shire Council acknowledge the Traditional Owners of the area on which this assessment took place and pay respect to their beliefs, cultural heritage and continuing connection with the land. We also acknowledge and pay respect to the post-contact experiences of Aboriginal people with attachment to the area and to the elders, past and present, as the next generation of role models and vessels for memories, traditions, culture and hopes of local Aboriginal people.

---

**ABBREVIATIONS AND GLOSSARY**

---

AHIMS	Aboriginal Heritage Information Management System. Administered by Department of Premier and Cabinet, AHIMS is the central register of all Aboriginal sites within NSW.
Assemblage:	All artefacts recorded at a location. In this report, assemblage refers to stone artefacts as this was the only artefact class recorded.
NPW Act	<i>National Parks and Wildlife Act 1974</i> . Primary legislation governing Aboriginal cultural heritage within NSW.
PAD	Potential archaeological deposit. Indicates that a particular location has potential to contain subsurface archaeological deposits, although no Aboriginal objects are visible.

---

## EXECUTIVE SUMMARY

---

OzArk Environment and Heritage (OzArk) has been engaged by Narrabri Shire Council (Council) to complete an Aboriginal Heritage Study over the Narrabri Local Government Area (LGA) (the study). This study has been proudly funded by the New South Wales (NSW) Government in association with Council.

The study has two objectives:

1. To ensure that the Aboriginal community of Narrabri LGA are meaningfully consulted in regard to what sites and places within the shire are important to them.
2. To identify a group of sites of significance to Aboriginal people that may be appropriate for listing as Local Heritage Items on the Narrabri Local Environmental Plan (LEP) under Schedule 5 Environmental Heritage.

In the period between April to September 2019, OzArk undertook consultation with relevant Aboriginal persons with interests in the Narrabri LGA. Community workshops were held on 20 August and 21 August 2019. Both community workshop meetings were well-attended and valuable discussion occurred at them.

As a result of the consultation undertaken for this study, a number of places were put forward by the local Aboriginal community as being significant and warranting further investigation and potential inclusion on the Narrabri LEP.

There are a number of recommendations for further work which have been identified during the course of this study:

- Oral history surveys of life at town camps and reserves, and to a lesser extent for missions, may be necessary to assist in the preparation of heritage assessments for potential LEP listings. Oral history records of Aboriginal life in the early post-contact period in the Narrabri LGA contain less detail than comparable areas near missions such as Brewarrina (Bourke Shire Council LGA) and Terry Hie Hie (Moree Plains Shire LGA).
- Multiple sites, with identified Aboriginal heritage significance, have not been located by the current study. The location of these sites, such as natural bores across the Narrabri LGA, could be investigated by future studies.
- The process of listing any suggested sites must involve Aboriginal community consultation to gain consent for the publication of the location or knowledge concerning any LEP sites. The Aboriginal community should also be consulted when determining appropriate curtilages for any sites and places listed.

There are eight (8) places that should be considered for listing on the Narrabri LEP. All of these places have a strong connection to the local Aboriginal community, both past and present. Some of these locations are still in use today by the local Aboriginal community and will be used into the future as well.

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## 1 INTRODUCTION

---

### 1.1 AIMS AND OBJECTIVES

OzArk has been engaged by Council to complete an Aboriginal Heritage Study over the Narrabri LGA. This study has been proudly funded by the NSW Government in association with Council.

The study has two objectives:

1. To ensure that the Aboriginal community of Narrabri LGA are meaningfully consulted in regard to what sites and places within the shire are important to them.
2. To identify a group of sites of significance to Aboriginal people that may be appropriate for listing as Local Heritage Items on the Narrabri Local Environmental Plan (LEP) under Schedule 5 Environmental Heritage.

We note that this document is not prepared as evidence to support any Native Title aspirations of local Aboriginal people and accordingly we seek to ensure that we do not pre-judge the research which we understand to be ongoing for that purpose.

### 1.2 REPORT AUTHORS AND CONTRIBUTORS

This report has been written and contributed to by:

- Report Author: Dr Alyce Cameron (OzArk Senior Archaeologist, BA [Hons] and PhD [Archaeology & palaeoanthropology] Australian National University).
- Report Author: Harrison Rochford (OzArk Heritage Officer, MPhil (Ancient History), BLib. Studies [Hons], University of Sydney).
- Reviewer: Ben Churcher (OzArk Principal Archaeologist; BA [Hons], Dip Ed).

We are indebted to the Aboriginal community stakeholders who met with us and spent time discussing the study and sites.

### 1.3 LOCATION

Narrabri LGA is located in the central north region of New South Wales (**Figure 1-1**). It is located adjacent to the Namoi River and the town of Narrabri is at the junction of the Newell Highway and the Kamilaroi Highway. There are a number of smaller towns, villages and localities in the LGA including Baan Baa, Bellata, Boggabri, Edgeroi, Gwabegar, Pilliga and Wee Waa (**Figure 1-2**).

Figure 1-1: Location of the Narrabri LGA.

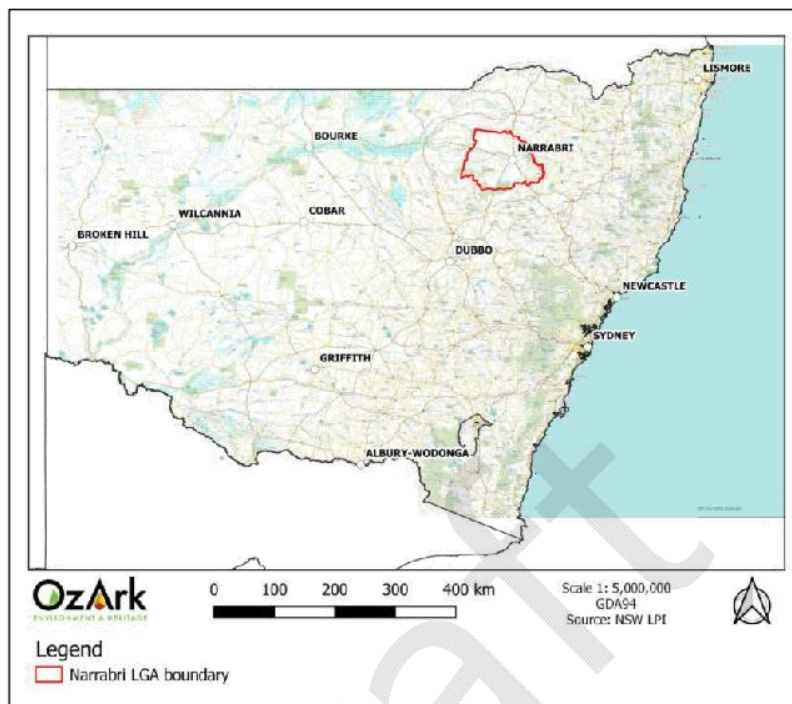


Figure 1-2: The Narrabri LGA in its regional context.



#### 1.4 CONSTRAINTS AND LIMITATIONS

A primary aim of this study was to engage with the local Aboriginal community and workshops were scoped and held in Narrabri and Wee Waa. Although the workshops were well-attended and good outcomes were achieved, there are further people with varying types of knowledge to contribute who may not have been able to attend these meetings.

While the nominated places of significance came as a result of the community consultation with local Aboriginal people, many of the findings of this report are, nevertheless, based on a desktop review of resources.

This study did not rely on any field survey within the Narrabri LGA and no site visits were undertaken. However, those Aboriginal people who were able to participate expressed enthusiasm that the Narrabri Shire Council was seeking to engage with the Aboriginal community for this study and are hopeful that this study might form the basis of further studies.

An additional constraint of the study was that the signatures from the appropriate Local Aboriginal Land Councils were unable to be obtained to support the application for an *Aboriginal Heritage Information Licence Agreement* (AHILA). An AHILA would have meant the study could have obtained all Aboriginal site data across the Narrabri LGA from the Aboriginal Heritage Information Management System (AHIMS).

#### 1.5 RELEVANT LEGISLATION

Aboriginal heritage in NSW is managed by a number of state and national Acts. Baseline principles for the conservation of heritage places and relics can be found in the *Burra Charter* (Australia ICOMOS 2013). The *Burra Charter* has become the standard of best practice in the conservation of heritage places in Australia, and heritage organisations and local government authorities have incorporated the inherent principles and logic into guidelines and other conservation planning documents. The *Burra Charter* generally advocates a cautious approach to changing places of heritage significance.

In NSW Aboriginal cultural heritage is currently largely managed by provisions within the *National Parks and Wildlife Act 1974* (NPW Act) which provides protection for all Aboriginal objects (whether they are known or recorded or otherwise) and declared Aboriginal places<sup>1</sup>.

---

<sup>1</sup> See, for example, Aboriginal heritage legislation in NSW: How the Aboriginal heritage system works. Published by the State of NSW and the Office of Environment and Heritage (2012). <https://www.environment.nsw.gov.au/resources/cultureheritage/20120401system.pdf>.

There are a range of other heritage protection facilities also available for the purpose of protecting Aboriginal cultural heritage in NSW, including: the *NSW Heritage Act 1977* (Heritage Act), which protects the state's most outstanding heritage items and places, Aboriginal and otherwise; the *Environment Planning and Assessment Act 1979* (EP&A Act) and the *Crown Lands Act 1989* (CL Act).

The EP&A Act is also a key piece of legislation for the management of development in NSW. Cultural heritage is considered to be a part of the environment under this Act and requires that Aboriginal cultural heritage, and the possible impacts to Aboriginal heritage that development may have, are formally considered in land-use planning and development approval processes.

The CL Act enables covenants to be placed over Crown Land to protect environmental, cultural and heritage values before the land is sold or transferred.

The NPW Act remains the core NSW legislation to be relied upon to protect Aboriginal cultural heritage and it operates to do so in a range of ways. Firstly, all Aboriginal objects are automatically protected under this law (including objects which are not recorded or 'known'). Further, places of importance to Aboriginal individuals and communities may be given additional legal protection under provisions of the NPW Act by the following steps:

- Declaration of new Aboriginal Places.
- Reservation and management as Aboriginal Areas and national parks.
- Formal agreements on the joint management of national parks.
- Formal agreements with land owners (Voluntary Conservation Agreements).

**Table 1-1** further sets out the wide range of additional legislative and regulatory frameworks which have a direct relationship with the protection of Aboriginal cultural heritage in NSW (OEH 2012: 5–6).

In essence, if there are any steps that a party is anticipating taking which might potentially have an impact on Aboriginal heritage then the overarching form of protection is to take reasonable steps to identify any such potential impacts in relation to the various Acts and regulations described below.

**Table 1-1: Aboriginal Heritage Legislation in NSW (source: OEH 2012: 5–6).**

Legislation / Policy	Relevance to Aboriginal culture and heritage
<i>National Parks and Wildlife Act 1974</i>	Provides for the protection of Aboriginal objects and declared Aboriginal Places in NSW; and to foster appreciation, understanding and enjoyment of Aboriginal cultural heritage. Provides protection by establishing offences for 'harm' (damage, destroy, deface or move). Requires that information on Aboriginal cultural heritage be maintained in AHIMS. Allows for the reservation of Aboriginal Areas and for the co-management of some national parks through Boards of Management.
<i>Heritage Act 1977</i>	Lists and gives protection to places of Aboriginal heritage significance that are of 'State' heritage significance on the State Heritage Register. Consultation is undertaken with Aboriginal groups for places listed specifically for Aboriginal significance.
<i>Environmental Planning and Assessment Act 1979</i>	Provides planning controls and requirements for environmental assessment. Oversees land-use planning for local areas. Compulsory clause in standard Local Environmental Plan template specifically for conservation of locally significant Aboriginal heritage.
<i>Crown Lands Act 1989</i>	Sets out processes and principles for using and managing Crown land. The Act enables covenants to be placed over Crown land to protect environmental and cultural and heritage values before the land is sold or transferred.
<i>Aboriginal Land Rights Act 1983</i>	Establishes a system of Local Aboriginal Land Councils (LALC) across NSW. LALCs and NSWALC can also acquire and deal in land and negotiate agreements for access to private land for cultural resource use. LALCs have a role in the protection and promotion of awareness of Aboriginal culture and heritage.
<i>Native Title Act (NSW) 1994</i>	Enables full ownership of land via native title as well as provision for making agreements via Indigenous Land Use Agreements (ILUA).
<i>Forestry Act 1916</i>	Allows for the co-management of State Forests. Boards of Management have been established and resourced for three State Forests. Under this Act, Aboriginal people can gain access to state forests for obtaining forest products and materials.
<i>Catchment Management Authorities Act 2003</i>	Aboriginal Reference Groups and Advisory Committees advise CMAs. Aboriginal employment facilitated via projects funded through the Commonwealth 'Caring for Country' program.
<i>Fisheries Management Act 1994; Marine Parks Act 1997</i>	The NSW Indigenous Fishing Strategy supports involvement of Aboriginal people in fisheries management and aquaculture. The Fisheries Management Act issues permits for taking fish for cultural community events. The Marine Parks Act permits Aboriginal cultural resource use in certain areas/zones of marine parks in particular circumstances.
<i>Rural Fires Act 1997; Bush Fire Environmental Assessment Code</i>	When hazard reduction and wildfire control is carried out, Aboriginal heritage is considered via AHIMS searches and consideration of relevant management plans.
<i>Water Management Act 2000</i>	Aboriginal representation on water management committees; Aboriginal cultural access and community development licences as part of Water Sharing Plans.
<i>Game and Feral Animals Control Act 2002</i>	Certain Aboriginal people are exempt from licence requirements for hunting feral animals.
<i>Land Acquisition (Just Terms Compensation) Act 1991</i>	An authority of the State of NSW may acquire land in exceptional circumstances.
<i>Threatened Species Conservation Act 1995</i>	Requires that Aboriginal people's interests be considered in threatened species recovery plans.
<i>NSW Cultural Resource Use Framework</i>	Enables access to land for cultural purposes; outlines processes of community engagement to be undertaken for public lands.

### 1.5.1 The role of a Local Environmental Plan

In NSW a LEP protects Aboriginal heritage items within an LGA. The Narrabri LEP (gazetted 21 December 2012) states its aims at Section 1.2, to encourage '*protecting, enhancing and conserving...places and buildings of heritage significance*'. The currently listed places of

environmental and heritage significance are listed at Schedule Five (5). There are currently no heritage places listed that protect identified Aboriginal cultural values.

#### **1.5.1.1 Commonwealth legislation**

There is commonwealth legislation of relevance but in NSW all state avenues would have been exhausted prior to looking further afield. The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* may be relevant where state-based processes are unable to protect any item under threat of injury or desecration that is of importance to an Aboriginal community. The Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* may also be relevant to some development proposals, particularly where there are heritage values which are arguably of national significance.

#### **1.5.1.2 State legislation**

##### National Parks and Wildlife Act 1974 (NPW Act)

As presented above in **Table 1-1**, the NPW Act provides for the protection of Aboriginal objects and declared Aboriginal Places in NSW. There are currently no Aboriginal Places gazetted within the Narrabri LGA.

In cases where there is no way to avoid directly impacting an item or place with Aboriginal heritage significance then a process of applying for a permit to impact Aboriginal heritage is available through the NPW Act. To quote from OEH 2012: 8:

*The NPW Act also contains the process to help people determine that their actions will not harm Aboriginal objects. The process is described in the OEH (Heritage NSW) guideline titled Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW (2010). If the due diligence process shows that an activity such as development may harm an Aboriginal object or declared Aboriginal Place then the developer must investigate, assess and report on the harm that may be caused by that activity. This second process is described in the OEH guideline titled Guideline to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW (2011). Where harm to an Aboriginal object cannot be avoided, an application for an Aboriginal Heritage Impact Permit (AHIP) must be made by the developer. These permits are issued at the discretion of the Director General. All AHIP applicants must undertake consultation with Aboriginal communities in accordance with the NPW Regulation.*

*If a developer harms an Aboriginal object or declared Aboriginal Place without an AHIP, the developer has broken the law and can be prosecuted in the courts. The NPW Act identifies a number of defences and exemptions to the offence of harming an Aboriginal object or declared Aboriginal Place*

OEH 2012: 8

#### Heritage Act 1997 (Heritage Act)

The Heritage Act is applicable to the current study.

This Act established the Heritage Council of NSW. The Heritage Council's role is to advise the government on the protection of heritage assets, make listing recommendations to the Minister in relation to the State Heritage Register, and assess/approve/decline proposals involving modification to heritage items or places listed on the Register. Most proposals involving modification are assessed under Section 60 of the Heritage Act.

Automatic protection is afforded to 'relics', defined as 'any deposit or material evidence relating to the settlement of the area that comprised NSW, not being Aboriginal settlement, and which holds state or local significance' (note: formerly the Heritage Act protected any 'relic' that was more than 50 years old. Now the age determination has been dropped from the Heritage Act and relics are protected according to their heritage significance assessment rather than purely on their age). Excavation of land on which it is known or where there is reasonable cause to suspect that 'relics' will be exposed, moved, destroyed, discovered or damaged is prohibited unless ordered under an excavation permit.

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## **2 ABORIGINAL STAKEHOLDER CONSULTATION: METHODS AND RESULTS**

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In the period between April to September 2019, OzArk undertook consultation with relevant Aboriginal persons with interests in the Narrabri LGA. This consultation was in the form of email, postal mail and phone calls to relevant Aboriginal agencies and individuals.

Formal notice of the study objectives and announcement of dates for local workshops to discuss the study were provided to all parties identified in the consultation period. Newspaper and social media advertisements were placed, and posters were created.

On 20 August 2019, a community workshop meeting was held at the Bowls' Club at Wee Waa; and on 21 August 2019, a community workshop meeting was held at the Narrabri Shire Council Chambers, Narrabri. Both community workshop meetings were well-attended and valuable discussion occurred at them.

One of the key outcomes of the consultations with Aboriginal stakeholders was that the community consultation meetings were considered a good first step, and that participants were interested in the process following the submission of this report to Council.

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### **3 LANDSCAPE CONTEXT**

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#### **3.1 TOPOGRAPHY**

The topography of the Narrabri LGA is characterised mostly by flat plains, with some waterways and associated terraces. There is little deviation in elevation across the western half of LGA, especially when compared to the eastern half which has several distinct small hills or mountain ranges (**Figure 3-1**).

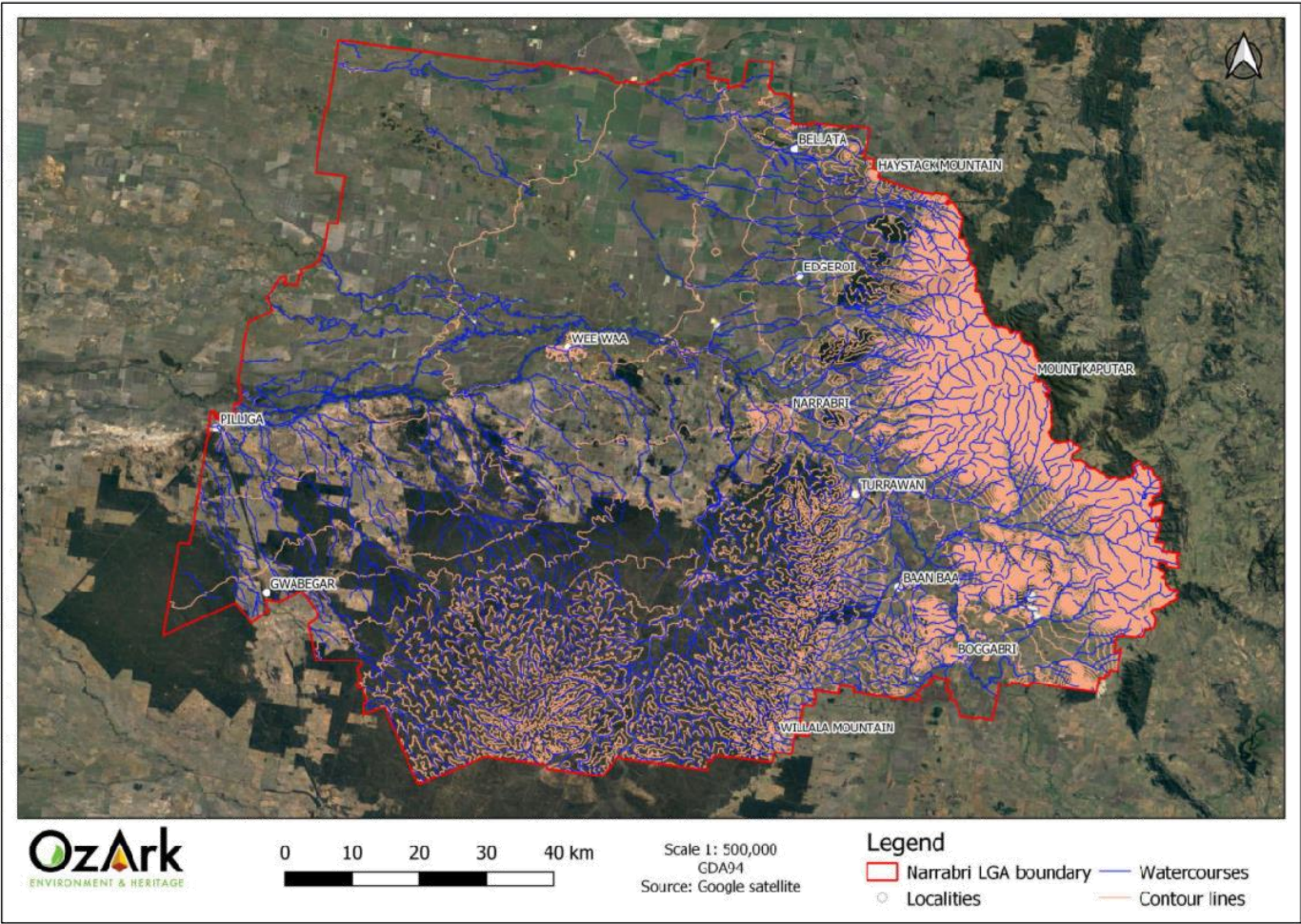
Australia's landscape can be classified into eighty-nine (89) geographically distinct bioregions. The classification is based on climate, landform, native vegetation and species information. These eighty-nine (89) bioregions are refined further into four hundred and nineteen (419) sub bioregions which are localised and homogenous geomorphological units inside each bioregion (DEE 2019).

Narrabri LGA has three bioregions: Darling Riverine Plains, Brigalow Belt South and Nandewar. These are further refined into two sub bioregions of Nandewar (Kaputar and Peel) and five sub bioregions of the Brigalow Belt South (Northern Outwash, Northern Basalts, Liverpool Plains, Pilliga and Pilliga Outwash). Both the Brigalow Belt South and Darling Riverine Plains are dominated by Quaternary sediments (from the past two and half (2.5) million years) tended to be coarser in the east and finer to the west. The Nandewar bioregion contains the youngest geological features in NSW, with Triassic sandstones and shales deposited two hundred and fifty (250) million years ago on the edge of the Gunnedah basin.

#### **3.2 GEOLOGY AND SOILS**

Narrabri LGA falls predominantly into the Brigalow Belt South bioregion, which is characterised by landscapes derived from either basalt flows or quartz sandstone. Basalt areas tend to have well structured clays and high levels of nutrients, whereas the sandstone country has thin sandy soil with fewer nutrients. The bedrock features of Darling Riverine Plains to the west are covered by alluvial deposits, leaving sandy soils with low nutrient values and rapid drainage. The Nandewar soils around Kaputar are stony brown loams between the frequent basalt outcrops. (NPWS 2003).

Figure 3-1: Topography of the Narrabri LGA.



### 3.3 HYDROLOGY

Narrabri LGA is dominated by the Mooki-Namoi River system, with the main waterways draining into the system, with only a few to the north of the LGA flowing to the Gwydir. Areas west of the Nandewar Ranges contribute to the Murray-Darling River basin, consisting of the Macintyre-Dumaresq, Culgoa, Narran, Warrego, Paroo, Moonie, Barwon, Gwydir, Namoi, Macquarie, Yanda, Castlereagh and Darling catchments.

The main waterways in the LGA are Bohena Creek, Coghill Creek, Cubbo Creek, Etoo Creek, Maules Creek, Millie Creek, Pian Creek, Mulgate Creek, Horsearm Creek, Long Gully and Narrabri Creek, an altered anabranch of the Namoi River. The area also includes Yarrie Lake, an endorheic lake that does not flow to the river systems and likely caused by a meteorite impact.

Much of the landscape of the Narrabri LGA contains Quaternary alluvial plains with extensive scalding interpreted as relic floodplains or terraces. This indicates that there has been considerable channel migration of the LGA's main drainage lines, particularly areas to the west approaching the confluence of the Namoi and Barwon rivers.

### 3.4 VEGETATION

There are three (3) National Parks (NP) within the Narrabri LGA: Couradda NP, Moema NP and Mount Kaputar NP. There are also two (2) NSW National Parks and Wildlife administrated Aboriginal Areas: Deriah and Willala.

Reflecting the logging history of the area, there are also twenty-three (23) state forests and conservation areas inside the LGA: Barr; Bobbiwaa; Bubblewindi; Coomore; Couradda; Cubbo; Culgoora; Cumbil; Deriah; Etoo; Euligal; Jack's Creek; Janewindi; Killarney; Leard; Minnon; Moema; Orr; Pilliga East; Quegobla Rusden; Plagyan; and Vickery.

The vegetation today is greatly altered from its pre-1788 form across much of the LGA, even in these reserves. The Pilliga forests in the southwest of the LGA would have consisted of sparse blue-leaved and silver-leaved ironbark (*Eucalyptus fibrosa* and *Eucalyptus melanophloia*) and large white cypress pine (*Callitris glaucophylla*) interspersed with grasses (mostly *Triodia* sp.) (Rolls 1981:1–7). Vegetation today is much denser as acacia species and casuarina species form a solid undergrowth between the eucalypts.

The Riverine landscapes to the northwest of the LGA support a less diverse range of vegetation, featuring hardy species such as myall (*Acacia pendula*), white cypress, poplar box and belah (*Casuarina bristata*).

### 3.5 CLIMATE

The climate throughout the Narrabri LGA ranges from subhumid and temperate in the southeast to semi-arid and hot in the west. The annual mean maximum temperature is 26.9 degrees Celsius for Narrabri. The highest mean maximum temperature is during January (34.9 degrees Celsius), while the lowest mean minimum temperature is during July (18.1 degrees Celsius) (BOM 2019). Rainfall ranges from 566–1270 millimetres (mm) per annum in the Kaputar National Park to 213–607 mm in the semi-arid northwest.

### 3.6 LAND-USE HISTORY AND EXISTING LEVELS OF DISTURBANCE

Narrabri LGA is predominantly agricultural land with the larger urban centres (Boggabri, Narrabri and Wee Waa) along the banks of the Namoi.

According to the Australian Land Use and Management (ALUM) classification, most of the Narrabri LGA is classified as production from dryland agriculture and plantations, including cropping, grazing and horticulture. The dryland agriculture is interspersed with production from irrigated agriculture and plantations. Along the southern boundaries of the LGA, land use is mostly production from relatively natural environments, which includes native plant grazing, forestry and conservation (DAWR 2019).

### 3.7 CONCLUSION

The topography, hydrology and climate of the Narrabri LGA would have been conducive to nearly year-round occupation by Aboriginal people prior to 1820s when the land of the Pilliga forests and the Liverpool plains were settled by colonial graziers.

The environment of the Narrabri LGA would therefore support varying densities of population that will be reflected in the distribution of Aboriginal sites. Obvious nodal points are the major waterway of the Namoi running east–west across the LGA, but smaller waterways that would have had more reliable water pre-1788 are also likely to have been significant. Areas away from these water sources, such as the subhumid grasslands and open forests of the southeast, would have supported a range of food producing activities. The flat alluvial plains that characterise much of the northwest may have been more difficult to manage in terms of resource procurement and

supported a smaller population, although changes to vegetation and hydrology in the post-contact era are likely to have exacerbated the harshness of this environment.

Further complicating the past population distribution is the fact noted in **Section 3.3** that areas of the Narrabri LGA contain relic floodplains and terraces. Therefore, it is not possible in this environment to conclude that where there is water today always had water in the distant past. Conversely, landforms distant to water today, may well have been near water in the past. As will be seen in **Section 6**, this makes the task of predicting where Aboriginal sites are likely to be located difficult in such a dynamic landscape.

Draft

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## 4 BRIEF HISTORY OF THE NARRABRI LGA

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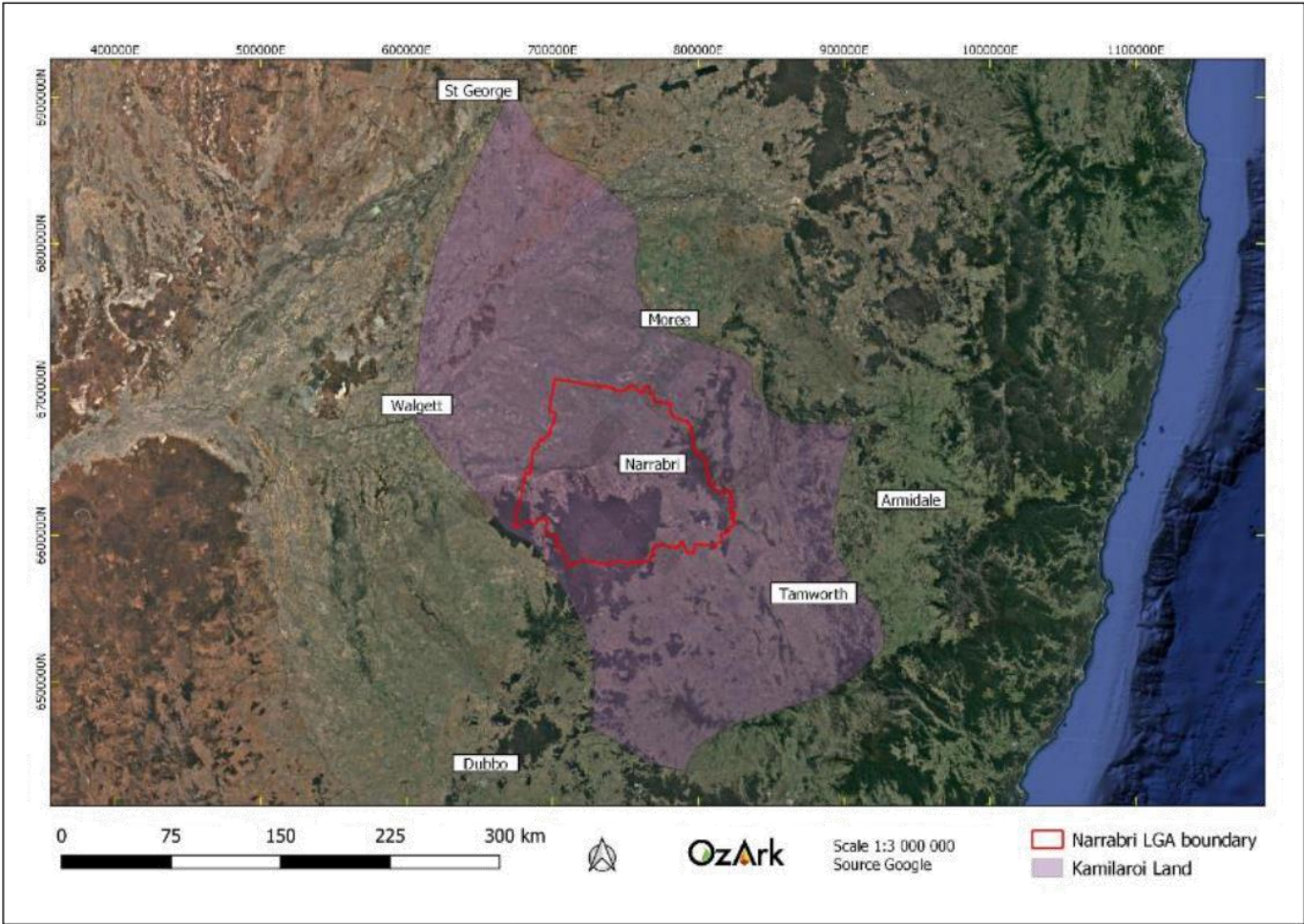
### 4.1 KAMILAROI LAND

The Narrabri LGA falls within the traditional lands associated with the Kamilaroi people. The Kamilaroi traditional lands extend from the northern end of Hunter Valley up through the Brigalow Belt to Mungindi and the northern reaches of the Barwon River. The westernmost point of the Kamilaroi bounds tends to be Walgett, although the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) mapping project continues Kamilaroi areas up to Lightning Ridge and Brewarrina (AIATSIS 1996). The Great Dividing Range represents the eastern limits of the tribe's lands before colonial occupation.

The approximation presented in **Figure 4-1** has been adapted from Tindale 1974 with reference to more current AIATSIS resources. While **Figure 4-1** also shows the limits of the Narrabri LGA, a history of the Kamilaroi people is not limited to the Narrabri LGA, nor is the first nation's history of Narrabri LGA limited to the actions and customs of the Kamilaroi.

It should be noted early in this chapter that Aboriginal groups have often been described as tribes or nations with relatively distinct language groups and boundaries. This was often a reflection of colonial expectations of Aboriginal social groups, misapplication of anthropological concepts or incomplete information. The boundaries presented in **Figure 4-1** are a guide to lands associated with Kamilaroi people.

Figure 4-1: Traditional lands of the Kamilaroi.



## 4.2 KAMILAROI HISTORY

### Introduction

Social network theory studies have questioned the usefulness of discrete nations or societies as classifications (Keen 1997: 261; Kenny 2012: 131–2). This network approach effectively highlights and stresses the transcendence of language, custom and ritual between 'nation' groups as a result of contact between smaller social units. The sources relevant to the present study represent information concerning Aboriginal people and their practices within the artificial boundary of the Narrabri LGA.

This section avoids using the past tense to describe Kamilaroi traditions due to the continuity of concepts (food, social structure) in the present-day Aboriginal population of the area.

### Landscape context

Kamilaroi land largely falls within current landscapes of semi-arid grasslands, although the exact characteristics of the land before colonial influence are difficult to establish. The Brigalow Belt South bioregion has no dry season with hot summer conditions and comprises part of the Aboriginal 'grain belt' that provided appropriate conditions for grass seed cultivation across central Australia (Mulvaney and Kamminga 1999: 86).

Kamilaroi use of the land appears to have been balanced between cultivation and hunting of game, with a preference for the latter. Archaeological evidence suggests that seed-cakes made of harvested *panicum* species were consumed widely through Kamilaroi lands, with greater frequency of grinding stones on the plains west of the ranges (McBride 1977). It is also likely that native plant food associated with the area such as melons (*Cucumis trigona*), potatoes (*milaa*), yams (*gubiyaay* or *Dioscorea* sp.) and oranges (*bambul*) were cultivated by the inhabitants of the region (O'Rourke 1997: 151–3). Written sources from the early colonial period suggest that Kamilaroi peoples preferred animal food sources, especially possum, yabbies and fish (O'Rourke 1997: 151).

### Languages

The name Kamilaroi, although more evident in an alternative transcriptive name 'Gamilaraay', refers to the group of people who 'have' (-araay) the word 'gamil' for 'no' (Austin 1993: 7). The same naming principle is evident in name of the neighbouring language groups the Yawaalaraay (those having 'waal' for no) and Wayilwan ('wayil' is 'not' and '-wan' means 'having' in this

language) (Austin 1993: 7). The names of towns in the Narrabri area can be recognised for their Kamilaroi origins, such as Boggabri ('*bagaaybaraay*' which is a place having creeks) and Narrabri ('*nharibaraay*' which is a place having knotty wood).

### Social Structure

Kamilaroi society is traditionally divided into four sections, rather than the dual (moiety) system more widespread in NSW. This structure is now referred to now as the section system, a term popularised following the studies of Ridley (1856) and Lorimer & Fison (1880) documenting their contact with Kamilaroi society. The four sections also interact with a matrilineal totemic moiety division between *dhillbay* (crow) and *gubadhin* (eagle) that extends beyond humans to all living things in the region.

These social sections and totems overlay smaller family units, usually consisting of a wife and a husband with their children. Descent was understood as matrilineal and determined the formation of 'clans' or 'bands' (collections of families) within the Kamilaroi nation that associated with a totem. Self-taught anthropologist R.H. Mathews recorded 68 clans of the Kamilaroi nation in 1897 and estimated more (Mathews 1905). Collections of bands coexisted as communities of possibly 150 individuals occupying a defined spatial territory within the nation (O'Rourke 1997: 131–2).

Leadership of these social units in the Kamilaroi nation follows established but indefinite practices. In discussions of marriage, mothers and their brothers reached decisions concerning offspring with little input from the father (O'Rourke 1997: 167–70). Inter-clan or inter-community feuds and combat tended to be decided by male elders with input from younger males with expertise or experience (O'Rourke 1997: 155–6).

### Dreaming

Baayama (Baiame) is the most significant being in the Kamilaroi interpretation of the cosmos, a creator figure who is common to most Aboriginal nations in NSW. Baayama and his wives brought forward the existing world order, including animals and plants, from a previous void of existence. Baayama's contact with the present world tends to be limited to appearing, rather than altering, and carries no prescriptive moral force (Stanner 1960: 256; Stanner 1979: 31, 57; 84; O'Rourke 1997: 173–7). Baayama's son Dharramulan and Garriya the Rainbow Serpent were the beings that had more influence on rituals and behaviour. Dharramulan presided over bora ceremonies and their associated initiation rites and Garriya rests in waterholes and in the Milky Way (O'Rourke 1997: 178–80).

### Significant Locations

The bora grounds in the Narrabri region are actively remembered to the present day, although their exact location is restricted knowledge. Bora ceremonies have been recorded in written sources at Wee Waa in 1861 and 1905 (Kenny 2012: 136 and O'Rourke 1997: 210, respectively).

## **4.3 EARLY COLONIAL OCCUPATION**

While population estimates are a difficult proposition, accepting O'Rourke's reasonable figure of ten thousand (10 000) Kamilaroi speaking people in 1826 puts the impacts of colonial occupation into a comprehensible frame of reference. By 1841 it appears that there were only 4 000 Kamilaroi speakers remaining. In 1856, the Kamilaroi population was no more than 1 000. This ninety (90) per cent decline of the Kamilaroi population occurred at a rate of three (3) per cent per year (O'Rourke 1997: 217–34).

The first recorded colonial journey into Kamilaroi country was John Oxley's second expedition (1818), travelling northwest on the Macquarie River up to the Macquarie Marshes and heading back east through the Pilliga. His records indicate that he passed through Kamilaroi country, being closely watched by its first people, from Baradine past Boggabri before reaching the ranges near Walcha (Oxley 1820: 109–12). The cautious reaction of the first group of Aboriginal people the party encountered, before they reached the Warrumbungles, suggests that the local population had interacted with colonial settlers before (Oxley 1820: 109; Rolls 1981: 1–3).

Oxley's written account, often inadvertently, displays aspects of the multifaceted relationship of Kamilaroi peoples with their country before colonial occupation: a man threw his firestick at Oxley (Oxley 1820: 108); widespread use of fire for hunting (Oxley 1820: 135) and descriptions of open woodland managed by burning (Oxley 1820: 80; cf. Rolls 1981: 7, 127); and the country Oxley frequently criticises for being uninhabitable supported a 'numerous' population (Oxley 1820: 108).

Oxley's exploratory journey into Kamilaroi country was too difficult and roundabout for settlers and graziers to follow (Rolls 1981: 8). The next non-Aboriginal person to have recorded interaction with the people of the Narrabri area had the opposite intention, escaping rather than colonising. George 'the Barber' Clarke was a convict, attached to a station run by Benjamin Singleton in the Upper Hunter, who fled in the mid-1820s (Boyce 1970: 22; Hunt 1980: 10). Clarke was taken in by a band of Kamilaroi people, often interpreted as conforming with series of episodes in which colonial runaways were accepted by Aboriginal groups as returned ghosts of their ancestors (*wonda* in Gamilaraay, Boyce 1970: 22–8). The 'returned ghost' concept has been challenged as

the sole explanation for indigenous acceptance of colonial wanderers by a broader theory incorporating additional Aboriginal social factors that limit exclusivity and allow all members to contribute to the group (Maynard and Haskins 2016: 1–8).

Although George Clarke is not included in the case studies of Maynard and Haskins, the recurrent features of his story demonstrate some inclusive social features of the Kamilaroi band who supported him. Clarke was fed until he learned how to contribute hunting and food gathering, was initiated into the tribe at bora ceremony and married into the society (Boyce 1970: 26–9; Rolls 1981: 94–5). He offered his skills to the group by cattle rustling, which led to his arrest near Boggabri in 1831 and undoubtedly reprisal attacks on his adoptive band by the squatters (Rolls 1981: 94).

The band that accepted Clarke lived near present Boggabri and had a camp near the lagoon now called 'Barber's Lagoon'. Major Thomas Mitchell, who surveyed the area in the 1830s, noted that the nearby peak now usually called Barber's Pinnacle, was known by the local name, *Tangulda* (Mitchell 1939: 44). Mitchell's stated aim to continue original names, rather than new colonial labels, led to the name of a nearby feature, now sometimes called 'Gin's Leap', being named '*Bullabalakit*' (Mitchell 1939: 45). Current tradition refers to the place as Cooloobindi, possibly adapted from an early station in the area called 'Coocoobiandi' (Rolls 1981: 139).

#### **4.4 SQUATTING AND SETTLEMENT**

The speed of squatting and land occupation in Kamilaroi country was overwhelming. It took only sixteen (16) years for landholders to expand from the Upper Hunter to Goondiwindi (1826–42) once the first plots were claimed (O'Rourke 1997:201). Conflict between first inhabitants of the area and the squatters was constant. Early sources suggest that cohabitation between Aboriginal people and colonial settlers could be peaceful until there were assaults on Aboriginal women or competition for areas continuously cultivated by Aboriginal people (Conner 2017: 996). The mass introduction of sheep and cattle to the fire-curated grasslands of the Kamilaroi people quickly destroyed the delicate balance of soils and grasses in the region and subsequently led to large scale conflict (Rolls 1981: 129; Gammage 2011: 3–8).

Between 1820, the year after Oxley's expedition, and 1829, the sheep population of Australia reached half a million. The colonial population increased from 40 000 to over 120 000 in the same period (Davidson and Wells 1988: 43, cit. in Hagan and Castle 1998: 26). While population increase in the Narrabri region was a small portion of the overall growth, colonial settlers went from

exploration of the land to division of cattle runs and the establishment of the Australian Agricultural Company land grants by 1825 (Rolls 1981: 67; Lydon and Ryan 2018: 17). The occupation and collapse of the previous ecosystem of the region led to conflict and eventually determined killing of the Kamilaroi people.

The earliest recorded land conflict between first people of the Kamilaroi region and the growing squatter population was on a cattle run known as Boorambil near modern Quirindi in 1827 or 1828 (Rolls 1981: 91). Estimates of the Aboriginal casualties from this encounter are perhaps unlikely to have been as high as the estimated two hundred (200), but there were a devastating number of deaths regardless. The Colonial Frontier Massacres project defines six (6) or more deaths in an Aboriginal group as a 'fractal' event that reduces the likelihood of survival in adverse conditions (estimates, see Rolls 1981: 91; fractal massacres, see Ryan et al 2017).

In 1829–30, a second smallpox outbreak spread into Kamilaroi lands, following the original outbreak in 1788–9 (Butlin 1983: 25–30). Most white settlers were either inoculated or had been exposed to the virus as children, whereas the Aboriginal population had no resistance to the introduced disease. Estimating the precise impact of the highly contagious virus is difficult, but George Clark's testimony in Bathurst gaol indicating that the disease was fatal for one (1) in six (6) of the tribe he joined was accepted at the time (Campbell 2002: 180–5). Campbell argues that the smallpox outbreaks were not of colonial origin but came from the trading networks connected to the far north (Campbell 2002: 14–5). Regardless of the origin of the outbreak, the first people of the Narrabri area in 1830s were bearing the effects of fatal diseases and the expansion of colonial grazing.

In the Narrabri region, there was increasing competition between landholders of large cattle runs, and the first nations people of the area. This was exacerbated by the drought conditions of the early 1830s (Rolls 1981: 101; Conner 2017: 1000). These large cattle runs would later give their names to towns (e.g. South Wee Waa, Baan Baa). Enduring constant incursions on their land by determined squatters, Kamilaroi people retaliated to the occupation of their land or perhaps assault on their people by killing five stockmen near Boggabri in 1833 (Rolls 1981: 100).

There are no records of an immediate reaction to this attack. Unlike the years of extended but small-scale attacks and retaliations in the Hunter region between settlers and the Wonnarua (Lydon and Ryan 2018: 90–1) or the later open war between the colony and the Wiradjuri (Read 1988), the Kamilaroi and their Warrayiraay neighbours on the Gwydir were the victims of organised assassination.

Although mostly outside the Narrabri region, there were systematic attacks on Kamilaroi and Warrayiraay people along the Gwydir and Namoi Rivers from 1836–8 by stockmen, soldiers and policemen. Attacks targeted entire hearth group units, rather than just those accused of spearing settlers or their stock, and destroyed the functional structures of traditional groups and their chances at continuity.

In response to the complaints of settlers in the wider Namoi and Gwydir region being raided by Kamilaroi, the colonial government dispatched the Mounted Police to the region in 1837 (Conner 2002: 103). Even before this organised response, a Mounted Police unit under a Sargent Temple was reported to have killed eighty (80) Kamilaroi in 1836 on the eastern side the Nandewar range, although the casualty estimate has been questioned (Milliss 1992: 101–2; Conner 2002: 102). Similarly, stockmen banded together to massacre possibly up to two hundred (200) Kamilaroi on the Gwydir River east of Moree over multiple days, giving the current town 'Gravesend' its name (Lydon and Ryan 2018: 18).

The Mounted Police expedition in 1837, led by Major James Nunn, ambushed and captured one hundred (100) Kamilaroi south of the Namoi near Manilla, executing one (1) man on the charge of killing a stockman eighteen (18) months previous (Conner 2002: 108). Roger Milliss argues that the evidence gathered from this attack and a visit to a station further north suggested that Nunn should have headed east to the Masterman Ranges seeking the perpetrators of the recent raids, but chose to head northwest to the Gwydir for '*a punitive expedition ... [against] any Aborigines he happened to come across*' (Milliss 1992: 174; *contra* Windschuttle 2000).

Nunn found a large encampment at a waterhole now known as Waterloo Creek or Jews Lagoon near modern Bellata in January 1838. Nunn ordered his troops to surround the group and advanced, opening fire and attacking when the Kamilaroi reacted, leaving over forty (40) dead (Conner 2002: 111; Lydon and Ryan 2018: 18). Nunn's unit returned to Jerrys Plains, where they faced little examination for their actions (Conner 2002: 113).

Three months later, stockmen and large landholders continued their determined attacks on the Kamilaroi population. On a station eighty (80) kilometres (km) east of Waterloo Creek, station workers killed hundreds at Slaughterhouse Creek (Milliss 1992: 200–3; Lydon and Ryan 2018: 18). In the same month, an organised gang arrived on Henry Dangar's property at Myall Creek, tying up and abducting the Wirrayaraay group who had been visiting and working at the station. The gang killed at least thirty-eight (38) men, women and children after leading them away and spent

the next three days hunting for the ten Wirrayaraay warriors who were not present (Lydon and Ryan 2018: 20–8).

Unlike the other slaughters in the area, eleven (11) of the twelve (12) perpetrators of the Myall Creek Massacre were brought to trial late in 1838 and seven were found guilty and sentenced to death. The station workers who had worked with the Wirrayaraay testified against the perpetrators, but the trial largely galvanised the frontier farming community and encouraged them to be more conscientious in hiding their attacks on local peoples (Tedeschi 2016: 161).

The actions of colonial settlers in the two (2) decades after Oxley's first survey devastated the lives, structures and ecosystem of the first inhabitants of the Narrabri region. The unrestricted expansion of grazing into carefully managed country deprived the Aboriginal population of their customary food sources and disrupted their traditional patterns of culture, movement and communication. Up to one (1) in five (5) Kamilaroi people died from smallpox during this first period of land dispossession. The Aboriginal people who lived in the Narrabri region and surrounds before the arrival of white people were subject to systematic attacks with the intended to completely remove them from the area. The shape of Aboriginal life after 1840 had been irreversibly altered.

#### **4.5 POST-CONTACT**

The effect of colonial settlement outlined above drastically changed patterns of movement, subsistence and culture in the Kamilaroi lands during the latter half of the 19<sup>th</sup> century. The settler occupation of Kamilaroi lands along the rivers of the Narrabri region by 1840 removed the ability of people to hunt, gather and cultivate food using their methods honed over millennia.

Around the Namoi, Peel and Gwydir, basic survival now depended on interaction with colonists, performing unfamiliar work with introduced plant and animal species. Knowledge of country helped Aboriginal workers adapt quickly to contract work as shepherds and stockmen. Despite underpay, resentment and violence from colonial employers and station workers, Aboriginal people developed methods of survival on their occupied lands. The goldrush of the 1850s led to a shortage of non-Aboriginal workers, who left for the goldfields, and an increase in Aboriginal labour in the pastoral sector (Hagan and Castle 1998: 30). Large runs with absentee owners necessitated much contract labour, but this eventually decreased as fencing replaced shepherding as the primary means of flock management in the Narrabri area. The Lloyd brothers fenced their holds on the banks of the Namoi from Manilla to Wee Waa, nearly one hundred and eighty

(180) km of contiguous property (Rolls 1981: 165). This limited both employment opportunity and the ability of Aboriginal people in the area to live by their traditional means (Hagan and Castle 1998: 30).

The land use of the Narrabri area diversified between the 1850s and 1900 with the introduction of logging in the Pilliga scrub and cropping around Wee Waa. During the same time, towns began to form, and the railway connected the Narrabri with the rest of the state in 1882. These changes complicated the role of Aboriginal people in the rural economy and resulted in underemployment and population migration towards towns and cities. There was resistance to the growing presence of Aboriginal people in the town-based social and domestic space of white settlers, a situation that had rarely been the case on stations (Goodall 1996: 84). The foundation of the New South Wales Aborigines Protection Board (APB) in 1883 reflected these tensions but was also a reaction to Aboriginal groups campaigning for ownership of land (Goodall 1996: 105). A group of thirty-five (35) indigenous people requested a one hundred (100) acre lot of land at Borah Creek near Narrabri in 1890 that was rejected, although Heather Goodall notes that forty-five (45) percent of Aboriginal reserves created in this decade were responses to petitioning (Goodall 1996: 110).

The Aboriginal missions, stations and reserves in the Narrabri LGA were mostly founded around the turn of the 19<sup>th</sup> and 20<sup>th</sup> centuries. Tulladunna Reserve at Wee Waa (AR 19783) was founded in 1894; Bohena Creek at Narrabri in 1888 (AR 7903, 28098, 54612); Baan Baa in 1901 (AR 32747/8); Minnom Mission and Pilliga Reserve at Pilliga in 1902 (AR 33753/4, 42571/2); and Cuttabri in 1904 (AR 37420). These mission and reserve foundations represented a clear change in the relationship between the Aboriginal people of the area and the government of the colonial occupiers. Despite often relying on Aboriginal labour, the APB aimed to segregate Aboriginal people from non-Aboriginal settlements and urban centres. Between 1910 and 1915, under the influence of Robert Donaldson as chair, segregation began to shift toward assimilation as the APB began to remove children under their control, even in cases where there was no discernible neglect (Goodall 1996: 147). Between 1910 and 1970, between ten (10) and thirty-three (33) per cent of Aboriginal children were separated from their parents by the Australian government or organisations that they had endorsed (*Bringing Them Home* 1997: 34–5).

Life in the missions was typically austere, and evidence suggests that the reserves near Narrabri were no different. Wailwan elder Allan Hall remembers hunting rabbits to supplement rations given out at Minnom Mission in Pilliga. Pilliga Reserve, which pre-dated Minnom Mission, was independent, according to Billy Reid, an activist born at Wee Waa Reserve (possibly Tulladunna),

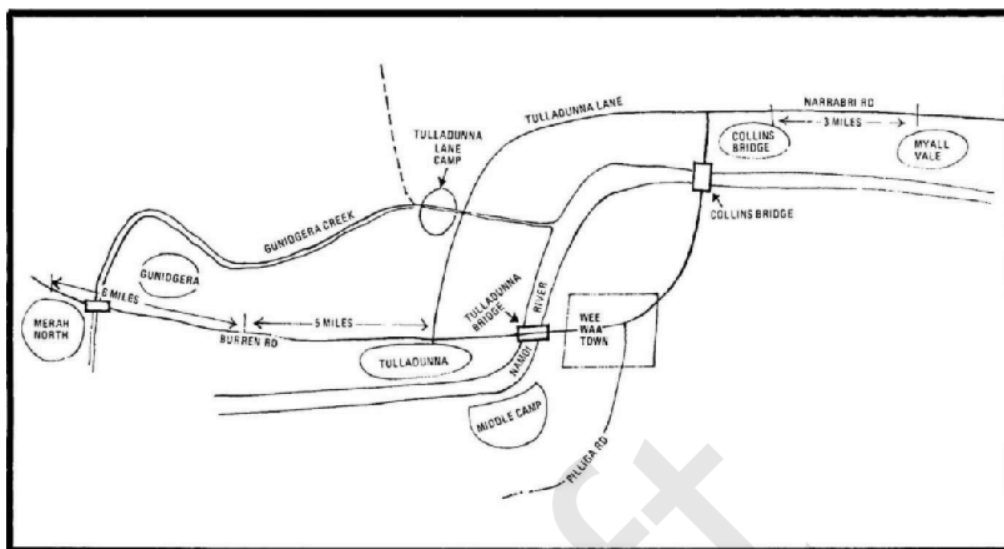
who grew up at Cuttabri (Catabrai) and moved to Pilliga Station as a teenager (Morgan 1983). Reid recalled his education at the reserves and missions being cursory, aiming to provide manual 'slave labour' (Ellis 1993: 28). Overcoming the pervasive evangelism and the obfuscation of traditional social networks, Reid remembers visits from friends living at Burrabadee in Coonabarabran. Hall similarly wished to emphasise the good times he had as a young man as well as the difficulties.

Despite an increase in the percentage of Aboriginal people living under state managerial control rising to thirty-three (33) per cent by 1936, the majority of the population lived on private property or unreserved camps on private properties, crown land or Travelling Stock Reserves (TSRs) (Goodall 1996: 230-1). Unlike in some of the more densely populated and cultivated areas of NSW, Aboriginal people in the Narrabri region could move between camps and reserves to avoid the APB or look for employment, as well for cultural and social purposes. At Wee Waa, bora ceremonies were still initiating new members into Kamilaroi adulthood in the area in 1905 (O'Rourke 1997: 210). The Aboriginal population of early 20<sup>th</sup> century in the Kamilaroi lands were mobile for these reasons, but also because they were denied land rights available to the non-Aboriginal population. 154 ANZAC soldiers in the First World War were Aboriginal men from NSW, only one of whom gained land from the Returned Servicemen's Settlement scheme.<sup>2</sup> The result of the scheme for most Aboriginal people was in fact to create further pressure on the few reserves that offered some land security (Goodall 1996: 148). Although there were soldier settlement blocks in the Pilliga and at Edgeroi, there is no direct evidence of these blocks being taken from Crown Land that may have been part of Aboriginal reserves, as occurred elsewhere in NSW.

The Aboriginal population and their camps in the Narrabri region remained as close as possible to traditional waterways and work opportunities. Aboriginal workers were employed as fettlers throughout NSW and the railway line between Narrabri and Moree had many camps. Wee Waa became a centre for cotton, a significant industry in the economic and social development of the Narrabri area. Cotton farms employed many Aboriginal workers under poor conditions. Wee Waa had at least seven (7) camps for chippers with no facilities until 1973. **Figure 4-2** shows mud map of their location from an edition of *New Dawn*.

<sup>2</sup> The only known Aboriginal serviceman to be granted land in the scheme was George Kennedy near Wilcannia (Goodall 1996:148).

**Figure 4-2: Diagram of cotton camps at Wee Waa (New Dawn 1973).**



Arthur Murray and others had gatherings at the Royal Hotel in 1972 to plan industrial action to improve their pay, hours and poor conditions, including being sprayed with pesticides from overhead crop dusters (Forde 2012). An estimated fifteen thousand (1 500) workers went on strike and five hundred (500) marched through Wee Waa to steady abuse and attacks on their camps. Murray and the workers won a pay increase from \$1.12 per hour to \$1.45 and an eight-hour day (New Dawn 1973: 3). There was resentment to increasing activism of the Wee Waa workers and emergence of land rights occupations. Arthur Murray's son, Eddie, was arrested in 1981 and died in police custody, with police explaining that he had hung himself in his cell. Exhumation of his body in 1997 under a court order determined that his sternum had been broken while he was still alive. Arthur and Leila Murray campaigned tirelessly for reform and the Royal Commission into Aboriginal Deaths in Custody that concluded in 1991.

Under challenging conditions and active disruption from government and church agencies, Kamilaroi language began to be extinguished. By 1975, no grammatical structures were fluently spoken by the few remaining speakers, rendering the language functionally extinct (Austin 1993: 15). The revival of Gamilaraay from functional extinction has been a successful collaborative project of the late 20<sup>th</sup> century. S.A. Wurm and Peter Austin collected lexicons and interviewed speakers such as Billy Reid, Peter Lang and Hannah Duncan who offered their knowledge (Austin 1993: 14–5). In 2018, the Australian National University expanded their Gamilaraay courses, TAFE NSW has had Gamilaraay course options since 2011 and high schools in the region (Peel High,

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Tamworth High, Quirindi High School) have had increasing number of year twelve (12) students completing Gamilaraay as a subject.

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## 5 ARCHAEOLOGICAL CONTEXT

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### 5.1 REGIONAL ARCHAEOLOGICAL CONTEXT

The study area is located within the Murray-Darling Basin. Aboriginal people have occupied this part of Australia for over forty thousand (40,000) years, with early occupation focussed on the resources of freshwater lakes and rivers and their floodplains. This occupation also occurred along various river channels that pre-date the present Murray-Darling river system (MDBMC 1987: 353).

Archaeological evidence indicates that with the drying up of the lakes around twenty-six thousand (26 000) years BP (years before present) in response to changes in climatic conditions, Aboriginal people remained near major rivers. However, by four thousand (4 000) years BP there is evidence of a major increase in site numbers and more intensive occupation of more marginal environmental regions (MDBMC 1987: 354).

Prior to the 1980s only a few archaeological studies had been conducted within the central north region. Two (2) broader regional studies which are relevant is Balme (1986) and Purcell (2002). Balme's (1986) assessment of the North Central Rivers, included Narrabri LGA. There were three hundred and twenty-two (322) sites compiled from previous assessments, with an additional ninety-six (96) sites identified. Balme concluded that there was widespread evidence of Aboriginal cultural through culturally modified trees and bora grounds, but few sites which would have dateable materials and contexts present. It was also identified that silcrete artefacts were more prevalent in the north and east of the North Central Rivers region, with quartz being more prevalent in the south and west.

Purcell (2002) identified and compiled one thousand and two (1802) sites in the Brigalow Belt South (BBS) bioregion. It was found that the highest number of sites occurred in alluvial landforms (n=668), with ninety (90) per cent of sites occurring within two hundred (200) to three hundred (300) metres (m) of water. Part of Purcell's assessment covered the south and central sections of the Narrabri LGA.

#### 5.1.1 Regional archaeological context

##### 5.1.1.1 Previous studies within the Narrabri LGA

Systematic, regional based archaeological studies have not been undertaken and development driven studies have comprised the bulk of archaeological assessment within the region over the past forty (40) years.

In addition, many of the sites recorded within the Narrabri LGA have been registered with AHIMS but no report has been attached to the recordings. As such, it is difficult to gain contextualising information regarding the site recordings. Several of the main clusters of site recordings without accompanying reports are shown in **Table 5-1**.

**Table 5-1: Clusters of recorded sites without accompanying reports.**

Recorder	Location	Number of sites
Stewart / Trindall	Moema National Park	25
Richards	Bobbiwaa CCA Zone 3 State Conservation Area	7
Therin	Gunidgera Creek and Kamilaroi Highway	6
Quayl / Cain / Hatch / Wheeler / Ruttle / Leslie / Sutherland	Pilliga Nature Reserve on west side of Newell Highway	21

Of the reports available, **Table 5-2** presents the information regarding the major assessments that have taken place within the Narrabri LGA extending back to the 1980s. There have been a large range of studies for specific mining operations in the Narrabri LGA, including Maules Creek Coal Mine, Narrabri Coal Mine and Boggabri Coal Mine. **Table 5-3** summaries these specific assessments. It is worth noting that not all the sites mentioned in **Table 5-3** have been included in the analysis as discussed in **Section 5.2.1**.

**Table 5-2: Synopsis of major assessments within the Narrabri LGA.**

Author	Year	Project	Results
Silcox & Bowdler	1982	Archaeological survey of a proposed transmission line Walgett to Narrabri	Inside Narrabri LGA, there were eight (8) sites recorded along the proposed 66kV electricity transmission line. Five (5) sites are scarred trees, and three (3) sites artefact scatters.
Balme	1986	North Central Rivers Archaeological Project	The purpose of the study was to provide a regional archaeological context for the North Central Rivers including the Narrabri LGA. Three hundred and twenty-two (322) sites were compiled from previous assessments and an additional ninety-six (96) identified. There was widespread 'recent evidence' of Aboriginal culture (modified trees and bora grounds) but few datable site contexts reflecting regional culture before colonial contact. Areas in the north and west tended to contain silcrete artefacts, whereas the south and west had a higher number of quartz tools and debitage (Balme 1986: 181-3).
Roberts	1991	Investigation of Aboriginal Archaeological resources of the Pilliga Forests	Roberts identified eighty-nine (89) sites, mostly scarred trees (n=62). Concluded that burial sites, rock engravings and art were unlikely in the Pilliga Forests due to soil conditions. Likely to have been a higher number of modified trees before post-contact logging.
Purcell	2002	Brigalow Belt South Bioregion Aboriginal Cultural Heritage Assessment	Identified and compiled records of one thousand and two (1 802) sites in the BBS bioregion, with the highest number of sites occurring in alluvial landforms (n=668). 90% of sites occurred within 200-300 m of water.
Sneddon & Whincop	2017	Aboriginal Heritage Conservation Strategy: Maules Creek coal mine, Tarrawonga coal project, Boggabri coal	Includes desktop assessment, cultural values assessment, proposed methodology for targeted assessments, recording of cultural values and conservation of Aboriginal heritage values.

Author	Year	Project	Results
		mine and related biodiversity offset areas	
NSW National Parks and Wildlife Service	2006	Mount Kaputar National Park Plan of Management	Twenty-five (25) Aboriginal sites recorded in the NP, including campsites, scarred tree, rock carvings, and artefacts. There is also a possible stone arrangement on the Kaputar Plateau, a midden on Spring Creek and axe grinding grooves on Carinya. No comprehensive survey has occurred in the NP.

**Table 5-3: Synopsis of assessments done for mining operations within the Narrabri LGA.**

Author	Year	Results
<b>Maules Creek Coal Project</b>		
Haglund	1983 and 1986	Haglund surveyed the Maules Creek Coal Mine area and identified a total of twenty-one (21) sites, predominantly stone artefact scatters on flat or gently sloping areas near temporary water sources.
AECOM	2010	Recorded fifty-nine (59) new sites, mostly artefact scatters including a large site (320 artefacts) near Lawler's Waterhole in the Leard State Forest.
Whitehaven	2015	The <i>Aboriginal Archaeology and Cultural Heritage Management Plan</i> for Maules Creek Coal Mine identified sixty-seven (67) Aboriginal sites that have been recorded. Forty-three (43) sites are artefact scatters and twenty-four (24) sites are isolated finds.
<b>Narrabri Coal Operations</b>		
Appleton (Australian Archaeological Survey Consultants)	2007 & 2009	2007: Seven (7) sites identified during survey, two (2) isolated finds, two (2) artefact scatters, two (2) scarred trees and one (1) resource site. 2009: Recorded one hundred and twenty-one (121) sites, largely low-density artefact scatters and isolated finds. A place of cultural and scientific significance, a large camp with indications of repeated use, was identified at Pine Creek.
Niche Environment & Heritage	2015	Modification 5. Recorded an additional six (6) sites, all artefact scatters or isolated finds along Pine Creek and Kurrajong Creek.
<b>Boggabri Coal Mine</b>		
ARAS	2002	Assessment identified sixty-one (61) Aboriginal sites: thirty (30) artefact scatters, twenty-six (26) isolated finds and five (5) scarred trees. In 2007, forty-two (42) sites were approved for salvage.
Insite	2010	Assessment identified an additional seventy-seven (77) Aboriginal sites, including two (2) sets of grinding grooves in Leard State Forest.
Kayandel	2011	Fourteen (14) Aboriginal sites recorded during Tarrawonga Cultural Heritage assessment.
Hansen Bailey	2010	Identified one hundred and four (104) sites in the study area, including parts of the Leard State Forest. Potential for subsurface deposits in the Leard State Forest was considered high.
<b>Tarrawonga Coal Project</b>		
Kayandel	2011	No additional sites or areas of high archaeological significance identified during assessment.
Whitehaven	2016	The <i>Heritage Management Plan</i> for Tarrawonga Coal Project lists all Aboriginal sites inside mine boundary. There are one hundred and thirty-three (133) Aboriginal sites, with fifty (50) artefact scatters, fifty-nine (59) isolated finds and twenty-four (24) scarred trees.

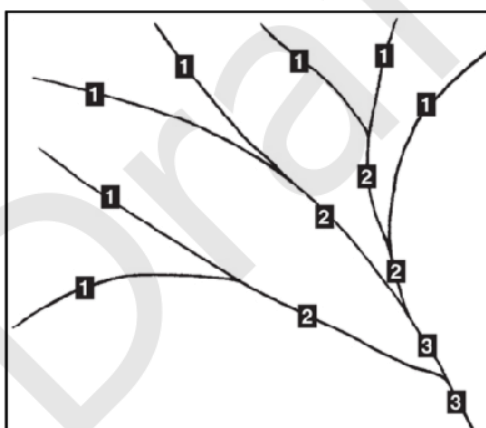
**5.1.1.2 Previous studies concerning site prediction and modelling****OzArk 2014**

The OzArk study of the former Dubbo City Council Local Government Area (LGA) (now incorporated into the Western Plains Regional Council) was able to establish a stream order

correlation to site location. Although distance to the nearest water source is a concept widely used in the analysis and description of Aboriginal sites, it proved to be particularly difficult to achieve/demonstrate this in a GIS model (OzArk 2014). Nonetheless, the analysis used in OzArk 2014, demonstrates a close relationship between the presence of water and site location.

OzArk 2014 employed the Strahler Stream Order to describe stream rankings (**Figure 5-1**). According to the Strahler Stream Order, to qualify as a stream it must be either recurring or perennial. Recurring streams have water in the channel for at least part of the year. When two (2) first-order streams come together, they form a second-order stream. When two (2) second-order streams come together, they form a third-order stream. Streams of lower order joining a higher order stream do not change the order of the higher stream. Thus, if a first-order stream joins a second-order stream, it remains a second-order stream. It is not until a second-order stream combines with another second-order stream that it becomes a third-order stream.

**Figure 5-1: Diagram of the Strahler Stream Order.**

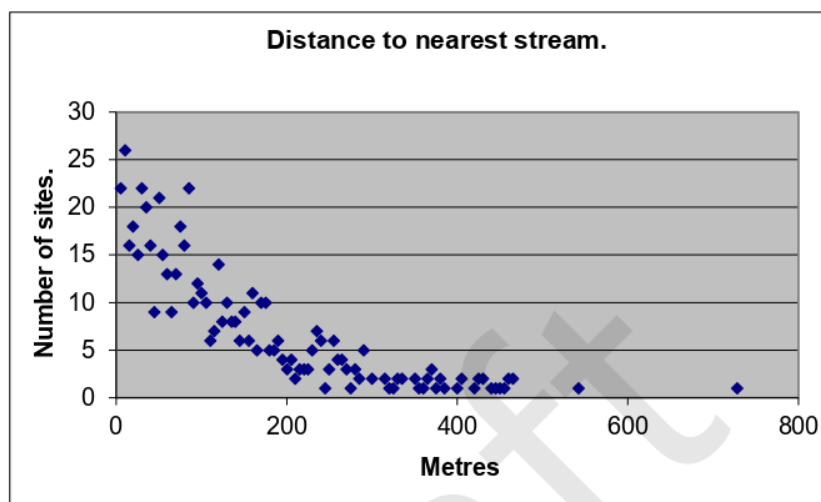


When the data was plotted (**Chart 5-1**) there was a clear distance decay curve consistent with normal expectations about Aboriginal site distribution. The two outliers were near the edge of the LGA and may be closer to streams that were not mapped in the OzArk 2014 exercise. If they are ignored, the evidence is that all sites are found within five hundred (500) m of a stream of some sort. Further analysis was undertaken to try and improve the distance modelling based on different stream orders. The overall conclusions from the stream order analysis were:

- All sites occur within five hundred (500) m of streams (of any kind)
- Most sites cluster within one hundred (100) m of a stream and become very infrequent further than two hundred (200) m from a stream

- Landforms within one hundred (100) m of streams that would be expected to provide more reliable water supplies, that is those with an order number of three (3) or greater, are likely to contain most sites in that area.

**Chart 5-1: Distance to the nearest stream for all sites (n=583).**



OzArk (2014) also examined the relationship of site location to landform type, by dividing sites into four groups. These four groups included:

- Group 1: Open sites of any type that are assumed to be located on a soil mantle. These comprise artefact sites such as open camp sites; potential archaeological deposits (PADs); hearths; ceremonial / bora rings; burials; and shell mounds. This group clearly contains both occupation types of sites and ceremonial / ritual sites, and are collected because of their physical locations, i.e. within (on or below) the ground surface
- Group 2: Sites that are defined by trees. These comprise modified trees; scarred trees (definite, probable and possible); and carved trees
- Group 3: Sites that depend on local geology and rock outcrop. These sites comprise grinding grooves; ochre and stone quarries; and stone arrangements
- Group 4: Sites that do not have any ready identification / landform association criteria. These sites comprise Aboriginal resource gathering site; ceremonial and dreaming sites; and water holes.

OzArk 2014 also amalgamated landform types into floodplain and channels; low benches; high terraces; alluvial/colluvial plains and low angle soil mantled bedrock slopes; and steeper bedrock slopes to outcrop areas.

The results of this analysis indicated that:

- Sites can occur anywhere within the landscape. All landforms that were subject to archaeological survey have been documented as containing Aboriginal sites, albeit in very low levels for some landforms
- Average background density is 1.45 sites per km<sup>2</sup>. If Aboriginal site presence is averaged out over all landform units, it can be predicted that for every square kilometre, there will be 1.45 Aboriginal sites, based on existing data
- The density of sites on the floodplain and channels landform is greater than elsewhere despite the expected losses from human disturbance, hydrology, erosion etc. This was seen by OzArk (2014) as an expected outcome, as the location of Aboriginal sites has a strong correlation with the proximity of water sources.

### **OzArk 2016**

Following on from the observations of OzArk (2014), OzArk (2016) undertook an assessment of Travelling Stock Reserves (TSRs) in the Central West Local Land Services (CW LLS) area.

The CW LLS was divided into two stream orders: major waterways (normally named rivers) and minor waterways (normally named creeks and their larger tributaries). Based on the evidence of site location obtained by OzArk (2014), two buffers were established for each waterway type, namely:

- Two hundred (200) m either side of a major waterway (Drainage 1)
- One hundred (100) m either side of a minor waterway (Drainage 2).

According to the results of the 2014 study the two hundred (200) m buffer on either side of named rivers would capture most sites, while the one hundred (100) m buffer on either side of named creeks would capture most sites.

An example of the mapped buffers surrounding the two hierarchies of waterways is shown in **Figure 5-2**.

While the OzArk (2014) study focused on a higher resolution of landform type (i.e. distinguishing between lower and upper terraces), this was not possible for the CW LLS area that covered such an extensive region. Instead, Mitchell landscapes were used to understand the underlying landform type of an area which is often obscured by local variations in topography.

As even the resolution of Mitchell's landscapes is too fine to be of use across such a broad area, the 2016 OzArk study used a higher-level classification within Mitchell landscapes to describe the landscapes within the CW LLS area. This study divided various landscape types into:

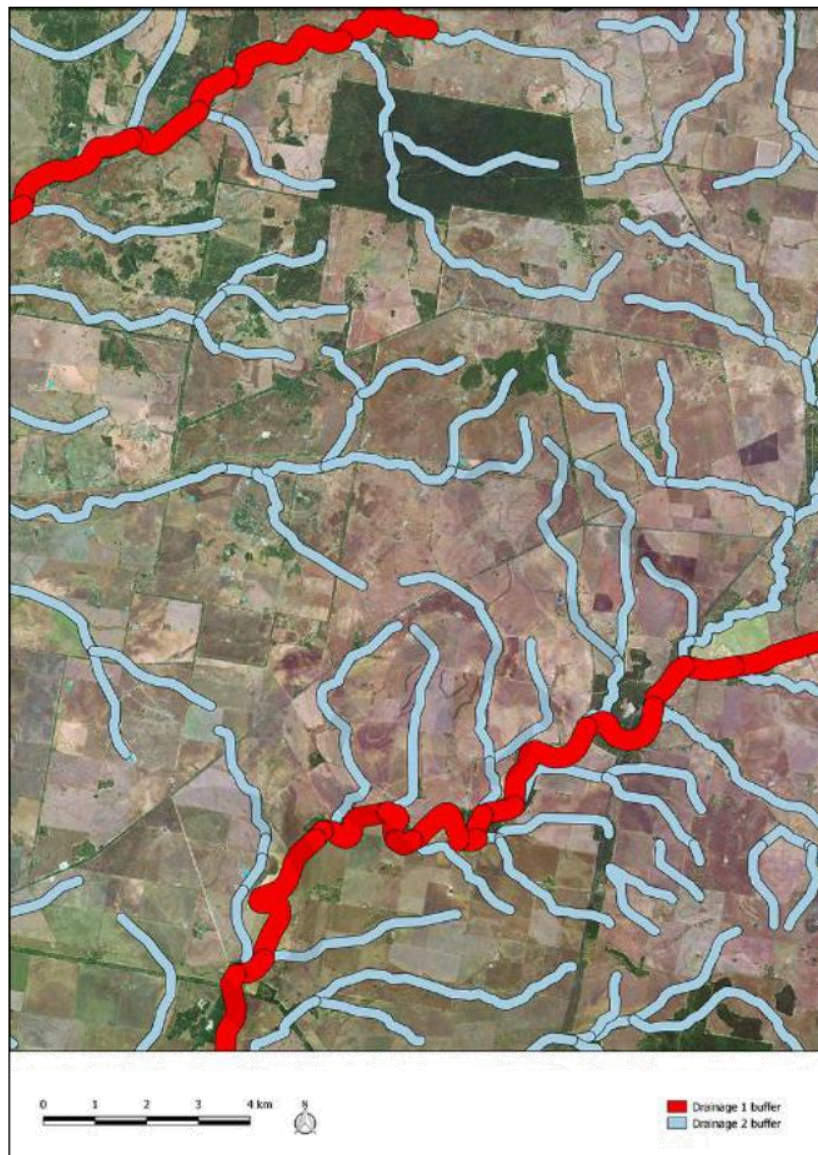
- Channels and floodplains
- Alluvial Plains
- Slopes
- Uplands
- Downs.

In this way, although the landscape type was Lachlan - Bland Channels and Floodplains in one part of the CW LLS study area, and Bogan Channels and Floodplains in another, 'channels and floodplains' was a defining landscape type irrespective of localised names.

When previously recorded sites were plotted against these gross landscape types, the following observations were made:

- A high number of sites (n=876) have been recorded in slope landscapes. This is perhaps biased by the fact that Dubbo is located within this landscape type and the highest number of sites in the CW LLS area have been recorded in and around Dubbo
- The highest concentration of sites is within channel and floodplain landscapes (n=927)
- Alluvial plains landscapes have the third highest concentration of sites (n=770)
- Relatively small numbers of sites are recorded in uplands (n=5) or plateau landscapes (n=34)
- A reasonable number of sites have been recorded in downs landscapes (n=255). These recordings are largely due to three or four clusters of sites that may have skewed the data slightly. If the veracity of all site recordings in this category was able to be verified, it is suspected that the actual number of sites in downs landscapes would be lower.

**Figure 5-2: Example of mapped buffers surrounding waterways.**



The result of mapping AHIMS sites against landform type indicates that sites should be most frequently recorded in channels and floodplain landscapes, alluvial plains landscapes and downs landscapes. Conversely, sites should be infrequently recorded in uplands landscapes and plateau landscapes. Overriding this observation is the fact that AHIMS recordings are not an accurate indicator of Aboriginal site distribution and therefore cannot be used to accurately describe site distribution within landscape types. For example, as noted, the concentration of sites in Slopes landscapes may be skewed due to the location of Dubbo in this landscape type where many sites

have been recorded largely because this is where assessments have taken place. If other landscape types were assessed to the same level, then the prominence of sites within Slopes landscapes may not seem so extraordinary. However, in gross terms, it appears that sites were more likely to be in areas of lower elevation (plains/channels/downs) and in areas of more moderate gradient (slopes).

It was noted that these results broadly agree with the observations of OzArk 2014 that the higher density of sites are in landforms in closer proximity to water.

Elements of the predictive model was then tested through targeted survey. Fifty-nine (59) sites were recorded during the survey. Twenty-six (26) (44%) of the recorded sites were scarred trees, twenty-two (22) (37%) were artefact scatters and eleven (11) (19%) were isolated finds.

The final results of OzArk 2016 demonstrated that:

- Most sites will be recorded within channels and floodplains, and slopes landscapes
- Sites in channels and floodplains landscapes are likely to be scarred trees, while those in slopes landscapes are likely to be artefact scatters.

#### 5.1.1.3 Desktop database searches conducted

A desktop search was conducted on the following databases to identify any potential previously recorded heritage within the study area. The results of the AHIMS search are summarised in **Table 5-4**. As it was not possible to obtain an AHILA, five (5) extensive AHIMS searches were undertaken to cover the majority of the Narrabri LGA. These are detailed in **Section 5.2**.

**Table 5-4: Aboriginal cultural heritage: desktop-database search results.**

Name of Database Searched	Date of Search	Type of Search	Comment
Commonwealth Heritage Listings	13 June 2019	Narrabri LGA	No places listed on either the National or Commonwealth heritage lists are located within the Narrabri LGA
National Native Title Claims Search	13 June 2019	NSW	The Gomeroi people have an active claim over a wide region including the Narrabri LGA, filed on 20/12/2011 (Tribunal file no. NC2011/006, Federal Court no. NSD2308/2011).
Heritage NSW AHIMS	13 June 2019	Five extensive searches to cover the Narrabri LGA	Two hundred and thirty (230) sites within the Narrabri LGA
Local Environmental Plan (LEP)	13 June 2019	Narrabri LEP	No Aboriginal Places recorded within the Narrabri LGA

## 5.2 AHIMS DATA IN THE NARRABRI LGA

As set out in **Section 1.1**, a principal component of this assessment was to devise strategic mapping related to Aboriginal cultural heritage for the Narrabri LGA.

This task involves a large area (13 031 km<sup>2</sup>) covering a diverse range of topographies and it is understood that any predictive model over such an area can only ever be general in its application.

In formulating the predictive model, the following variables were considered. Each of these steps will be expanded on below:

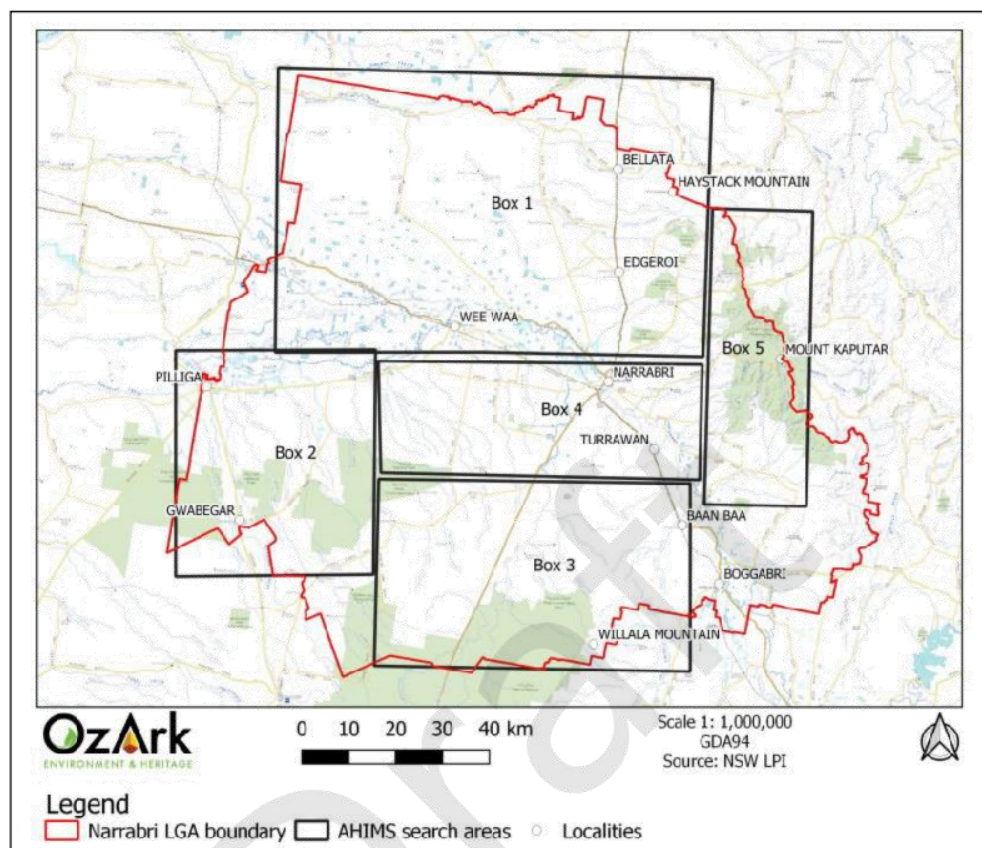
1. Mapping known Aboriginal site locations within the Narrabri LGA
2. Mapping drainage features within the Narrabri LGA
3. Mapping Mitchell landscape types within the Narrabri LGA
4. Mapping accumulated impacts from the Aboriginal Site Decision Support Tool (ASDST)
5. Mapping land use categories.

### 5.2.1 Mapping known Aboriginal site locations

Due to the size Narrabri LGA and the large number of registered AHIMS sites, five search areas were used to maximise the amount of the data gained. The areas of the LGA included in these searches are shown in **Figure 5-3**. **Table 5-5** shows the number of AHIMS sites which were returned from each search.

**Table 5-5: Number of AHIMS sites from extensive search areas.**

Search Box and details	Number of AHIMS sites
Box 1 Eastings: 696547–789328 Northings : 6648000–6708885	116
Box 2 Eastings: 675486–718177 Northings : 6602744–6649257	118
Box 3 Eastings: 718814–784187 Northings: 6580873–6619800	120
Box 4 Eastings: 719069–786991 Northings: 6623181–6645100	116
Box 5 Eastings: 211143–233550 Northings: 6616394–6678979	117
<b>Total</b>	<b>583</b>

**Figure 5-3: Search areas used for AHIMS extensive searches.**

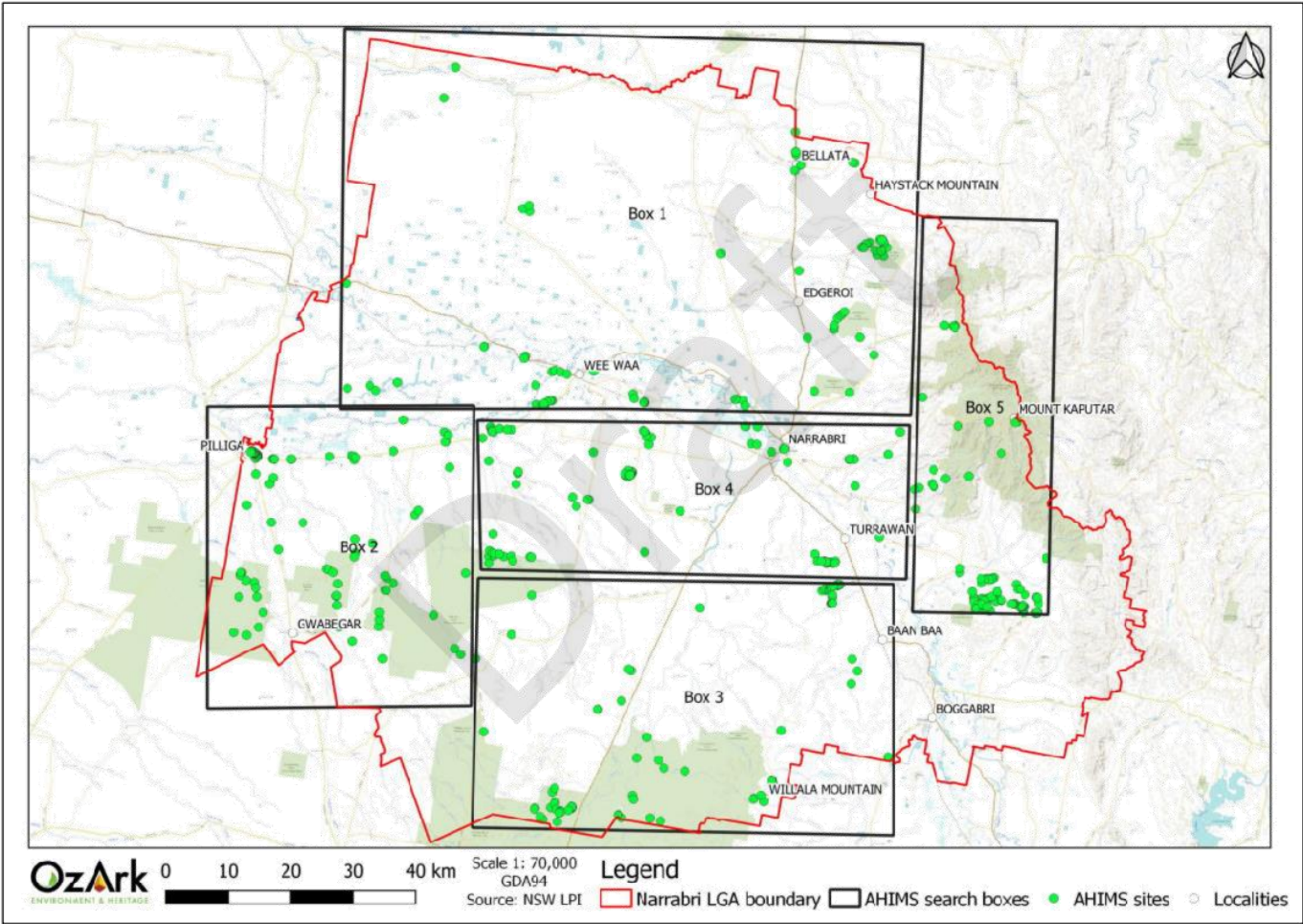
In total, the searches of the Heritage NSW administered AHIMS database returned 583 records for Aboriginal heritage sites. Of this, forty-six (46) of these sites were outside the Narrabri LGA boundary and have been excluded from further analyses. The Boggabri area was excluded from a search due to the high number of previous assessments conducted due to mining activities, and that the high number of recorded sites in this area would skew the data. This is discussed further in **Section 5.2.8**.

In total, there are five hundred and thirty-seven (537) Aboriginal sites from inside the search areas. **Table 5-6** shows that the most frequent type of site recorded in the Narrabri LGA search areas is artefact scatters (36.5%), followed by modified trees (34.1%) and isolated finds (12.3%). **Figure 5-4** shows the location of the AHIMS sites that have been recorded inside the search areas for the Narrabri LGA.

**Table 5-6: Site types and frequencies of AHIMS sites inside the Narrabri LGA.**

Site Type	Number	% Frequency
Artefact scatter	196	36.5
Modified tree	183	34.1
Isolated find	66	12.3
Axe grinding groove	36	6.7
Aboriginal ceremony and dreaming (& burial/s or modified trees)	7	1.3
Artefact scatter & additional feature	7	1.3
Art (pigment &/or engraved)	6	1.1
Shelter with deposit	6	1.1
Burial/s (& additional feature)	5	0.9
Axe grinding groove & additional feature	4	0.7
Habitation structure	4	0.7
Hearth	4	0.7
Water hole	4	0.7
Aboriginal resource and gathering	3	0.6
Ochre quarry	3	0.6
Quarry	1	0.2
Shell	1	0.2
Shelter with art	1	0.2
<b>Total</b>	<b>537</b>	<b>100</b>

Figure 5-4: Distribution of AHIMS sites inside Narrabri LGA.



The distribution of previously recorded sites within the Narrabri LGA (**Figure 5-4**) is skewed by several factors that are discussed below:

1. Recordings are somewhat associated with major population centres such as Narrabri and Wee Waa and Pilliga
2. There is some correlation between site recordings and major transport routes such as the Newell Highway, Pilliga Road and the Kamilaroi Highway
3. There is some correlation between site recordings and national parks or state conservation areas
4. There are clusters of sites recorded by members of the Aboriginal community, probably on an ad hoc basis
5. There are clusters of discrete site recordings throughout the LGA which are likely due to development approval purposes
6. There are several clusters of sites in the southeast corner of the LGA which are due to archaeological assessments for coal mines.

The result of this non-systematic recording of sites, mostly for development approval purposes and mining, therefore means that the established distribution of sites as seen in the AHIMS data (**Figure 5-4**) cannot be taken as a true indicator of past Aboriginal occupation patterns. Consequently, the distribution of sites as registered with AHIMS can only be tentatively used to formulate a predictive model for site location.

This conclusion underlies some major flaws in the AHIMS recording system as it has developed over the years. Some general observations on the veracity of the site distribution pattern as represented by the AHIMS data is:

- AHIMS registrations can be made by any individual and, therefore, the veracity of many of the AHIMS recordings remains questionable
- The 'dots on a map' approach is not informative as one dot may represent a single stone artefact, and another may represent a cluster of one hundred (100) artefacts
- The location of sites is more driven by development proposals rather than systematic research. Therefore, the data tends to skew towards population centres and public land (i.e. TSRs) while private land, where no development has ever been proposed, remain as 'blanks' on the map
- **Table 5-6** indicates that 'modified trees' are the second most common site type recorded in the Narrabri LGA (34.1%). This site type is not only often mis-recorded (where natural

scars are interpreted as cultural scars), but of all site types, scarred trees have been most affected by widespread land clearing (unlike scarred trees, land clearing may disturb but not completely remove artefact sites). Therefore, it is difficult to use this site type to map past occupation distribution patterns as the examples of this site type on AHIMS are either not actually culturally modified, or are biased to those areas where vegetation clearing has been less such as: riparian corridors; road corridors; or public land such as TSRs. The distribution of site types is further examined in **Section 5.2.2**.

As a result, while the data is normally available to interrogate the AHIMS site distribution pattern more fully, at face value it is of limited use.

### 5.2.2 Site types

The site type categories developed in OzArk (2014) were used to divide sites into four groups, namely:

- **Group 1:** Open sites of any type that are assumed to be located on a soil mantle. These comprise artefact sites such as open camp sites; PADs; hearths; ceremonial / bora rings; burials; and shell mounds. This group clearly contains both occupation types of sites and ceremonial / ritual sites, and are collected because of their physical locations, i.e. within (on or below) the ground surface.
- **Group 2:** Sites that are defined by trees. These comprise modified trees; scarred trees; and carved trees.
- **Group 3:** Sites that depend on local geology and rock outcrop. These sites comprise grinding grooves; ochre and stone quarries; and stone arrangements.
- **Group 4:** Sites that do not have any ready identification / landform association criteria. These sites comprise Aboriginal resource gathering site; ceremonial and dreaming sites; and water holes.

In the Narrabri LGA, there is a nearly even split of sites between Group 1 and Group 2–4 types. There are two hundred and eighty-three (283) sites which classify as Group 1, one hundred and eight-three (183) as Group 2 and fifty-seven (57) as Group 3 and fourteen (14) as Group 4 (**Figure 5-5**).

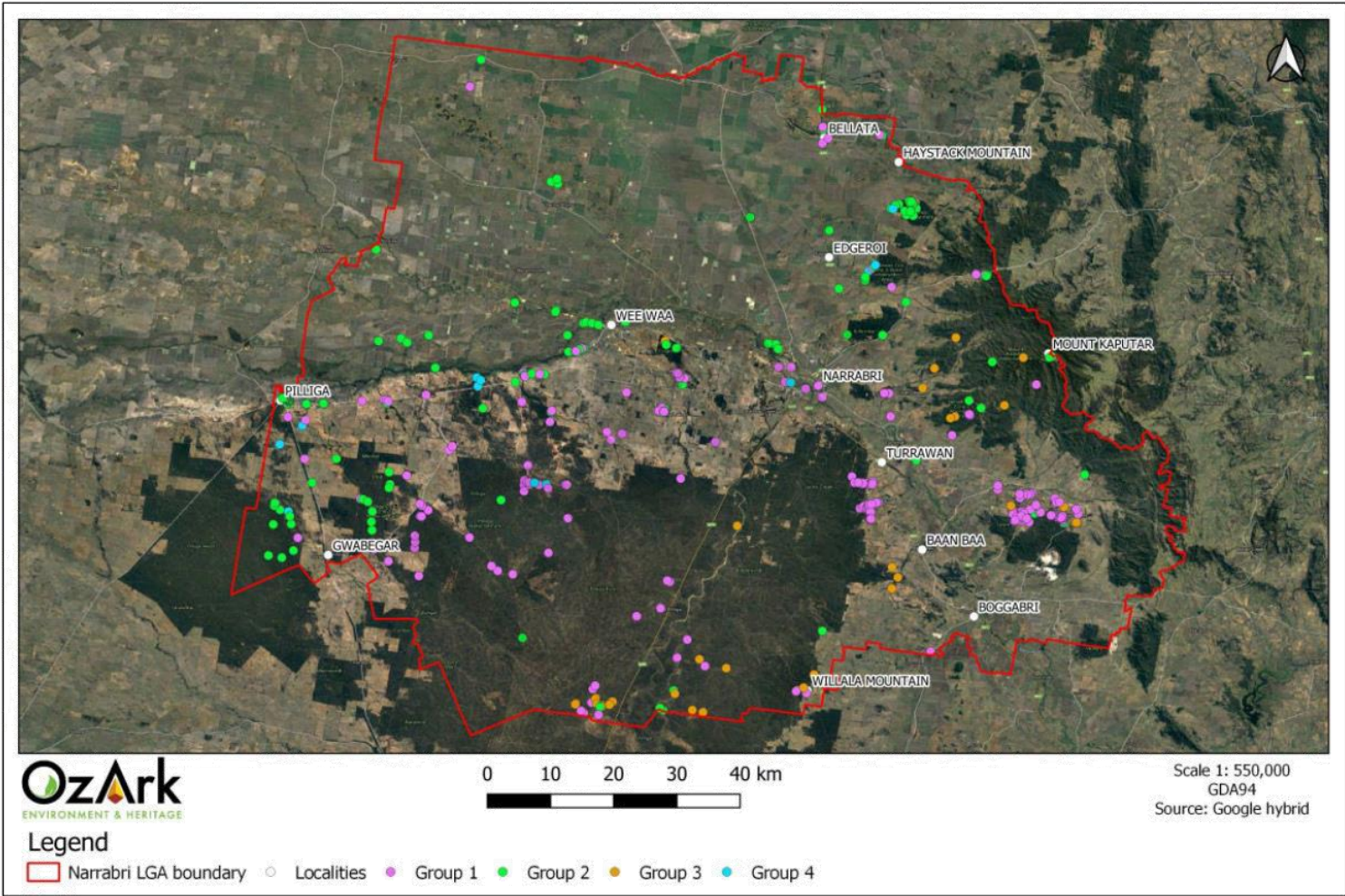
Over half of the sites in the Narrabri LGA are Group 1 sites, specifically, open artefact sites. The distribution of stone artefact sites is a good indicator of past Aboriginal occupation within the LGA. Stone artefact sites (Group 1) are less ambiguous to recognise, and while historic land use may disturb the site's integrity, it rarely removes it entirely from the landscape.

Group 2 consisting of modified trees, is the second most prevalent group type in the Narrabri LGA. As noted in **Section 5.2.1**, this site type is problematic as it is often mis-recorded, and its distribution is heavily skewed by historic land use practices, primarily widespread tree clearance that removes this site type. As a result, not too much faith can be placed in nearly half of the site recordings within the Narrabri LGA to act as an indicator of past Aboriginal occupation distribution.

The distribution pattern seen on **Figure 5-5** shows a clustering of Group 1 sites around the waterways in the LGA. This patterning supports the view that Aboriginal site location is closely associated with available water resources (**Section 5.2.3**).

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Figure 5-5: AHIMS registered sites by site types.



### 5.2.3 Mapping drainage features

Throughout NSW there is an observed and accepted correlation between site location and waterways. Several previous studies conducted by OzArk in different areas of NSW have shown that there is a correlation between distance from water and likelihood of Aboriginal sites being present (OzArk 2014 and 2016).

Two (2) types of drainage buffers were used to determine which type of drainage buffer would provide the most data:

1. The first method applies distance buffers around named and unnamed waterways and determining the number of recorded AHIMS sites within and outside these buffers (see **Section 5.2.3.1**).
2. The second method applies specific distance buffers based on waterway or waterbody type (see **Section 5.2.3.2**).

#### 5.2.3.1 Non-specific drainage buffers for named and unnamed waterways

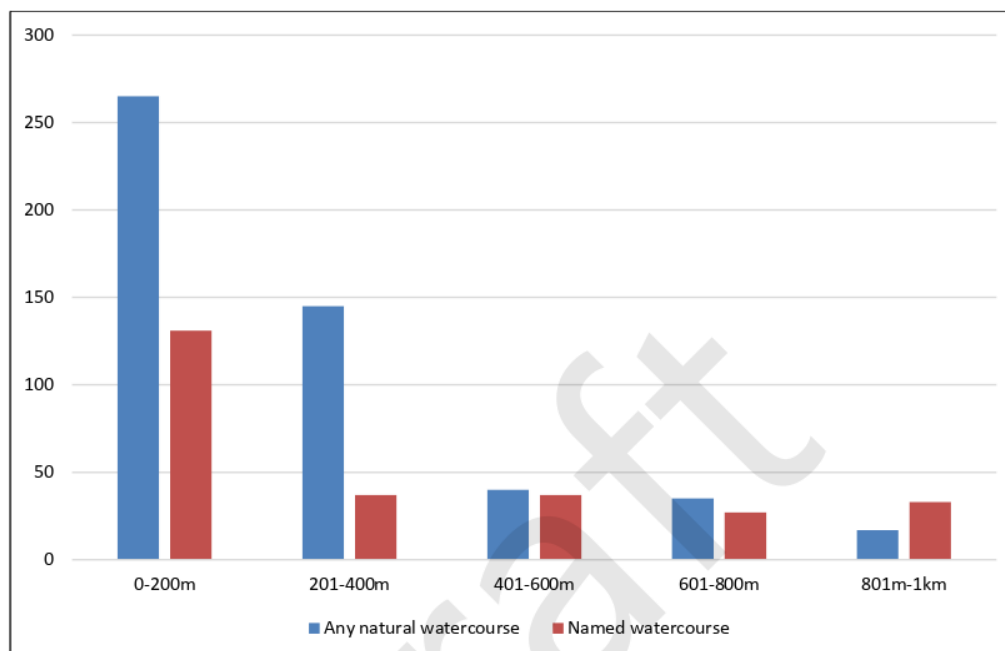
There are five hundred and thirty-seven (537) AHIMS sites recorded in the search areas of Narrabri LGA, and of these, one hundred and thirty-one (131) sites are within two hundred metres (200 m) of a named watercourse. This means nearly one quarter (24%) of AHIMS sites from the search areas are within two hundred metres (200 m) of a named watercourse. Of these one hundred and thirty-one (131) sites, 47% (n=62) are the Group 1 type sites, 43% (n=56) are Group 2, 4% (n=5) are Group 3 and 6% (n=8) are Group 4 site types.

In comparison, there are two hundred and sixty-five (265) sites within two hundred meters (200 m) of any natural watercourse. This is nearly half (49%) of all sites from the search areas, and the majority of these sites are within one hundred metres (100 m) of any natural watercourse (n=166, 31%). The type of sites within two hundred meters (200 m) of any natural watercourse are Group 1 (n=168), consisting of open occupation sites, followed by Group 2 (n=69), Group 3 (n=19) and Group 4 (n=8).

**Chart 5-2** shows the number of sites in relation to distance from water, and whether the buffer area includes all watercourses or only named watercourses. There is a large difference in the number of sites within four hundred metres (400 m) of either any watercourse or only named watercourses. This indicates that Aboriginal occupation of the landscape occurred in proximity to

watercourses, including the minor or non-perennial watercourses prevalent throughout the Narrabri LGA.

**Chart 5-2: Number of AHIMS sites within 1 km of watercourses.**



#### 5.2.3.2 Specific drainage buffers for type of waterway or waterbody

Nearly half of the sites in Narrabri LGA are within two hundred meters (200 m) of any type of natural watercourse. To further investigate, specific distance buffers were applied based on the type of watercourse. Buffers of varying distances were applied to all natural watercourses within the Narrabri LGA. This includes rivers, creeks, and unnamed waterways. These specific drainage buffers are outlined in **Table 5-7** and shown on **Figure 5-6**.

**Table 5-7: Specific distance buffers for types of waterways.**

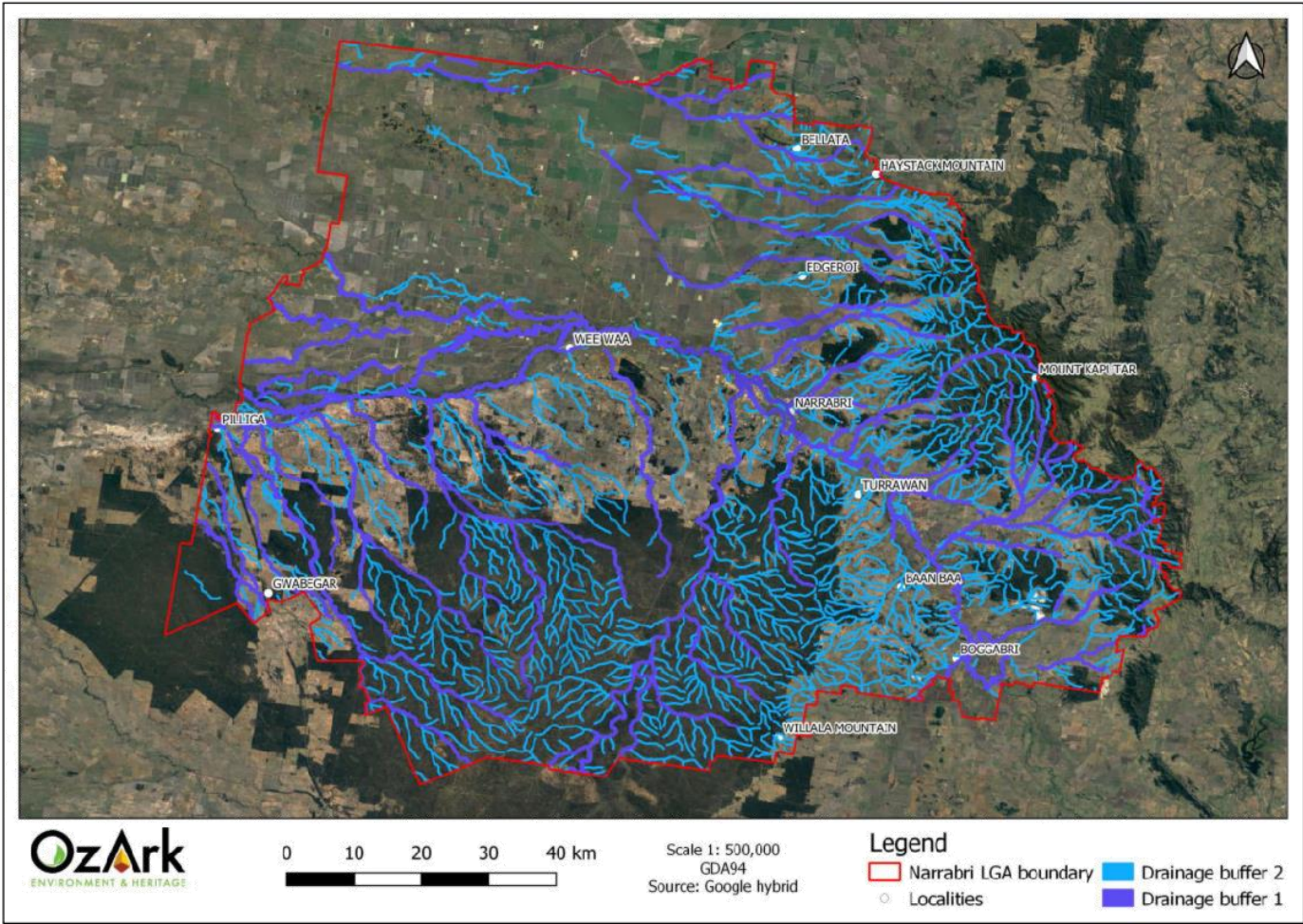
Name	Applied distance buffer	Water feature type
Drainage buffer 1	200 m buffer	Named rivers
		Named creeks
Drainage buffer 2	100 m buffer	Unnamed natural watercourses

When the specific drainage buffers are applied in relation to AHIMS sites, two hundred and eighteen (218) sites (41%) in the Narrabri LGA are inside one of the two (2) specific drainage buffers (**Table 5-8**).

**Table 5-8: Number of AHIMS sites and specific drainage buffers.**

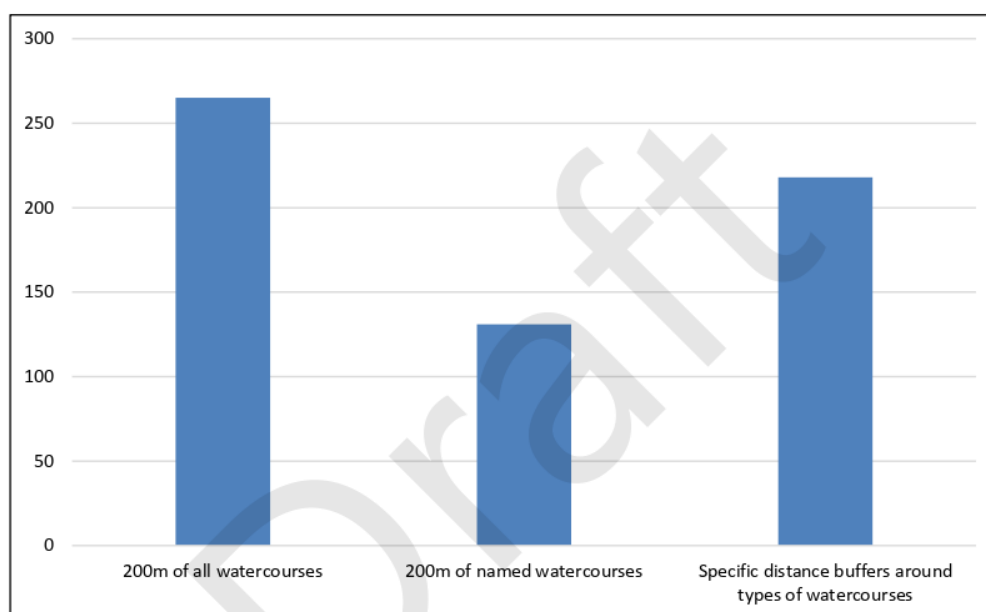
Drainage buffer	Number	Frequency (%)
Drainage buffer 1	131	60
Drainage buffer 2	87	40
<b>Total</b>	<b>218</b>	<b>100</b>

Figure 5-6: Example of specific drainage buffers inside the Narrabri LGA.



**Chart 5-3** shows the total number of AHIMS sites for each type of drainage buffer analyses conducted: within two hundred meters (200 m) of all watercourses, within two hundred meters (200 m) of only named watercourses, and within either Buffer 1 or Buffer 2 as outlined in **Table 5-7**. It shows that Aboriginal occupation along watercourses was not restricted to the larger and more permanent water courses but included frequent use of perennial and less constant sources of water as well.

**Chart 5-3: Number of AHIMS sites within 200 m using the two types of drainage buffers.**



#### 5.2.4 Mapping landscape types

There are two tiers of landscape types which were used in the analysis:

1. Bioregions and sub bioregions.
2. Mitchell's landscapes.

##### 5.2.4.1 Bioregions and sub bioregions

Narrabri LGA has three bioregions: Darling Riverine Plains, Brigalow Belt South and Nandewar. These are further refined into eight sub bioregions as summarised in **Table 5-9**.

**Table 5-9: Bioregions and sub bioregions of Narrabri LGA.**

Bioregion	Sub bioregion
Darling Riverine Plains	Castlereagh-Barwon
Brigalow Belt South	Northern Outwash
	Northern Basalts
	Liverpool Plains
	Pilliga
	Pilliga Outwash
Nandewar	Kaputar
	Peel

There is a difference in the amount of AHIMS sites when classified by which sub bioregion the sites are located (**Table 5-10**). The Pilliga Outwash has the highest frequency of sites (34%), followed nearly evenly by Liverpool Plains (34%). Aboriginal sites are more likely to be recorded in the Brigalow Belt South bioregion than either the Darling Riverine Plains bioregion or the Nandewar bioregion.

**Table 5-10: Number of AHIMS sites and sub bioregions.**

Sub bioregion	n	Frequency (%)
Pilliga Outwash	185	34
Liverpool Plains	182	34
Pilliga	62	12
Castlereagh-Barwon	42	8
Northern Basalts	33	6
Northern Outwash	20	4
Kaputar	13	2
Peel	0	0
<b>Total</b>	<b>537</b>	<b>100</b>

#### 5.2.4.2 Mitchell's landscapes

While the resolution of Mitchell's landscapes is too fine to be of use across such a broad area, this study used a higher-level classification within Mitchell landscapes to describe the landscapes within the Narrabri LGA. This study group various landscape types as defined by Mitchell (2002) into:

- Sands, outwash sands and aeolian sands
- Alluvial plains
- Channels and floodplains

- Plateaus
- Ranges
- Slopes and plains
- Swamps and lagoons
- Tops
- Uplands.

**Table 5-11** identifies the broader classifications that Mitchell's landscapes are grouped into for the purposes of the analysis. **Figure 5-7** shows the landscape types distribution across the Narrabri LGA as well as the location of AHIMS sites. The alluvial plains (37%) and uplands (30%) have the highest frequency of recorded sites, followed by the channels and floodplains (20%), slopes and plains (9%), sands, outwash sand and aeolian sands (3%) and tops (1%).

**Table 5-11: Grouping of Mitchell's landscapes and number of AHIMS sites.**

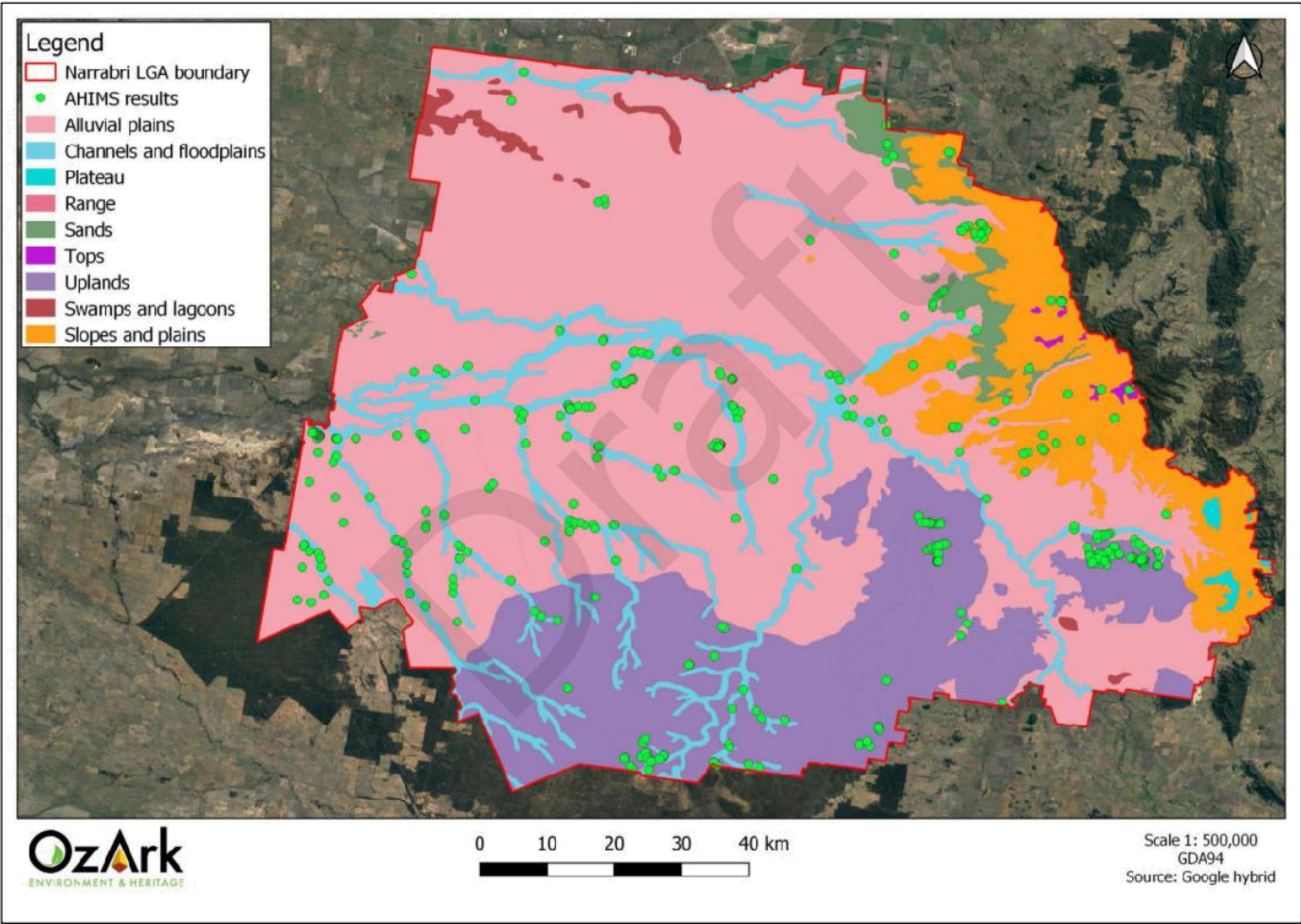
Landscape Number	Landscape types	Mitchell's landscapes (2002)	Number of AHIMS sites	Frequency of AHIMS sites (%)
1	Sands, outwash sands and aeolian sand	Namoi aeolian sands Belata sands Kerringle outwash sands	18	3.4
2	Alluvial plains	Baradine alluvial plains Coghill alluvial plains Gwydir alluvial plains Liverpool alluvial plains Namoi alluvial plains	196	36.5
3	Channels and floodplains	Baradine-Coghill channels and floodplains Gwydir channels and floodplains Mooki-Namoi channels and floodplains Namoi channels and floodplains	110	20.5
4	Plateau	Split yard plateau	0	0.0
5	Range	Kelvin Range	0	0.0
6	Slopes and slopes and plains	Kaputar slopes Tamworth-Keepit slopes and plains	47	8.8
7	Swamps and lagoons	Gwydir swamps and lagoons Upper Namoi swamps and lagoons	0	0.0
8	Tops	Kaputar Tops	3	0.6
9	Uplands	Bugaldie uplands Cubbo uplands	163	30.4

Aboriginal sites are most likely to be recorded in the alluvial plains and uplands, followed by channels and floodplains landscapes. These results are unsurprising as much of the Narrabri LGA is either alluvial plains, uplands, or slopes and plains landscapes (**Figure 5-7**). The alluvial plains

also include the areas around the channels and floodplains landscapes and current natural water sources such as the Namoi River and its creeks and tributaries. The inclusion of terraces in these landscape types, especially overlooking permanent or semi-permanent water sources, are ideal locations for Aboriginal occupation sites. Such sites are shown through archaeological evidence such as artefact scatters, hearths and earth mounds.

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Figure 5-7: Landscape types and AHIMS sites.



### 5.2.5 Mapping combined accumulated impacts

To approximately determine the impacts of colonial land use history on Aboriginal site features in the landscape, the 'combined accumulated impacts' spatial data from the Aboriginal Sites Decision Support Tool (ASDST) was used (OEH 2014). The combined accumulated impact data shows areas with high values which reflects where most feature types have been heavily impacted. Areas where the combined impacts are low, reflect where land use has had a minimum impact on likely survival of site features.

High impact areas typically include those that have been mined, dense urban areas, or areas that have been cleared and regularly cropped. Low impact areas can include locations such as long-established national parks, rangelands, or where agricultural activity has been restricted to livestock grazing. The accumulated impacts can be shown as five categories: low; low-moderate; moderate; moderate-high; and high.

The full range of accumulated impacts are present inside the Narrabri LGA (see **Figure 5-8**). A large proportion of the Narrabri LGA is classified as having low-moderate or moderate accumulated impacts. There are also a few areas of low, moderate-high or high impacts. The areas of moderate-high or high impacts are mostly related to urban centres including Narrabri, Wee Waa, Boggabri, Bellata.

**Chart 5-4** shows the AHIMS data categorised by accumulated impacts. There are a high proportion of AHIMS sites recorded in areas where accumulated impacts are moderate-low (n=302, 56%) or moderate (n=191, 36%). Only seven (7) per cent of AHIMS sites are in areas categorised as having moderate-high (n=37, 6.9%) or high (n=1, 0.2%) accumulated impacts. There are no sites in the areas categorised as having low accumulated impacts as there is so little of the LGA mapped as having this level of accumulated impact (**Figure 5-8**).

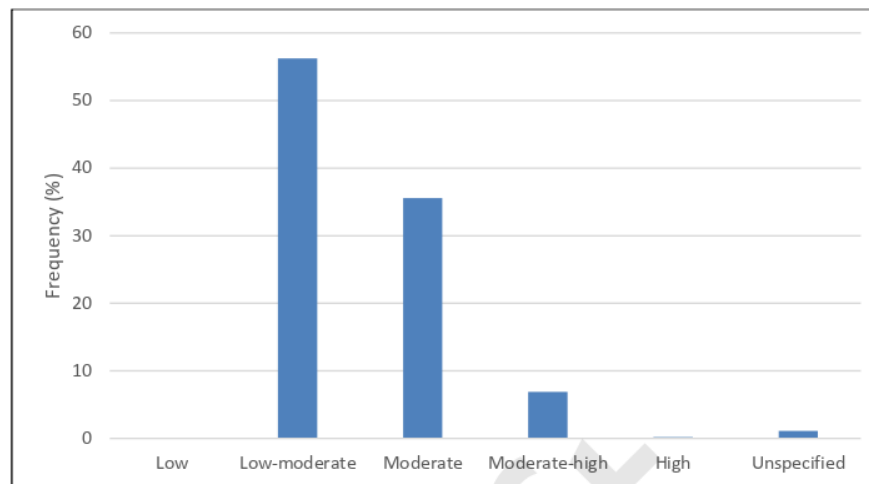
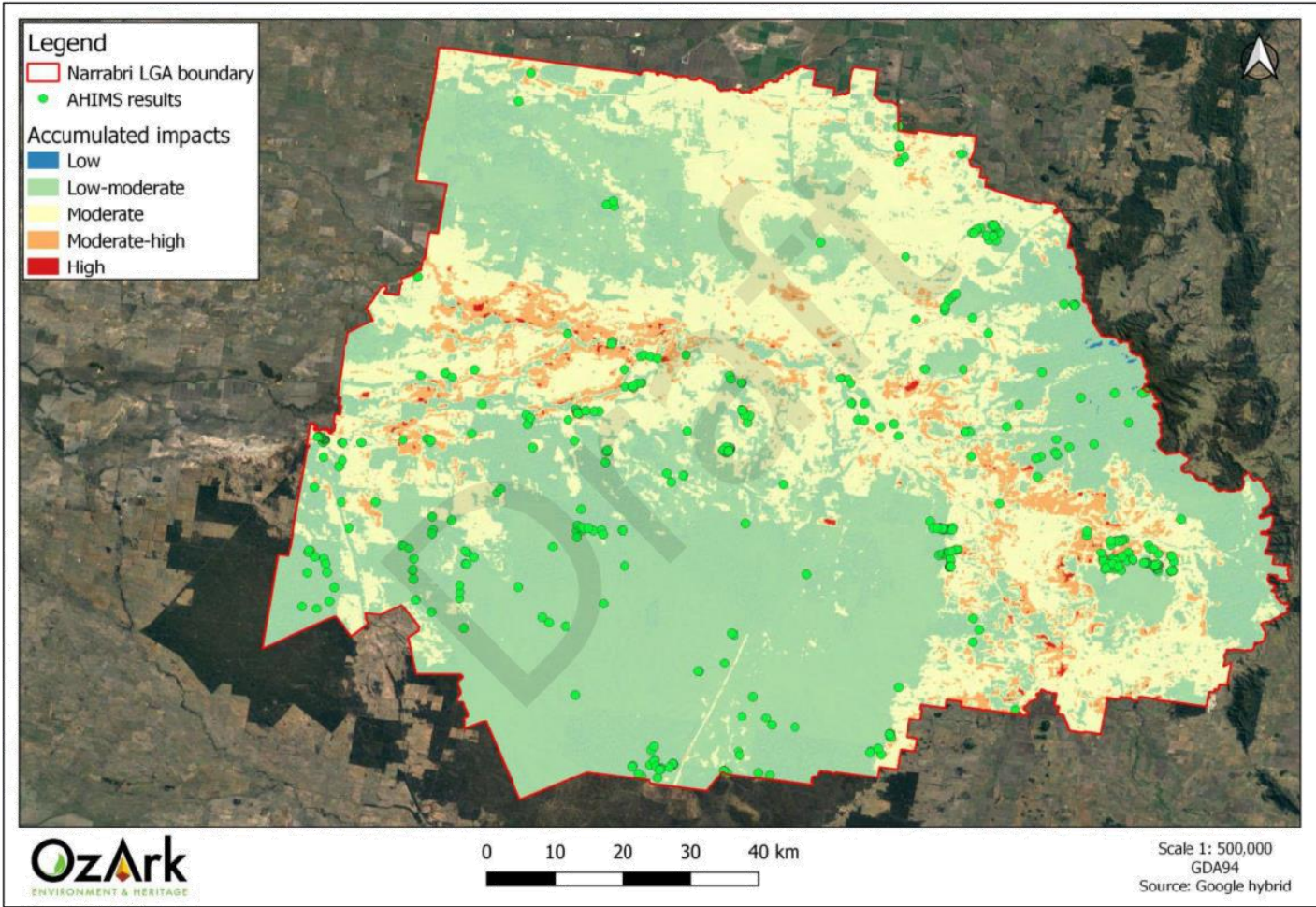
**Chart 5-4: Frequency of AHIMS sites and accumulated impacts.**

Figure 5-8: AHIMS sites and accumulated impacts.



### 5.2.6 Mapping land use categories

Land use of an area can be mapped using spatial data provided by the Australian Government which is based on the Australian Land Use and Management (ALUM) classification (DAWR 2019). There are six (6) high-level land use categories which are further broken down in more specific uses (see **Table 5-12**). For the purposes of this analysis, only the high-level land use categories are used.

**Table 5-12: Land use categories.**

High level category	Second level category
1. Conservation and natural environments	1.1.0 Nature conservation 1.2.0 Managed resource protection 1.3.0 Other minimal use
2. Production from relatively natural environments	2.1.0 Grazing native vegetation 2.2.0 Production forestry
3. Production from dryland agriculture and plantations	3.1.0 Plantation forestry 3.2.0 Grazing modified pastures 3.3.0 Cropping 3.4.0 Perennial horticulture 3.5.0 Seasonal horticulture 3.6.0 Land in transition
4. Production from irrigated agriculture and plantations	4.1.0 irrigated plantation forestry 4.2.0 Grazing irrigated modified pastures 4.3.0 Irrigated cropping 4.4.0 Irrigated perennial horticulture 4.5.0 Irrigated seasonal horticulture 4.6.0 Irrigated land in transition
5. Intensive uses	5.1.0 Intensive horticulture 5.2.0 Intensive animal husbandry 5.3.0 Manufacturing and industrial 5.4.0 Residential and farm infrastructure 5.5.0 Services 5.6.0 Utilities 5.7.0 Transport and communication 5.8.0 Mining 5.9.0 Waste treatment and disposal
6. Water	6.1.0 Lake 6.2.0 Reservoir/dam 6.3.0 River 6.4.0 Channel/aqueduct 6.5.0 Marsh/wetland 6.6.0 Estuary/coastal waters

**Figure 5-9** shows the high-level land use categories for the Narrabri LGA. The land use category with the largest area inside the Narrabri LGA is Category 2 (production from relatively natural environments). This is followed by Category 3 (production from dryland agriculture and

plantations) and Category 4 (production from irrigated agriculture and plantations) and Category 1 (conservation and natural environments). As these land use categories cover a large area of the Narrabri LGA, it is unsurprising that the frequency of AHIMS sites located inside Category 2 and 1 is also proportionally higher (**Chart 5-5** and **Figure 5-9**).

**Chart 5-5: Frequency of AHIMS sites for land use categories.**

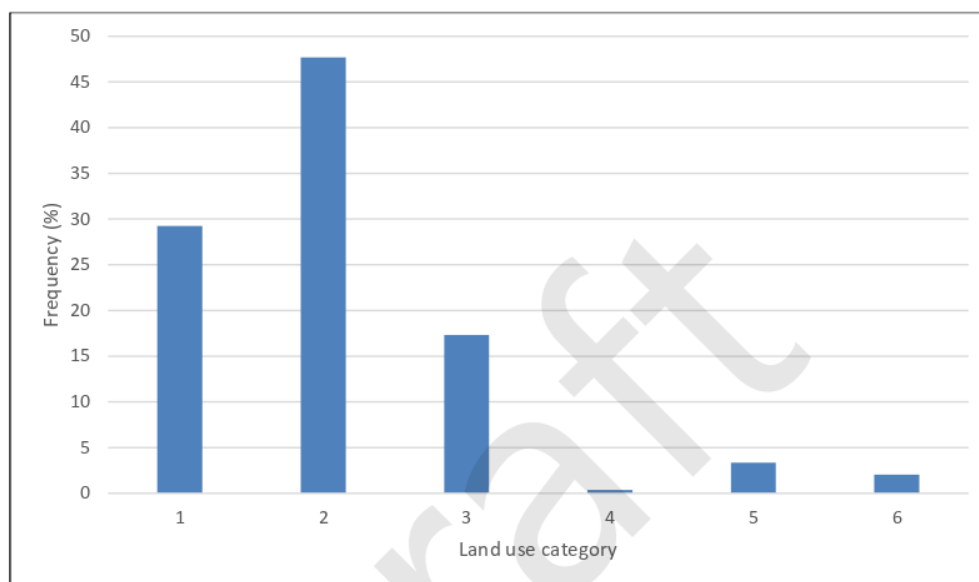
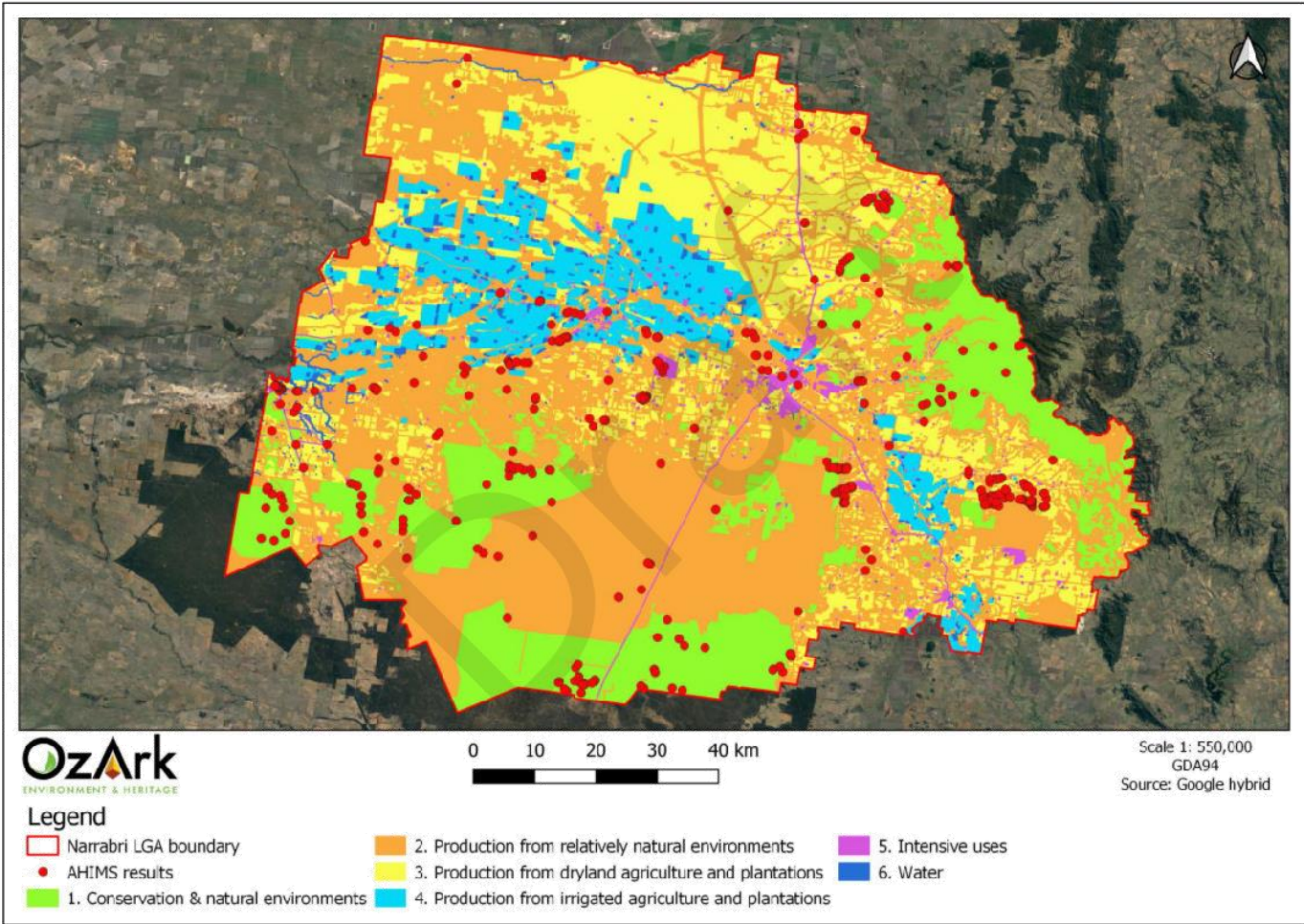


Figure 5-9: AHIMS sites and land use categories.

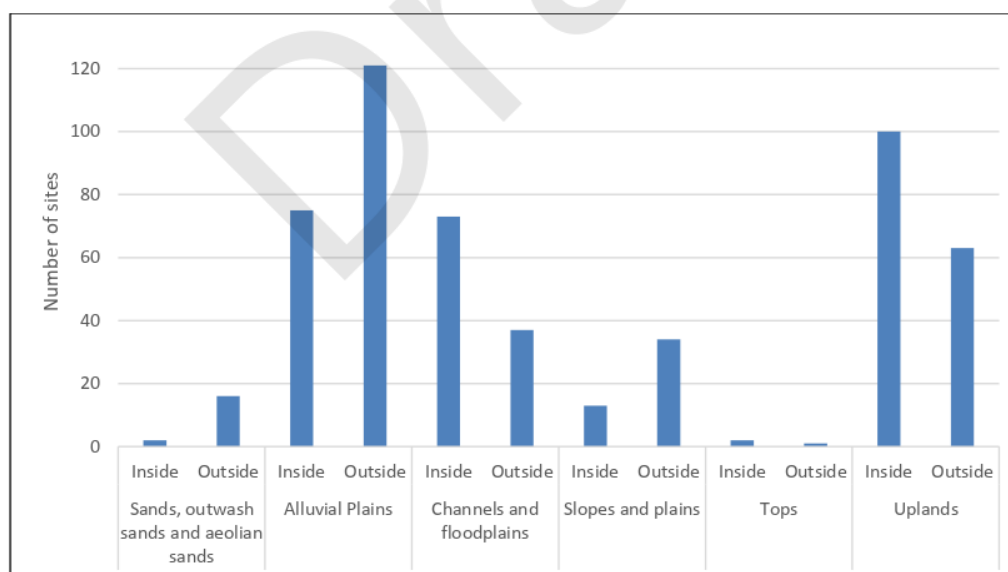


### 5.2.7 Discussion

Proximity to water is an important consideration in terms of predictive modelling for Aboriginal sites in NSW. Nearly half of the sites used in this analysis tend to go against this principle, with fifty-one (51) per cent of sites being outside a two hundred meters (200 m) area from any type of current natural water source. The most likely explanation for this occurring could be due to the landform types.

The landscape types can be compared to whether sites are within two hundred meters (200 m) of a natural water source, or outside this buffer area. There is a higher number of sites outside the two hundred meters (200 m) water buffer for the majority of landscape types, excepting the channels and floodplains or the uplands (**Chart 5-6**). Of interest is the number of sites recorded in the alluvial plains and outside of the two hundred meters (200 m) water buffer. This landscape is formed by the deposition of sediment over a long period of time by rivers coming from highland regions, from which the alluvial soil forms. Floodplains are part of this process, by being a smaller area over which the rivers flood at particular times, while the alluvial plains are the region over the floodplains have shifted.

**Chart 5-6: Sites by landscape type and whether inside or outside the 200 m water buffer.**

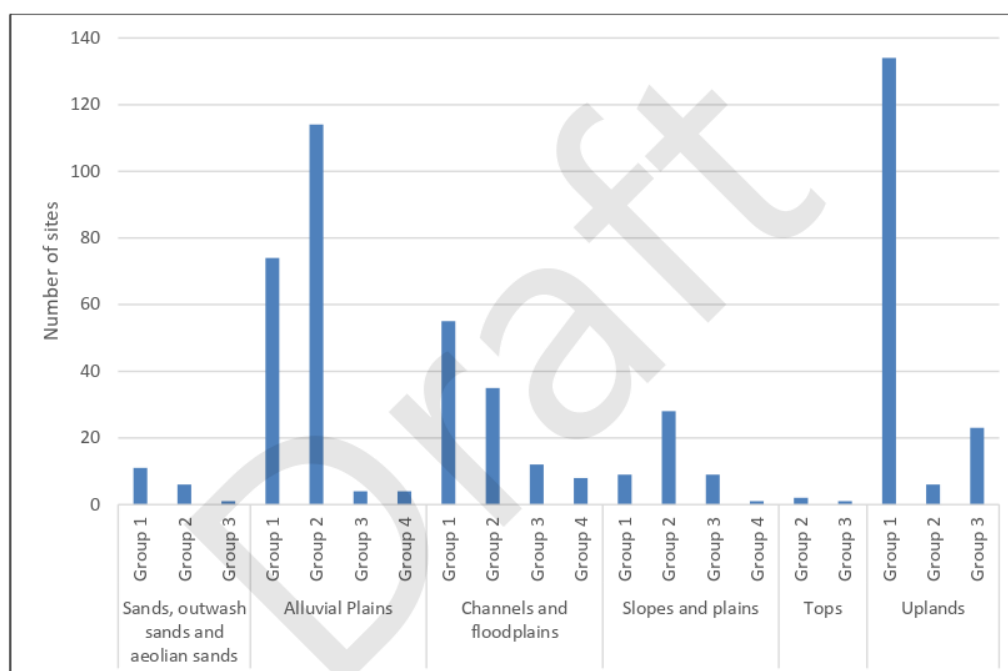


There is not any significant variation in site type group whether the sites are inside two hundred meters (200 m) of a natural water source or outside the two hundred meters (200 m) area. There are some differences when site type group is compared against landscape type (**Chart 5-7**). The

number of sites in Group 1 and Group 2 are nearly equal in the sands, outwash sands and aeolian sands landscape. The uplands have a higher number of Group 1 and Group 3 sites compared to the other landscape types. The alluvial plains have a higher number of Group 2 sites, followed by Group 1 sites.

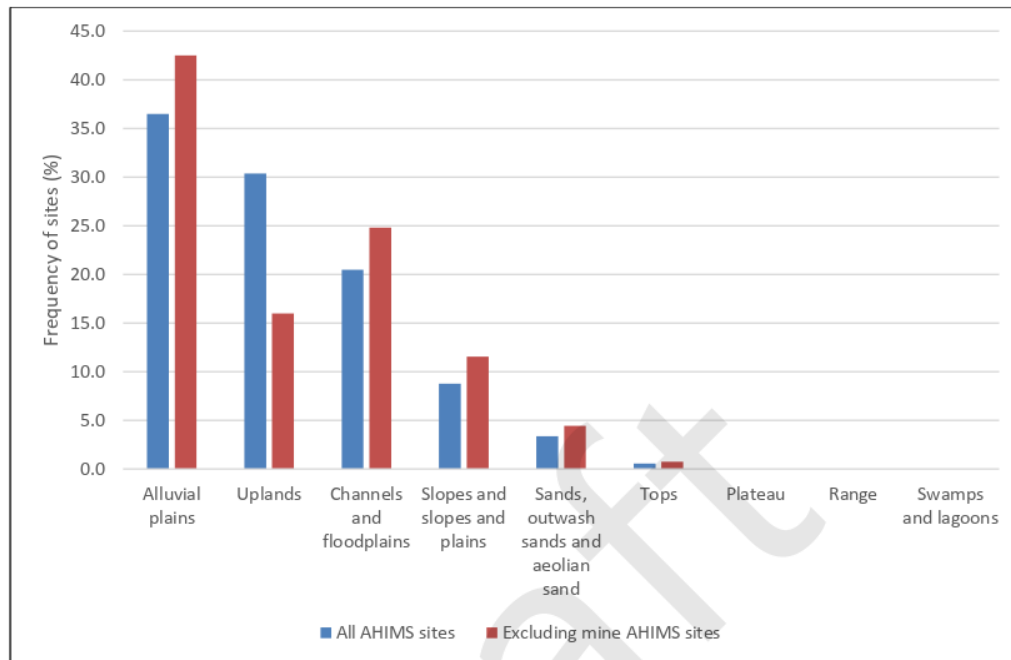
Of interest is the channels and floodplains, where the majority of sites are Group 1, followed by Group 2, Group 3 and Group 4 sites. Of the sites in the slopes and plains landscape, Group 2 is the most prevalent.

**Chart 5-7: Number of sites by site type groups and landscape types.**

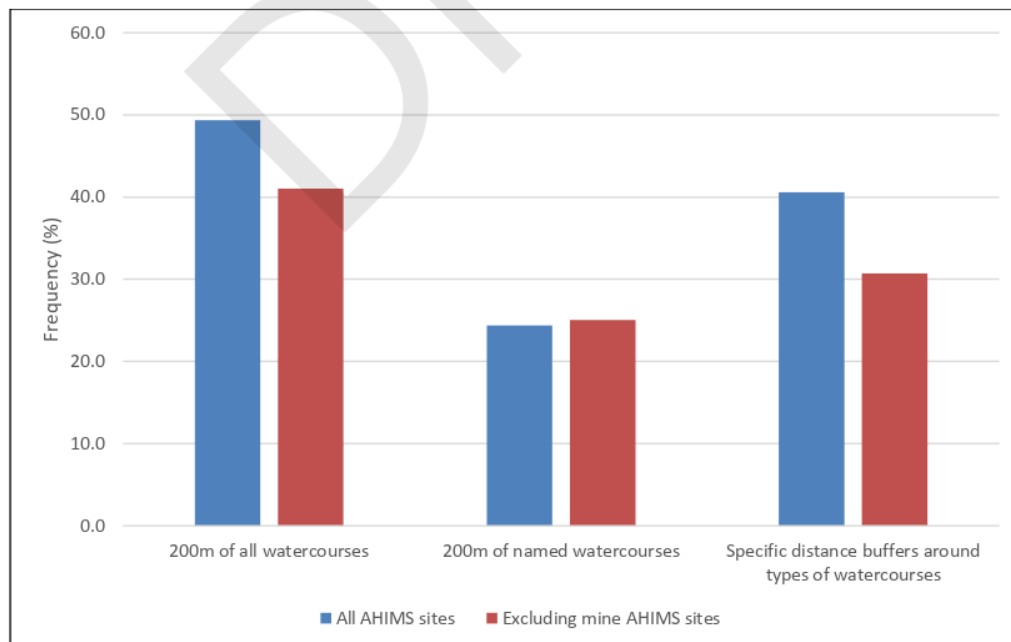


To test the veracity of the conclusions (see **Section 5.2.8**), the one hundred and thirty (130) AHIMS sites relating to two mines (Whitehaven Coal and Maules Creek) were removed from the data, and the general analyses regarding drainage buffers and landscape types were redone and compared. The main difference relates to the number of sites in the Uplands landscape type, due to the majority of the mine AHIMS sites ( $n=98$ ) being located in this landscape type. When removed, sixteen (16) per cent of the remaining AHIMS sites are located in the Uplands landscape, as opposed to thirty (30) per cent of sites when the mine AHIMS sites are included (**Chart 5-8**). When the AHIMS sites recorded in mining districts are excluded, there is little major variation in the results concerning drainage features (**Chart 5-9**).

**Chart 5-8: Comparison of frequency of sites for each landscape type for all AHIMS sites and excluding AHIMS sites in mining districts.**



**Chart 5-9: Comparison of frequency of sites for drainage features for all AHIMS sites and excluding AHIMS sites in mining districts.**



### 5.2.8 Conclusions

There are several broad conclusions which can be drawn from the predictive model:

- **Drainage buffers:** Nearly half (n=265) of the AHIMS sites are within two hundred meters (200 m) of a natural water source, while nearly all of the sites are within one kilometre (1 km) of water (n=502)
- **Sub bioregion:** sixty-eight (68) per cent of sites are in either the Pilliga Outwash or Liverpool Plains sub bioregions. Overall, the majority of sites are in the Brigalow Belt South bioregion (n=482)
- **Landscape types:** Most sites (70%) are in the alluvial plains landscape type. The alluvial plains have the greatest number of Group 2 sites (n=114)
- **Accumulated impacts:** Most sites have been recorded where accumulated impacts are categorised as low-moderate or moderate. This is likely due to the extremely low frequency of areas classified as having low accumulated impacts
- **Land use categories:** Most sites are recorded in areas where the land use category is either production from relatively natural environments or conservation and natural environments. The less destructive nature of these land uses would have helped to preserve sites to a certain degree, especially in relation to the production from relatively natural environments
- When sites recorded in mining districts are included in the analysis, the results become slightly skewed. This is most apparent regarding the landscape types where at least half of the sites recorded in the Uplands landscape type are within mining districts (n=98). However, this skew does not appear to unduly affect the other variables, especially regarding drainage features.

## 5.3 SIGNIFICANCE OF AHIMS SITES

### 5.3.1 Introduction

The appropriate management of cultural heritage items is usually determined based on their assessed significance, as well as the likely impacts of any proposed developments. Cultural, scientific, aesthetic and historical significance are identified as baseline elements of significance assessment, and it is through the combination of these elements that the overall cultural heritage values of a site, place or area are resolved.

#### Social or Cultural Value

This area of assessment concerns the importance of a site or features to the relevant cultural group: in this case the Aboriginal community. Aspects of social value include assessment of sites,

items, and landscapes that are traditionally significant or that have contemporary importance to the Aboriginal community. This importance involves both traditional links with specific areas, as well as an overall concern by Aboriginal people for their sites generally and the continued protection of these. This type of value may not be in accord with interpretations made by the archaeologist: a site may have low archaeological value but high social value, or vice versa.

#### Archaeological/Scientific Value

Assessing a site in this context involves placing it into a broader regional framework, as well as assessing the site's individual merits in view of current archaeological discourse. This type of value relates to the ability of a site to answer current research questions and is also based on a site's condition (integrity), content and representativeness.

The overriding aim of cultural heritage management is to preserve a representative sample of the archaeological resource. This will ensure that future research within the discipline can be based on a valid sample of the past. Establishing whether a site can contribute to current research also involves defining 'research potential'. Questions regularly asked when determining significance are: can this site contribute information that no other site can? Is this site representative of other sites in the region?

#### Aesthetic Value

This refers to the sensory, scenic, architectural and creative aspects of the place. It is often closely linked with the social values. It may consider form, scale, colour, texture and material of the fabric or landscape, and the smell and sounds associated with the place and its use (Burra Charter 2013).

#### Historic Value

Historic value refers to the associations of a place with a historically important person, event, phase or activity in an Aboriginal community. Historic places do not always have physical evidence of their historical importance (such as structures, planted vegetation or landscape modifications). They may have 'shared' historic values with other (non-Aboriginal) communities.

Places of post-contact Aboriginal history have generally been poorly recognised in investigations of Aboriginal heritage. Consequently, the Aboriginal involvement and contribution to important regional historical themes is often missing from accepted historical narratives. This means it is often necessary to collect oral histories along with archival or documentary research to gain enough understanding of historic values.

### 5.3.2 Discussion

Assessing the significance of the AHIMS sites used in the predictive model is impossible at the individual site level for the purposes of this study. However, it is possible to discuss the archaeological significance of certain site types, based on previous studies and experience with AHIMS sites in the broader region. In order to do this, generalised site types located inside Narrabri are discussed in relation to archaeological significance. The grouping of sites as described in **Section 5.2.2** have been used.

#### 5.3.2.1 Group 1 site types

Group 1 site types include open sites of any type assumed to be located on a soil mantle. This includes artefact sites such as open camp sites, PAD, hearth, ceremonial / bora rings, burials, and shell mounds.

Archaeological evidence of Group 1 site types is often evidenced by several archaeological features. The most common type of site type are stone artefact sites, which are often located in proximity to water sources. Other features which may indicate camp sites, in association with stone artefacts, include hearths, middens, and rock shelters.

There are several factors which help determine archaeological significance and the research potential of Group 1 sites and include: the size of the camp site and density of archaeological features such as stone tools; whether the site has been previously disturbed; and whether there is potential for archaeological sub surface deposits.

#### 5.3.2.2 Group 2 sites

Group 2 sites are those defined by trees. These comprise modified trees, scarred trees, and carved trees.

Modified trees include scarred and carved trees. Scarred trees are evidence of bark and wood being removed for shields, shelters, coolamons and canoes. Sometimes evidence of toe-holes or climbing footholds will be visibility indicating the tree was used to hunt possum or for gathering honey.

Carved trees have had a section of bark removed (as with scarred trees), then the underlying wood carved into. Carved trees are highly significant due to their ceremonial meanings, as they are often associated with burials.

The archaeological significance of modified trees often varies depending on surrounding sites, such as camp sites or associated burials.

#### **5.3.2.3 Group 3 site types**

Group 3 site types are those which depend on local geology and rock outcrop. These sites comprise grinding grooves, ochre and stone quarries, and stone arrangements.

The archaeological significance of these types of sites vary depending on whether any there are any associated sites, such as artefact scatters or open camp sites.

#### **5.3.2.4 Group 4 site types**

Group 4 site types comprise sites such as Aboriginal resource gathering site, ceremonial and dreaming sites, and water holes. In general, these sites have lower archaeological potential, as there is often limited archaeological evidence remaining at them, or such evidence is not identified.

### **5.4 CONCLUSION**

The unique nature of the Narrabri LGA makes strategic mapping of the Aboriginal cultural values within the LGA very difficult. These 'unique' features include:

- A large number of water courses, especially minor drainage lines. These readily available water sources would have possibly been used during differing seasons depending on water availability. This availability would have made travelling over distances less precarious for the local Aboriginals
- The LGA contains large areas of relic floodplains and terraces. Due to this fact, it is difficult to predict where sites may be located as the landscape has altered markedly over time. Commonly available aerials can show the ephemeral lakes/depressions and relic drainage channels. While most of these landforms are captured in the 'high' and 'moderate' archaeological potential categories on **Figure 6-1**, should any such relic drainage features fall into the 'low' potential category landforms, it should be assumed that they may contain potential to contain Aboriginal objects (see **Chart 6-1**).

In conclusion, the Aboriginal cultural heritage values of the Narrabri LGA are relatively well documented. This will get better as more heritage studies are conducted over time.

Until a systematic study provides more empirical data on Aboriginal site distribution across the LGA, the precautionary principle should be applied. While the strategic mapping provided here is

a useful start, it should be assumed that impacts in all but the most-disturbed landforms within the LGA could harm Aboriginal objects.

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## 6 STRATEGIC PLANNING MAP

The strategic planning map is the result of the processes set out in **Section 5**. It should be stressed that the map is not designed to a definitive record of all areas of Aboriginal cultural heritage within the Narrabri LGA. Rather, it is designed to show most of the sites that are registered with AHIMS, along with areas where there is a predicted higher likelihood of Aboriginal sites being located.

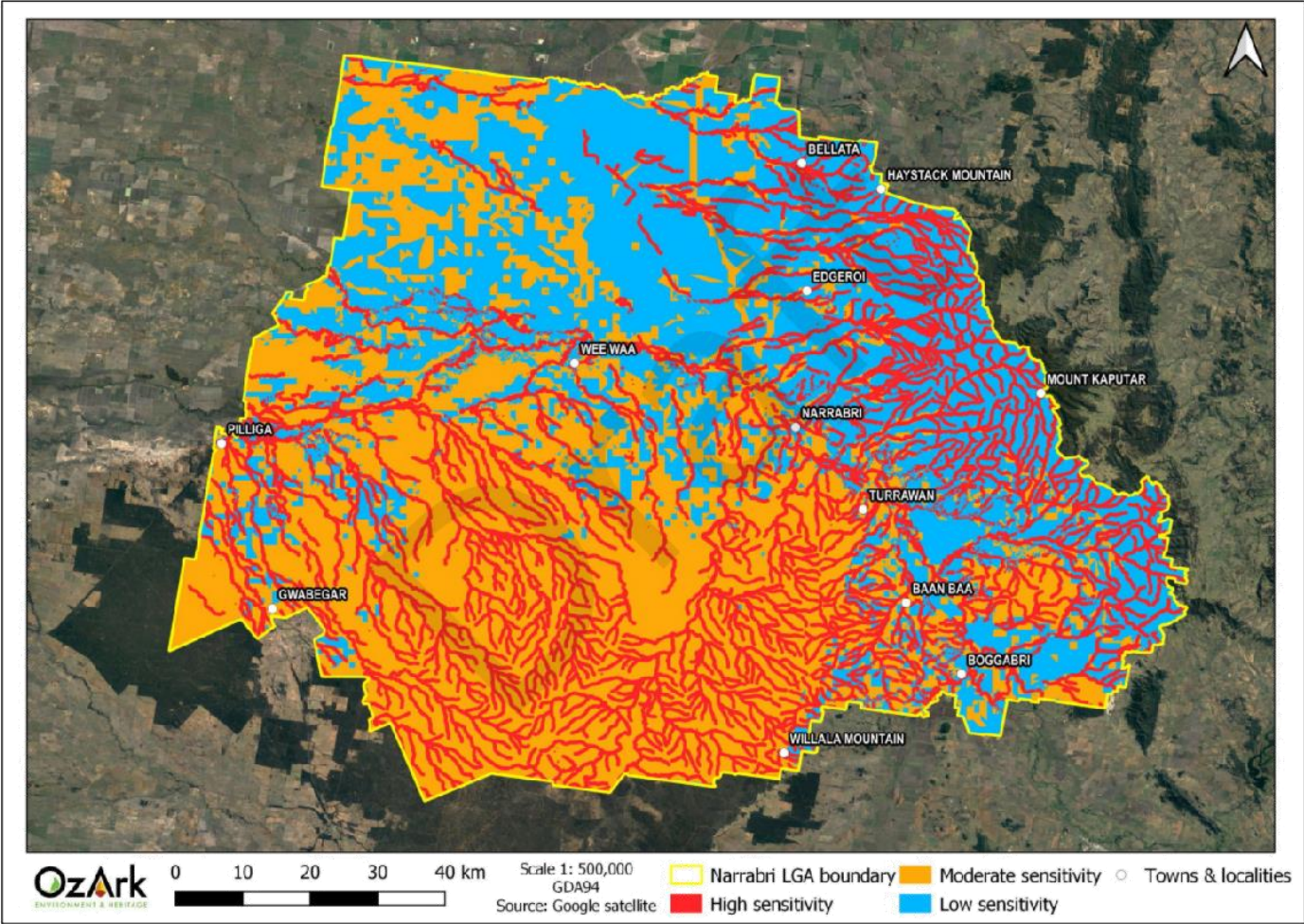
It is accepted that at such a broad level, not all areas of archaeological sensitivity have been mapped and that the strategic planning map is envisioned to be used as an indicative guide only and does not replace formal assessment of areas where development may be proposed. For example, the AHIMS data is presented as a single point although the actual site may be larger than this. Therefore, further research and assessment will be required to ascertain the archaeological values of an area where impacts may be proposed.

However, the strategic map shown on **Figure 6-1** can be used as a guide to the likelihood of a landform containing Aboriginal objects. OzArk will provide Narrabri Council with the GIS data used to generate this map and this will allow the locations of proposed activities to be assessed at a finer resolution than is possible with a printed map. **Table 6-1** provides the rationale behind the classifications shown on the strategic map. This indicates that the map is an interplay between a landform's distance to water, its landscape type, its land use and the level of previous impact in that landform.

**Table 6-1: Rational behind strategic mapping categories.**

Likelihood for Aboriginal sites	Characteristics
High	Includes landforms: <ul style="list-style-type: none"> <li>• Within two hundred meters (200 m) of natural water sources</li> <li>• Within fifty meters (50 m) of recorded AHIMS sites</li> </ul> Excludes landforms which have a high or high-moderate level of accumulated impacts
Moderate	Includes: <ul style="list-style-type: none"> <li>• Landforms where land use category is either conservation and natural environments or production from relatively natural environments in either the alluvial plains, uplands or channels and floodplains.</li> </ul> Excludes landforms which have a high or high-moderate level of accumulated impacts
Low	Includes everything else

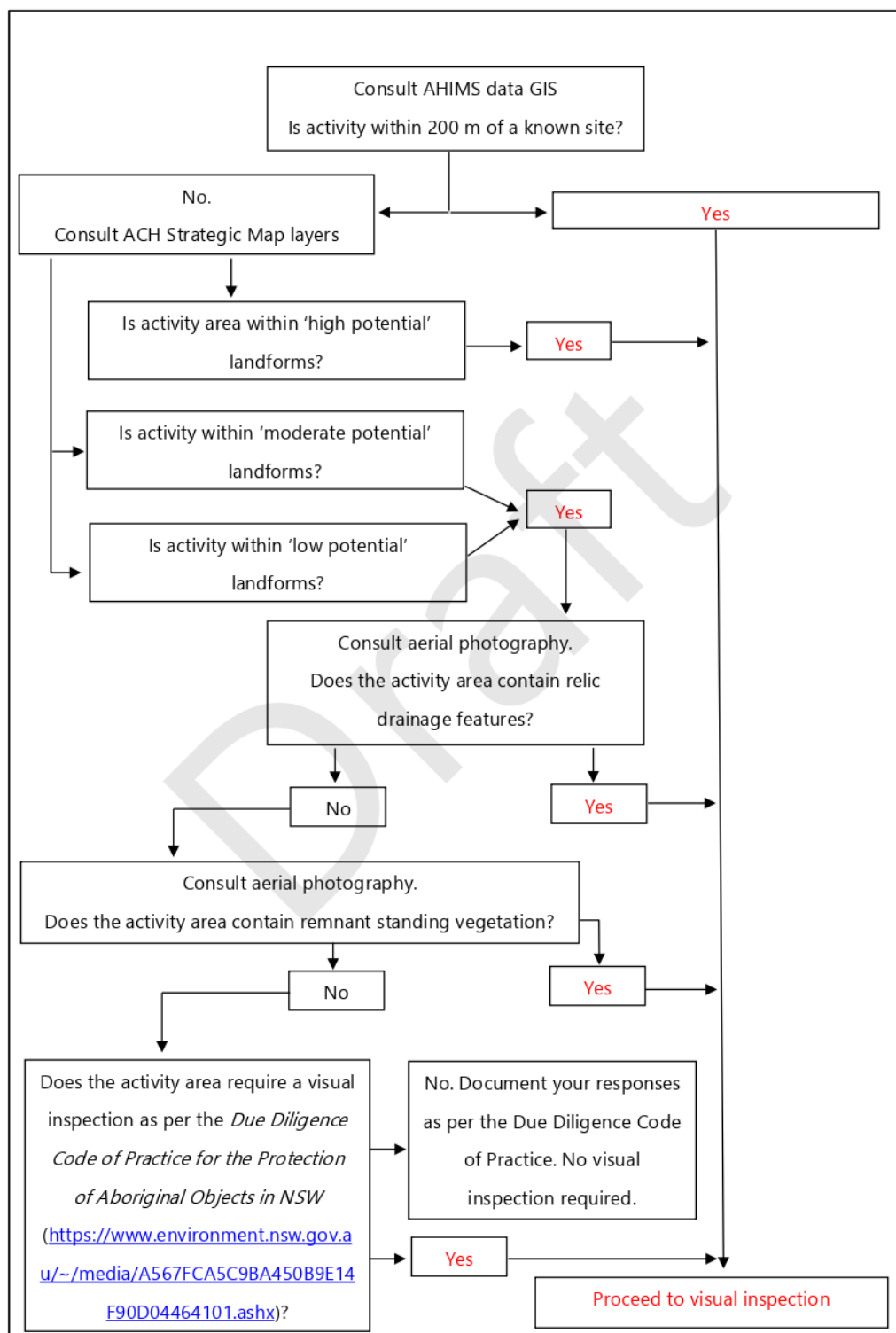
Figure 6-1: Aboriginal cultural heritage strategic planning map showing a landform’s potential to contain Aboriginal objects.



**Chart 6-1** has been provided to aid in the determination of whether a visual inspection of an activity area is required. At all stages, due diligence should be applied. As such, should an area be determined by the flow chart to require a visual inspection, this should be double-checked against aerials of the activity area to determine if this is the case. For example, the activity area may be within a landform that can be defined as 'disturbed land' under the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* (Due Diligence Code of Practice, DECCW 2010) and is therefore exempt from the requirement for a visual inspection.

At all times, the Due Diligence Code of Practice should be followed. The information provided here is to help inform the undertaking of the Due Diligence Code of Practice.

Draft

**Chart 6-1: Generic flowchart to determine if a visual inspection is required.**

## 7 SIGNIFICANT ABORIGINAL SITES/PLACES

As a result of the consultation undertaken for this study, a number of places were put forward by the local Aboriginal community as being significant and warranting further investigation and potential inclusion on the Narrabri LEP. A list of these places is provided in **Table 7-1**.

**Section 7.1** provides a brief commentary on the main themes determined from the results presented in **Table 7-1**. Many of the locations generated through the consultation process relate to recent places or broader geographical areas, such as rivers and creeks. While documenting these places has been important in beginning to understand the significance of parts of the LGA to the local Aboriginal community, the potential listing of such geographical areas on the LEP is not attainable. Many of the proposed locations also require further investigation past the desktop-level of research conducted for this study. Places which are candidates for LEP listing are discussed in detail in **Section 8**, while **Section 7.1.3** outlines locations which can be considered following further research and consultation and research.

**Table 7-1: Places proposed as significant by Aboriginal community.**

Name of Place	Details	Preliminary location information
Tulladunna	Aboriginal reserve and campsite. Was used as site for many families of itinerant cotton (chip) workers dating back to the 1950s.	732410E / 6653727N (GDA94 Zone 55)
Pilliga Mission Sites (Minnom Mission)	There are two missions associated with Pilliga, not necessarily at the same site.	Minnom: 685832E 6637070N (GDA94 Zone 55) Pilliga: 685151E 6635880N (GDA94 Zone 55)
Burren Rd ancestral remains	Remains relocated off Coonabarabran Rd from Pilliga, southward.	Exact location unknown. Possibly outside Narrabri LGA.
Top Camp Pilliga	Town camp near Pilliga Lagoon. Suspect location of camp relates to where AHIMS sites have been recorded around confluence of two creek northeast of Pilliga town.	Exact location unknown. Possibly located around confluence of Pilliga Lagoon Creek and Oak Creek.
Wee Waa Bora Ground/ Corroboree	Described as being circular and still evident today. No AHIMS site recording for location.	Either on eastern or western edge of Wee Waa lagoon. Exact location unknown.
The Pines	Site near Tulladunna believed to have been cleared.	Exact location unknown.
Ancestral remains	Spring Plains Rd.	Exact location unknown.
Scarred trees at Tulladunna bridge	Culturally scarred portion of tree has been relocated next to south side of Kamilaroi Highway on the west side of bridge coming into Wee Waa from Narrabri. Unable to determine which (if any) AHIMS site is scarred tree original location, or relocation spot. Since being relocated, the scarred tree has been vandalised.	Original location unknown, but likely along Kamilaroi Highway alignment. Relocated location is south of Kamilaroi Highway, west of bridge into Wee Waa, and east of Wee Waa proper.
Cooloobindi / Gin's Leap	Rock formation near Boggabri with cultural and pedagogical significance.	216388E / 6604600N (GDA94 Zone 56)
Boggabri Massacre	Boggabri contact suggested: Alfred Priestley (company name 'Gomerio Dreaming').	Location unknown.

Name of Place	Details	Preliminary location information
Waterloo Creek	Process for site to be registered on SHR and recognised by Narrabri LGA ongoing. Listed on Moore Plains LEP (A009).	On northern border between Narrabri LGA and Moore Plains LGA.
Cuttabri Reserve	Reserve between Pilliga and Wee Waa near Coghill Creek and Namoi River.	713714E 6643684N
Narrabri Lake (West Narrabri)	Burial site in West Narrabri now covered by man-made lake.	765135E 6640521N
Trindall's Travelling Stock Reserve	Possible location of a camp at TSR west of Narrabri.	Located south of Kamilaroi Highway, west of Narrabri and north of Narrabri Creek.
Moree-Narrabri route	Railway line between towns had numerous cotton (chip) worker camps.	Specific locations unknown at this time.
Bellata 'Black' School	The Bellata 'Black' School and the nearby Myall Woodland.	Location unknown.
Deriah	Site already co-managed with National Parks and Wildlife Service (NPWS). Includes a variety of recorded archaeological sites including grinding grooves, modified trees and artefact scatters (AHIMS #20-1-0073, #20-1-0032, #20-1-0070, #20-1-0033, #20-1-0017, #20-1-0018).	Located adjacent to south west boundary of Mount Kaputar National Park.
Powell's Travelling Stock Reserve	Camp east of Narrabri on Gunnedah Road.	Along Old Gunnedah Road east of Narrabri, between Deep Creek and Bullawa Creek. Largest area is between Old Gunnedah Road and Namoi River.
Tarriaro Travelling Stock Reserve	Camp at reserve 15 km east of Narrabri on Maules Creek Road.	Around intersection of Old Gunnedah Road and Maules Creek Road. Includes section of land in south elbow of Namoi River.
Yarrie Lake	Crater lake 17 km southeast of Wee Waa. Part is a TSR (R24046). 21 AHIMS sites recorded around Yarrie Lake consisting of artefact scatters and modified trees.	East of Nuable Road with Lake Circuit cutting through east-west of area.
Dripping Rock	Waterflow and waterhole 10 km southeast of Maules Creek.	Approximate 242296E / 6612929N (GDA94 Zone 56)
Bore sites	Traditional camp sites, water sources and meeting points located at: Burren (on property now called 'Elmore'); Barwon and Doyle St (Narrabri near TAFE); Pilliga; Bellata; Millie.	Exact locations of bores not known.
Quarries	Locations unknown.	Locations unknown.
Ancient fauna remains	Diprotodon skeletons at Coonabarabran. Diprotodon skeleton found at Vox's Creek near Tambar Springs.	Tambar Springs is located outside the Narrabri LGA.
Old growth area around Harparary Rd north east of Baan Baa	Mature trees near the Harparary Bridge (spans Namoi River).	787648E / 6616290N (GDA94 Zone 55)
Willala Gorge and caves	NPWS Aboriginal Area designation already in place.	Located adjacent to Pilliga East State Conservation Area.
Doctor's Creek	Creek catchment northeast of Narrabri.	Approximate location only: suspect is tributary from Horsearm Creek and around Narrabri Airport.
Bohena Creek Reserve	Referred to as Black's Camp cf. <i>Tipperina/Bohena Ck / Tibbereena</i> reserve/mission from Parish data. Also known as Narrabri Reserve. Ran from 1888–1920.	Located south of confluence of Namoi River, Narrabri Creek and Bohena Creek.
Cemeteries	The issue of Aboriginal remains in existing LEP landmarks such as Narrabri Gaol and the cemeteries listed at Pilliga, Wee Waa, Narrabri, Drildool and Boggabri.	Narrabri Cemetery (LEP I018), Narrabri Gaol (SHR 334, LEP I040), Pilliga General Cemetery (LEP I007), Drildool Private Cemetery (LEP I005), Wee Waa

Name of Place	Details	Preliminary location information
		General Cemetery (LEP 1004), and Boggabri General Cemetery (LEP 1037).
Scarred Trees	Two lots of land at Old Gunnedah Rd and Kaputar Rd near airport. No AHIMS sites recorded inside the Kaputar Corner TSR, which is on north side of Old Gunnedah Road and east and west side of Kaputar Road.	Exact location unknown, though suspect scarred trees are inside the Kaputar Corner TSR.
Town camps	Town camp locations along Namoi River, Narrabri Creek, Doctors Creek and Bohena Creek suggested.	766655E 6641571N (GDA94 Zone 55) – where 'Trindall's Reserve' and 'Narrabri Reserves' are located according to AIATSIS Map.

## 7.1 THEMES FOR POTENTIAL LEP LISTINGS

From the locations raised during consultation, it has been possible to determine several main themes. These are discussed in detail below, especially in relation to the specific locations proposed for LEP listing by the community during the workshops and as summarised in **Table 7-1**.

It is worth noting that several suggested places clearly follow topographic features, especially where reliable water has been available from the Namoi River in the modern period. The two sites furthest from the Namoi River are Yarrie Lake and Dripping Rock, both remembered for offering clean water before the current drought. In contrast to these potential LEP sites, AHIMS sites, as explored in **Section 5.2**, are more widespread, which may indicate variation in water access and resource location over time.

### 7.1.1 Missions, camps and reserves

The community consultation raised several suggestions of Aboriginal missions, camps and reserves from several areas inside the Narrabri LGA.

From the mid-1800s the British government became concerned regarding the expansion of pastoralism through Australia and the impact it was having on Aboriginal people's access to their Country. By 1850, thirty-five (35) Aboriginal reserves were created throughout regional NSW. These reserves were selected based on locations already used by Aboriginal people (i.e. major existing camp sites). Further reserves were created from the 1870s onwards, and the management of the reserves resulted in the appointment of a 'Protector of Aborigines' in 1881, replaced by the Aboriginal Protection Board (APB) in 1883. The purpose of the APB was to look after the welfare of Aboriginal people and provide grants of land for living on, which represented a new phase of control over Aboriginal's peoples in NSW. The APB also helped to financially support existing missions (DPIE 2020).

The reserves were not created as acknowledgement of Aboriginal property rights, but to remove Aboriginal people from society and public view. Following its inception, the APB created new reserves and 'stations'. By 1915, there were at least eighteen (18) APB stations, including one (1) at Namoi and one (1) at the Pilliga Scrub.

In the 1920s and 1930s, as well as the 1950s and 1960s, many of the reserves were closed or reduced size by the APB or the Aborigines Welfare Board, which replaced the APB in 1940. The closures of reserves in the 1920s and 1930s was due to the APB attempting to move Aboriginal people from town camps, smaller reserves and stations to larger and more tightly controlled managed stations. The closures of reserves in the 1950s and 1960s, were replaced by smaller sized reserves on the edges of towns. In 1983, the *Aboriginal Land Rights Act* meant any remaining Aboriginal reserves were handed back to local Aboriginal communities (DPIE 2020).

Broadly, these were spaces were formally set aside by the government specifically for Aboriginal people to live on. The three broad categories are:

- Missions. Created by churches or religious individuals to house Aboriginal people and train them in Christian ideals and prepare them for work. Most missions were developed on land granted by the government for this purpose. There were approximately ten (10) missions established in NSW between 1824 and 1923, though missionaries often visited some managed stations
- Reserves. Parcels of land set aside for Aboriginal people to live on and were not managed by the government of its official. The first reserves began in 1850, when thirty-five (35) reserves were established throughout regional NSW. Often existing major Aboriginal campsites were used. Aboriginal people living on unmanaged reserves from 1883 received rations and blanks from the Aborigines Protection Board (APB) but were responsible for their own housing
- Stations or 'managed reserves'. Established by the APB from 1883 onwards. Stations were managed by officials appointed by the APB. The station managers controlled the station tightly, and schooling, work training, rations and housing was provided. The station managers also controlled who could and could not live at the managed reserves. There was propaganda surrounding managed reserves as them being 'safe havens' which defended Aboriginal people from settlers. However, the reality and legislation passed in the early 1900s regarding managed reserves, meant the APB, and government, had total control of Aboriginal and Torres Strait Islanders, including legal guardianship of their children (AIATSIS 2020).

The plotted location of two reserve sites (Cuttabri and Bohena Creek) according to AIATSIS data appears to correlate with smaller lots than the surrounding agricultural lots and have attached areas of Crown Land (waterways or TSRs). It is possible that this reflects past subdivision of the land for the reserves and may facilitate the listing of the land on the LEP.

The location of one camp, Tulladunna Reserve, is well known and in continuous use in the current Wee Waa community. The reserve area covers parts of four Deposited Plan (DP) lots, although there is existing interpretation signage on site, suggesting that the importance of the site is already recognised by the landholders.

Differentiating the location of the Minnom Mission and Pilliga Reserve on Mission Lane in Pilliga was uncertain. Both sites appear to be associated with the same lot of land in between Etoo Creek and Friday Creek and may indeed have functioned on the same lot at different times.

### **7.1.2 Geological features**

A part of Aboriginal connection to Country often includes geological and topographic features, such as mountains, cliff faces, rivers and creeks. Often these natural features have non-archaeological cultural values and highlight the inter-connectedness of places along established routes which were defined by topography. Movement through the landscape is reflected in traditional stories and places, often called song lines and dreaming places (Sneddon & Whincop 2017).

The dreaming and post-contact memorial site at Cooloobindi (Gin's Leap) has existing interpretation signage and a small cemetery containing the remains of early colonial residents of the area. There is currently debate within the Aboriginal community as to formally changing the name of Gin's Leap and is currently being investigated. The site of Cooloobindi is the location of a Kamilaroi story. The signposted version of the story is that two young lovers from differing tribes eloped together, and upon being found together, jumped off the cliff at Cooloobindi together. The Kamilaroi version of the story, as told by elders in the documentary 'The Kamilaroi' (2019), is that a local squatter drove an Aboriginal woman off the cliff to her death.

Dripping Rock is on crown land and access to the site is permitted, though only available using 4WD vehicles. The cultural values associated with the Dripping Rock site require further investigation for interpretation at the site to be effective, though in previous nearby assessments it has been mentioned as being part of a song line in the area (Sneddon & Whincop 2017).

Yarrie Lake is an existing recreation park that offers camping and water activities when the lake is full. The recreation park is administered by the volunteer Yarrie Lake Flora and Fauna Trust, but the ownership of the land appears to be private. There are AHIMS sites recorded at and around Yarrie Lake consisting of artefact scatters and modified trees, providing evidence that the area was used for occupation by Aboriginal groups in the past. It is a three (3) km saucer shaped lake thought to have been formed by a falling meteor several thousands of years ago.

#### **7.1.3 Sites with unknown or undefinable extents**

Several locations were raised during the workshop which have unknown or undefinable extents.

The Moree-Narrabri rail route was raised as a significant site in the workshops but listing the railway line or easement would be difficult. It may be possible to update the interpretation and titles of existing Narrabri railway heritage sites, Narrabri Railway Station (I024) or the Railway Station Precinct (I035), to recognise the contribution of Aboriginal fettlers.

An exact location for Top Camp, near the Namoi River at Pilliga, and Wee Waa Bora Ground could not be determined from archival material. Further community consultation will be required to advance the listing of these sites.

Two (2) camp sites, Powell's Reserve and Tarriaro Reserve, are associated with currently designated TSRs, although no certain location of the previous Aboriginal camps could be identified at a desktop level. Only one identified Aboriginal Reserve, Trindall's Reserve, appears to have since been subdivided into residential lots. The listing of the eighteen (18) lots associated with the location would be unfeasible, although the camp areas may have been larger than the current residential block.

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## 8 DISCUSSION ON LEP LISTING

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### 8.1 INTRODUCTION TO ABORIGINAL SITE PROTECTION

As discussed in **Section 1.5**, the accepted and lawful approach to protecting Aboriginal cultural heritage in the context of land use impacts is to properly consider what impact a particular project may have on the Aboriginal heritage resource in that location. Such impacts will differ from project to project. Each proposal must be considered on its own merit and appropriate courses of action decided upon in the context of any relevant legislative requirements of the NPW Act.

The possibility of also affording particular locations of importance to the local Aboriginal community protection via listing on the Narrabri LEP is being explored. This type of listing allows diverse elements of the significance of sites and locations to the local community to be documented and recorded.

### 8.2 ABORIGINAL SITES IN NARRABRI LGA

As the previous sections have demonstrated, Narrabri LGA possesses a wide range of Aboriginal heritage resource with at least five hundred (500) sites recorded on the AHIMS database for the LGA. These records are only those places that have been registered on AHIMS inside the search areas; and it is known that many more exist. AHIMS sites also focus nearly exclusively on archaeological sites, such as artefact scatters, etc., and generally do not consider more recent sites and locations of importance to the Aboriginal community.

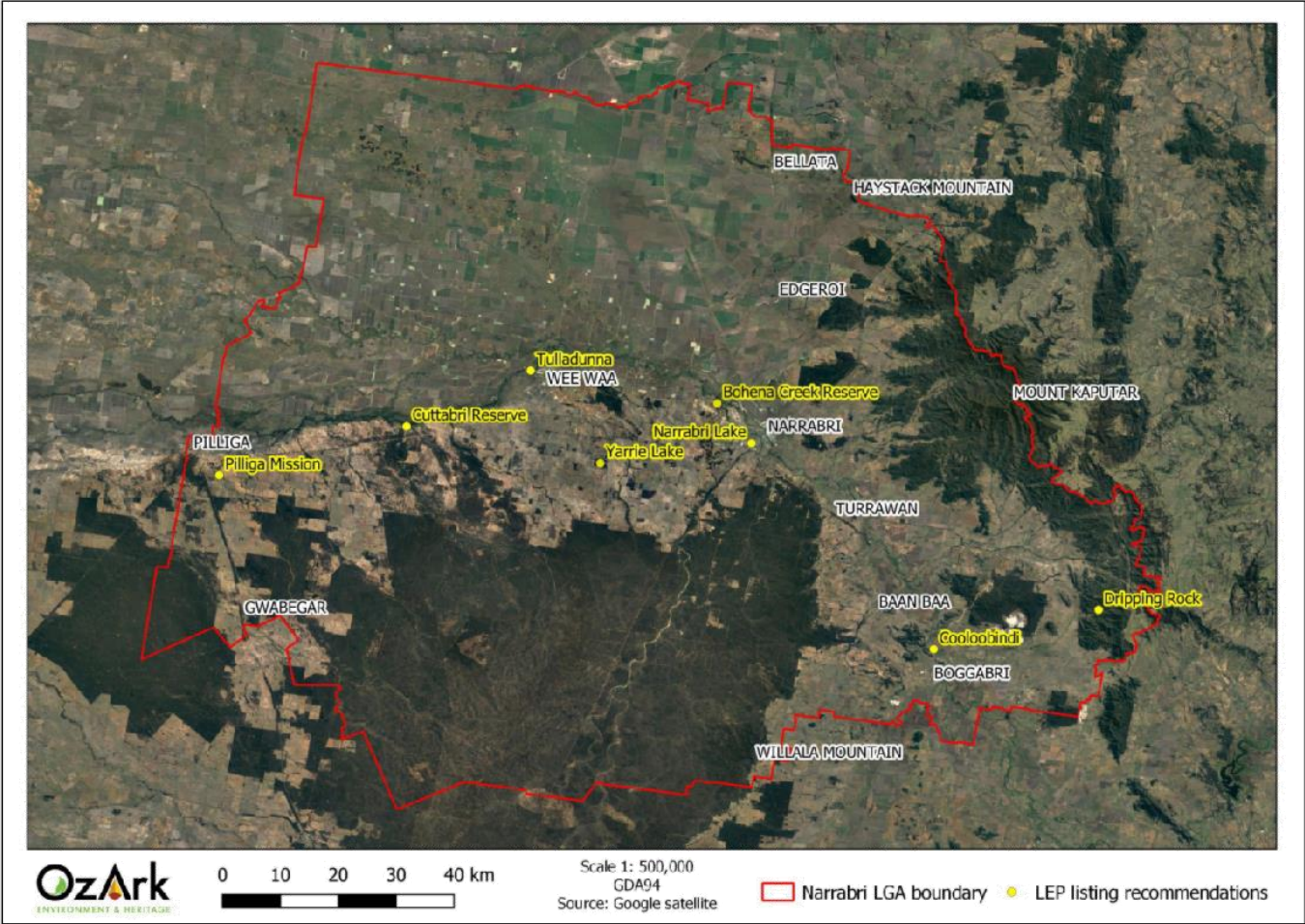
**Table 8-1** and **Section 8.4.2** outlines the details of locations proposed for LEP listing and the relevant information relating to each one. This includes addressing significance criteria to a certain degree. We note in some cases certain criteria are unable to be determined at a desktop level (such as the aesthetics of a location).

The locations which need further investigation prior to be considered for LEP listing are outlined in **Section 9.2**.

**Table 8-1: Sites for consideration towards LEP listing.**

No	Name of Place	Type of Place	Themes	Lot//DP
1	Tulladunna	Aboriginal Reserve	Peopling Australia – Aboriginal cultures and interactions with other cultures. Peopling Australia – Migration	7006, 7007, 70010, 7011 // DP1121835
2	Pilliga Mission	Aboriginal Reserve	Peopling Australia – Aboriginal cultures and interactions with other cultures. Peopling Australia – Migration	64//DP 750305
3	Cooloobindi / Gin's Leap	Geological and landscape feature	Tracing the natural evolution of Australia – Environment – naturally evolved. Peopling Australia – Aboriginal cultures and interactions with other cultures. Marking the phases of life – Birth and Death	87// DP755475
4	Cuttabri Reserve	Aboriginal Reserve	Peopling Australia – Aboriginal cultures and interactions with other cultures. Peopling Australia – Migration	10//DP757088
5	Narrabri Lake (West Narrabri)	Geographical and landscape feature.	Peopling Australia – Aboriginal cultures and interactions with other cultures. Peopling Australia – Migration Marking the phases of life – Birth and Death	7024//DP1059185
6	Yarrie Lake	Geographic and landscape feature	Peopling Australia – Aboriginal cultures and interactions with other cultures.	51, 52, 53// DP43308
7	Dripping Rock	Geographic and landscape feature	Tracing the natural evolution of Australia – Environment – naturally evolved. Peopling Australia – Aboriginal cultures and interactions with other cultures.	29//DP754927
8	Bohena Creek Reserve	Aboriginal Reserve	Peopling Australia – Aboriginal cultures and interactions with other cultures.	131//DP757093 (1921) 130//DP757093 (1888-1920)

Figure 8-1: Location of sites for consideration towards LEP listing.



### 8.3 ASSESSMENT OF HERITAGE SIGNIFICANCE

#### 8.3.1 Assessment of significance—general principles

The current assessment will evaluate the heritage significance of the sites identified within the study area in accordance with the NSW Heritage Office's publication *Assessing Heritage Significance* (Heritage Office 2001). In order to be listed on the Narrabri LEP a site must satisfy at minimum one (1) of the following criteria to be assessed as having heritage significance:

**Criterion (a):** *An item is important in the course, or pattern, of Narrabri LGA cultural or natural history*

**Criterion (b):** *An item has a strong or special association with the life or works of a person, or group of persons, of importance in Narrabri LGA cultural or natural history*

**Criterion (c):** *An item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in Narrabri LGA*

**Criterion (d):** *An item has strong or special association with a particular community or cultural group in Narrabri LGA for social, cultural or spiritual reasons*

**Criterion (e):** *An item has potential to yield information that will contribute to an understanding of Narrabri LGA cultural or natural history*

**Criterion (f):** *An item possesses uncommon, rare or endangered aspects of Narrabri LGA cultural or natural history*

**Criterion (g):** *An item is important in demonstrating the principal characteristics of a class of Narrabri LGA cultural or natural places; or cultural or natural environments*

Significance assessments are carried out on the basis that decisions about the future of heritage items must be informed by an understanding of these items' heritage values. The *Australia ICOMOS Burra Charter* (Burra Charter 2013) recognises four categories of heritage value: historic, aesthetic, scientific, and social significance.

Items are categorised as having local or state level, or no significance. The level of significance is assessed in accordance with the geographical extent of the item's value. An item of state significance is one that is important to the people of NSW whilst an item of local significance is one that is principally important to the people of a specific LGA.

### 8.3.2 Assessment of significance of historic items

Several of the locations discussed at the LEP workshops are suitable for listing on the Narrabri LEP to facilitate the conservation of Aboriginal objects and Aboriginal places of heritage significance. This section provides details of each location, as well as assessing its viability towards listing on the Narrabri LEP. Only locations and sites with enough details have been included here. **Section 9.2** provides a list of locations which may be considered for LEP listing following further investigation.

**Table 8-2** details the assessed significance of items identified during this study in accordance with the NSW Heritage Office guidelines and the *Burra Charter*.

**Table 8-2: Historic heritage: assessment of significance.**

Site Name	Level of Significance
Tulladunna Reserve	Local
Pilliga Mission Sites (Minnon Mission and Pilliga Mission)	Local
Cooloobindi	Local
Cuttabri Reserve	Local
Narrabri Lake	Local
Yarrie Lake	Local
Dripping Rock	Local
Bohena Creek Reserve	Local

#### 1. Tulladunna Reserve

Tulladunna Reserve is located approximately one (1) km west of Wee Waa along the Namoi River. Before the location was turned into a reserve, it was already used as a camp site by local Aboriginal people. Tulladunna Reserve (AR 19783) was founded in 1894. The location is best known for being a camp site where the cotton chip workers, Aboriginal and otherwise, would camp during the harvest season. Tulladunna Reserve also includes places of significance such as a Bora site, scarred trees and burial sites.

Wee Waa was the location of a significant workers rights movement in the early 1970s and early meetings of the Wee Waa Aboriginal Cotton Chippers Caucus took place in the back of the Royal Hotel. The Tulladunna Reserve was the location of key strikes in 1973 and sit-ins after the attempted closure of the camp in 1981, the formation of a worker's caucus was an important moment in this process.

Wee Waa LALC, in partnership with the community, TAFE students and North West Local Land Services have put up fencing around the site, planting native species and undertaking cultural burns. There is also interpretative signage around the Reserve to help inform the local community. Fences have been installed to protect riverbanks from stock on the property.

**Table 8-3** assesses Tulladunna against the assessment criteria established in the Heritage Office publication, *Assessing Heritage Significance* (Heritage Office 2001). Tulladunna is assessed as having local significance and should be considered for listing on the Narrabri LEP.

**Table 8-3: Assessment of heritage significance – Tulladunna Reserve.**

Criteria	Comments	Significance
<b>a</b>	Tulladunna Reserve is an important location to the local Aboriginal Community. It was one of the first Aboriginal reserves founded in Narrabri LGA in 1894. Prior to being used as a reserve, the location was already important to the local Aboriginal people, evidenced through the presence of a Bora site, scarred trees and burial sites, and was likely used for short- and long-term occupation prior to non-Aboriginal settlement. The reserve is also the location of key strikes in 1973 by the Wee Waa Aboriginal Cotton Chippers Caucus in regards to working conditions.	Local
<b>b</b>	Tulladunna Reserve remains an important link to many local Aboriginal people, families and the community. There are members of the community who lived or grew up at Tulladunna or had family who lived at Tulladunna. The reserve was also used by cotton chippers coming from other areas such as Collarenebri, Goodooga, Brewarrina and Lightning Ridge.	Local
<b>c</b>	The location of Tulladunna Reserve is aesthetically pleasing. The area retains its natural environment with native vegetation present and traditional Kamilaroi practices of land management being used today.	Local
<b>d</b>	Tulladunna Reserve has several strong associations with the local Aboriginal community. There is archaeological evidence of use of the reserve prior to non-Aboriginal settlement in the area. The location was also one of the first Aboriginal reserves founded in Narrabri LGA, and Tulladunna has close associations to cotton chipping, as well as activism related to cotton chipping worker conditions during the 1970s.	Local
<b>e</b>	Tulladunna is a focal point of cultural history in the Wee Waa area. The continuous use of the location for occupation and living in the past, as well as its current use in helping educate the broader community and as a gathering place shows that Tulladunna has potential to yield further information regarding the cultural history of Narrabri LGA.	Local
<b>f</b>	Tulladunna Reserve is the location of a Bora site, scarred trees and burial sites. All these site types are of high cultural significance and have become less common due to post non-Aboriginal impacts in the surrounding region.	Local
<b>g</b>	Tulladunna Reserve is a good example of a location which has been used continuously by the local Aboriginal Community, from pre non-Aboriginal settlement through to today.	Local

## **2. Pilliga Mission**

The Pilliga Mission Reserve (also known as Minnom Mission) was formed in 1902. Initially it was approximately twenty-four hectares (24 ha) in size, though an additional thirty-four hectares

(34 ha) was added to the area in 1908. There was a lot of people movement during the earlier years of the reserve between Pilliga, Wingadee and Cuttabri.

A school was set up at the Pilliga Mission in 1912. In 1923, the APB turned the reserve into a station and appointed a manager. It became a large produce of timber for the Board's stations and reserves throughout the region. The station had its own sawmill and employed local people. Today, some buildings remain at Pilliga Mission, and the cemetery is at risk of flooding.

**Table 8-4** assesses Pilliga Mission against the assessment criteria established in the Heritage Office publication, *Assessing Heritage Significance* (Heritage Office 2001). Pilliga Mission is assessed as having local significance and should be considered for listing on the Narrabri LEP.

**Table 8-4: Assessment of heritage significance – Pilliga Mission.**

Criteria	Comments	Significance
<b>a</b>	Pilliga Mission is an important location in the cultural history of the Narrabri area as one of the locations to which a significant proportion of the local Aboriginal population were forcibly relocated. Members of the local community will have memories of growing up there or have family who would. Aboriginal people are also likely to have camped along Etoo Creek near the mission site before the foundation of the mission.	Local
<b>b</b>	Pilliga Mission has strong associations to the Aboriginal people of the local area due to family history and as a location that represents the purposeful disenfranchisement of their people since colonisation.	Local
<b>c</b>	Pilliga Mission site not understood to remain in a state that would meet the aesthetic or technical threshold of this criteria.	None
<b>d</b>	Pilliga Mission has strong associations to the Aboriginal people of the local area for multiple social, cultural and spiritual reasons including the burial locations of ancestors.	Local
<b>e</b>	The research potential of the site has not been assessed as part of this study. Intact archaeological remains at the site would have local significance, if present.	Local
<b>f</b>	While there are multiple reserve and camp locations in the local area, there is high potential for historical values of sites in this category to be endangered. Neglect of the site's values might lead to memories of the site being lost.	Local
<b>g</b>	There are few characteristic features of mission and reserve sites across NSW and the local area. This does not reduce the assessed local significance of the site in this instance.	Local

### **3. Cooloobindi**

Cooloobindi, also known as Gin's Leap, is a rock formation near Boggabri with cultural and pedagogical significance. There is an existing campaign to change name due to both racist nomenclature and a reference to massacre event. Direct evidence for the massacre event requires further investigation.

The location has cultural significance dating to the pre-contact period as well as the importance of the later violence against Aboriginal people at the site.

**Table 8-5** assesses Cooloobindi against the assessment criteria established in the Heritage Office publication, *Assessing Heritage Significance* (Heritage Office 2001). Cooloobindi is assessed as having local significance and should be considered for listing on the Narrabri LEP.

**Table 8-5: Assessment of heritage significance – Cooloobindi.**

Criteria	Comments	Significance
<b>a</b>	Cooloobindi has importance to the local population for both natural and cultural story of the local area. The geological formation is associated with both traditional dreaming stories and post-contact history.	Local
<b>b</b>	Cooloobindi has special associations with Aboriginal people of the local area and their traditional cultural history and its relationship to place.	Local
<b>c</b>	Cooloobindi has high natural aesthetic value as a prominent outcrop with cultural significance to first nations people of the local area.	Local
<b>d</b>	Cooloobindi has strong social, cultural and spiritual value to the local Aboriginal population, including as an area of storytelling and learning.	Local
<b>e</b>	The research potential of the site itself is considered to be low.	None
<b>f</b>	The outcrop is an uncommon and striking geological feature of the local area.	Local
<b>g</b>	The site does not have features characteristic of a class of sites.	None

#### **4. Cuttabri Reserve**

Cuttabri Reserve is between Pilliga and Wee Waa, located on east side of Coghill Creek between Pilliga Rd and the Namoi River. It was founded in 1904 and officially merged with Pilliga mission in the late 1930s. The reserve is likely to have remained an unmanaged camp in later years and may have been referred to as Maranatha.

There are four associated AHIMS sites near Cuttabri Reserve (#19-6-0019 to -0021 and 19-6-0024) which includes a burial site.

**Table 8-6** assesses Cuttabri Reserve against the assessment criteria established in the Heritage Office publication, *Assessing Heritage Significance* (Heritage Office 2001). Cuttabri Reserve is assessed as having local significance and should be considered for listing on the Narrabri LEP.

**Table 8-6: Assessment of heritage significance – Cuttabri Reserve.**

Criteria	Comments	Significance
<b>a</b>	Cuttabri Reserve is an important location in the cultural history of the Narrabri area as one of the locations to which a significant proportion of the local Aboriginal population were forcibly relocated. Members of the local community will have memories of growing up there or have family who would. Aboriginal people are also likely to have camped along Coghill Creek near the mission site before the foundation of the mission.	Local
<b>b</b>	Cuttabri Reserve has strong associations to the Aboriginal people of the local area due to family history and as a location that represents the purposeful disenfranchisement of their people since colonisation.	Local

Criteria	Comments	Significance
<b>c</b>	Cuttabri Reserve site is not understood to remain in a state that would meet the aesthetic or technical threshold of this criteria.	None
<b>d</b>	Cuttabri Reserve has strong associations to the Aboriginal people of the local area for multiple social, cultural and spiritual reasons, possibly including the burial locations of ancestors.	Local
<b>e</b>	The research potential of the site has not been assessed as part of this study. Intact archaeological remains at the site would have local significance, if present.	Local
<b>f</b>	While there are multiple reserve and camp locations in the local area, there is high potential for historical values of sites in this category to be endangered. Neglect of the site's values might lead to memories of the site being lost.	Local
<b>g</b>	There are few characteristic features of mission and reserve sites across NSW and the local area. This does not reduce the assessed local significance of the site in this instance.	Local

## 5. Narrabri Lake

Narrabri Lake in West Narrabri was an Aboriginal burial site which is now covered by the man-made lake. In 1975 a grant was allocated to build the artificial lake and construction was completed in 1982 (Brook 1998:144). Several participants of the workshops mentioned that during construction of the lake that Aboriginal burials were identified although no direct evidence of this has been sighted.

In 1966, the idea of an artificial lake was suggested by Mrs Dorothy Bendeich as part of a town beautification project for Narrabri. The lake scheme was considered an improvement to the then swampy wetlands which stretched from the Narrabri Showground to the residential area of Narrabri West. Enthusiasm from the public for the lake scheme increased in 1975 following a Regional Employment Development grant and works were set to proceed in 1976. However, the Regional Employment Development grant scheme ended before the money could be spent. The project was revived and finished in 1982.

Today the lake is a local landmark within Narrabri and is used for a recreation area for tourists and townspeople. There is a walkway and cycle track around the lake, and water sports take place in the lake.

**Table 8-7** assesses Narrabri Lake against the assessment criteria established in the Heritage Office publication, *Assessing Heritage Significance* (Heritage Office 2001). Narrabri Lake is assessed as having local significance and should be considered for listing on the Narrabri LEP.

**Table 8-7: Assessment of heritage significance – Narrabri Lake.**

Criteria	Comments	Significance
<b>a</b>	As an artificial lake, the item does not have known importance in the pattern of local cultural or natural history.	None
<b>b</b>	Narrabri Lake is potentially the location of Aboriginal burial sites before inundation and the area has special significance to the local Aboriginal community.	Local
<b>c</b>	While Narrabri Lake has aesthetic values, these are not demonstrative of creative or technical skill.	None
<b>d</b>	Narrabri Lake is potentially the location of Aboriginal burial sites before inundation and the area has social, cultural and spiritual significance to the local Aboriginal community.	Local
<b>e</b>	Narrabri Lake is not understood to have research potential for historical themes in the local area.	None
<b>f</b>	Narrabri Lake is not considered to represent an endangered or rare aspect of local history.	None
<b>g</b>	Narrabri Lake is not considered to demonstrate key characteristics of a wider class of heritage item.	None

## 6. Yarrie Lake

Yarrie Lake is an existing recreation park that offers camping and water activities when the lake is full. Yarrie Lake is seventeen kilometres (17 km) southeast of Wee Waa.

There are AHIMS sites recorded at and around Yarrie Lake consisting of artefact scatters and modified trees, providing evidence that the area was used for occupation by Aboriginal groups in the past. It is a three (3) km saucer shaped lake thought to have been formed by a falling meteor several thousands of years ago.

**Table 8-8** assesses Yarrie Lake against the assessment criteria established in the Heritage Office publication, *Assessing Heritage Significance* (Heritage Office 2001). Yarrie Lake is assessed as having local significance and should be considered for listing on the Narrabri LEP.

**Table 8-8: Assessment of heritage significance – Yarrie Lake.**

Criteria	Comments	Significance
<b>a</b>	Yarrie Lake is not considered to be important in the course and pattern of local history.	None
<b>b</b>	Yarrie Lake is not associated with any significant local figures and there are no known associations of the site to particular groups.	None
<b>c</b>	Yarrie Lake has widely appreciated aesthetic values in the local area.	Local
<b>d</b>	There are previously registered sites at the lake but no known social, cultural or spiritual values associated with the site.	None
<b>e</b>	The research value of the site is considered low.	None
<b>f</b>	Yarrie Lake is an example of a rare hydrological feature, an endorheic lake, that does not flow to the sea and may be the result of a meteor impact.	Local

Criteria	Comments	Significance
<b>g</b>	Yarrie Lake has local significance as representative of a type of hydrological feature as the nearby example Round Swamp is on private land and inaccessible to the public.	Local

## 7. Dripping Rock

Dripping Rock is a waterfall and waterhole ten kilometres (10 km) southeast of Maules Creek. Dripping Rock is on crown land and access to the site is permitted, though only available using 4WD vehicles. It has been mentioned as being part of a song line in the area (Sneddon & Whincop 2017).

**Table 8-9** assesses Dripping Rock against the assessment criteria established in the Heritage Office publication, *Assessing Heritage Significance* (Heritage Office 2001). Dripping Rock is assessed as having local significance and should be considered for listing on the Narrabri LEP.

**Table 8-9: Assessment of heritage significance – Dripping Rock.**

Criteria	Comments	Significance
<b>a</b>	Dripping Rock is not considered to be important in the course and pattern of local history.	None
<b>b</b>	Dripping Rock is not known to have associations with individuals or particular groups of local significance.	None
<b>c</b>	Dripping Rock has widely appreciated aesthetic values in the local area.	Local
<b>d</b>	There are known social and cultural values of the site to the local Aboriginal people. Previous studies have marked it as a location on a song-line.	Local
<b>e</b>	The research value of the site is considered low.	None
<b>f</b>	Dripping Rock is not considered to be a rare or endangered hydrological feature.	None
<b>g</b>	Dripping Rock does not represent the characteristic features of a wider class.	None

## 8. Bohena Creek Reserve

Bohena Creek Reserve (AR 7903), possibly also referred to as Black's Camp, Tipperina or Tibbereena. Earliest available evidence suggests that an area near the junction of Bohena Creek and the Namoi River was reserved for Aboriginal use since at least 1898.

**Table 8-10** assesses Bohena Creek Reserve against the assessment criteria established in the Heritage Office publication, *Assessing Heritage Significance* (Heritage Office 2001). Bohena Creek Reserve is assessed as having local significance and should be considered for listing on the Narrabri LEP.

**Table 8-10: Assessment of heritage significance – Bohena Creek Reserve.**

Criteria	Comments	Significance
<b>a</b>	Bohena Creek Reserve is an important location in the cultural history of the Narrabri area as one of the locations to which a significant proportion of the local Aboriginal population were forcibly relocated. Members of the local community will have memories of growing up there or have family who would. Aboriginal people are also likely to have camped along Bohena Creek and the Namoi near the mission site before and after the foundation of the reserve.	Local
<b>b</b>	Bohena Creek Reserve has strong associations to the Aboriginal people of the local area due to family history and as a location that represents the purposeful disenfranchisement of their people since colonisation.	Local
<b>c</b>	Bohena Creek Reserve site would not meet the aesthetic or technical threshold of this criteria.	None
<b>d</b>	Bohena Creek Reserve has strong associations to the Aboriginal people of the local area for multiple social, cultural and spiritual reasons.	Local
<b>e</b>	The research potential of the site has not been assessed as part of this study. Intact archaeological remains at the site would have local significance, if present.	None
<b>f</b>	While there are multiple reserve and camp locations in the local area, there is high potential for historical values of sites in this category to be endangered. Neglect of the site's values might lead to memories of the site being lost.	Local
<b>g</b>	There are few characteristic features of mission and reserve sites across NSW and the local area. This does not reduce the assessed local significance of the site in this instance.	Local

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## 9 CONCLUSIONS AND RECOMMENDATIONS

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### 9.1 ABORIGINAL COMMUNITY SUMMARY

The Aboriginal people consulted for this study expressed strong interest and desire in sites and places important to the Narrabri Aboriginal community being listed on the Narrabri LEP. The inclusion of some of the Aboriginal Reserves and Missions on the LEP was also highlighted during the workshops.

### 9.2 RECOMMENDATIONS FOR FURTHER WORK

There are a number of recommendations for further work which have been identified during the course of this study.

- Oral history surveys of life at town camps and reserves, and to a lesser extent for missions, may be necessary to assist in the preparation of heritage assessments for potential LEP listings. Oral history records of Aboriginal life in the early post-contact period in the Narrabri LGA currently contain less detail than comparable areas near missions such as Brewarrina (Bourke Shire Council LGA) and Terry Hie Hie (Moree Plains Shire LGA)
- Multiple sites, with identified Aboriginal heritage or cultural significance, have not been located by the current study. The physical location of these sites, across the Narrabri LGA, could be investigated by future studies. Several of these places are included in **Table 7-1** or **Section 7.1.3**.
- Several themes have emerged throughout the course of this study that warrant further research. These themes include Aboriginal participation in: transport infrastructure (such as Aboriginal fettlers who worked on the Narrabri-Moore Railway line and the currently unknown location of any Aboriginal fettler cottages); as well as the Aboriginal workers at the Wee Waa cotton camps.

### 9.3 CONCLUSIONS

There are eight (8) places that should be considered for listing on the Narrabri LEP. All of these places have a strong connection to the local Aboriginal community, both past and present. Some of these locations are still in use today by the local Aboriginal community and will be used into the future as well.

Whether these eight (8) places are included in Schedule 5 of the Narrabri LEP, or as new category such as 'places of Aboriginal cultural significance' has yet to be determined. However, prior to any determination of a development application for development on land which these locations are on, the likely impact of proposed developments on the cultural significance should be considered, and the local Aboriginal community should be consulted.

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# Planning Proposal

Northern NSW Inland Port (N2IP)

Yarrie Lake Road, Narrabri

Prepared for:

Narrabri Shire Council

August 2020



REPORT DETAILS	
Project Number	19011
Project Name	Planning Proposal – Northern NSW Inland Port
Project Address	488 & 622 Yarrie Lake Road and 237 Culgoora Road, Narrabri
Client	Narrabri Shire Council
Prepared by	Erika Dawson
Revision	F
Date	18 August 2020



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This report is prepared solely for Narrabri Shire Council (the 'client') and any future landowners (or their delegated representatives) of the subject lot(s) and is not for the benefit of any other person and may not be relied upon by any other person.

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# 1 Introduction

## 1.1 Overview

This Planning Proposal (PP) has been prepared for Narrabri Shire Council (NSC) to explain the intended effect of and justification for the proposed amendment to *Narrabri Local Environmental Plan 2012* (LEP).

## 1.2 The Proposal

The intent of the proposed LEP amendment is to facilitate the Northern NSW Inland Port. To achieve this intent, it is proposed to:

- Rezone the site from RU1 Primary Production to:
  - part SP1 Special Activities;
  - part Sp2 Infrastructure; and
  - part E3 Environmental Management.
- Modify the minimum lot size map

This PP will amend both the LEP and associated LEP mapping.

## 1.3 The Site

This PP applies to the land as outlined in the following table and as shown in **Figure 1**.

**Table 1: Planning Proposal Land**

Lot/DP	Street Address
Lot 159 DP 852877	488 Yarrie Lake Road
Lot 158 DP 711841	622 Yarrie Lake Road
Lot 2 DP 622404	237 Culgoora Road
Lot 2 DP 1260466	Culgoora Road
Part Lot 1102 DP 1169062	Culgoora Road

Planning Proposal – Northern NSW Inland Port  
Yarrie Lake Road, Narrabri



Source: (NSW Spatial Services n.d.)

Figure 1: Site Location

## 1.4 Legislative Framework

This PP has been prepared to satisfy the requirement of section 3.33 of the *Environmental Planning & Assessment Act 1979 (EP&A Act)*. This PP has been prepared in accordance with the *Planning Proposals: A guide to preparing planning proposals (the Guide)* (NSW Government Planning & Environment 2018), which provides the Planning Secretary's requirements pursuant to section 3.33(3) of the EP&A Act.

## 1.5 Format of Report

Consistent with the Guide, this PP has been prepared in the following format:

- Section 1 provides an introduction and overview of the PP.
- Section 2 provides an overview of the site and its features.
- Section 3 provides an overview of the existing legislative framework
- Section 4 contains the prescribed requirements for PPs including:
  - Part 1 – Objectives or intended outcomes
  - Part 2 – Explanation of Provisions
  - Part 3 – Justification
  - Part 4 – Mapping
  - Part 5 – Community Consultation
  - Part 6 – Project Timeline

The completed Information Checklist provided in Attachment 1 of the Guide is provided in **Appendix A**.

## 2 The Site

### 2.1 Title Details

The subject site is comprised of four (4) lots:

- Lot 158 DP 711841;
- Lot 159 DP 852877;
- Lot 2 DP 622404;
- Lot 2 DP 1260466; and
- Part Lot 1102 DP 1169062.

The Certificates of Title and title diagrams are provided in **Appendix B**.

#### 2.1.1 Lot 158

Lot 158 has an area of 155 hectares. There are no listed encumbrances on the title.

#### 2.1.2 Lot 159

Lot 159 has an area of 119.1 hectares. There are no listed encumbrances on the title.

#### 2.1.3 Lot 2 DP 622404

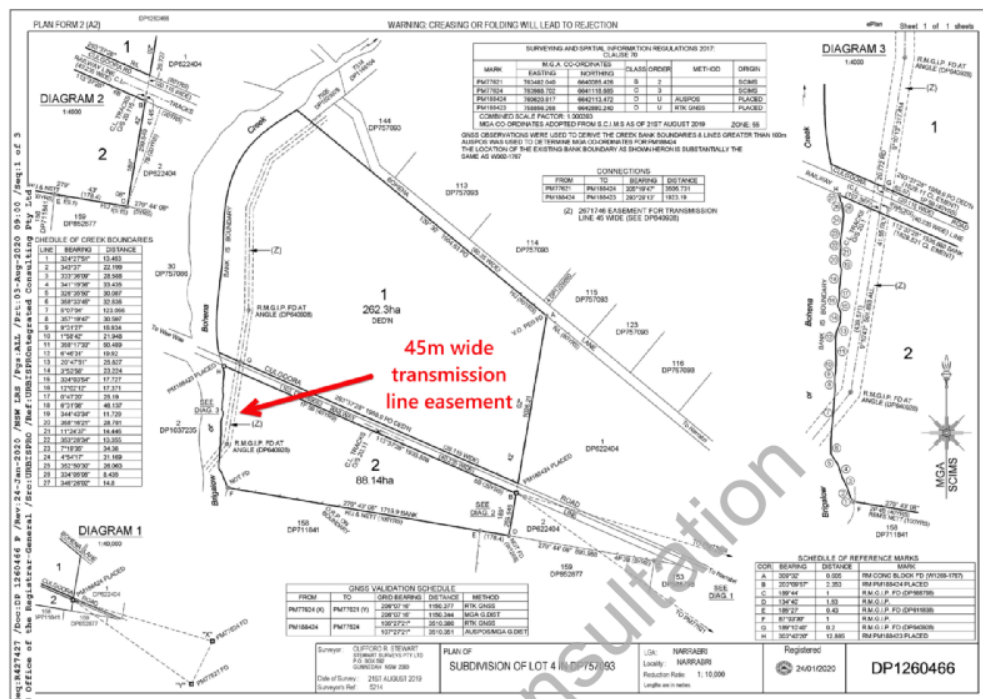
Lot 2 has an area of 13.59 hectares. There are no listed encumbrances on the title.

#### 2.1.4 Lot 2 DP 1260466

Lot 2 has an area of 88.14 hectares. The lot is encumbered by:

- a 45m wide easement for transmission line, which is vested in Country Energy (refer **Figure 2**).

**Planning Proposal – Northern NSW Inland Port**  
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Source: (Gleeson 1988)

**Figure 2: Easement Plan**

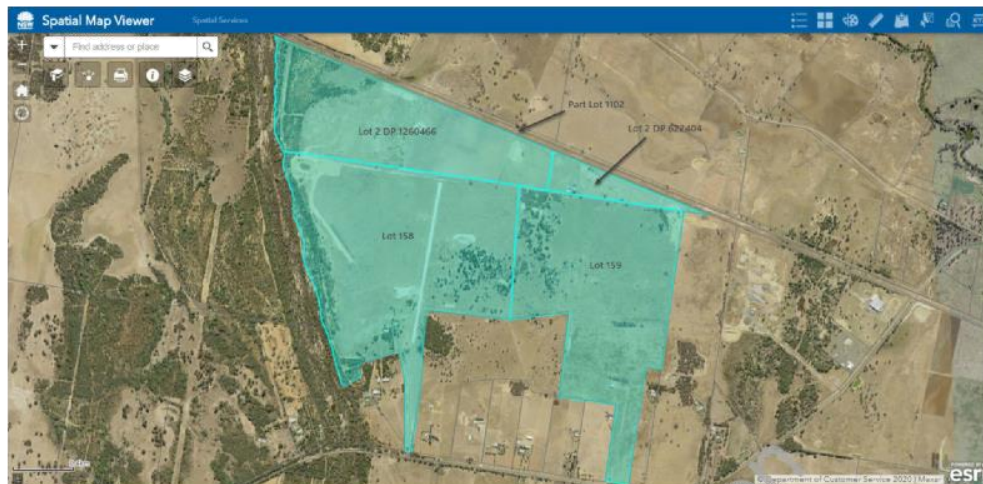
### 2.1.5 Part Lot 1102

Lot 1102 is the lot on which the existing railway line is located. The lot extends from Narrabri West for approximately 19kms. The part of Lot 1102 the subject of this application extends from the eastern extent of Lot 2 DP 622404 to the western extent of Lot 2 DP 1260466. This part of Lot 1102 has an area of approximately 13 ha. There are no listed encumbrances on the title.

## 2.2 Land Use

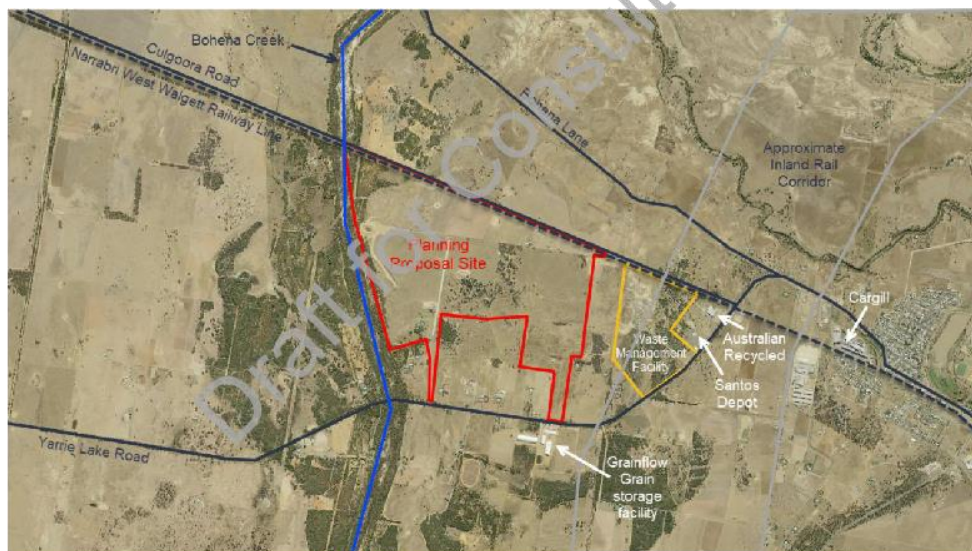
The site is characterised by agricultural land uses, predominantly comprising grazing as shown in **Figure 3**. Likewise, the land surrounding the site is predominantly characterised by agricultural land uses, with scattered dwellings, industries and waste management facility as shown in **Figure 4**.

Planning Proposal – Northern NSW Inland Port  
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Source: (NSW Spatial Services n.d.)

**Figure 3: Site Aerial Photograph**

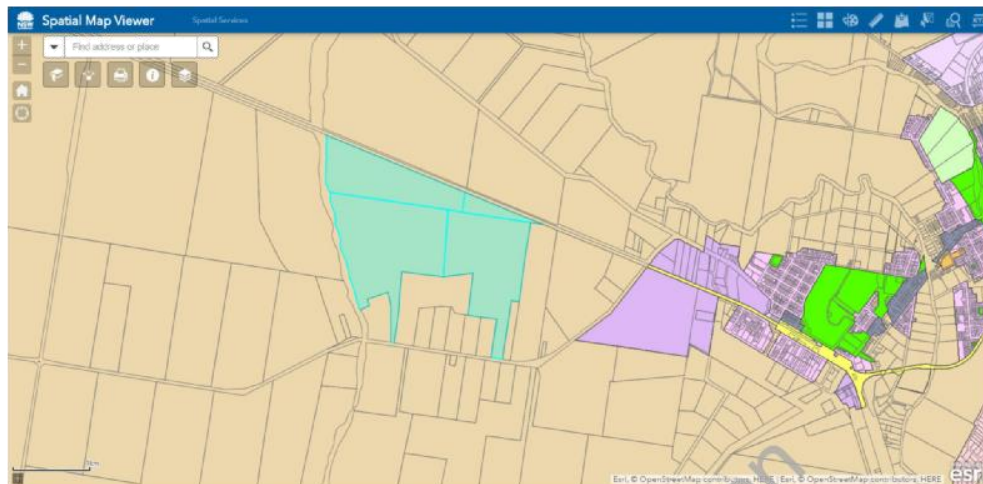


Source: (NSW Spatial Services 2019)

**Figure 4: Surrounding Land Uses**

The subject site and its immediate surrounds are zoned RU1 Primary Production under *Narrabri Local Environmental Plan 2012 (LEP)* as shown on **Figure 5**. At the south western edge of the existing urban area of Narrabri is an existing area of IN1 General Industrial zoned land.

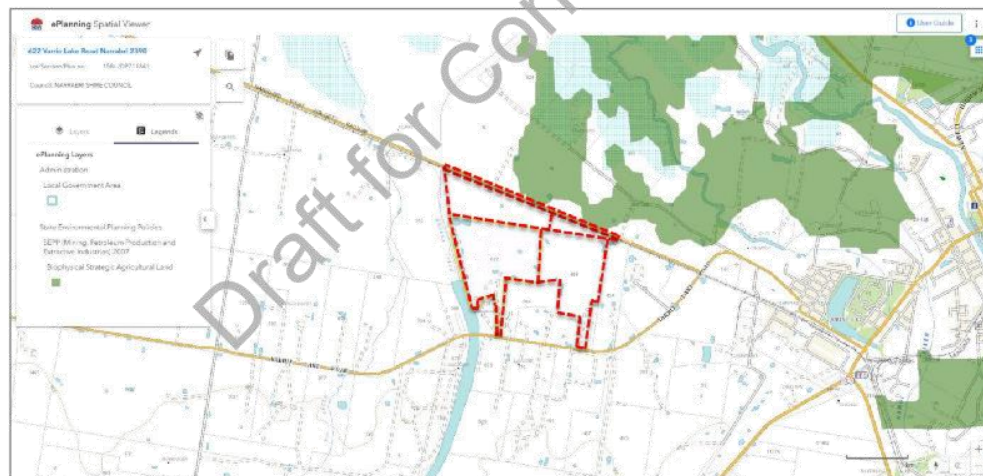
Planning Proposal – Northern NSW Inland Port  
Yarrie Lake Road, Narrabri



Source: (NSW Spatial Services n.d.)

**Figure 5: LEP Zoning Map**

The site is not mapped as Biophysical Strategic Agricultural Land under the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (Mining SEPP). **Figure 6** shows the location of the nearest BSAL mapped areas.



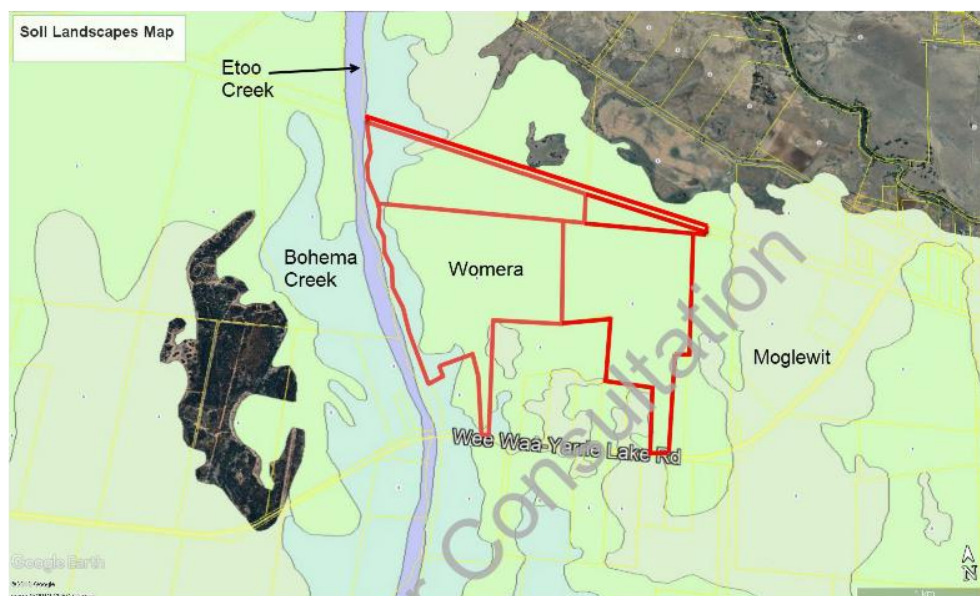
Source: (NSW Government n.d.)

**Figure 6: Biophysical Strategic Agricultural Land Map**

## 2.3 Soils & Geology

### 2.3.1 Soil Landscapes

A review of the NSW Office of Environment & Heritage's *eSpade* website revealed the site is located predominantly within the Womera Soil Landscape, with smaller areas in the Bohemia Creek and Moglewit Soil Landscapes. **Figure 7** show the location and extent of these soil landscapes.



Source: (Google 2019) (NSW Office of Environment & Heritage n.d.)

**Figure 7: Soil Landscapes Map**

#### 2.3.1.1 Womera Soil Landscape

The Womera Soil Landscape is characterised by the following (NSW Office of Environment & Heritage 2016):

- **Landscape**— Broad, clayey, often gilgaied, stagnant alluvial plain dominated by older alluvium in the north of the Pilliga Outwash. Slopes <1%, local relief 0 - 3 m, elevation 180 - 240 m. Extensively cleared open-woodland.
- **Soils**— Deep (>150 cm), imperfectly drained, Eutrophic, Brown or Yellow Sodosols (Solodic Soils) and Epipedal to Selfmulching, Grey Vertosols (Grey Clays). Minor giant, scalded, poorly-drained, Episodic-Gypsic Crusty Brown Vertosol (Brown Clays) in north.
- **Qualities and limitations**— localised complex soils, localised poor moisture availability, localised non-cohesive soils, widespread foundation hazard, localised productive arable land, localised woody weeds, localised dieback, widespread recharge zone, localised discharge zone, localised salinity hazard, localised wind erosion hazard, localised gully erosion hazard, widespread sheet erosion hazard, localised high run-on, widespread poor drainage, widespread seasonal waterlogging, widespread flood hazard.

### 2.3.1.2 Bohema Creek Soil Landscape

The Bohema Creek Soil Landscape is characterised by the following (NSW Office of Environment & Heritage 2016):

- **Landscape**— Narrow alluvial terraces on Quaternary sheetwash alluvium in the western Pilliga Outwash. Slopes 0 -2%, local relief <3 m, elevation ~240 - 300 m. Largely uncleared woodland in the south, extensively cleared woodland in the north.
- **Soils**— Dominated by deep (>150 cm), well-drained Red Kandosols (Red Earths). Rapidly drained Rudosols and low terraces of rapidly drained Stratic Tenosols (Earthy Sands/Alluvial Soils) in unmapped areas of Etoo Creek (etta).
- **Qualities and limitations**— localised complex soils, widespread poor moisture availability, widespread non-cohesive soils, localised foundation hazard, widespread recharge zone, localised discharge zone, localised streambank erosion hazard, localised high run-on, localised poor drainage, localised flood hazard.

### 2.3.2 Soil Fertility

A review of OEH's *Estimated Inherent Soil Fertility of NSW* (**Figure 8**) shows that the site is mapped as predominantly having moderately-low soil fertility, with a small area of moderate soil fertility along the creek.



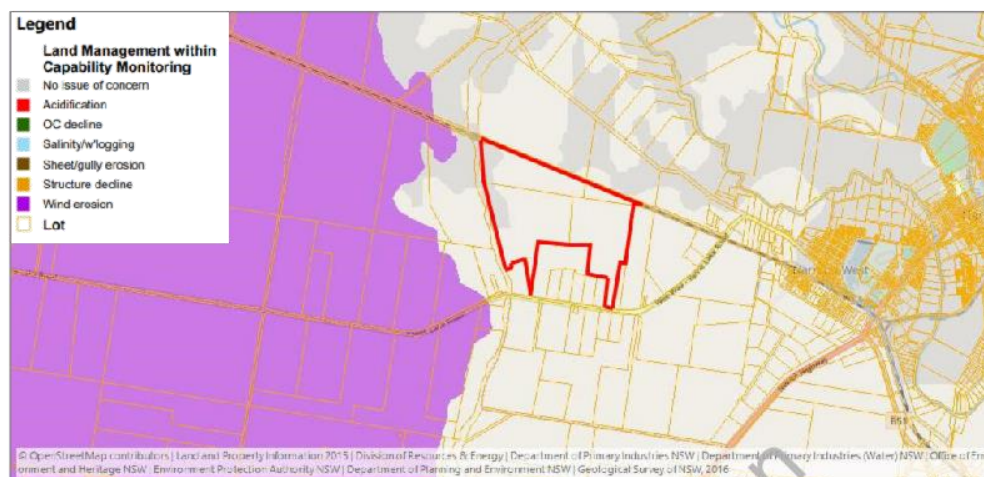
Source: (NSW Government n.d.)

**Figure 8: Soil Fertility**

### 2.3.3 Land Management within Capability Monitoring

A review of OEH's *Land Management within Capability Monitoring* dataset (**Figure 9**) shows much of the site is not mapped, however a small area (light grey) is mapped as not having any issues of concern.

Planning Proposal – Northern NSW Inland Port  
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Source: (NSW Government n.d.)

Figure 9: Land Management within Capability Monitoring

### 2.3.4 Soil Condition Monitoring

A review of OEH's *Soil Condition Monitoring* dataset (Figure 10) shows much of the site is not mapped, however a small area (light blue) is mapped as soil salinity.



Source: (NSW Government n.d.)

Figure 10: Soil Condition Monitoring

### 2.3.5 Land & Soil Capability

A review of OEH's *Land & Soil Capability Mapping for NSW* dataset (Figure 11) shows the site is mapped as predominantly Capability 3, with a small area mapped as Capability 4 and 6.

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Source: (NSW Government n.d.)

Figure 11: Land & Soil Capability Mapping for NSW

### 2.3.6 Contamination

A Preliminary Site Investigation (PSI) was undertaken for the site by JBS&G. The PSI identified the following:

- The site has historically been used for rural residential and agricultural purposes from early 1920s until the present;
- Council operated Narrabri Tip is located along the northern portion of the eastern boundary of the site. Depending on the depth and scale/type of landfilling and the direction of groundwater flow, there is potential for groundwater impacts to migrate onto the site. Similarly, there is the potential for hazardous ground gases relating to landfilled materials to migrate from the landfill across the northeast boundary of the site.
- Localised salinity is a characteristic of the soil landscape group the site is present within however due to prolonged drought conditions, visual indicators of high salinity were not obvious;
- Imported materials including slag and cotton husks were observed at the site as stockpiles or applied to the site surface. Slag was utilised to stabilise the ground on tracks and near cattle troughs, and cotton husks were sourced for their ability to hold moisture and were commonly dispersed across the paddocks. The source of the sandy material used to construct an airstrip is unknown. No significant filling was observed across the site, with dam walls appearing to be constructed of reworked natural clays from the site;
- TRHs were reported in soil samples from two locations (L002\_S07\_0.0-0.1 and L002\_S16\_0.0-0.1) exceeding the adopted ecological and management assessment criteria, while all remaining individual or 95% UCL mean concentrations of chemical contaminants fell below the laboratory limit of reporting (LOR) and/or the adopted site criteria;
- Asbestos impacts were present at ten locations (L002\_S06\_FRAG, L002\_S13\_FRAG/ L002\_S13\_0.0-0.1, L002\_S14\_0.0-0.1, L158\_S12\_FRAG, L158\_S20FRAG, L158\_S22FRAG/ L158\_S22\_0.0-0.1, L158\_S28FRAG, L002\_SP05 (associated with L002\_S13), L004\_SP27 and a location in the north western corner of Lot 159), exceeding the adopted health criteria; and
- Aesthetic issues were observed including ACM (noted above), above ground storage tanks and chemical storage drums/containers, hydrocarbon staining and general waste (JBS&G 2019).

The locations of the exceedances are shown in Figure 12.







**Figure 12: Contamination Exceedances**



The PSI concluded that:

- Whilst the investigation identified soil impacts and the potential for soil vapour, ground gas and groundwater impacts to be present in some areas at the site, the investigation did not identify the potential for gross or widespread contamination which may preclude rezoning and development for the proposed industrial use of the site. Identified impacts are considered representative of common contaminants and potentially contaminating land use activities which can be readily addressed during the DA stage (i.e. including completion of detailed site investigations consistent with relevant Council DCPs and SEPP 55 requirements) for redevelopment and assessment for site suitability; and
- In the absence of gross or widespread contamination, the requirements of the DUAP/EPA (1998) Managing Land Contamination: Planning Guidelines for this type of rezoning are considered to have been satisfied, namely that the rezoning can proceed, “provided that measures are in place to ensure that the potential for contamination and the suitability of the land for any proposed use are assessed once detailed proposals are made” (s.4.1.2 DUAP 1998) (JBS&G 2019).

The PSI provided the following recommendations:

- It is recommended that a detailed site investigation be undertaken upon submission of the DA for redevelopment of any land within the site.
- It is also recommended that Hazardous Building Material Surveys (HBMS) be undertaken on existing site structures prior to any demolition and redevelopment works on individual land parcels (JBS&G 2019).

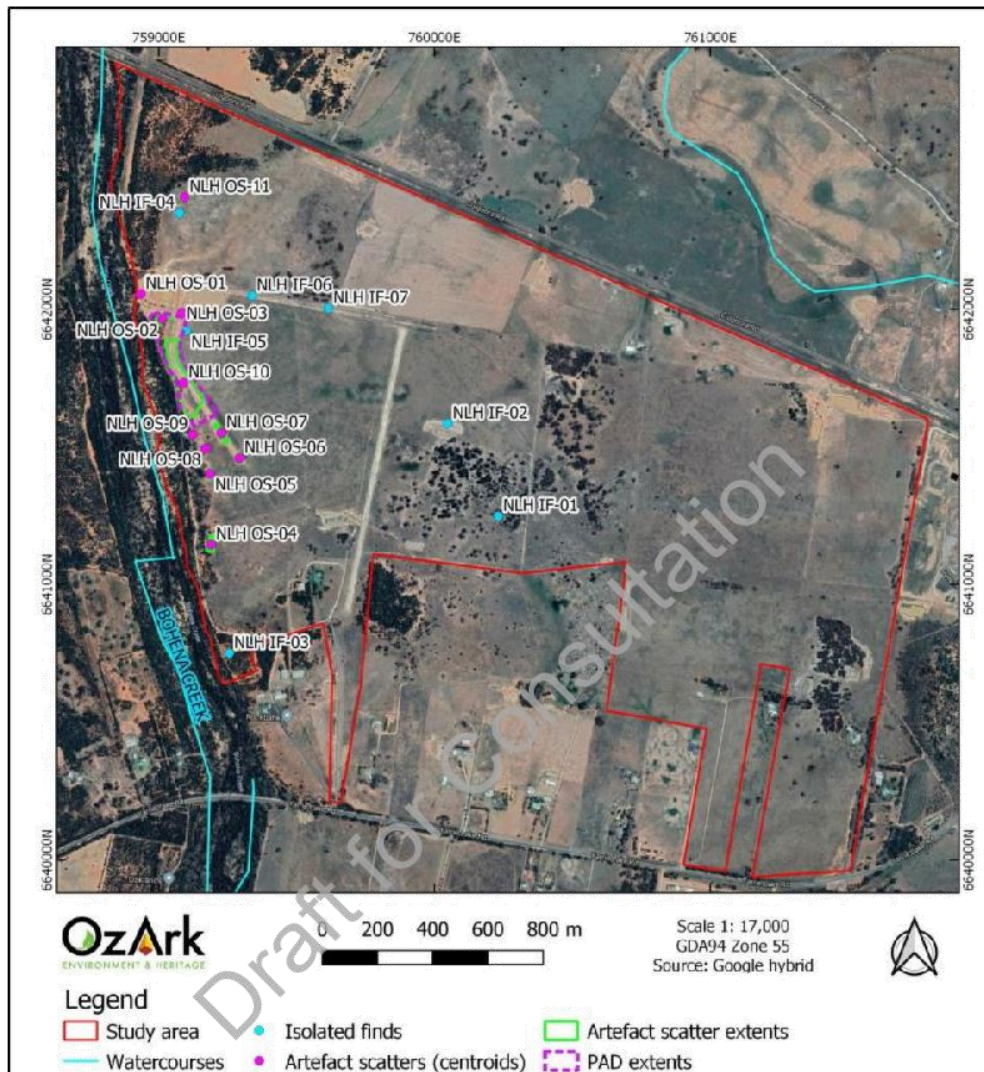
## 2.4 Aboriginal Heritage

A search of the Aboriginal Heritage Information Management System (AHIMS) was undertaken for the site and its immediate surrounds. A copy of the search is provided in **Appendix C**. The search identified:

- Two (2) Aboriginal sites are recorded in or near the search location; and
- Zero Aboriginal places have been declared in or near the search location.

A subsequent *Aboriginal Heritage Assessment Report: Opportunities and Constraints* is in the process of being prepared by OzArk Environment & Heritage for the project. Initial findings indicate that eighteen Aboriginal sites have been recorded within the study area (see **Figure 13**). These were predominantly located adjacent to the riparian corridor.

Planning Proposal – Northern NSW Inland Port  
Yarrie Lake Road, Narrabri



Source: (OzArk Environment & Heritage 2019)

Figure 13: Location of recorded sites in the study area

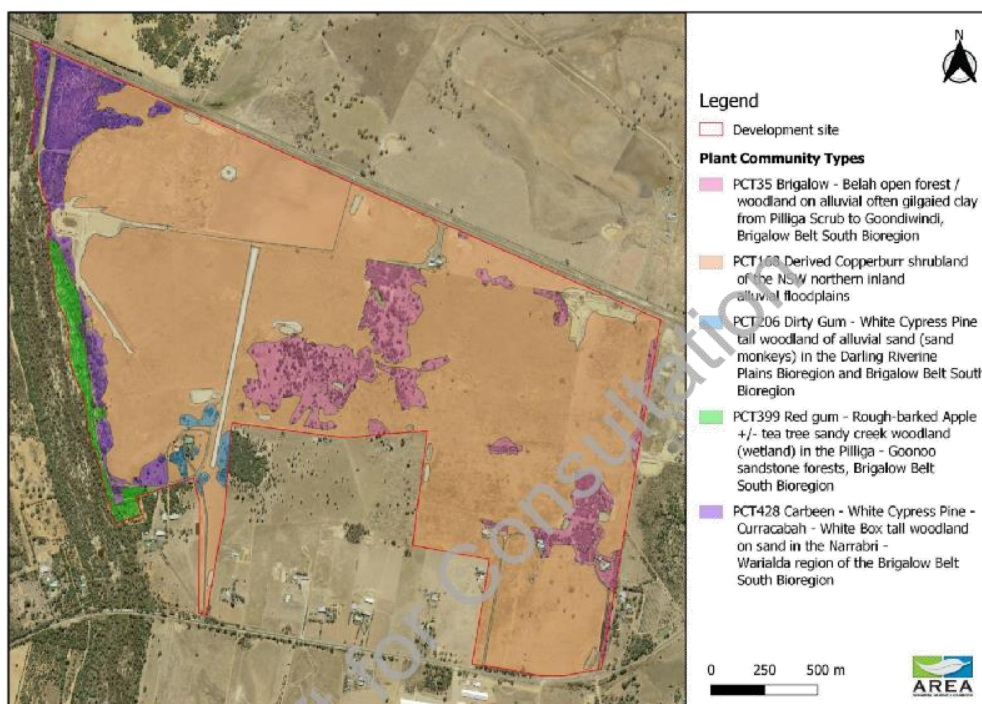
## 2.5 European Heritage

A search of the State Heritage Register and LEP was undertaken for the site and its surrounds. There are listed items of European heritage on or within the vicinity of the site.

## 2.6 Biodiversity

### 2.6.1 Plant Community Types

A Biodiversity Assessment Overview has been prepared by Area Environmental for the precinct. It identified five Plant Community Types (PCT) on site as shown in **Figure 14**.



Source: (Area Environmental 2019)

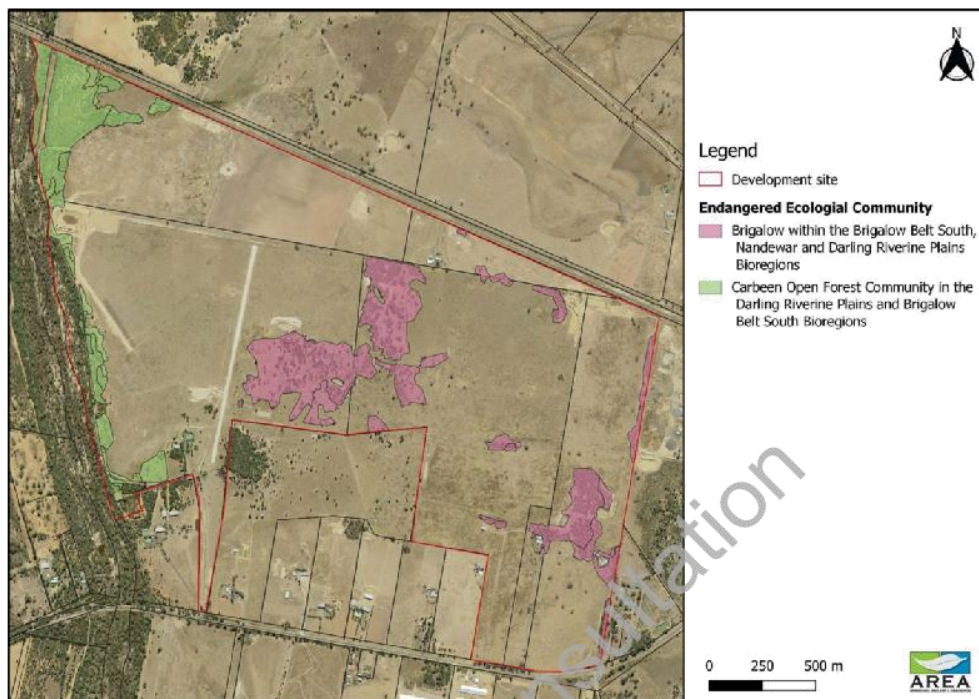
**Figure 14: Plant Community Type (PCT) Map**

Of these two (2) are listed as Threatened Ecological Communities (TEC) under the *Biodiversity Conservation Act 2016*, being:

- PCT35- Brigalow within the Brigalow Belt South, Nandewar and Darling Riverine Plains Bioregions (Part)
- PCT428 - Carbeen Open Forest Community in the Darling Riverine Plains and Brigalow Belt South Bioregions (Part)

The location and extent of the TECs are show on **Figure 15**.

Planning Proposal – Northern NSW Inland Port  
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Source: (Area Environmental 2019)

Figure 15: Endangered Ecological Communities

## 2.6.2 Threatened Species

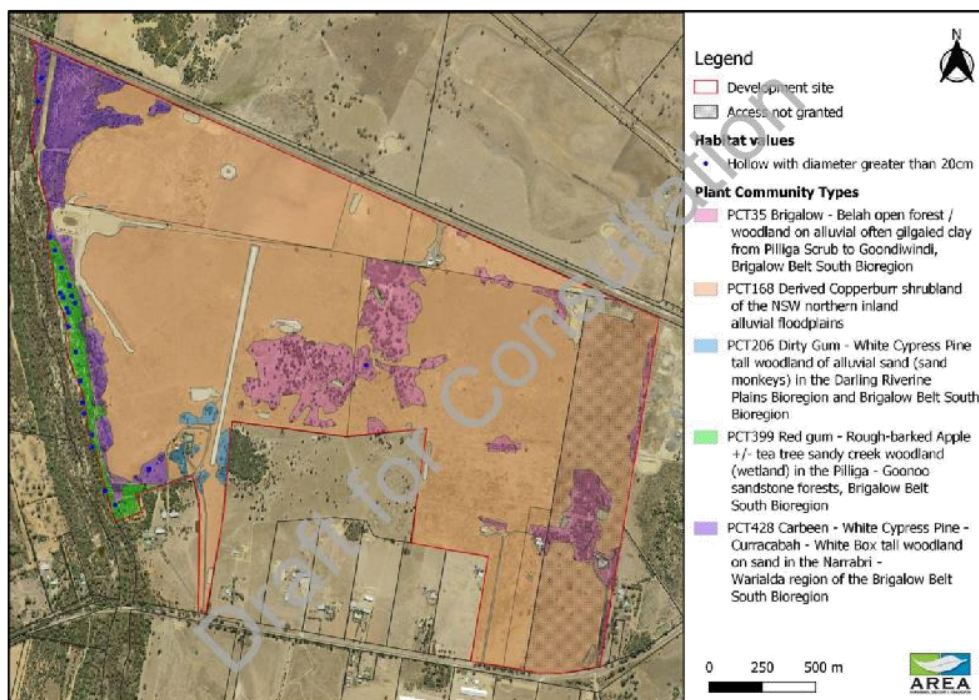
The following threatened species were recorded on site during the assessment:

- Microbats were recorded during all nights of the week. Results included at least one threatened bat species – Little Pied Bat, *Chalinolobus picatus* (Vulnerable BC Act). This species was recorded on BAT 1 which was located in PCT428 adjacent to Bohena Creek (Figure 2). This species roosts in caves, rock outcrops, mine shafts, tunnels, tree hollows and buildings.
- Grey-crowned Babblers, *Pomatostomus temporalis temporalis* (Vulnerable BC Act), and their nests were recorded in all treed PCTs
- A Little Eagle, *Hieraaetus morphnoides* (Vulnerable BC Act), was observed sitting on a fence in the north east corner of the development site. Numerous large stick nests were observed in the development site in all treed PCTs, potentially indicating this species nests in the development site.
- Square-tailed Kite, *Lophoictinia isura* (Vulnerable BC Act), recorded resting and flying in the development site and may nest in all treed areas with reasonable patch size.
- Winged Peppergrass, *Lepidium monophloeoides* (Endangered BC Act and EPBC Act), was recorded in three lots – Lot 2 DP1260466, Lot 158 DP711841 and 159 DP852877, in PCT168 (Figure 6) and in one vegetation plot (Plot 14). As the assessment was undertaken in a severe drought, the species is considered to have potential to occur in all areas of PCT168. The area of extent of this population might be able to be refined with provision of the flood study maps showing floodplains / areas of inundation in the study area.
- Belson's Panic, *Homopholis belsonii* (Endangered BC Act and Vulnerable EPBC Act), recorded in one gilgai in PCT35.

- A Diamond Firetail, *Stagonopleura guttata* (Vulnerable BC Act), nest was recorded in PCT399 on the edge of Bohena Creek.
- Glossy-black Cockatoo, *Calyptorhynchus lathami* (Vulnerable BC Act), evidence of feeding recorded in PCT399 and PCT428 on the edge of Bohena Creek.
- Barking Owl, *Ninox connivens* (Vulnerable BC Act), call heard during nocturnal assessment in PCT399 and PCT428 on the edge of Bohena Creek.
- Squirrel Glider, *Petaurus norfolcensis* (Vulnerable BC Act), call heard during nocturnal assessment in PCT399 on the edge of Bohena Creek.

The majority, but not all threatened species constraints are associated with PCTs along Bohena Creek.

Large hollows (greater than 15 centimetres diameter) and greater than five metres above the ground are suitable nesting sites for species including the Glossy Black Cockatoo. The location of the identified hollows as described are shown in **Figure 16**.



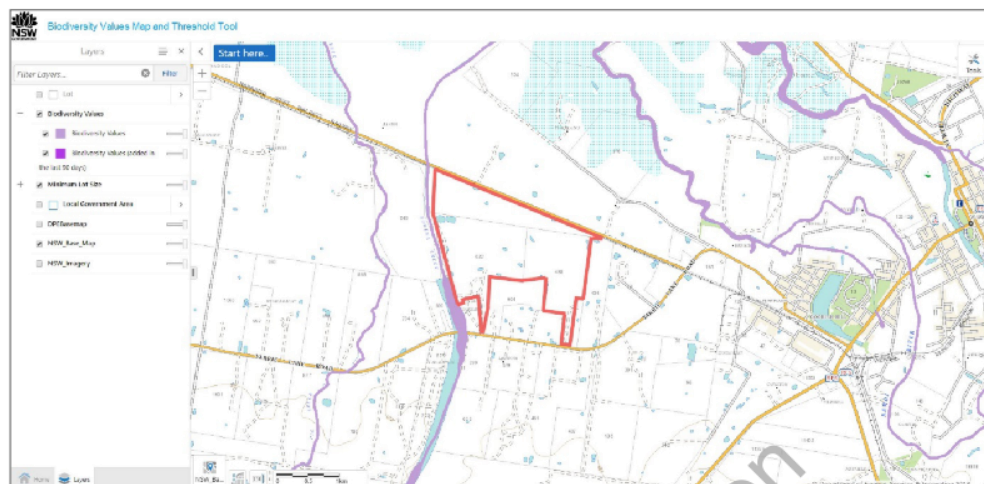
Source: (Area Environmental 2019)

**Figure 16: Identified Hollows**

### 2.6.3 Biodiversity Values

The western most part of the site has been mapped on the Biodiversity Values Map as comprising Biodiversity Values on the (**Figure 17**).

Planning Proposal – Northern NSW Inland Port  
Yarrie Lake Road, Narrabri



Source: (NSW Department of Planning and Environment n.d.)

**Figure 17: Biodiversity Values Map**

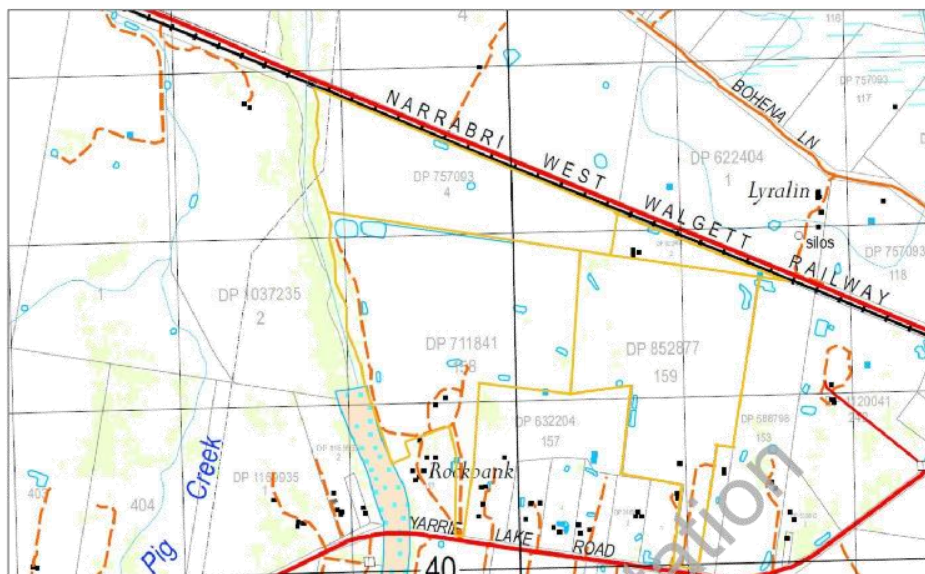
## 2.7 Surface Water

The site is identified as being in the Bohena Creek Water source under the *Water Sharing Plan for the Namoi Unregulated and Alluvial Water Sources 2012* (NSW Government n.d.).

As shown in **Figure 18**, the site contains a number of dams and a pipeline running east/west along the northern boundary of Lot 158. Whilst quite flat, the site generally falls to the west to Bohena Creek. Upstream of the site, Bohena Creek is mapped as a mainly dry lake, however, also forms a perennial stream both up and downstream of the site. Bohena Creek is classified as a third order stream under the Strahler System.

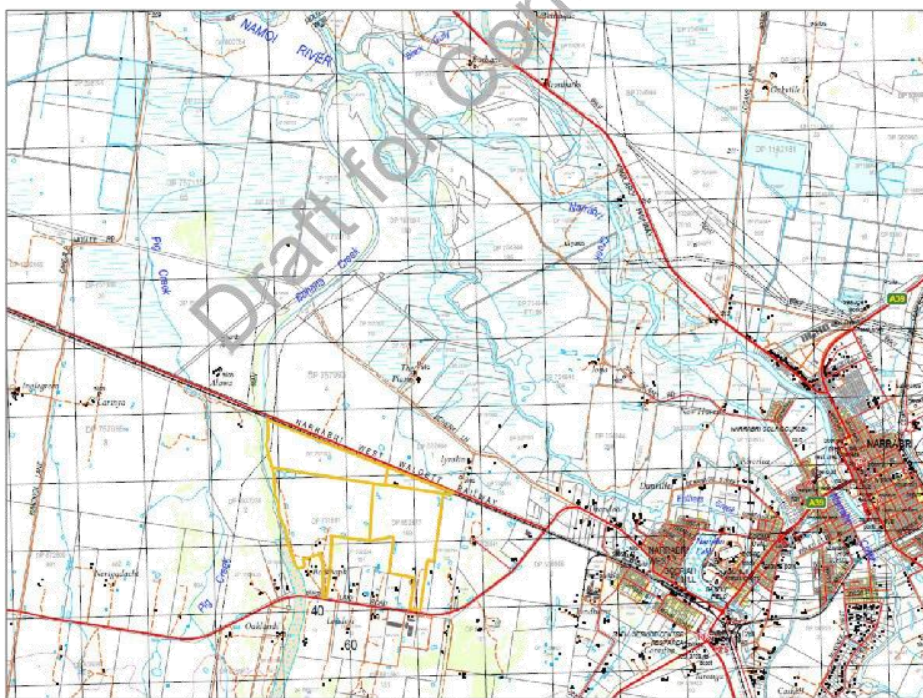
As shown in **Figure 19**, Bohena Creek flows in a northwards direction from the site. Its confluence with the Namoi River is approximately 6.3km downstream.

Planning Proposal – Northern NSW Inland Port  
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Source: (NSW Government Spatial Services 2017)

Figure 18: Topographic Map Site



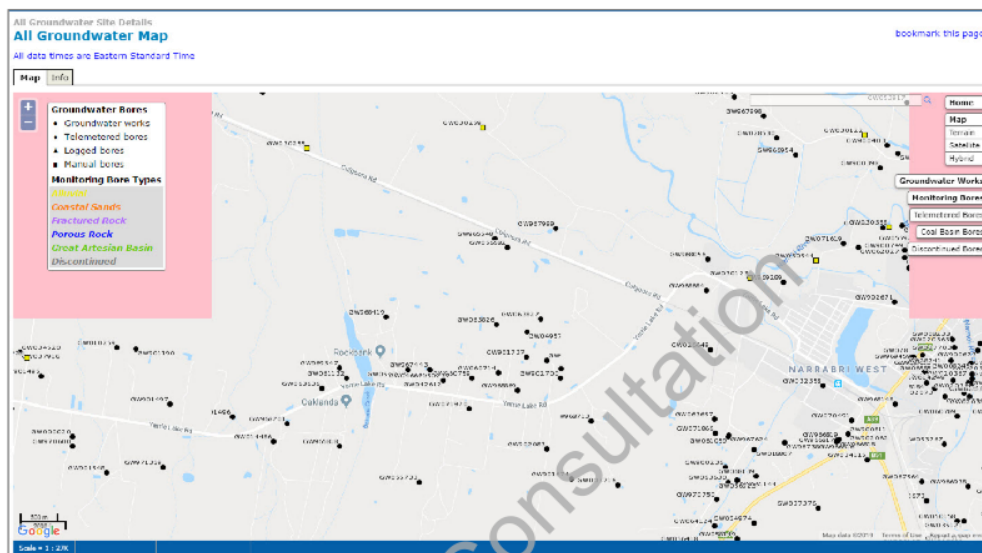
Source: (NSW Government Spatial Services 2017)

Figure 19: Topographic Map Overview

## 2.8 Groundwater

The site has been identified as being within the Lower Namoi Groundwater Source which is covered by the Lower Namoi Alluvium Water Sharing Plan (NSW Government n.d.).

A review of the All Groundwater website revealed numerous existing groundwater bores located within the vicinity of the site (**Figure 20**).



Source: (WaterNSW n.d.)

**Figure 20: Groundwater Map**

The following table outlines the characteristics of each bore.

**Table 2: Groundwater Bore Information**

Bore	Purpose	Depth	SWL	Salinity
GW968419*	Domestic	120m	15m	Good
GW046671	Stock, Domestic	34.7m	N/A	N/A
GW054077	Stock	40m	15.1m	Fair
GW967443	Domestic	76.24m	14.5m	N/A
GW050237	Stock, Domestic	28m	N/A	N/A
GW042612	Irrigation	74.6m	12.1m	Good
GW060759	Stock, Domestic	98.7m	6.1m	N/A
GW060714	Domestic	152m	N/A	N/A
GW901737	Irrigation	180m	N/A	N/A
GW968869	Domestic	84m	26m	777mg/L @ 26m & 4000mg/L @ 12m
GW965548*	Domestic	100.6m	10m	N/A

Table 2: Groundwater Bore Information

Bore	Purpose	Depth	SWL	Salinity
GW056582*	Stock, Domestic	29.3m	10.7m	N/A
GW063826*	Monitoring Bore	185m	9m	N/A
GW063827	Monitoring Bore	185m	8m	Salty
GW049575*	Stock, Domestic	60m	N/A	N/A
GW967879	Irrigation	110m	60m	N/A
GW966227	Stock, Domestic, Irrigation	142m	8.5m	N/A
GW902700	Domestic	141m	8.2m	N/A
GW967999	Domestic	42m	31m	Good
GW030255	Monitoring bore	21.3m	4.2m	N/A

Notes:

\* Located on site

N/A Not available

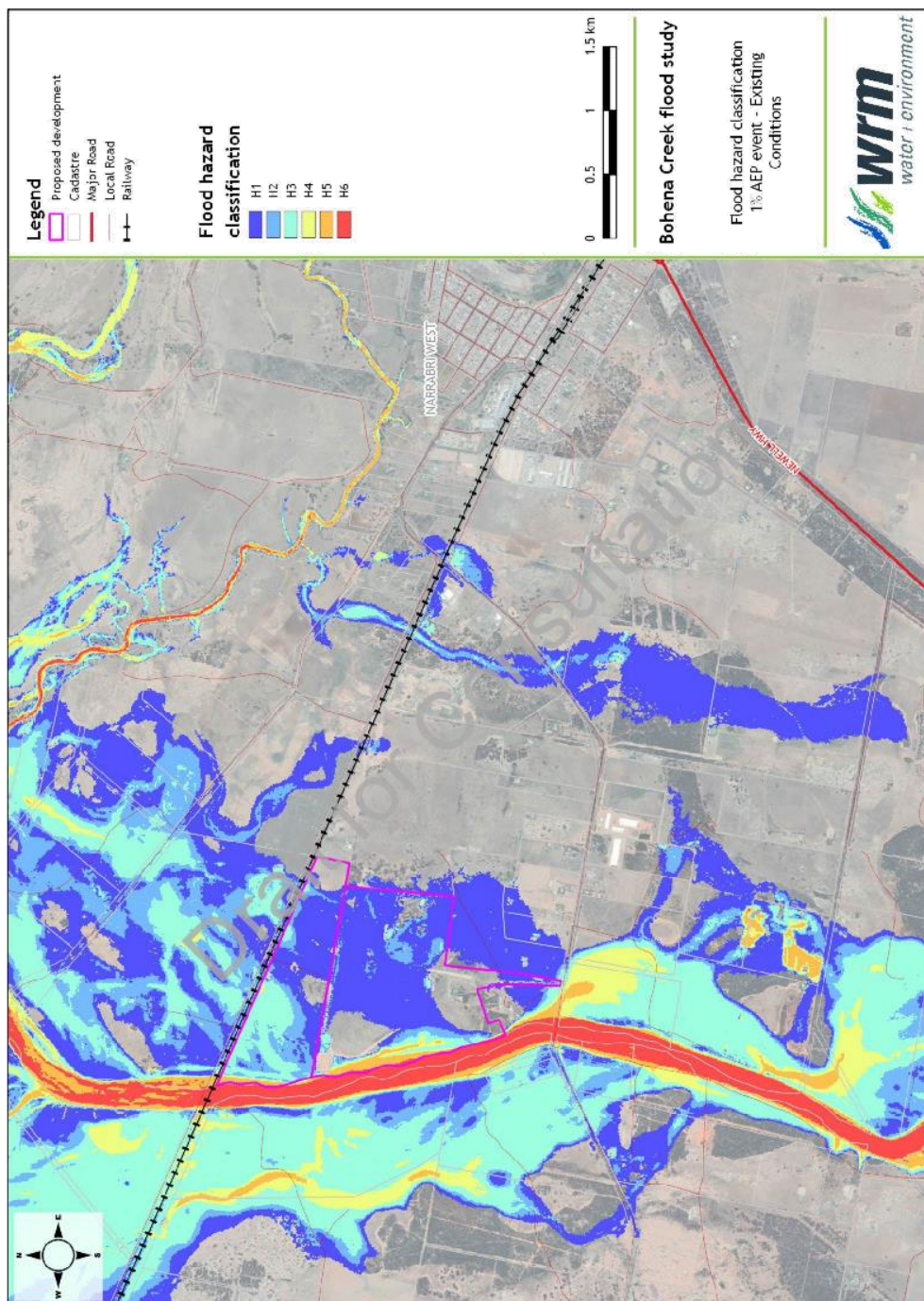
## 2.9 Flooding

The site is not mapped as being within a Flood Planning Area (FPA) on the LEP. However, this is because the site is outside of the flood model that the FPA is based upon.

A further flood study has been undertaken for the Bohena Creek Catchment as part of this PP. The Bohena Creek is a tributary of the Namoi River. As part of the flood study, consistent with the Floodplain Development Manual, the model has included consideration of climate change by increasing peak rainfall and storm volume by 30% for the 1% Annual Exceedance Probability (AEP) flood. This is considered to be the “worst case” of the three climate change sensitivity analyses recommended by the NSW Government (WRM Water + Environment 2019).

Figure 22 shows the provision hydraulic hazard for the 1% Flood for the site. It can be seen that the vast majority of the study area that is subject to inundation has a H1 hazard classification. As explained by Figure 23, is generally safe for people, vehicles and buildings.

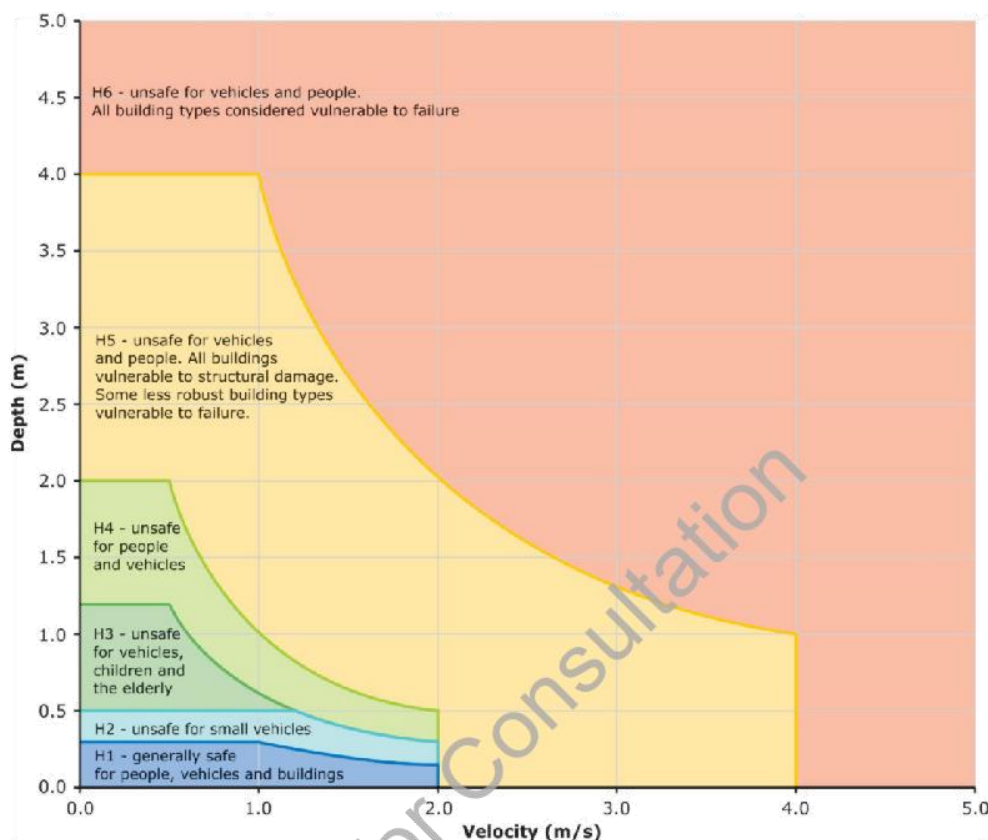
Planning Proposal – Northern NSW Inland Port  
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Source: (WRM Water + Environment 2019)

**Figure 21: Provisional Hydraulic Hazard – 1% AEP Event**

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Yarrie Lake Road, Narrabri



Source: (Australian Institute for Disaster Resilience 2017)

Figure 22: Provisional Hydraulic Hazard Categories

## 2.10 Bushfire

The site is not mapped on Council's Bush Fire Prone Land Map. Nevertheless the vegetation on site and its surrounds is considered to comprise bushfire prone vegetation in accordance with the NSW Rural Fire Services (RFS) Guide for Bush Fire Prone Land Mapping (NSW Rural Fire Services 2015). In this regard the RFS' Planning for Bush Fire Protection will be considered in the preparation of this PP.

## 2.11 Access

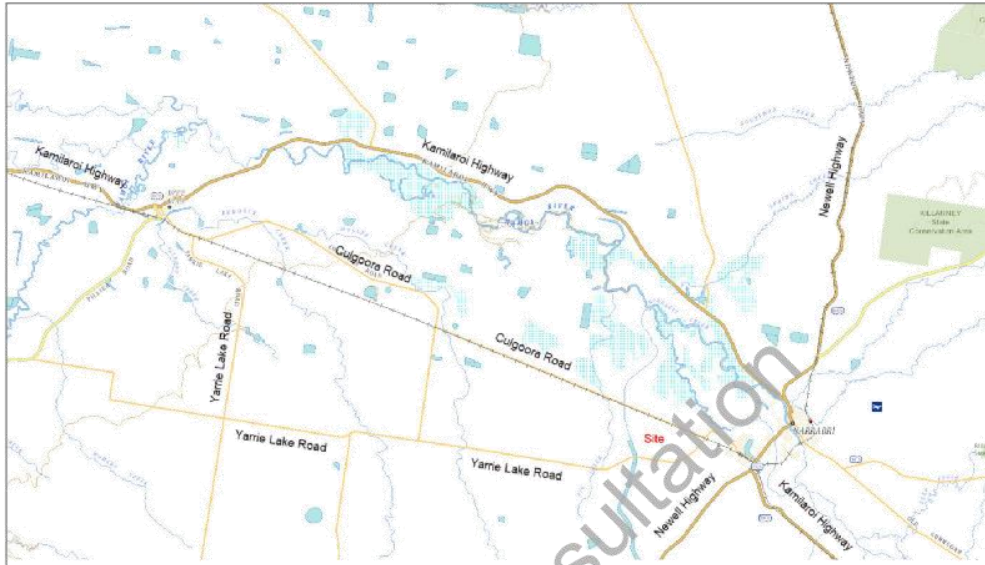
### 2.11.1 Roads

The wider and local road network surrounding the site is shown in **Figure 22** and **Figure 23**.

The site currently has access to Yarrie Lake Road, which is a two lane two way sealed rural road. Yarrie Lake Road provides access from Narrabri West to Wee Waa south of the railway line. Heading eastwards from the site, Yarrie Lake Road becomes Goobar Street at the intersection with Bukhai Street. It then becomes Bukhai Street and Mooloobar Street prior to its intersection with the Newell Highway (Cooma Road/A39). The posted speed limit on Yarrie Lake Road is 100km/h, dropping to 80km/hr at the approach to Goobar Street. Goobar, Bukhai and Mooloobar Streets have a 50km/h posted speed limit.

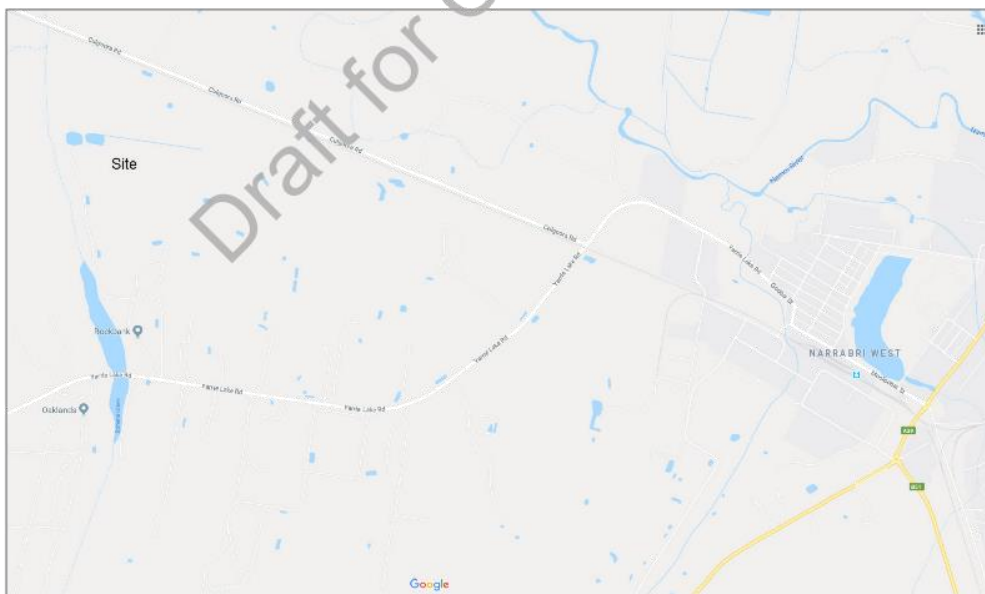
Planning Proposal – Northern NSW Inland Port  
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Culgoora Road is a two-lane two way sealed rural road. It provides access from Narrabri West to Wee Waa north of the railway line. Culgoora Road is located immediately to the north of the railway line corridor. The posted speed limit on Culgoora Road is 100km/h.



Source: (NSW Spatial Services 2019)

**Figure 23: Wider Road Network**



Source: (Google 2019)

**Figure 24: Local Road Network**

### 2.11.2 Intersections

The intersection of Yarrie Lake Road and Culgoora Road to the east of the site is a BAR/BAL type intersection controlled by give way signs.

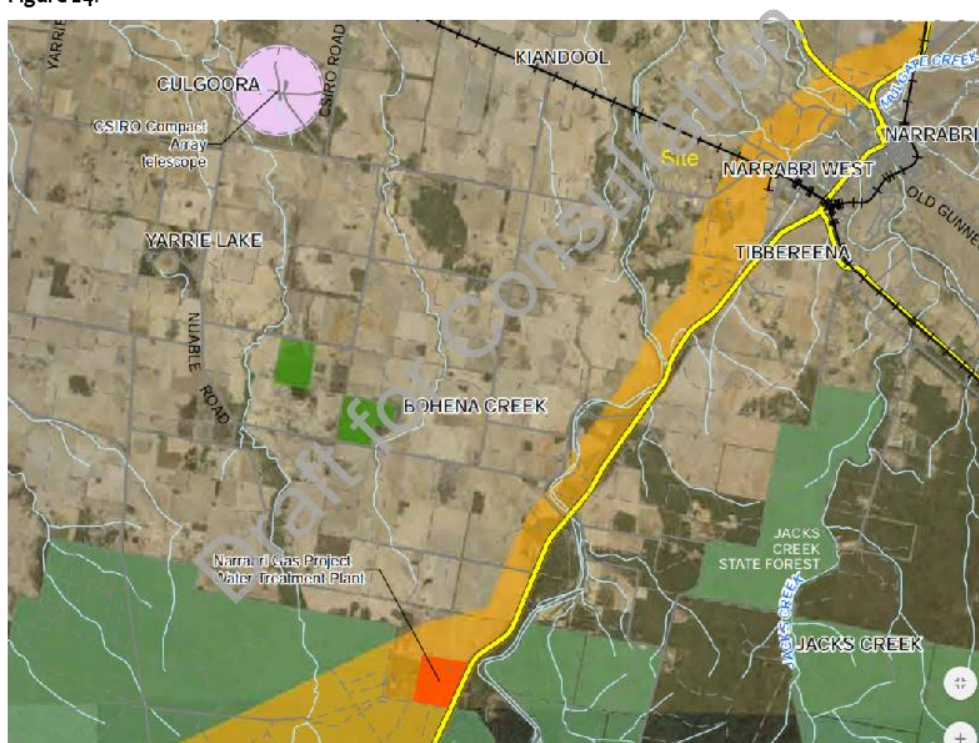
The Narrabri West Walgett Railway line intersection with Yarrie Lake Road to the east of the site is an at-grade crossing passive crossing controlled by stop signs.

The intersection of Mooloobar Street and the Newell Highway is controlled by a roundabout.

### 2.11.3 Rail

The Narrabri West Walgett Railway line runs along the north of the site. It extends from the Werris Creek Mungindi Railway Line in the east (Narrabri West) to Walgett in the west via Wee Waa and Burren Junction. It is a single line adjacent to the site.

The Inland Rail Project has an identified study corridor that is located to the east of the site as shown in **Figure 24**.



Source: (Australian Rail Track Corporation (ARTC) n.d.)

**Figure 25: Inland Rail Study Corridor**

## 3 Existing Legislative Framework

### 3.1 Zoning

As shown in **Figure 5**, the site is zoned RU1 Primary Production under the LEP. The objectives of the RU1 Zone are:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To allow for non-agricultural land uses that will not restrict the use of other land for agricultural purposes.

The land use table for the RU1 Zone is as follows:

#### 2 Permitted without consent

Building identification signs; Environmental protection works; Extensive agriculture; Farm buildings; Forestry; Home occupations; Intensive plant agriculture; Roads

#### 3 Permitted with consent

Air transport facilities; Airstrips; Animal boarding or training establishments; Aquaculture; Bed and breakfast accommodation; Boat launching ramps; Boat sheds; Camping grounds; Cellar door premises; Cemeteries; Community facilities; Depots; Dual occupancies; Dwelling houses; Environmental facilities; Extractive industries; Farm stay accommodation; Flood mitigation works; Freight transport facilities; Helipads; Home businesses; Home industries; Information and education facilities; Intensive livestock agriculture; Landscaping material supplies; Open cut mining; Plant nurseries; Recreation areas; Recreation facilities (major); Recreation facilities (outdoor); Research stations; Roadside stalls; Rural industries; Rural workers' dwellings; Signage; Turf farming; Water recreation structures; Water supply systems

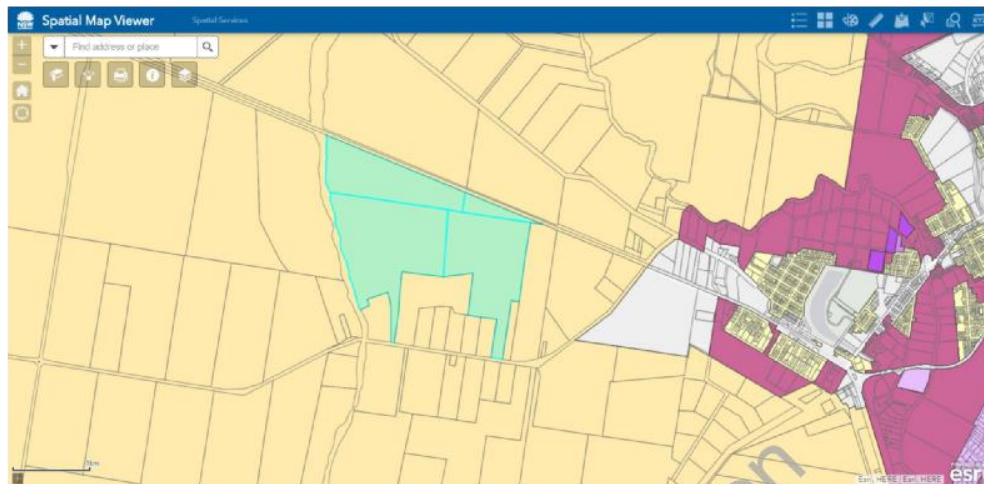
#### 4 Prohibited

Any development not specified in item 2 or 3

### 3.2 Minimum Lot Size

The site has a Minimum Lot Size (MLS) of 100 hectares under the LEP as shown in **Figure 25**.

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Source: (NSW Spatial Services n.d.)

Figure 26: LEP Minimum Lot Size Map

## 4 Planning Proposal

### 4.1 Part 1: Objectives or Intended Outcomes

#### 4.1.1 Objectives & Intended Outcomes

The Guide identifies that Part 1 of a PP should consist of:

*... a short, concise statement setting out the objectives or intended outcomes of the planning proposal. It is a statement of what is planned to be achieved, not how it is to be achieved. It should be written in such a way that it can be easily understood by the general community (NSW Government Planning & Environment 2018).*

The objective of this PP is to facilitate the development of a logistics and industrial hub on a significant area of land located adjacent to the intersection of the Narrabri West Walgett Railway line and the proposed Inland Rail corridor. The subject land is referred to as the Northern NSW Inland Port (**N2IP**).

The proposed amendment will:

- amend the Narrabri Local Environmental Plan 2012 (LEP);
- amend the Land Zoning Map; and
- amend the Lot Size Map.

#### 4.1.2 Location & Context

This is addressed in **Section 2**.

#### 4.1.3 Background

A Strategic Business Case was prepared for the Narrabri Shire Logistics and Industrial Hub by Arcadis. The following provides a summary from the business case as background to this document.

*In 2013 Transport for New South Wales (TfNSW) published its NSW Freight and Ports Strategy as an extension to the freight network strategy articulated in the preceding NSW Long Term Transport Master Plan – a strategy focused on a freight network throughout NSW that allows the efficient flow of goods to their market - a commitment to support the projected growth of product and its supply chain transport efficiencies throughout regional NSW.*

*In 2018 the Hon. Gladys Berejiklian MP the Premier for NSW issued an update on the Premier's Priorities with an ongoing commitment to support opportunities for creating jobs and delivering critical infrastructure to regional areas.*

*Narrabri Shire Council has responded to these prospectuses with a proposal to develop the Narrabri Shire Logistics and Industrial Hub (Hub), connected to the Walgett CRN line and access to the 'spine' of the national freight network between Melbourne and Brisbane, the Inland Rail. The proposed Hub would provide a dedicated facility to attract national organisations to Narrabri Shire, leading to an increase in economic development activities in the region.*

*The Hub would be able to accommodate business and industry across a broad spectrum including small, medium and large industrial and commercial operations. Narrabri Shire Council is engaged in conversations with Santos in an effort to attract a large commercial tenant at the Hub whose very presence would require a substantial capital investment and create up to 200 full time equivalent jobs at the Hub. This in turn would broaden and strengthen the economic base of the Shire. The Hub would provide a suitable location for this and other industrial and commercial operations through a coordinated approach to land use, infrastructure planning and development.*

*From Narrabri Shire Council's perspective, the establishment of the Hub would assist in strengthening the existing economy and continue to increase the current Gross Regional Product (GRP) of \$1.2billion.*

*The proposed Hub represents a proposal of nationally significant critical infrastructure with an opportunity to enhance the efficiency of the flow of goods through the region, increase industry diversity and enhance opportunities for regional employment (Arcadis 2019).*

#### 4.1.4 Summary

The planning proposal represents a significant amendment to the Narrabri Regional Local Environmental Plan 2012 as a considerable area of valuable employment generating land is captured by the proposed zone and lot size changes.

It is important to note that while Council has analysed these broad range of issues, specific impacts relating to future development proposals will need to be addressed via development application processes to determine the feasibility of proposed development types in specific sections of the subject lands.

### 4.2 Part 2: Explanation of Provisions

The Guide identifies that Part 2 of a PP is to provide:

*... a more detailed statement of how the objectives or intended outcomes are to be achieved by means of amending an existing LEP. ... explanation of provisions to identify what zones or development standards are being proposed (NSW Government Planning & Environment 2018).*

The proposed outcome for the PP will be achieved by the following measures.

#### 4.2.1 Modification to the Land Use Table

It is intended to modify the Land Use Table to insert the new SP1 Special Activities Zone as follows:

##### **Zone SP1 Special Activities**

##### **1 Objectives of zone**

- To provide for special land uses that are not provided for in other zones.
- To provide for sites with special natural characteristics that are not provided for in other zones.
- To facilitate development that is in keeping with the special characteristics of the site or its existing or intended special use, and that minimises any adverse impacts on surrounding land.
- To recognise the Northern NSW Inland Port Precinct as a special industrial enterprise area.
- To provide suitable land for a national multi-modal freight and transport interchange.
- To encourage the growth of the freight logistics industry and provide economic benefits for Narrabri.

##### **2 Permitted without consent**

Environmental protection works

##### **3 Permitted with consent**

Aquaculture; The purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose

##### **4 Prohibited**

Any development not specified in item 2 or 3

#### 4.2.2 Amending the Land Zoning Map

It is proposed to amend Land Zoning Map Sheet LZN\_004 to:

- Rezone the western part of the site to E3 Environmental Management;
- Rezone the railway line area and 60m south of the railway line lot to SP2 Infrastructure with “Rail Infrastructure Facility” shown as the permissible use; and
- Rezone the eastern part of the site to SP1 Special Activities Zone with the following listed permissible uses:
  - Freight Transport Facility;
  - Heavy Industrial Storage Establishment;
  - Heavy Industry;
  - High Technology Industry;
  - Rural Industry;
  - Transport Depot; and
  - Truck Depot.

The proposed Zoning Map is provided in **Appendix D**.

#### 4.2.3 Amending the Lot Size Map

It is proposed to amend Lot Size Map Sheet LSZ\_004 to remove the minimum lot size requirement from the precinct. The proposed Lot Size Map is provided in **Appendix D**.

### 4.3 Part 3: Justification

The Guide identifies that Part 3 is to set out the case for the making the proposed LEP. The following section provides a response to the questions outlined in the guide.

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Table 3: Planning Proposal Justification

Provision	Response
<b>Section A: Need for the Planning Proposals</b>	
Q1. Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?	<p>The PP is consistent with <i>New England North West Regional Plan 2017</i> (see <b>Appendix B</b>) and is included in the Local Strategic Planning Statement (LSPS) and Growth Management Strategy (GMS).</p> <p>The PP is consistent with Council's Community Strategic Plan, which has the following strategies:</p> <p>3.2.1 Promote Narrabri Shire as a Regional Logistics Hub</p> <p>3.2.2 Develop at least one flood free intermodal site that has access to quality infrastructure and the proposed inland rail network</p> <p>3.2.3 Explore opportunities for increasing efficiency in freight movements</p>
Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?	<p>A planning proposal is the only legal mechanism for amending the LEP to update the Land Zoning Map and Lot Size Map to facilitate the Northern NSW Inland Port Precinct.</p> <p>Other land use zonings could be utilised; however, the proposal is considered to provide the best fit for the intended development outcome.</p> <p>Council is seeking Delegated Authority to make this LEP and is submitting the delegated plan making reporting template and evaluation criteria for the delegation of plan making functions with the request for a Gateway Determination.</p>
<b>Section B – Relationship to strategic planning framework</b>	
Q3. Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?	
<b>Assessment Criteria</b>	
a) Does the proposal have strategic merit? Will it:	
<ul style="list-style-type: none"> <li>give effect to the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment; or</li> </ul>	Yes. See assessment in <b>Appendix E</b> .
<ul style="list-style-type: none"> <li>give effect to a relevant local strategic planning statement or strategy that has been endorsed by the Department or required as part of a regional or district</li> </ul>	The PP is consistent with Narrabri's LSPS and GMS. The Northern NSW Inland Port is included in the LSPS and GMS.

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Table 3: Planning Proposal Justification

Provision	Response
plan or local strategic planning statement; or	<p>The PP is consistent with Council's Community Strategic Plan, which has the following strategies:</p> <p>3.2.1 Promote Narrabri Shire as a Regional Logistics Hub</p> <p>3.2.2 Develop at least one flood free intermodal site that has access to quality infrastructure and the proposed inland rail network</p> <p>3.2.3 Explore opportunities for increasing efficiency in freight movements</p>
<ul style="list-style-type: none"> <li>responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognised by existing strategic plans.</li> </ul>	<p>The proposal is a response to the implementation of the Inland Rail project, which has the study corridor being located adjacent to the site. The Regional Plan states:</p> <p><i>The proposed Melbourne to Brisbane Inland Rail has the potential to reshape freight movements. The 2010 Melbourne-Brisbane Inland Rail Alignment Study, prepared by the Australian Rail Track Corporation (ARTC), identified the preferred corridor for inland rail, passing through Narrabri and Moree. The fine-scale alignment of the corridor is yet to be settled, and planning, engineering design and assessment will be finalised by the Australian Government and ARTC. The NSW Government will work with councils and the Australian Government during this period.</i></p> <p><i>Growth in containerised freight of grain and meat products could require new intermodal terminals and supporting rail infrastructure. Narrabri, Moree and Tamworth support existing and proposed intermodal terminals and will continue to be significant areas for outbound containerised freight</i></p> <p><i>Any new freight and logistics hubs and intermodals must be close to freight network corridors and infrastructure. These assets should also be protected from urban encroachment and incompatible land uses to protect freight and cargo handling capacity.</i></p> <p><i>Narrabri Shire Council is developing a transport and manufacturing hub masterplan that will take advantage of existing intermodal facilities and investment in rail and natural gas infrastructure.</i></p> <p>The proposal responds to this.</p>
b) Does the proposal have site-specific merit, having regard to the following?	
<ul style="list-style-type: none"> <li>the natural environment (including known significant environmental values, resources or hazards) and</li> </ul>	<p>A desktop assessment has been provided in Section 2 of this report. Furthermore, detailed assessments are being currently undertaken for the site including biodiversity, Aboriginal heritage, contamination, flooding and bushfire. From the preliminary</p>

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**Table 3: Planning Proposal Justification**

Provision	Response
	information available the site is suitable for the proposal.
<ul style="list-style-type: none"> <li>the existing uses, approved uses, and likely future uses of land in the vicinity of the proposal and</li> </ul>	<p>The existing land uses are addressed in <b>Section 2.2</b>.</p> <p>There are no approved or future land uses that are known to be different to the existing uses.</p>
<ul style="list-style-type: none"> <li>the services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.</li> </ul>	<p>Transport and Servicing Strategies are being prepared for the precinct. Once complete, Council will investigate options for funding of infrastructure requirements to facilitate the development including modifications to Contributions Plan(s).</p>
Q4. Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?	<p>The PP is consistent with Narrabri's LSPS and GMS. The Northern NSW Inland Port is included in the LSPS and GMS.</p> <p>The PP is consistent with Council's Community Strategic Plan, which has the following strategies:</p> <p>3.2.1 Promote Narrabri Shire as a Regional Logistics Hub</p> <p>3.2.2 Develop at least on flood free intermodal site that has access to quality infrastructure and the proposed inland rail network</p> <p>3.2.3 Explore opportunities for increasing efficiency in freight movements</p>
Q5. Is the planning proposal consistent with applicable State Environmental Planning Policies?	Yes. See assessment in <b>Appendix F</b> .
Q6. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?	Yes. See assessment in <b>Appendix G</b> .
<b>Section C – Environmental, social and economic impact</b>	
Q7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?	<p>The preliminary biodiversity assessment indicates that the site contains a number Plant Community Types (PCTs), of which two (2) were identified as being Threatened Ecological Communities (TEC). The development also has the potential to impact on a number of threatened species.</p> <p>The development will be best designed to avoid impact on these areas.</p> <p>The biodiversity assessment is in the process of being finalised.</p>
Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?	<p><b>Flooding</b></p> <p>The site is impacted by flooding. A flood assessment is being prepared for the site. The</p>

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Table 3: Planning Proposal Justification

Provision	Response
	development will be designed to ensure development is located to avoid impacts from flooding.
	<b>Bushfire</b> The site contains vegetation that is considered to comprise bushfire prone vegetation in accordance with the NSW Rural Fire Services (RFS) <i>Guide for Bush Fire Prone Land Mapping</i> . The development will be designed to comply with the RFS' <i>Planning for Bush Fire Protection Guidelines</i> .
Q9. Has the planning proposal adequately addressed any social and economic effects?	<b>Aboriginal heritage</b> An Aboriginal Heritage Assessment has identified that the site contains eighteen Aboriginal sites. The majority of these are located within the vicinity of the riparian corridor. The development will be best designed to avoid impact on these areas. The Aboriginal Heritage Assessment is in the process of being finalised. <b>Economic</b> The Strategic Business Case prepared for the precinct indicated that it could facilitate up to 900 new full-time equivalent jobs.
<b>Section D – State and Commonwealth interests</b>	
Q10. Is there adequate public infrastructure for the planning proposal?	Yes. Whilst the servicing strategy is being finalised, it has been confirmed that the site can be serviced in terms of water supply, effluent disposal and stormwater management.
Q11. What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?	Consultation will be undertaken in accordance with the requirements of a Gateway determination.

## 4.4 Part 4: Mapping

The existing and proposed mapping for the PP is provided in **Appendix D**.

## 4.5 Part 5: Community Consultation

It is intended that the following community consultation will be undertaken as part of the PP:

- Public Exhibition period of a minimum of 28 days or as otherwise advised by DPIE, including
  - NSC Notices Section within local newspapers;
  - NSC's website;
  - NSC's social media;
  - Static display at NSC's Administration Centre; and
  - Notices on the land.
- Consultation with government departments/agencies including:
  - DPIE – Environment, Energy & Science Group
  - DPIE – Regions, Industry, Agriculture & Resources Group
  - DPIE – Water Division
  - ARTC
  - Essential Energy
- Letters to stakeholders

Public exhibition and consultation will be undertaken in accordance with the requirements of a Gateway Determination.

## 4.6 Part 6: Project Timeline

The following table provides the indicative timeline for the project.

**Table 4: Anticipated Project Timeline**

Task	Timeframe
Anticipated commencement date (date of Gateway Determination)	October 2020
Anticipated timeframe for the completion of technical information	Studies will be complete and ready for exhibition with the planning proposal.
Government agency consultation	Subject to Gateway Determination requirements
Commencement and completion dates for public exhibition period	28 days
Dates for public hearing (if required)	Not required
Timeframe for consideration of submissions	2 weeks – dependent on the level of community interest in the proposal
Timeframe for further consideration of the proposal	2 -4 weeks – dependent on the level of community interest in the proposal
Date of submission to PCO and the Department to finalise the LEP	February 2021
Anticipated date Council will make the plan (if delegated)	March 2021
Anticipated date Council will forward to the department for notification	March 2021

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## Appendix A

### Information Checklist

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**STEP 1: REQUIRED FOR ALL PROPOSALS**  
(under s3.33(2)(a-e) of the EP&A Act)

- Objectives and intended outcome
- Mapping (including current and proposed zones)
- Community consultation (agencies to be consulted)
- Explanation of provisions
- Justification and process for implementation (including compliance assessment against relevant section 9.1 direction/s)

**STEP 2: MATTERS – CONSIDERED ON A CASE BY CASE BASIS**  
(Depending on complexity of planning proposal and nature of issues)

Planning Matters or Issues	to be considered	N/A		to be considered	N/A
<b>Strategic Planning Context</b>				<b>Environmental Considerations</b>	
Consistent with the relevant regional, district or corridor/precinct plans applying to the site, including any draft regional/district or corridor/precinct plans released or public comment; or	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Flooding	<input checked="" type="checkbox"/>
Consistent with a relevant local council strategy that has been endorsed by the Department; or	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Land/site contamination (SEPP55)	<input checked="" type="checkbox"/>
Responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls; or	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Resources (including drinking water, minerals, oysters, agricultural lands, fisheries, mining)	<input checked="" type="checkbox"/>
Seeking to update the current planning controls if they have not been amended in the last 5 years	<input type="checkbox"/>	<input checked="" type="checkbox"/>		Sea level rise	<input checked="" type="checkbox"/>
<b>Site Description / Context</b>				<b>Urban design Considerations</b>	
Aerial photographs	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Existing site plan (building, vegetation, roads, etc)	<input checked="" type="checkbox"/>
Site photos / photomontage	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Building mass/block diagram study (changes in building height and FSR)	<input checked="" type="checkbox"/>
<b>Traffic and Transport Considerations</b>				Lighting impact	<input checked="" type="checkbox"/>
Local traffic and transport	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Development yield analysis (potential yield of lots/houses, employment generation)	<input checked="" type="checkbox"/>
TMAP	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<b>Economic Considerations</b>	
Public transport	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Economic impact assessment	<input checked="" type="checkbox"/>
Cycle and pedestrian movement	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Retail centres hierarchy	<input checked="" type="checkbox"/>
<b>Environmental Considerations</b>				Employment land	<input checked="" type="checkbox"/>
Bushfire hazard	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<b>Social and Cultural Considerations</b>	
Acid sulphate Soil	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Heritage impact	<input checked="" type="checkbox"/>
Noise impacts	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Aboriginal archaeology	<input checked="" type="checkbox"/>
Hora and/or fauna	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Open space management	<input checked="" type="checkbox"/>
Soil stability, erosion, sediment, landslip assessment and subsidence	<input checked="" type="checkbox"/>	<input type="checkbox"/>		European archaeology	<input checked="" type="checkbox"/>
Water quality	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Social and cultural impacts	<input checked="" type="checkbox"/>
Stormwater management	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Stakeholder engagement	<input checked="" type="checkbox"/>
				<b>Infrastructure Considerations</b>	
				Infrastructure servicing and potential funding arrangements	<input checked="" type="checkbox"/>
				<b>Miscellaneous / Additional Considerations</b>	
				List any additional studies that should be undertaken post Gateway determination	<input checked="" type="checkbox"/>

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## Appendix B

### Titles & Title Diagrams

Planning Proposal – Northern NSW Inland Port  
Yarrie Lake Road, Narrabri



# NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH

FOLIO: 158/711841

SEARCH DATE	TIME	EDITION NO	DATE
14/6/2019	8:22 AM	6	9/9/2018

NO CERTIFICATE OF TITLE HAS ISSUED FOR THE CURRENT EDITION OF THIS FOLIO.  
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## LAND

LOT 158 IN DEPOSITED PLAN 711841  
AT NARRABRI WHST  
LOCAL GOVERNMENT AREA NARRABRI  
PARISH OF COOMA COUNTY OF WHITE  
TITLE DIAGRAM DP711841

## FIRST SCHEDULE

WAYNE ROBERT HANNAFORD  
LERANN PATRICIA HANNAFORD  
AS JOINT TENANTS (T 1294301)

## SECOND SCHEDULE (3 NOTIFICATIONS)

- 1 LAND EXCLUDES MINERALS AND IS SUBJECT TO RESERVATIONS AND CONDITIONS IN FAVOUR OF THE CROWN - SEE CROWN GRANT(S)
- 2 PROVISIONS OF S. 235A CROWN LANDS CONSOLIDATION ACT 1913 AS TO BOUNDARIES TO RIVERS AND LAKES AFFECTING THE PART OF THE LAND ABOVE DESCRIBED FORMERLY PART OF PORTION 15
- 3 1897830 MORTGAGE TO NATIONAL AUSTRALIA BANK LIMITED

## NOTATIONS

UNREGISTERED DEALINGS: NIL

\*\*\* END OF SEARCH \*\*\*

Integrated Consulting Pty Ltd

PRINTED ON 14/6/2019

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Yarrie Lake Road, Narrabri

PLAN FORM 2

Figures are approximate.

For drawing not to appear in this case

PLAN OF SUBDIVISION OF LOT 158, Z.P. 632004

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Yarrie Lake Road, Narrabri



# NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH

FOLIO: 159/852877

SEARCH DATE	TIME	EDITION NO	DATE
2/9/2019	4:44 PM	4	9/5/2017

## LAND

LOT 159 IN DEPOSITED PLAN 852877  
AT NARRABRI WEST  
LOCAL GOVERNMENT AREA NARRABRI  
PARISH OF COOMA COUNTY OF WHITE  
TITLE DIAGRAM DP852877

## FIRST SCHEDULE

WINSTON STANLEY HAYNE (T AM372142)

## SECOND SCHEDULE (1 NOTIFICATION)

1. LAND EXCLUDES MINERALS AND IS SUBJECT TO RESERVATIONS AND CONDITIONS IN FAVOUR OF THE CROWN - SEE CROWN GRANT(S)

## NOTATIONS

UNREGISTERED DEALINGS: NIL

\*\*\* END OF SEARCH \*\*\*

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# NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH

FOLIO: 2/622404

SEARCH DATE	TIME	EDITION NO	DATE
2/9/2019	4:42 PM	10	9/9/2018

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## LAND

LOT 2 IN DEPOSITED PLAN 622404  
LOCAL GOVERNMENT AREA NARRABRI  
PARISH OF COOMA COUNTY OF WHITE  
TITLE DIAGRAM DD622404

## FIRST SCHEDULE

KEVIN ARTHUR STUBBS  
VICKI KAY STUBBS  
AS JOINT TENANTS (T 7699989)

## SECOND SCHEDULE (2 NOTIFICATIONS)

- 1 LAND EXCLUDES MINERALS AND IS SUBJECT TO RESERVATIONS AND CONDITIONS IN FAVOUR OF THE CROWN (SEE CROWN GRANT(9))
- 2 A1184594 MORTGAGE TO NATIONAL AUSTRALIA BANK LIMITED

## NOTATIONS

UNREGISTERED DEALINGS: NIL

\*\*\* END OF SEARCH \*\*\*

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**LAND  
REGISTRY  
SERVICES**

NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH

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FOLIO: 2/1260466

SEARCH DATE	TIME	EDITION NO	DATE
3/8/2020	9:59 AM	2	23/3/2020

LAND

LOT 2 IN DEPOSITED PLAN 1260466  
AT NARRABRI  
LOCAL GOVERNMENT AREA NARRABRI  
PARISH OF COOMA COUNTY OF WHITE  
TITLE DIAGRAM DP1260466

FIRST SCHEDULE

NARRABRI SHIRE COUNCIL (T AP981554)

SECOND SCHEDULE (3 NOTIFICATIONS)

- 1 LAND EXCLUDES MINERALS AND IS SUBJECT TO RESERVATIONS AND CONDITIONS IN FAVOUR OF THE CROWN - SEE CROWN GRANT(S)
- 2 2671746 BASEMENT FOR TRANSMISSION LINE 45 METRE(S) WIDE AFFECTING THE PART(S) SHOWN SO BURDENED IN THE TITLE DIAGRAM  
9936219 BASEMENT NOW VESTED IN COUNTRY ENERGY
- 3 DP1260466 RESTRICTION(S) ON THE USE OF LAND

NOTATIONS

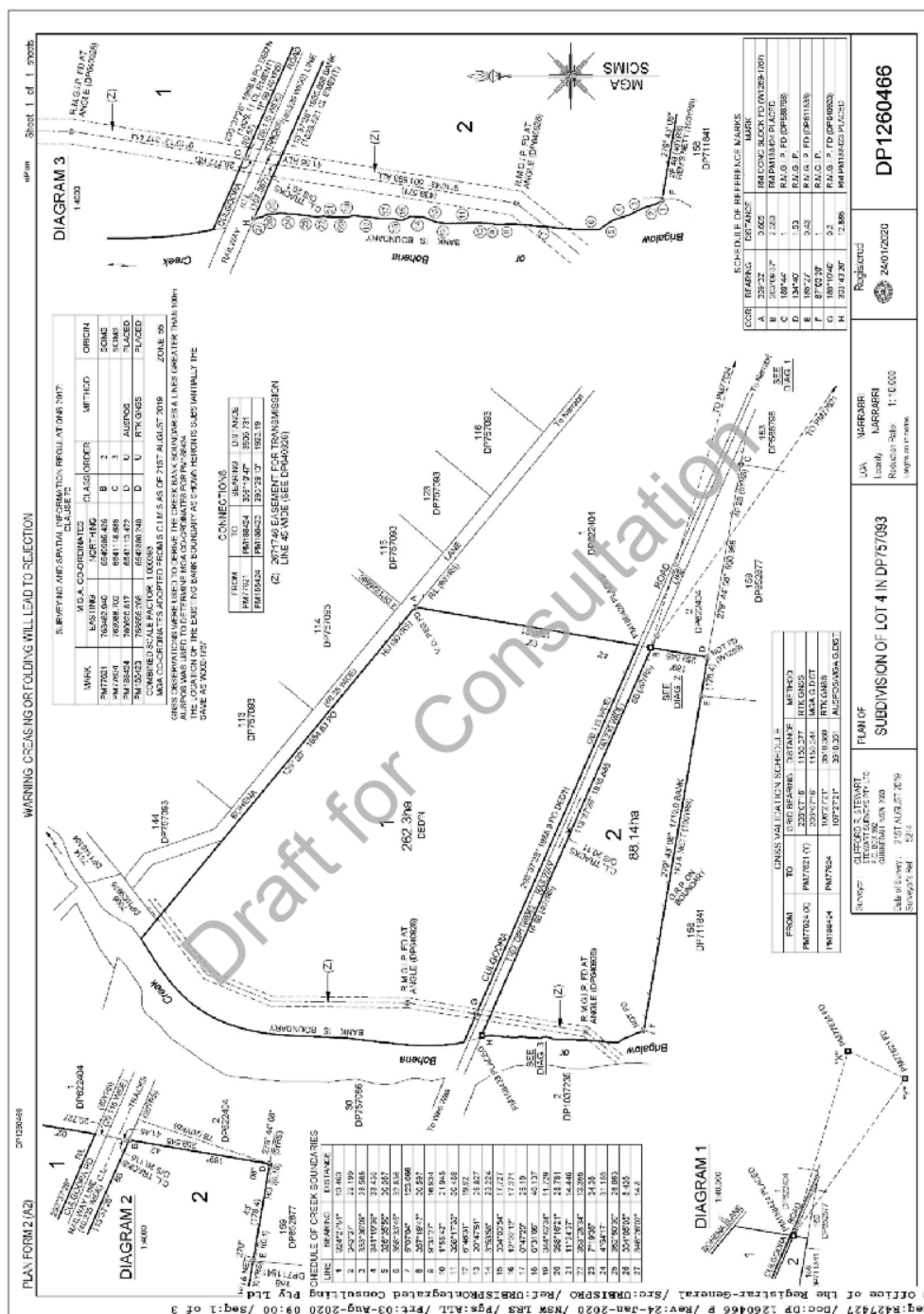
UNREGISTERED DEALINGS: NIL

\*\*\* END OF SEARCH \*\*\*

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# NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH

FOLIO: 1102/1169062

SEARCH DATE	TIME	EDITION NO	DATE
28/1/2020	8:04 AM	1	6/9/2011

## LAND

DOT 1102 IN DEPOSITED PLAN 1169062  
AT NARRABRI  
LOCAL GOVERNMENT AREA NARRABRI  
PARISH OF BORAL COUNTY OF WHITE  
PARISH OF COOMA COUNTY OF WHITE  
PARISH OF GURLEIGH COUNTY OF WHITE  
PARISH OF QUINN COUNTY OF WHITE  
TITLE DIAGRAM DP1169062

## FIRST SCHEDULE

COUNTRY RAIL INFRASTRUCTURE AUTHORITY (CA160310)

## SECOND SCHEDULE (2 NOTIFICATIONS)

- LIMITED TITLE. LIMITATION PURSUANT TO SECTION 28T(4) OF THE REAL PROPERTY ACT, 1900. THE BOUNDARIES OF THE LAND COMPRISED HEREIN HAVE NOT BEEN INVESTIGATED BY THE REGISTRAR GENERAL.
- LAND EXCLUDES MINERALS (S.134 PUBLIC WORKS ACT, 1900)

## NOTATIONS

UNREGISTERED DEALINGS: NIL

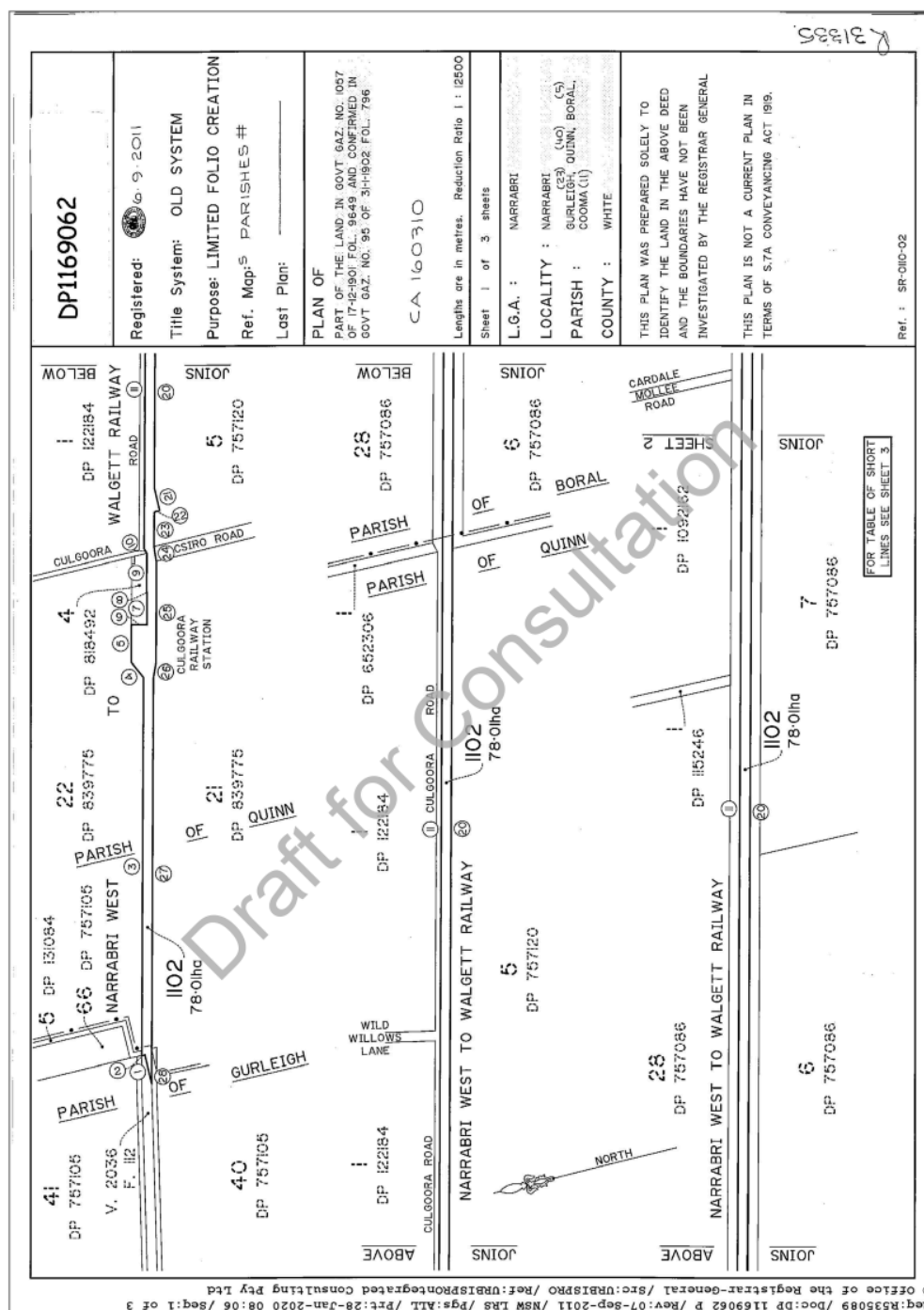
\*\*\* END OF SEARCH \*\*\*

Integrated Consulting Pty Ltd

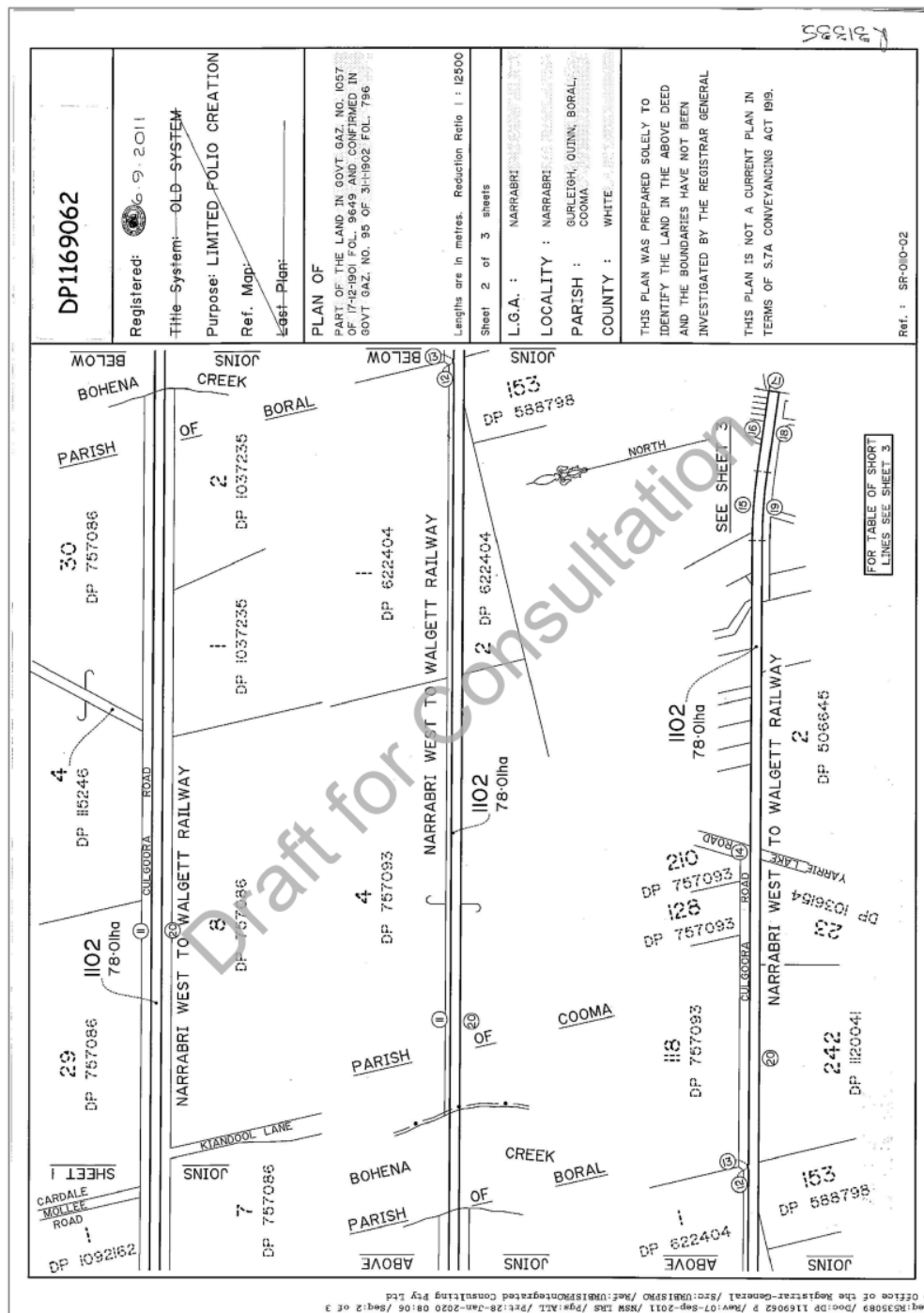
PRINTED ON 28/1/2020

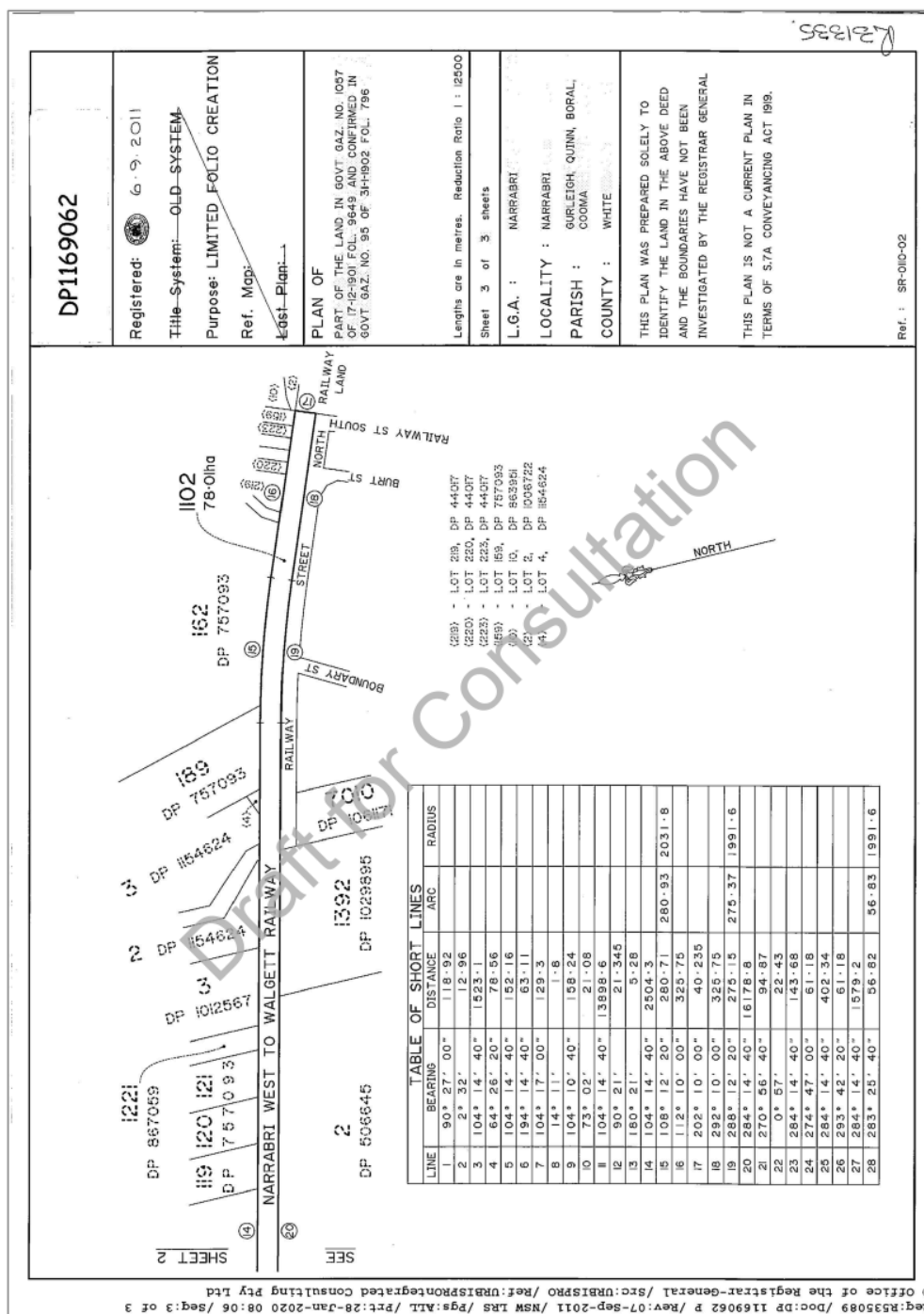
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## Appendix C

### AHIMS Search

Planning Proposal – Northern NSW Inland Port  
Yarrie Lake Road, Narrabri



### AHIMS Web Services (AWS) Search Result

Purchase Order/Reference: 18011

Client Service ID: 427190

Integrated Consulting

Date: 12 June 2019

PO Box 9026

Bathurst West New South Wales 2795

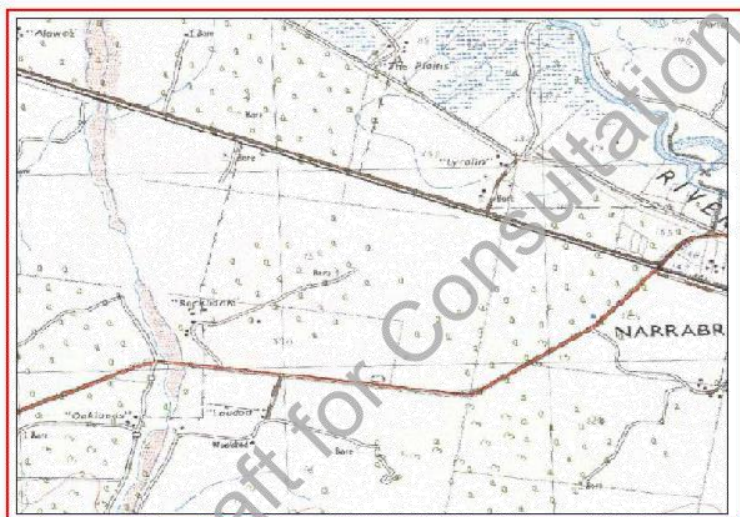
Attention: Erika Dawson

Email: [erika@integratedconsulting.com.au](mailto:erika@integratedconsulting.com.au)

Dear Sir or Madam:

**AHIMS Web Service search for the following area at Lat, Long From : -30.3504, 149.6054 - Lat, Long To : -30.3159, 149.74 with a Buffer of 50 meters, conducted by Erika Dawson on 12 June 2019.**

The context area of your search is shown in the map below. Please note that the map does not accurately display the exact boundaries of the search as defined in the paragraph above. The map is to be used for general reference purposes only.



A search of the Office of the Environment and Heritage AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

2	Aboriginal sites are recorded in or near the above location.
0	Aboriginal places have been declared in or near the above location.*

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**If your search shows Aboriginal sites or places what should you do?**

- You must do an extensive search: if AHIMS has shown that there are Aboriginal sites or places recorded in the search area.
- If you are checking AHIMS as a part of your due diligence, refer to the next steps of the Due Diligence Code of practice.
- You can get further information about Aboriginal places by looking at the gazettal notice that declared it. Aboriginal places gazetted after 2001 are available on the [NSW Government Gazette](http://www.nsw.gov.au/gazette) (<http://www.nsw.gov.au/gazette>) website. Gazettal notices published prior to 2001 can be obtained from Office of Environment and Heritage's Aboriginal Heritage Information Unit upon request.

**Important information about your AHIMS search**

- The information derived from the AHIMS search is only to be used for the purpose for which it was requested. It is not be made available to the public.
- AHIMS records information about Aboriginal sites that have been provided to Office of Environment and Heritage and Aboriginal places that have been declared by the Minister;
- Information recorded on AHIMS may vary in its accuracy and may not be up to date. Location details are recorded as grid references and it is important to note that there may be errors or omissions in these recordings;
- Some parts of New South Wales have not been investigated in detail and there may be fewer records of Aboriginal sites in those areas. These areas may contain Aboriginal sites which are not recorded on AHIMS.
- Aboriginal objects are protected under the National Parks and Wildlife Act 1974 even if they are not recorded as a site on AHIMS.
- This search can form part of your due diligence and remains valid for 12 months.

3 Marist Place, Parramatta NSW 2150  
Locked Bag 5020 Parramatta NSW 2220  
Tel: (02) 9585 6380 Fax: (02) 9873 8599

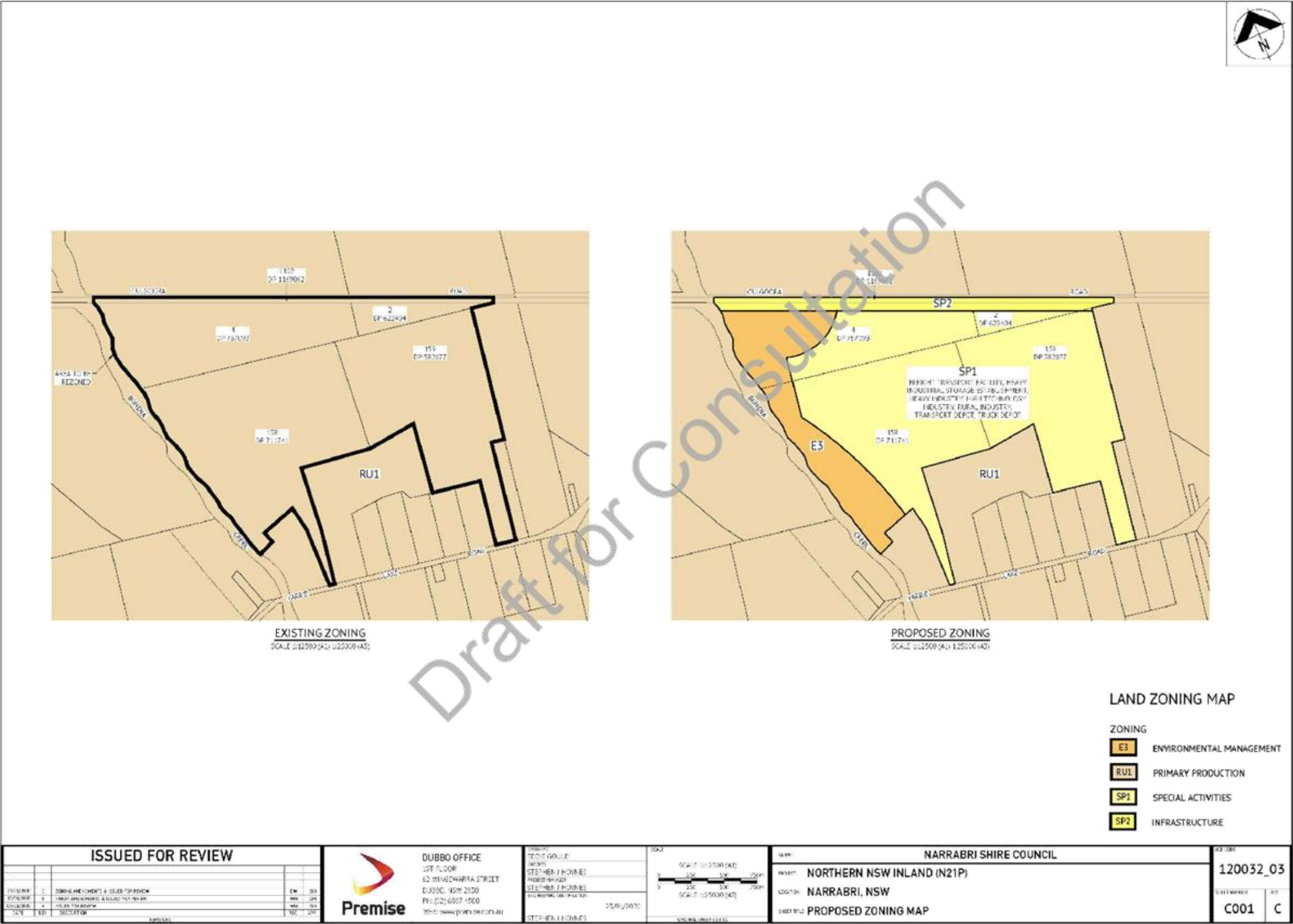
ABN 30 841 387 271  
Email: [ahims@environment.nsw.gov.au](mailto:ahims@environment.nsw.gov.au)  
Web: [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

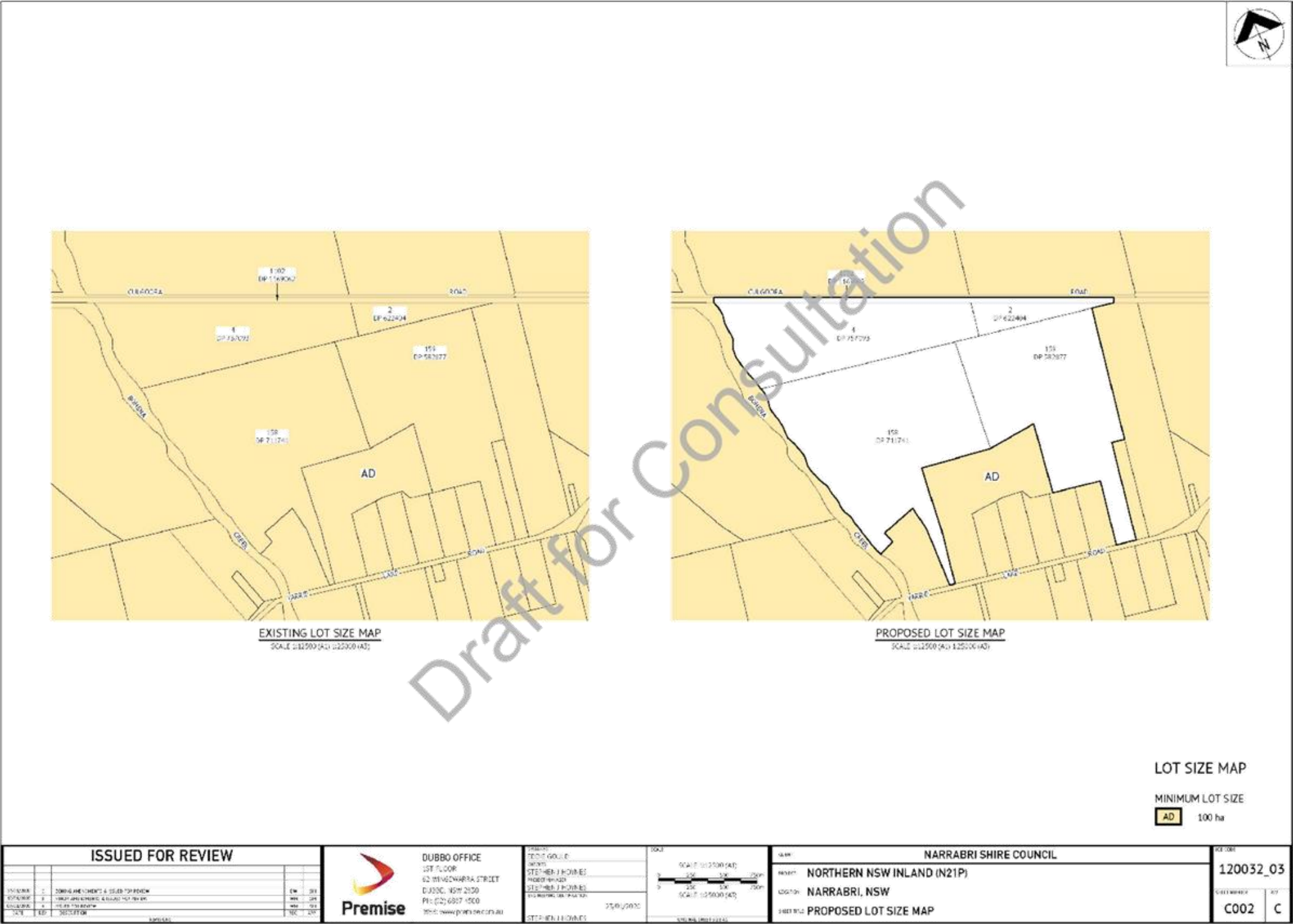
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## Appendix D

Draft LEP Maps









**ZONING**

<b>E3</b>	ENVIRONMENTAL MANAGEMENT
<b>RU1</b>	PRIMARY PRODUCTION
<b>SP1</b>	SPECIAL ACTIVITIES
<b>SP2</b>	INFRASTRUCTURE

ISSUED FOR REVIEW		 <p>DUBBO OFFICE 1ST FLOOR 62 WINDHAMPA STREET DUBBO, NSW 2820 Ph: (02) 6887 4500 Web: www.premise.com.au</p>		<p>PROJECT STEVEN J. POWERS PROJECT MANAGER 11/11/2020 11/11/2020</p> <p>DATE 27/01/2020</p>		<p>SCALE 1:1000 (A3) SCALE 1:1000 (A3) SCALE 1:1000 (A3)</p> 		<p>NARRABRI SHIRE COUNCIL</p> <p>PROJECT NORTHERN NSW INLAND (N21P)</p> <p>LOCATION NARRABRI, NSW</p> <p>SHEET TITLE CONCEPT RAIL SIDING DESIGN</p>		<p>120032_0</p> <p>C004</p>	
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Planning Proposal – Northern NSW Inland Port  
Yarrie Lake Road, Narrabri

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## Appendix E

### Regional Plan Assessment

Table 5: New England North West Regional Plan 2036

Actions	Comments
<b>Goal 1: A strong and dynamic regional economy</b>	
<b>Direction 7: Build strong economic centres</b>	
7.4 Facilitate economic activity around industry anchors, such as health and education facilities, through planning controls that encourage clusters of complementary uses and address infrastructure needs.	The N2IP will be focussed around the existing rail infrastructure and inland rail.
7.5 Promote an appropriate mix of land uses and prevent the encroachment of sensitive uses on employment land through local planning controls.	The zoning will facilitate a range of suitable and complementary land uses. The land surrounding the site is constrained by flooding, BSAL and a 100-ha minimum lot size, which would limit further development of this land. Therefore future encroachment of sensitive land uses is not expected.
7.6 Deliver an adequate supply of employment land through local growth management strategies and local environmental plans.	Consistent with the LSPS and GMS
<b>Goal 2: A healthy environment with pristine waterways</b>	
<b>Direction 10: Sustainably manage and conserve water resources</b>	
10.4 Adopt an integrated approach to water cycle management to consider regional climate change, water security, sustainable demand and growth, and the natural environment.	The servicing strategy will consider ways to adopt an integrated approach to water cycle management to consider regional climate change, water security, sustainable demand and growth, and the natural environment
10.5 Incorporate measures to improve water efficiency in urban and rural settings, including water sensitive urban design for new developments, into local planning policies.	The servicing strategy will consider ways to improve water efficiency including water sensitive urban design for new developments.
<b>Direction 11: Protect areas of potential high environmental value</b>	
11.1 Focus development to areas of least biodiversity sensitivity and implement the 'avoid, minimise, offset' hierarchy to biodiversity and areas of high environmental value.	The precinct will be designed in accordance with the avoid, minimise, offset' hierarchy for areas of biodiversity and high environmental value.
11.2 Ensure local plans consider areas of high environmental value to avoid potential Development impacts.	The precinct will be designed in accordance with the avoid, minimise, offset' hierarchy for areas of biodiversity and high environmental value.
11.3 Encourage the identification of vegetated areas adjacent to aquatic habitats and riparian corridors in local plans.	An enhanced riparian corridor area will be incorporated into the precinct.
<b>Direction 12: Adapt to natural hazards and climate change</b>	
12.1 Minimise the risk from natural hazards and the projected effects of climate change by identifying hazards, managing risks and avoiding vulnerable areas, particularly when considering new urban release areas.	The precinct has been located in an area that has an acceptable level of risk from flooding and bushfire. Future development will be designed to respond to the requisite risks of these natural hazards.
12.2 Incorporate new knowledge on regional climate projections, including flooding and bushfire risk, related cumulative impacts, and findings of the New England North West Enabling Regional Adaptation	Bushfire and Flooding assessments will consider climate change impacts

Table 5: New England North West Regional Plan 2036

Actions	Comments
Project in local plans for new development.	
12.3 Review and update floodplain and bushfire mapping to manage risk, particularly where urban growth is being investigated.	Mapping will be updated as part of a separate review of the LEP (for flooding) and bushfire prone land mapping (as required under the RF Act).
<b>Goal 3: Strong infrastructure and transport networks for a connected future</b>	
<b>Direction 13: Expand emerging industries through freight and logistics connectivity</b>	
13.1 Implement local planning controls to protect freight and logistics facilities from encroachment of sensitive land uses.	The land surrounding the site is constrained by flooding, BSAL and a 100-ha minimum lot size, which would limit further development of this land. Therefore future encroachment of sensitive land uses is not expected and as such separate land use controls are not proposed.
13.2 Work with the Australian Government and councils as the Melbourne to Brisbane Inland Rail Corridor project progresses.	The precinct has been designed to respond to the inland rail project.
13.3 Integrate cross-border transport planning between NSW and Queensland.	Not applicable to this project.
13.4 Locate freight and logistics facilities to maximise existing infrastructure, support future industrial development and capitalise on inter-regional connections and external markets.	The intent of the N2IP project to achieve this action.
<b>Direction 14: Enhance transport and infrastructure networks</b>	
14.1 Protect freight and utility infrastructure and corridors through local plans and strategies to protect network opportunities and distribution from incompatible land uses or land fragmentation.	The precinct will assist in the protection of freight corridors associated with the N2IP.
14.2 Minimise the impact of development on the regional and State road network and rail corridors by identifying buffer and mitigation measures.	The precinct will assist in the protection of freight corridors associated with the N2IP.
14.3 Support councils to investigate opportunities to provide greater access for high productivity vehicles.	Not applicable to this project.
14.4 Prioritise projects that address impediments to the regional freight network and work with stakeholders to upgrade transport network capacity as demand changes.	Not applicable to this project.
<b>Local Government Narratives</b>	
<b>Priorities:</b>	
• Support economic diversification and strengthening including upskilling health and education workers.	The N2IP will assist with facilitating economic diversification for Narrabri.
• Continue to develop access and logistics infrastructure on appropriate sites to encourage new industry opportunities.	The N2IP will achieve this priority.
• Identify and promote wind, solar and other renewable energy opportunities.	The N2IP will provide the opportunity for the use of alternative energies.

Planning Proposal – Northern NSW Inland Port  
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## Appendix F

### Applicable State Environmental Planning Policies

Table 6: Application of SEPPs

SEPP	Comments
SEPP 33 – Hazardous & Offensive Development	Applies to potentially hazardous and/or potentially hazardous industries. Whilst not strictly applicable to PPs, consideration is required of the nature of the developments to be accommodated within the precinct to ensure land use safety conflicts can be avoided or managed.
SEPP 44 – Koala Habitat Protection/ SEPP (Koala Habitat Protection) 2019 <sup>1</sup>	Does not apply to PPs. However future DAs would be required to consider the SEPP as it applies to Narrabri Local Government Area (LGA) and the site being over 1 hectare in size.  No koalas were recorded on site during the biodiversity assessment. However, it was identified that the site may provide for a breeding habitat for koalas in the vicinity of the creek. Further consideration of SEPP would be required for any future DA.
SEPP 55 – Remediation of Land	A Preliminary Site Investigation (PSI) has been carried out for the site by JBS&G. It is summarised in Section 2.3.6.  The assessment concludes that whilst the investigation identified soil impacts and the potential for soil vapour, ground gas and groundwater impacts to be present in some areas at the site, the investigation did not identify the potential for gross or widespread contamination which may preclude rezoning and development for the proposed industrial use of the site. Identified impacts are considered representative of common contaminants and potentially contaminating land use activities which can be readily addressed during the DA stage (i.e. including completion of detailed site investigations consistent with relevant Council DCPs and SEPP 55 requirements) for redevelopment and assessment for site suitability.  In the absence of gross or widespread contamination, the requirements of the DUAP/EPA (1998) Managing Land Contamination: Planning Guidelines for this type of rezoning are considered to have been satisfied, namely that the rezoning can proceed, “provided that measures are in place to ensure that the potential for contamination and the suitability of the land for any proposed use are assessed once detailed proposals are made” (s.4.1.2 DUAP 1998) (JBS&G 2019).
SEPP Infrastructure 2007	The Infrastructure SEPP doesn't contain any provisions relating to PPs. However, there are some that would relate to future development:  <b>Development likely to affect an Electricity Transmission or Distribution Networks</b>  The site is traversed by an Essential Energy electricity transmission line surrounded by a 45m wide easement. Where development is to be carried out within or adjacent to the easement, consultation is required with the electricity supply authority to determine concerns regarding potential safety risks. This consultation should occur as part of the PP process to ensure future development is appropriately located.  <b>Development adjacent to pipeline corridors</b>  There is potential for the precinct to be provided with a reticulated gas supply. Where development is to be carried out on land adjacent to a pipeline corridor: <ul style="list-style-type: none"> <li>• potential safety risks or risks to the integrity of the pipeline that are associated with the development to which the application relates are required to be identified and taken into consideration;</li> <li>• consultation is to be undertaken with the pipeline operator; and</li> <li>• the response from the pipeline operator is to be taken into consideration.</li> </ul> These matters should be considered, and consultation undertaken as part of the

<sup>1</sup> Comes into effect on 1 March 2020.

Table 6: Application of SEPPs

SEPP	Comments
	<p>PP process to ensure future development is appropriately located.</p> <p><b>Development in or adjacent to rail corridors</b></p> <p>There are a number of provisions that relate to the future development of the site including:</p> <ul style="list-style-type: none"> <li>• Development involving access via level crossings;</li> <li>• Development adjacent to rail corridors; and</li> <li>• Excavation in, above, below or adjacent to rail corridors.</li> </ul> <p>Each of these requires:</p> <ul style="list-style-type: none"> <li>• consultation/concurrence of the rail authority;</li> <li>• Consideration of <i>inter alia</i> safety impacts, structural impacts, and operational impacts.</li> </ul> <p>These matters should be considered and consultation undertaken as part of the PP process to ensure future development is appropriately located.</p> <p><b>Development in or adjacent to road corridors and road reservations</b></p> <p>A development (including subdivision) that is considered to be 'traffic generating' requires consultation with the NSW Roads and Maritime Service (RMS), consideration of the accessibility of the site and potential traffic safety, congestion and parking implications.</p> <p>These matters should be considered and consultation undertaken as part of the PP process to ensure future development is appropriately located.</p>
SEPP Primary Production and Rural Development 2019	<p>State Significant Agricultural Land (SSAL)</p> <ul style="list-style-type: none"> <li>• No SSAL has been identified by the SEPP to date.</li> </ul>
SEPP Vegetation in Non-Rural Areas 2017	<p>The SEPP applies to the removal of vegetation in non-rural zones where it is not included in a DA. No provisions are applicable to PPs.</p> <p>Any future vegetation removal would need to be considered under this SEPP if it is undertaken outside of a DA. Note Exempt and Complying Development is not obviated from the consideration of the approval requirements of the Vegetation SEPP.</p>

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Draft for Consultation

## Appendix G

### Ministerial Directions

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Table 7: Consideration of Ministerial Directions

DIRECTION			COMMENTS
No.	Applicability	Provision	
1	Employment & Resources		
1.1 Business & Industrial Zones	This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary).	<p>A planning proposal must:</p> <ul style="list-style-type: none"> <li>(a) give effect to the objectives of this direction,</li> <li>(b) retain the areas and locations of existing business and industrial zones,</li> <li>(c) not reduce the total potential floor space area for employment uses and related public services in business zones,</li> <li>(d) not reduce the total potential floor space area for industrial uses in industrial zones, and</li> <li>(e) ensure that proposed new employment areas are in accordance with a strategy that is approved by the Secretary of the Department of Planning and Environment.</li> </ul> <p>A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Secretary of the Department of Planning and Environment (or an officer of the Department nominated by the Secretary) that the provisions of the planning proposal that are inconsistent are:</p> <ul style="list-style-type: none"> <li>(a) justified by a strategy which: <ul style="list-style-type: none"> <li>(i) gives consideration to the objective of this direction, and</li> <li>(ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular</li> </ul> </li> </ul>	<p>The PP will provide a new SP1 zoned area. This will be consistent with the NENW Region Plan and Council's LSPS and GMS that are in the process of being finalised.</p> <p>N/A – not inconsistent with the direction.</p>

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Table 7: Consideration of Ministerial Directions

DIRECTION			COMMENTS
No.	Applicability	Provision	
		<p>site or sites), and</p> <p>(iii) is approved by the Secretary of the Department of Planning and Environment, or</p> <p>(b) justified by a study (prepared in support of the planning proposal) which gives consideration to the objective of this direction, or</p> <p>(c) in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning and Environment which gives consideration to the objective of this direction, or</p> <p>(d) of minor significance.</p>	
1.2 Rural Zones	This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary).	<p>A planning proposal must:</p> <p>(a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.</p> <p>(b) not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).</p> <p>A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:</p>	<p>The PP will rezone land from RU1 to SP1 and E3 and remove the minimum lot size provisions.</p> <p>The PP is consistent with the NENW Region Plan, and Council's LSPS and GMS that are in the process of being finalised.</p>

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Table 7: Consideration of Ministerial Directions

DIRECTION			COMMENTS
No.	Applicability	Provision	
		<ul style="list-style-type: none"> <li>(a) justified by a strategy which:               <ul style="list-style-type: none"> <li>(i) gives consideration to the objectives of this direction,</li> <li>(ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and</li> <li>(iii) is approved by the Director-General of the Department of Planning, or</li> </ul> </li> <li>(b) justified by a study prepared in support of the planning proposal which gives consideration to the objectives of this direction, or</li> <li>(c) in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or</li> <li>(d) is of minor significance.</li> </ul>	
1.3 Mining, Petroleum Production and Extractive Industries	<p>This direction applies when a relevant planning authority prepares a planning proposal that would have the effect of:</p> <ul style="list-style-type: none"> <li>(a) prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or</li> <li>(b) restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance by permitting a land</li> </ul>	<ul style="list-style-type: none"> <li>(4) In the preparation of a planning proposal affected by this direction, the relevant planning authority must:               <ul style="list-style-type: none"> <li>(a) consult the Director-General of the Department of Primary Industries (DPI) to identify any:                   <ul style="list-style-type: none"> <li>(i) resources of coal, other minerals, petroleum or extractive material that are of either State or regional significance, and</li> <li>(ii) existing mines, petroleum</li> </ul> </li> </ul> </li> </ul>	<p>Consultation will be undertaken with the former DPI in accordance with this direction.</p> <p>Issues likely to lead to land use conflict between other land uses and development of identified resources and existing identified developments will be identified and taken into consideration.</p>

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Table 7: Consideration of Ministerial Directions

DIRECTION			COMMENTS
No.	Applicability	Provision	
	use that is likely to be incompatible with such development.	<p>production operations or extractive industries occurring in the area subject to the planning proposal, and</p> <p>(b) seek advice from the Director-General of DPI on the development potential of resources identified under (4)(a)(i), and</p> <p>(c) identify and take into consideration issues likely to lead to land use conflict between other land uses and:</p> <p>(i) development of resources identified under (4)(a)(i), or</p> <p>(ii) existing development identified under (4)(a)(ii).</p>	
		<p>(5) Where a planning proposal prohibits or restricts development of resources identified under (4)(a)(i), or proposes land uses that may create land use conflicts identified under (4)(c), the relevant planning authority must:</p> <p>(a) provide the Director-General of DPI with a copy of the planning proposal and notification of the relevant provisions,</p> <p>(b) allow the Director-General of DPI a period of 40 days from the date of notification to provide in writing any objections to the terms of the planning proposal, and</p> <p>(c) include a copy of any objection and</p>	Consultation will be undertaken with the former DPI in accordance with this direction.

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Table 7: Consideration of Ministerial Directions

DIRECTION			COMMENTS
No.	Applicability	Provision	
		supporting information received from the Director-General of DPI with the statement to the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) before undertaking community consultation in satisfaction of section 57 of the Act.	
		A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), that the provisions of the planning proposal that are inconsistent are of minor significance.	N/A – not inconsistent with the direction.
1.5 Rural Lands	<p>(3) This direction applies when a relevant planning authority prepares a planning proposal that:</p> <p>(a) will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary) or</p> <p>(b) changes the existing minimum lot size on land within a rural or environment protection zone.</p>	<p>(4) A planning proposal to which clauses 3(a) or 3(b) apply must:</p> <p>(a) be consistent with any applicable strategic plan, including regional and district plans endorsed by the Secretary of the Department of Planning and Environment, and any applicable local strategic planning statement</p> <p>(b) consider the significance of agriculture and primary production to the State and rural communities</p> <p>(c) identify and protect environmental values, including but not limited to, maintaining biodiversity, the protection of native vegetation, cultural heritage,</p>	<p>(a) The PP is consistent with the NENW Region Plan, and Council's LSPS and GMS that are in the process of being finalised.</p> <p>(b) The site is not mapped as BSAL land. The site is fragmented from other agricultural land and impacted by other land uses. It is not considered to be of significance agriculturally to the state and rural communities.</p> <p>(c) the PP will improve protection of biodiversity, cultural heritage and riparian areas on site.</p> <p>(d) the natural and physical constraints of the site have been considered as part</p>

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DIRECTION			COMMENTS
No.	Applicability	Provision	
		and the importance of water resources	of the design of the precinct as outlined throughout this report.
		(d) consider the natural and physical constraints of the land, including but not limited to, topography, size, location, water availability and ground and soil conditions	(e) the N2IP will promote opportunities for investment in productive, diversified, innovative and sustainable rural economic activities.
		(e) promote opportunities for investment in productive, diversified, innovative and sustainable rural economic activities	(f) whilst the N2IP will displace agricultural land, it will assist farming activities in the region through improved transportation connections for produce and facilitate value adding opportunities.
		(f) support farmers in exercising their right to farm	
		(g) prioritise efforts and consider measures to minimise the fragmentation of rural land and reduce the risk of land use conflict, particularly between residential land uses and other rural land uses	(g) The precinct is located within a discrete area, isolated from other agricultural land by road and rail infrastructure. The land surrounding the site is constrained by flooding, BSAL and a 100-ha minimum lot size, which would limit further development of this land. Therefore future encroachment of sensitive land uses and thus land use conflict is not expected.
		(h) consider State significant agricultural land identified in State Environmental Planning Policy (Primary Production and Rural Development) 2019 for the purpose of ensuring the ongoing viability of this land	(h) the land is not State Significant Agricultural Land.
		(i) consider the social, economic and environmental interests of the community	(i) the social, economic and environmental interests of the community will be considered through the community consultation process.
		(5) A planning proposal to which clause 3(b)	N/A – the PP will remove the MLS,

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DIRECTION			COMMENTS
No.	Applicability	Provision	
		<p>applies must demonstrate that it:</p> <p>(a) is consistent with the priority of minimising rural land fragmentation and land use conflict, particularly between residential and other rural land uses</p> <p>(b) will not adversely affect the operation and viability of existing and future rural land uses and related enterprises, including supporting infrastructure and facilities that are essential to rural industries or supply chains</p> <p>(c) where it is for rural residential purposes:</p> <p>i. is appropriately located taking account of the availability of human services, utility infrastructure, transport and proximity to existing centres</p> <p>ii. is necessary taking account of existing and future demand and supply of rural residential land</p>	however, will also remove the rural zone.
		<p>A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Secretary of the Department of Planning &amp; Environment (or an officer of the Department nominated by the Secretary) that the provisions of the planning proposal that are inconsistent are:</p> <p>(a) justified by a strategy which:</p>	N/A – not inconsistent with the direction.

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DIRECTION			COMMENTS
No.	Applicability	Provision	
		i. gives consideration to the objectives of this direction, ii. identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and iii. is approved by the Secretary of the Department of Planning & Environment and is in force, or (b) is of minor significance.	
<b>2. Environment and Heritage</b>			
<b>2.1 Environment Protection Zones</b>	This direction applies when a relevant planning authority prepares a planning proposal.	(4) A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.  (5) A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 "Rural Lands".	The PP includes an E3 zone to protect the environmentally significant land on site  The PP will increase the environmental protection standards for the site.
		(6) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the	N/A – not inconsistent with the direction.

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DIRECTION			COMMENTS
No.	Applicability	Provision	
		<p>Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:</p> <p>(a) justified by a strategy which:</p> <p>(i) gives consideration to the objectives of this direction,</p> <p>(ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and</p> <p>(iii) is approved by the Director-General of the Department of Planning, or</p> <p>(b) justified by a study prepared in support of the planning proposal which gives consideration to the objectives of this direction, or</p> <p>(c) in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or</p> <p>(d) is of minor significance.</p>	
2.3 Heritage Conservation	This direction applies when a relevant planning authority prepares a planning proposal.	<p>(4) A planning proposal must contain provisions that facilitate the conservation of:</p> <p>(a) items, places, buildings, works, relics, moveable objects or precincts of</p>	<p>Existing LEP provisions relating to heritage conservation would remain.</p> <p>A Heritage Assessment Report: Opportunities and Constraints was</p>

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DIRECTION			COMMENTS
No.	Applicability	Provision	
		<p>environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area,</p> <p>(b) Aboriginal objects or Aboriginal places that are protected under the National Parks and Wildlife Act 1974, and</p> <p>(c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.</p>	<p>prepared by OzArk for the PP as outlined in <b>Section 2.4</b>. It identified 18 Aboriginal sites have been recorded within the study area.</p> <p>The majority of the items of Aboriginal heritage significance would remain within the E3 zoned area. Four items would be located within the SP1 zoned area. These have been identified as being of lower significance.</p> <p>Any disturbance to these items would require an Aboriginal Heritage Impact Permit. This would be addressed at the subsequent development application stage.</p>
		<p>(5) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that:</p> <p>(a) the environmental or indigenous heritage significance of the item, area, object or place is conserved by existing or draft environmental planning instruments, legislation, or regulations</p>	<p>N/A – not inconsistent with the direction.</p>

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Table 7: Consideration of Ministerial Directions

DIRECTION			COMMENTS
No.	Applicability	Provision	
		that apply to the land, or (b) the provisions of the planning proposal that are inconsistent are of minor significance.	
<b>3. Housing, Infrastructure and Urban Development</b>			
<b>3.4 Integrating Land Use and Transport</b>	This direction applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.	<p>A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of:</p> <p>(a) Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and</p> <p>(b) The Right Place for Business and Services – Planning Policy (DUAP 2001).</p> <p>A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:</p> <p>(a) justified by a strategy which:</p> <p>(i) gives consideration to the objective of this direction, and</p> <p>(ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and</p> <p>(iii) is approved by the Director-General of</p>	<p>The PP will be generally consistent with the aims, objectives and principles of:</p> <p>(a) Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and</p> <p>(b) The Right Place for Business and Services – Planning Policy (DUAP 2001).</p> <p>N/A – not inconsistent with the direction.</p>

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DIRECTION			COMMENTS
No.	Applicability	Provision	
		the Department of Planning, or	
		(b) justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or	
		(c) in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or	
		(d) of minor significance.	
<b>4. Hazard and Risk</b>			
<b>4.3 Flood Prone Land</b>	This direction applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.	A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas).	A flood study prepared in accordance with the Floodplain Development Manual 2005 has determined that the site is located in a low flood risk area and is an appropriate use in accordance with the NSW Flood Prone Land Policy
		A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.	The site is not mapped as being within the flood planning area. Nevertheless, further investigations have revealed that the site is subject to inundation. The PP will be cognisant of the flood risk.
		A planning proposal must not contain provisions that apply to the flood planning areas which:	The PP will not permit development in a floodway.
		(a) permit development in floodway areas,	Further investigations are being undertaken to ensure that development of the PP site will not result in:
		(b) permit development that will result in significant flood impacts to other	

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DIRECTION			COMMENTS
No.	Applicability	Provision	
		properties, (c) permit a significant increase in the development of that land, (d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or (e) permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development.	<ul style="list-style-type: none"> <li>significant flood impacts to other properties</li> <li>a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services</li> <li>permit development to be carried out without development consent, other than environmental protection works.</li> </ul>
		A planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).	N/A – Not for residential development.
		For the purposes of a planning proposal, a relevant planning authority must not determine a flood planning level that is inconsistent with the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas) unless a relevant planning authority provides adequate justification for the proposed departure from that Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-	N/A – no flood planning level proposed as part of this PP.

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DIRECTION			COMMENTS
No.	Applicability	Provision	
		General).	
		A planning proposal may be inconsistent with this direction only if the relevant planning authority can satisfy the Director-General (or an officer of the Department nominated by the Director-General) that:	Narrabri Shire Council is currently preparing a floodplain risk management plan (FRMP) prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005 for Narrabri including the location of the PP. The FRMP is due to be completed within the next few months. The PP is consistent with the draft FRMP.
		(a) the planning proposal is in accordance with a floodplain risk management plan prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005, or	
		(b) the provisions of the planning proposal that are inconsistent are of minor significance.	
4.4 Planning for Bushfire Protection	This direction applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.	In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 56 of the Act, and prior to undertaking community consultation in satisfaction of section 57 of the Act, and take into account any comments so made,	The land is not mapped as bushfire prone land and is not in proximity to any mapped land. Therefore, consultation is not required.
		A planning proposal must:	Despite not being mapped as bushfire prone land, the vegetation on site and its surrounds is considered to comprise bushfire prone vegetation in accordance with the NSW Rural Fire Services (RFS) Guide for Bush Fire Prone Land Mapping.
		(a) have regard to Planning for Bushfire Protection 2006,	
		(b) introduce controls that avoid placing inappropriate developments in hazardous areas, and	
		(c) ensure that bushfire hazard reduction is not prohibited within the APZ.	The PP has been designed to comply with PBP 2006 and the subsequent PBP 2019. A Strategic Bush Fire Study has been

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Table 7: Consideration of Ministerial Directions

DIRECTION			COMMENTS
No.	Applicability	Provision	
			prepared for the PP to avoid placing inappropriate developments in hazardous areas.
		<p>A planning proposal must, where development is proposed, comply with the following provisions, as appropriate:</p> <ul style="list-style-type: none"> <li>(a) provide an Asset Protection Zone (APZ) incorporating at a minimum: <ul style="list-style-type: none"> <li>(i) an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and</li> <li>(ii) an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,</li> </ul> </li> <li>(b) for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the Rural Fires Act 1997), the APZ provisions must be complied with,</li> <li>(c) contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks,</li> </ul>	<p>The Strategic Bush Fire Study will ensure the development is provided with appropriate APZs, access including perimeter roads, access to water, and appropriately designed electricity and gas supplies.</p>

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DIRECTION			COMMENTS
No.	Applicability	Provision	
		(d) contain provisions for adequate water supply for firefighting purposes, (e) minimise the perimeter of the area of land interfacing the hazard which may be developed, (f) introduce controls on the placement of combustible materials in the Inner Protection Area.	
		A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the council has obtained written advice from the Commissioner of the NSW Rural Fire Service, to the effect that, notwithstanding the non-compliance, the NSW Rural Fire Service does not object to the progression of the planning proposal.	N/A – not inconsistent with the direction.
<b>5. Regional Planning</b>			
<b>5.10 Implementation of Regional Plans</b>	This direction applies to land to which a Regional Plan has been released by the Minister for Planning.	Planning proposals must be consistent with a Regional Plan released by the Minister for Planning.	The PP is consistent with the NENW Regional Plan as outlined in Table 5.
		A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Secretary of the Department of Planning and Environment (or an officer of the Department nominated by the Secretary), that the extent of inconsistency with the Regional Plan:	N/A – not inconsistent with the direction.

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DIRECTION			COMMENTS
No.	Applicability	Provision	
		(a) is of minor significance, and (b) the planning proposal achieves the overall intent of the Regional Plan and does not undermine the achievement of its vision, land use strategy, goals, directions or actions.	
<b>6. Local Plan Making</b>			
<b>6.1 Approval and Referral Requirements</b>	This direction applies when a relevant planning authority prepares a planning proposal.	<p>A planning proposal must:</p> <p>(a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and</p> <p>(b) not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of:</p> <p>(i) the appropriate Minister or public authority, and</p> <p>(ii) the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General),</p> <p>prior to undertaking community consultation in satisfaction of section 57 of the Act, and</p> <p>(c) not identify development as designated development unless the relevant planning authority:</p> <p>(i) can satisfy the Director-General of the</p>	The PP does not include any provisions requiring the concurrence, consultation or referral of development applications to a Minister or public authority.

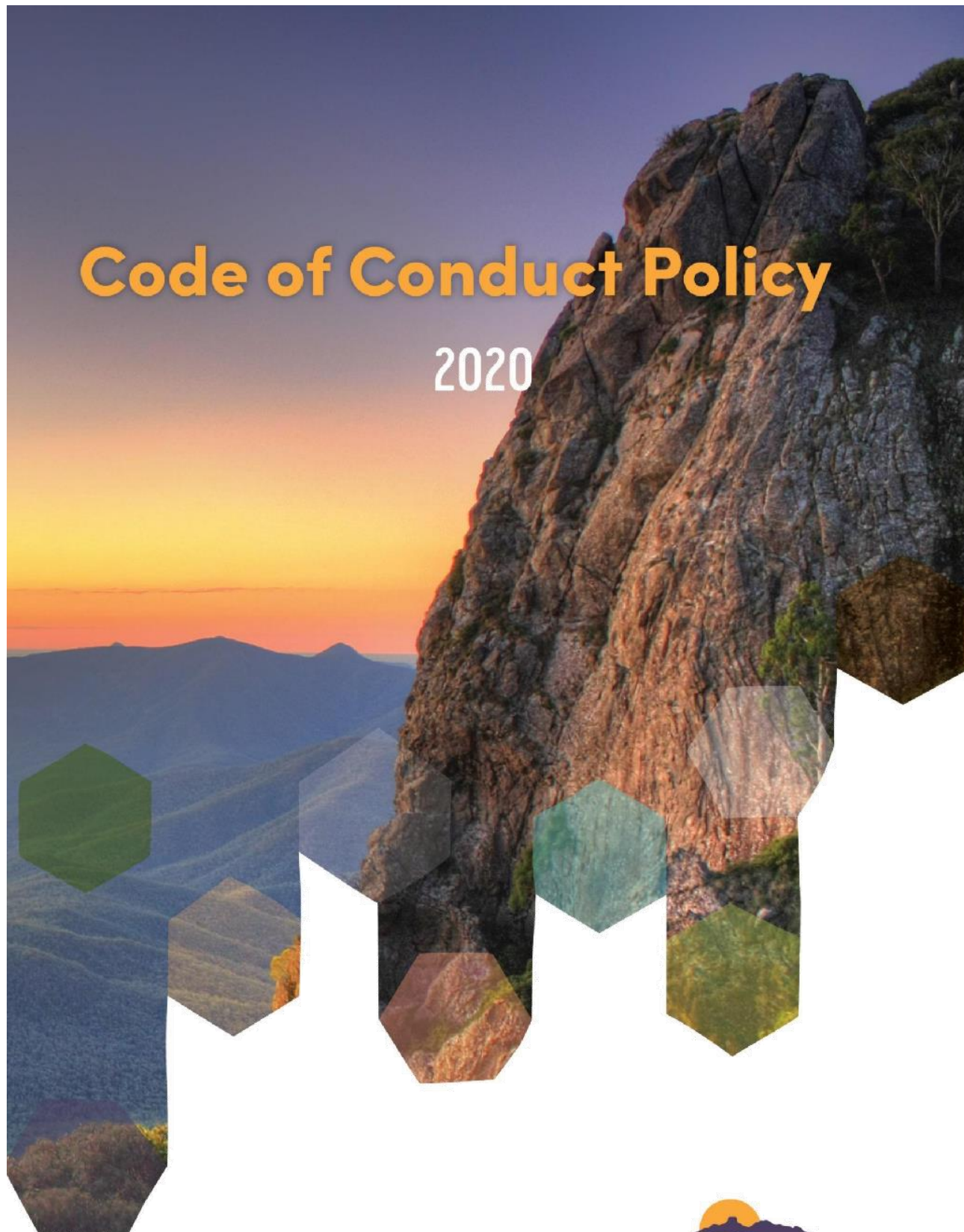
Planning Proposal – Northern NSW Inland Port  
Yarrie Lake Road, Narrabri

Table 7: Consideration of Ministerial Directions

DIRECTION			COMMENTS
No.	Applicability	Provision	
		<p>Department of Planning (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and</p> <p>(ii) has obtained the approval of the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of section 57 of the Act.</p>	
		A planning proposal must be substantially consistent with the terms of this direction.	N/A – not inconsistent with the direction.

# Code of Conduct Policy

## 2020



**Responsible Department:** Corporate and Community Services  
**Responsible Section:** Governance  
**Responsible Officer:** Director Corporate and Community Services

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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 2005* ("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)
- act in a way that enhances public confidence in local government.

This Code must be published and maintained as a current document and must be noted in accordance with Narrabri Shire Council's Complaints Handling Policy and Procedure.

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 (e.g. 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:

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 4000 of the LGA
LGA	<i>Local Government Act 1993</i>

local planning panel	a local planning panel constituted under the <i>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 Local Government (General) Regulation 2005
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* (WH&S Act). You must comply with your duties under the WH&S 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 WH&S 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 WH&S 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 \$50. 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 \$50
  - b) gifts of alcohol that do not exceed a value of \$50
  - c) ties, scarves, coasters, tie pins, diaries, chocolates or flowers or the like
  - d) prizes or awards that do not exceed \$50 in value.

#### **Gifts and benefits of more than token value**

- 6.9 Gifts or benefits that exceed \$50 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 \$50, 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 \$50 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 a 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*.

**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 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 any)	Nature of interest (if any)	Description of position (if any)	Description of principal objects

interest or held a position at the  
return date/at any time since 30  
June

(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

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 <sup>1</sup>	
Nature of the land that is subject to a change in zone/planning control by the proposed LEP (the subject land) <sup>2</sup> <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>	
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>	

<sup>1</sup> 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.

<sup>2</sup> 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.

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]

## Procedures for the Administration of the Narrabri Shire Council Code of Conduct Policy

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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 2005* ("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 (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:

LGA	the <i>Local Government Act 1993</i>
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
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
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 4000 of the LGA
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 2005</i>
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 by resolution establish a panel of conduct reviewers.
- 3.2 The council may by resolution 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 by resolution. 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 three 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*. 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 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 26 of the *Public Interest Disclosures Act 1994*.

#### 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 Chief Executive of 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 investigation, 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 investigation, 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 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 at least 14 days or such other period 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 at least 14 days or such other period 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 at least 14 days or such other period 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 a draft 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 at least 14 days or such other period 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 at least 14 days or such other period 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 Where the investigator determines that the conduct investigated constitutes a breach of the code of conduct, the investigator may make one or more of the following recommendations:
- a) that the council revise any of its policies, practices or procedures
  - b) that the respondent undertake any training or other education relevant to the conduct giving rise to the breach
  - c) that the respondent be counselled for their conduct
  - d) that the respondent be removed from membership of a committee of the council or any other body or organisation that the respondent serves on as the council's representative
  - e) that the respondent gives an undertaking not to repeat the offending behaviour in such time and form specified by the recommendation

- f) that the respondent apologise to any person or organisation affected by the breach in such a time and form specified by the recommendation
- g) that findings of inappropriate conduct be made public by publishing the investigator's findings and determination in the minutes of the council meeting at which the matter is considered
- h) in the case of a breach by the general manager, that action be taken under the general manager's contract
- i) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the LGA
- j) 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.

7.37 Where the investigator determines that the conduct investigated does not constitute a breach of the code of conduct, the investigator may make one or more of the following recommendations:

- a) that the council revise any of its policies, practices or procedures
- b) that a person or persons undertake any training or other education.

7.38 In making a recommendation under clause 7.36, the investigator may have regard to the following:

- a) the seriousness of the breach
- b) whether the breach can be easily remedied or rectified
- c) whether the respondent has remedied or rectified their conduct
- d) whether the respondent has expressed contrition
- e) whether there were any mitigating circumstances
- f) the age, physical or mental health or special infirmity of the respondent
- g) whether the breach is technical or trivial only
- h) any previous proven breaches
- i) whether the breach forms part of an ongoing pattern of behaviour
- j) the degree of reckless intention or negligence of the respondent
- k) the extent to which the breach has affected other parties or the council as a whole
- l) the harm or potential harm to the reputation of the council or local government in general arising from the conduct
- m) whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny
- n) whether an educative approach would be more appropriate than a punitive one
- o) the relative costs and benefits of taking formal disciplinary action as opposed to taking no action or taking informal action
- p) what action or remedy would be in the public interest.

7.39 Where the investigator proposes to make a recommendation under clause 7.36(j), 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.

7.40 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.

- 7.41 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 or recommendations under clause 7.36, paragraph (a) only, the complaints coordinator must provide a copy of the investigator's report to the general manager. Where the general manager agrees with the recommendation/s, the general manager is responsible for implementing the recommendation/s.
- 7.45 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 7.36, paragraphs (b) or (c) only, 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. The general manager is responsible for arranging the implementation of the recommendation/s where the report relates to a councillor's conduct. The mayor is responsible for arranging the implementation of the recommendation/s where the report relates to the general manager's conduct.
- 7.46 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 7.36, paragraphs (d) to (j) (whether or not in conjunction with recommendations made under

clause 7.36, paragraphs (a) to (c)), 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.

### Consideration of the final investigation report by council

- 7.47 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 7.36, paragraphs (d) to (j) (whether or not in conjunction with recommendations made under clause 7.36, paragraphs (a) to (c)).
- 7.48 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.
- 7.49 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.
- 7.50 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/s.
- 7.51 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.
- 7.52 The council must not invite submissions from other persons for the purpose of seeking to rehear evidence previously considered by the investigator.
- 7.53 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.
- 7.54 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.
- 7.55 The investigator may make additional enquiries for the purpose of preparing a supplementary report.
- 7.56 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.
- 7.57 The investigator is not obliged to notify or consult with any person prior to submitting the supplementary report to the complaints coordinator.

- 7.58 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.
- 7.59 A council may by resolution impose one or more of the following sanctions on a respondent:
- a) that the respondent undertake any training or other education relevant to the conduct giving rise to the breach
  - b) that the respondent be counselled for their conduct
  - c) that the respondent be removed from membership of a committee of the council or any other body or organisation that the respondent serves on as the council's representative
  - d) that the respondent gives an undertaking not to repeat the offending behaviour in such time and form specified by the resolution
  - e) that the respondent apologise to any person or organisation affected by the breach in such a time and form specified by the resolution
  - f) that findings of inappropriate conduct be made public by publishing the investigator's findings and determination in the minutes of the meeting
  - g) in the case of a breach by the general manager, that action be taken under the general manager's contract for the breach
  - h) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the LGA
  - i) 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.
- 7.60 The council is not obliged to adopt the investigator's recommendation/s. Where the council proposes not to adopt one or more of the investigator's recommendation/s, the council must resolve not to adopt the recommendation/s and state in its resolution the reasons for its decision.
- 7.61 Where the council proposes to impose a sanction on the respondent under clause 7.59 that is different to the sanction recommended by the investigator in their final report, the council must state in its resolution the reasons for its decision.
- 7.62 Where the council resolves not to adopt the investigator's recommendation/s or imposes a sanction on the respondent under clause 7.59 that is different to the sanction recommended by the investigator, 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 7.59, paragraph (i), 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.
- 8.20 In the case of a sanction implemented by the general manager or mayor under clause 7.45, where the Office recommends that the decision to impose a sanction be reviewed:
- a) the complaints coordinator must provide a copy of the Office's determination in relation to the matter to the general manager or the mayor, and
  - b) the general manager or mayor must review any action taken by them to implement the sanction, and
  - c) the general manager or mayor must consider the Office's recommendation in doing so.
- 8.21 In the case of a sanction imposed by the council by resolution under clause 7.59, 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.

8.22 Where, having reviewed its previous decision in relation to a matter under clause 8.21, 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 at least 14 days or such other period 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.

## History

Minute Number	Meeting Date	Description of Change
130/2019	June, 25 2019	Adopted
	September, 4 2020	OLG Amendments

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9/8/2020

Cornish v Secretary, Department of Planning, Industry and Environment - NSW Caselaw



Summary

## Supreme Court New South Wales

**Medium Neutral Citation:****Cornish v Secretary, Department of Planning, Industry and Environment [2019] NSWSC 1134****Hearing dates:**

22 August 2019

**Decision date:**

03 September 2019

**Jurisdiction:**

Common Law

**Before:**

Basten J

**Decision:**

- (1) Set aside the order of the Civil and Administrative Tribunal made on 12 July 2018.
- (2) In lieu thereof, order that the proceedings commenced in the Tribunal by the predecessor to the Secretary be dismissed.
- (3) Order that the Secretary pay Mr Cornish's costs in this Court.

**Catchwords:**

ADMINISTRATIVE LAW – review of decision of Civil and Administrative Tribunal (NCAT) – disciplinary action against local councillor for breaches of Code of Conduct – validity of statutory powers of Council – validity of referral to NCAT – jurisdictional error in disciplining for breach of invalid provision of Code – jurisdiction to inquire into underlying conduct

LOCAL GOVERNMENT – powers of local council to discipline councillor – power to censure conferred by statute – validity of further powers contained in Code made under Regulation – whether additional powers consistent with scheme of legislation – Council required councillor to acknowledge breach, apologise, undertake not to repeat conduct and undertake training – councillor referred to Chief Executive for failing to comply – matter referred to NCAT for consideration – powers of NCAT

STATUTORY INTERPRETATION – conferral of limited power to take disciplinary action – further powers conferred by code made under regulation – whether code consistent with scheme of legislation

<https://www.caselaw.nsw.gov.au/decision/5d6c53cce4b0c3247d7117d8>

1/24

9/8/2020

Cornish v Secretary, Department of Planning, Industry and Environment - NSW Caselaw

<b>Legislation Cited:</b>	Civil and Administrative Tribunal Act 2013 (NSW), Sch 5, cl 29 Independent Commission Against Corruption Act 1988 (NSW) Local Government Act 1993 (NSW), ss 360, 440, 440AA, 440F, 440G, 440H, 440I, 440J, 440L, 440N, 482A, 490B; Ch 14, Pt 1, Divs 1, 2, 3; Pts 3, 4, 5 Supreme Court Act 1970 (NSW), s 69  Local Government (General) Regulation 2005 (NSW), cl 193, 255-258	
<b>Cases Cited:</b>	Director-General, Department of Premier and Cabinet; Re Councillor Martin Ticehurst, LGPIDT 06/2012, 27 June 2013 Kirk v Industrial Court of New South Wales (2010) 239 CLR 531; [2010] HCA 1 Phillips v Director General, Department of Premier and Cabinet [2014] NSWCATOD 48	
<b>Category:</b>	Principal judgment	
<b>Parties:</b>	Marcus Cornish (Plaintiff) Secretary, Department of Planning, Industry and Environment (Defendant)	
<b>Representation:</b>	Counsel: P E King (Plaintiff) B J Tronson / D J McDonald-Norman (Defendant)  Solicitors: Robert Balzola & Associates (Plaintiff) Office of Local Government (Defendant)	
<b>File Number(s):</b>	2018/234875	
<b>Decision under appeal</b>	<b>Court or tribunal:</b>	Civil and Administrative Tribunal of NSW
<b>Jurisdiction:</b>	Occupational Division	
<b>Citation:</b>	[2018] NSWCATOD 110	
<b>Date of Decision:</b>	12 July 2018	
<b>Before:</b>	R C Titterton, Principal Member	
<b>File Number(s):</b>	2017/212948	

**JUDGMENT**

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**BASTEN J:** Marcus Cornish is a councillor on Penrith City Council. He has been a member of the Council since 2012. Almost five years ago, in November 2014, the Council was debating whether to consent to a development application for a place of worship and community centre in Kemps Creek. The application was approved at a Council meeting held on 24 November 2014; on 8 December 2014 the Council considered a rescission motion.

- 2 On 19 December 2014 a complaint was made concerning Mr Cornish's conduct at these meetings, alleging breaches of the Council's Code of Conduct. Through a process which will be outlined below, some three and a half years later, on 12 July 2018, the Civil and Administrative Tribunal ("NCAT") imposed a disciplinary sanction on Mr Cornish, suspending his right to payment of emoluments for a period of three months from the date of the decision.
- 3 On 31 July 2018 Mr Cornish brought an appeal from that decision pursuant to Sch 5, cl 29(2)(b) of the *Civil and Administrative Tribunal Act 2013* (NSW) ("the Tribunal Act"). There is no appeal to an Appeal Panel of NCAT, but only to this Court. In February 2019 the summons was amended to add a claim for relief pursuant to s 69 of the *Supreme Court Act 1970* (NSW) in the supervisory jurisdiction of the Court, quashing the decision of NCAT. There is no need to stay to consider whether either jurisdiction is inappropriate. It is convenient to refer to Mr Cornish hereafter as "the applicant". For reasons which follow, the decision of the Tribunal must be set aside, with consequential orders as to costs.
- 4 Two changes to the legislative and administrative regimes took place during the long procedural history of this matter. First, in late 2014 when the conduct occurred, disciplinary functions were conferred on the Director-General of the Department of Local Government. In July 2017, the matter was referred to NCAT for consideration by the Chief Executive, Office of Local Government. That office was abolished and replaced by the Department of Planning, Industry and Environment with effect from 1 July 2019.<sup>[1]</sup> The defendant in the current proceeding is the Secretary of that Department.
- 5 Secondly, the statutory scheme was amended in November 2015 by the *Local Government Amendment (Councillor Misconduct and Poor Performance) Act 2015* (NSW). The Act commenced on 13 November 2015. That date was after the misconduct complained of on the part of the applicant, but before the matter was dealt with by the Chief Executive, Office of Local Government. Where the legislative provisions as in force prior to the amendments are the applicable provisions, that will be noted in setting out the relevant sections below. Where no relevant change has occurred, the current version of the legislation will be set out.

### Factual background

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The conduct of the applicant underlying the disciplinary steps taken against him may be summarised briefly and in terms which do not purport to resolve disputes as to the precise order of events, nor what was said. The first matter arose at an ordinary Council meeting on 24 November 2014. Whilst a speaker was addressing the Council in support of a motion that a development application for a Muslim place of worship in Kemps Creek be granted consent, the applicant asked the speaker if she lived in the Penrith District. The mayor directed that the question need not be answered and the applicant rose to take a point of order. The mayor then requested the applicant to resume his seat on two occasions. He did not immediately sit down.

- 7 The second incident occurred at an extraordinary meeting on 8 December 2014 during discussion of the rescission motion, when another person was addressing the Council in favour of the development. The applicant asked him whether he believed in Sharia law, a question which was said to have "incited the crowd in the gallery." [2] The mayor rose to intervene and the applicant rose to take a point of order. It was alleged that the applicant continued to stand and pursue the matter despite requests by the mayor, who was also on his feet, for him to be seated and silent.
- 8 On 19 December 2014 a complaint with respect to these incidents was referred to a member of the Council's "Code of Conduct Review Committee", pursuant to cl 6.1 of the Procedures for the Administration of Model Code of Conduct (the Procedures). A conduct reviewer determined that an investigation should be carried out pursuant to cl 6.10(e) of the Procedures. The final investigation report found that the conduct in question constituted a breach of cl 1.9(a) and (b) (of the meeting code), and 3.3, 3.4, 3.5, 3.7, 6.5 and 6.6 of the Model Code of Conduct, which had been adopted by the Council. (The terms of these clauses are not presently relevant.)
- 9 The applicant was not satisfied with the findings of the reviewer and sought to exercise an internal right of review by the Department, provided under Pt 9 of the Procedures, apparently in relation to an interim report prepared by the reviewer. The Pt 9 review was rejected, and is of no immediate relevance except to the extent (if at all) that it provided a form of merit review of the conduct reviewer's investigation and findings. Such a review is, however, limited to an assertion that the reviewer has "failed to comply with a requirement prescribed under these procedures". A Pt 9 review can only be obtained from a "final report" and not where the "sanction imposed" involves censure and referral to the Department for consideration of misconduct proceedings. This matter fell into the latter category.
- 10 On 21 April 2015 the investigator made recommendations for certain steps to be taken in accordance with cl 8.35 of the Procedures. The recommendations were as follows:

**9.1.1 It is recommended that** Councillor Cornish be formally censured for the breach under section 440G of the *Local Government Act 1993* ("the Act") at a meeting duly constituted in accordance with section 440G of the Act.

**9.1.2 It is recommended that** findings of inappropriate conduct by Councillor Cornish at the Council meetings held on 24 November and 8 December 2014 be made public at the next available duly constituted Council meeting.

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**9.1.3 It is recommended that** at the next available duly constituted Council meeting, Councillor Cornish be required to:

- a. Publicly acknowledge the findings of breach of clauses 3.1(3), 3.3 and 6.7(a), (e), (g) of the *Model Code* and is also to give an undertaking to Council that he will avoid similar breaches in future;
- b. Offer an unqualified apology to the Mayor, Council and the Penrith community;
- c. Give an undertaking that he will not make negative or derogatory comments regarding the complaint, the outcome of the *Code of Conduct* process publicly including to the media.

...

**9.1.5 It is recommended that** Councillor Cornish be required to attend and to give an undertaking that he will participate in the subject training.

...

**9.1.7 It is recommended that** the above actions be completed within 3 months of the date of this report."

- 11 At its meeting on 27 July 2015, the Council proceeded in two stages. First, a Committee of the Whole adopted a recommendation, the operative part of which read:

"CW11 That:

1. The information contained in the report on Code of Conduct Matter concerning Councillor Marcus Cornish be received.
2. Council adopt all of the recommendations made by the Investigator within the Final Investigation Report, specifically that:
  - a. Councillor Cornish be formally censured for the breach under section 440G of the *Local Government Act 1993* ('the Act') at a meeting duly constituted in accordance with section 440G of the Act.
  - b. Findings of inappropriate conduct by Councillor Cornish at the Council meetings held on 24 November and 8 December 2014 be made public at the next available duly constituted Council meeting.
  - c. At the next available duly constituted meeting, Councillor Cornish be required to:
    - i. Publically acknowledge the findings of breach of clauses 3.1(e), 3.3 and 6.7(a), (e), (g) of the *Model Code* and is also to give an undertaking to Council that he will avoid similar breaches in future.
    - ii. Offer an unqualified apology to the Mayor, Council and the Penrith community.
    - iii. Give an undertaking that he will not make negative or derogatory comments regarding the complaint, the outcome or the Code of Conduct process publically including to the media.

Secondly, the Council adopted the recommendation of the Committee. (The Council resolution was referred to in these proceedings as "resolution CW11".)

- 12 The applicant failed to acknowledge the findings of breach, failed to offer the unqualified apology and to give the required undertaking; he also refused to participate in code of conduct training.
- 13 Following the failure of the applicant to take the necessary steps within the three month period specified in the resolution, on 30 October 2015 the Council's general manager referred the matter to the Office of Local Government as involving a possible breach of the misconduct provisions of the *Local Government Act 1993* (NSW). [3] The Acting Chief Executive of that Office found in May 2016 that there was sufficient evidence to conclude that the applicant, in failing to take the relevant steps, had breached cl 8.8 and 8.10 of the Code of Conduct. A breach of those provisions was said to constitute "misbehaviour of a councillor" within the terms of s 440F of the *Local Government Act*.

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- 14 On 10 July 2017 the Acting Chief Executive lodged with NCAT an application for disciplinary findings and orders, [4] alleging a breach of cl 8.10 (only) of the Penrith City Council Code of Conduct. The Council had adopted the Model Code, cl 8.10 of which read as follows:

"8.10 Where you are a councillor or the general manager, you must comply with any council resolution requiring you to take action as a result of a breach of this code."

- 15 The "action" which was particularised was the failure to comply with the requirements of acknowledgment, apology, and giving undertakings not to commenting and to undertaking a course of training, within the time specified.
- 16 The proceedings were heard by a principal member of the Occupational Division of NCAT (Mr R C Titterton) on 14 February and 20 April 2018. On 12 July 2018 the Tribunal made the following order:

"The respondent's right to payment is suspended for a period of three months from the date of these reasons."

### Issues on appeal or review

- 17 Of critical importance to the steps taken to discipline the applicant are the powers conferred on a council under the *Local Government Act*. The primary proposition relied on by the applicant was that the scheme of the Act did not permit the Code of Conduct and the Procedures to impose disciplinary penalties for the breach of their own provisions. If that proposition were made good, NCAT had no power to discipline the applicant for breach of sanctions invalidly imposed by the adoption of Council resolution CW11.
- 18 The second proposition relied on by the applicant was that, assuming the resolution was valid and acknowledging that the applicant had not complied with it, NCAT erroneously limited its jurisdiction to a consideration of those facts and declined to consider whether the sanctions imposed by the Council were appropriate, having regard to the conduct which occurred at the two Council meetings in 2014. If the applicant were successful on this ground, but not on the first ground, he accepted that the matter would need to be remitted to NCAT to complete the exercise of its functions.

### Powers of Council

- 19 Part 1 of Ch 14 of the *Local Government Act* is headed "Conduct". Division 1 deals with "Conduct generally" and includes ss 440 and 440AA set out below. Division 2 deals with "Serious corrupt conduct" and provides for circumstances in which both the Governor and the Minister may suspend, dismiss or disqualify a person from holding civic office (including a councillor). Those powers were not invoked in the present case. Division 3 is headed "Misconduct"; it provides for suspension of a councillor from civic office, either by the Secretary or by the Tribunal on referral by the Secretary. There is only one provision conferring powers on a council to deal with misbehaviour, namely s 440G, which, in November 2014, provided as follows:

#### **440G Formal censure of councillor for misconduct**

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- (1) A council may by resolution at a meeting formally censure a councillor for misconduct.
- (2) A formal censure resolution may not be passed except by a motion to that effect of which notice has been duly given in accordance with regulations made under section 360 and, if applicable, the council's code of meeting practice.
- (3) A council may pass a formal censure resolution only if it is satisfied that the councillor has engaged in misconduct on one or more occasions.
- (4) The council must specify in the formal censure resolution the grounds on which it is satisfied that the councillor should be censured.
- (5) A motion for a formal censure resolution may, without limitation, be moved on the report of a committee of the council and any such report must be recorded in the minutes of the meeting of the council.

- 20 The motion passed by the Council on 27 July 2015 included censure of the applicant. That step was one available to the Council: it did not form the basis of the proceedings in the Tribunal. The question is, on what basis did the Tribunal have power to make the other orders, requiring the applicant to take action of the kinds specified?
- 21 It should be noted that, pursuant to s 360 of the *Local Government Act*, a council was empowered to adopt a "code of meeting practice", which incorporated provisions in the regulations. That code dealt with "acts of disorder" at council meetings and conferred power on the Chair to require a councillor to apologise and to expel a person, including a councillor, from a meeting. [5] No action was taken under these provisions, although breaches of the code were noted by the conduct reviewer in her report.
- 22 In November 2014, s 440 and s 440AA provided for the prescription of model codes in the following terms:

#### **440 Codes of conduct**

- (1) The regulations may prescribe a model code of conduct (the **model code**) applicable to councillors, members of staff of councils and delegates of councils.
- (2) Without limiting what may be included in the model code, the model code may:
  - (a) relate to any conduct (whether by way of act or omission) of a councillor, member of staff or delegate in carrying out his or her functions that is likely to bring the council or holders of civic office into disrepute, and
  - (b) in particular, contain provisions for or with respect to conduct specified in Schedule 6A.
- (3) A council must adopt a code of conduct (the **adopted code**) that incorporates the provisions of the model code. The adopted code may include provisions that supplement the model code.
- (4) A council's adopted code has no effect to the extent that it is inconsistent with the model code as in force for the time being.
- (5) Councillors, members of staff and delegates of a council must comply with the applicable provisions of:
  - (a) the council's adopted code, except to the extent of any inconsistency with the model code as in force for the time being, and
  - (b) the model code as in force for the time being, to the extent that:
    - (i) the council has not adopted a code of conduct, or
    - (ii) the adopted code is inconsistent with the model code, or
    - (iii) the model code contains provisions or requirements not included in the adopted code.
- (6) A provision of a council's adopted code is not inconsistent with the model code merely because the provision makes a requirement of the model code more onerous for persons required to observe the requirement.

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(7) A council must, within 12 months after each ordinary election, review its adopted code and make such adjustments as it considers appropriate and as are consistent with this section.

(8) Nothing in this section or such a code gives rise to, or can be taken into account in, any civil cause of action, but nothing in this section affects rights or liabilities arising apart from this section.

(9) ...

#### **440AA Administration of code of conduct**

(1) The regulations may prescribe a procedure (the **model procedure**) for administering the model code referred to in section 440.

(2) The model procedure is to set out the procedures for dealing with alleged contraventions of the model code.

(3) A council must adopt a procedure (the **adopted procedure**) that incorporates the provisions of the model procedure. The adopted procedure may include provisions that supplement the model procedure.

(4) A council's adopted procedure has no effect to the extent that it is inconsistent with the model procedure as in force for the time being.

(5) Councillors, members of staff and delegates of a council must comply with the applicable provisions of:

(a) the council's adopted procedure, except to the extent of any inconsistency with the model procedure as in force for the time being, and

(b) the model procedure as in force for the time being, to the extent that:

(i) the council has not adopted the model procedure, or

(ii) the adopted procedure is inconsistent with the model procedure, or

(iii) the model procedure contains provisions or requirements not included in the adopted procedure.

(6) This section applies to an administrator of a council (other than an administrator appointed by the Minister for Primary Industries under section 66) in the same way as it applies to a councillor.

- 23 Pursuant to the Local Government (General) Regulation 2005 (NSW), as then in force, the Model Code of Conduct and the Procedures, as published in the Gazette on 7 December 2012, were prescribed for the purposes of those provisions: cl 193. The introduction to the Model Code stated:

"Failure by a councillor to comply with the standards of conduct prescribed under this Code constitutes misconduct for the purposes of the Act. The Act provides for a range of penalties that may be imposed on councillors for misconduct, including suspension or disqualification from civic office."

- 24 As noted above, Div 3 is entitled "Misconduct"; in November 2014 the term was defined in s 440F as follows:

#### **440F Definitions**

(1) In this Division:

**misconduct** of a councillor means any of the following:

(a) a contravention by the councillor of this Act or the regulations,

(b) a failure by the councillor to comply with an applicable requirement of a code of conduct under section 440,

(c) a failure by a councillor to comply with an order issued by the Director-General under this Division,

(d) an act of disorder committed by the councillor at a meeting of the council or a committee of the council.

(2) However, a contravention of the disclosure requirements of Part 2 is not misconduct.

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**Note.** A contravention of the disclosure requirements of Part 2 is dealt with under other provisions of this Chapter.

(3) A reference in this Division to misconduct includes a reference to misconduct that consists of an omission or failure to do something.

- 25 The significant feature of this definition is that misconduct means, amongst other things, a failure to comply with a requirement of a code of conduct: s 440F(1)(b). There follows in Division 3 a carefully modulated scheme for dealing with complaints of misconduct.
- 26 First, as already noted, there is a power conferred on a council to censure a councillor for misconduct: s 440G, set out at [19] above.
- 27 Secondly, powers are conferred on the Departmental Chief Executive, [6] to conduct an investigation to determine whether a councillor has engaged in misconduct. Such an investigation may be carried out “if the general manager of a council refers an allegation of misconduct by a councillor to the Departmental Chief Executive”: s 440H(2)(b). The council itself may, by resolution, refer an allegation of misconduct: s 440H(2)(c). In the present case, the step was taken by the general manager.
- 28 Thirdly, the Departmental Chief Executive may arrange for a “departmental report” to be prepared in relation to an investigation: s 440H(5). A report may also be prepared without an investigation where the Chief Executive is satisfied that the report may be based on the findings of an investigation conducted by or on behalf of the council: s 440H(5A)(a). [7]. That occurred in the present case. Importantly, “[t]he preparation of a departmental report is a pre-requisite to a decision by the Departmental Chief Executive to take disciplinary action against a councillor”: s 440H(6). [8]
- 29 Fourthly, the Departmental Chief Executive is given power to take disciplinary action himself or herself for misconduct, if satisfied that a councillor has engaged in misconduct and that disciplinary action is warranted. The forms of disciplinary action are identified in the following terms:

**440I Director-General may take disciplinary action for misconduct**

...

(2) The Director-General may take one or more of the following actions (and any such action is disciplinary action):

- (a) counsel the councillor,
- (b) reprimand the councillor,
- (c) by order, direct the councillor to cease engaging in the misconduct,
- (d) by order, direct the councillor to apologise for the misconduct in the manner specified in the order,
- (e) by order, direct the councillor to undertake training,
- (f) by order, direct the councillor to participate in mediation,
- (g) by order, suspend the councillor from civic office for a period not exceeding 3 months,
- (h) by order, suspend the councillor’s right to be paid any fee or other remuneration, to which the councillor would otherwise be entitled as the holder of the civic office, in respect of a period not exceeding 3 months (without suspending the councillor from civic office for that period).

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The relevance of s 440I(2) is that it identifies steps which may be taken, by way of disciplinary action, including, in pars (d), (e) and (f), action of the same kinds as those which the Council purported to take in the present case.

- 31 Fifthly, there are (and were then) other options available to the Departmental Chief Executive:

**440J Alternatives to disciplinary action by the Departmental Chief Executive**

- (1) The Departmental Chief Executive may before, during or after an investigation into an allegation of misconduct by a councillor decide to take no further action against the councillor, if satisfied that no further action is warranted.
- (2) The Departmental Chief Executive may, instead of taking disciplinary action against a councillor:
  - (a) refer the matter to the council concerned with recommendations as to how the council might resolve the matter, by alternative dispute resolution or otherwise, or
  - (b) refer the matter to the Civil and Administrative Tribunal for consideration.
- (3) A matter is referred to the Tribunal under this section by means of a report presented to the Tribunal by the Departmental Chief Executive. A report may contain or be accompanied by such material and observations as the Departmental Chief Executive thinks fit.
- (4) The Departmental Chief Executive is to notify the councillor concerned of any decision to refer the matter to the Tribunal.
- (5) The regulations may make provision for or with respect to the reference of matters to the Tribunal under this section.

- 32 In the present case, the Departmental Chief Executive referred "the matter" to NCAT "for consideration", pursuant to s 440J(2)(b). The scope of the referral was the subject of the second ground relied on by the applicant.
- 33 Finally, Pt 1, Div 2 of Ch 14, dealing with serious corrupt conduct, provides a link between the provisions of the *Independent Commission Against Corruption Act 1988* (NSW) and powers to suspend, dismiss and disqualify for a period of up to five years from civic office, if the person has been the subject of an adverse finding by the Commission. These powers, which are not engaged in the present case, are to be contrasted with the powers and procedures with respect to misconduct generally.
- 34 Although not directly relevant to this case, s 440L provided that a councillor against whom disciplinary action had been taken by the Departmental Chief Executive, could appeal to NCAT. [9] The nature of such an appeal was discussed in another decision of NCAT relied on by the applicant.
- 35 The applicant submitted that the referral to NCAT was not under s 440J, but under a different provision, namely s 440N, which applied to "former councillors". He submitted that he was, by the time the matter came to the Chief Executive, a "former councillor" because he had served the term during which misconduct occurred and had been re-elected. It is not necessary to determine whether that is so for present purposes; s 440J is stated to apply to the referral of the matter to the Tribunal in any event: s 440N(4). However, the better view is that the applicant was not (and is not) a "former councillor", but a serving councillor. On that basis, s 440N was not engaged.

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Finally, Ch 14, Pt 3 deals with proceedings before NCAT. Relevantly for present purposes, the powers of NCAT with respect to misconduct matters are set out in s 482A:

**482A Decision of NCAT—misconduct matters**

- (1) This section applies where a matter has been referred to the Civil and Administrative Tribunal under section 440J.
- (2) The Tribunal may, if it finds that the behaviour concerned warrants action under this section:
  - (a) counsel the councillor, or
  - (b) reprimand the councillor, or
  - (c) suspend the councillor from civic office for a period not exceeding 6 months, or
  - (c1) disqualify the councillor from holding civic office for a period not exceeding 5 years, or
  - (d) suspend the councillor's right to be paid any fee or other remuneration, to which the councillor would otherwise be entitled as the holder of the civic office, in respect of a period not exceeding 6 months (without suspending the councillor from civic office for that period).
- (3) In determining which action, if any, to take against a councillor, the Tribunal may take into account any previous incidents of misconduct by the councillor, any disciplinary action previously taken against the councillor and any other relevant matters.
- (4) In this section, **councillor** includes a former councillor.

- 37 Aspects of this statutory scheme for disciplinary action are unclear. For example, the reason for conferring on the Chief Executive a power to counsel or reprimand a councillor, but not to censure, whereas a council is given power to censure but not to counsel or reprimand, is obscure. It may be that the different formulations of broadly similar actions turn on the identity of the party exercising the power. However, what is quite clear is that the directions contained in s 440I(2)(c)-(f) and the powers of suspension granted under pars (g) and (h) are distinct and more serious forms of disciplinary action than the power of censure conferred on the council. A regulation which sought to subvert that scheme by conferring on the council powers only conferred by the legislature on the Chief Executive would, absent express authority, be inconsistent with the statute and, according to conventional principles, invalid. However, s 490B, which appears in Pt 5 of Ch 14 reads as follows:

**490B Certain regulations not affected**

Nothing in this Chapter affects any regulations made, or the power to make regulations, with respect to the conduct of meetings of a council or a committee of a council, and in particular with respect to:

- (a) the keeping of order at any such meetings, or
- (b) censuring a councillor in connection with a breach of a council's code of meeting practice.

It may be noted that the regulations separately provide for a code of conduct for council meetings; the reference to the power of censure is consistent with the power conferred by s 440G.

- 38 The same principle applies to the powers conferred on NCAT, which include a power to counsel and reprimand, but extend to suspension from civic office for a period not exceeding six months and disqualification from holding civic office for a period not

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exceeding five years. Any regulation which purported to permit the Chief Executive (or a council) these extended powers of disciplinary action would be invalid.

### Code of Conduct and Procedures

- 39 Against this statutory background, it is convenient to turn to the content of the Model Code of Conduct and the Procedures, as in force at the time of the impugned conduct of the applicant.
- 40 The Model Code of Conduct is designed, amongst other purposes, to ensure that council officers act in a way “that enhances public confidence in the integrity of local government.” [10]. It includes provisions prohibiting behaviour which “causes, comprises or involves intimidation, harassment or verbal abuse” (cl 3.1(e)) and positive obligations to “treat others with respect at all times” (cl 3.3). Part 4 deals with conflicts of interest and Pt 5 with personal benefits. Part 6 includes obligations which will arise in relation to other public officials, including a requirement to show respect to the chair, other council officials and members of the public present during council meetings: cl 6.6. Clause 6.7 prohibits a number of “inappropriate actions”. Complaints about the applicant included alleged breaches of aspects of Pts 3 and 6. However, neither the purpose or the construction of these provisions is presently important.
- 41 Of central importance is Pt 8, entitled “Maintaining the integrity of this Code”. It requires that a councillor not engage in conduct that is “likely to undermine confidence in the integrity of this Code or its administration.” That includes an obligation not to make a complaint for an improper purpose or take reprisals for a complaint that has been made against the officer. Clause 8.7 prohibits conduct “calculated to impede or disrupt the consideration of a matter under this Code”; cl 8.8 requires compliance with a “reasonable and lawful request” made by a person exercising a function under the Code and cl 8.9 requires compliance with a “practice ruling made by the Division of Local Government.” Clause 8.10 has been set out above and it will be necessary to return to it in due course.
- 42 The “Model Code Procedures” were made pursuant to s 440AA of the *Local Government Act*. They require that a council establish a panel of conduct reviewers. A complaint of a breach of the Code of Conduct may be made under Pt 4 and the manner in which the complaints are to be handled is set out in Pt 5. References in the Code to the “Division” referred to the Division of Local Government in the Department of Premier and Cabinet. Complaints about councillors were required to be dealt with by the general manager of the council, in the following manner:
- 5.16 The general manager must refer the following code of conduct complaints about councillors to the Division:
- a) complaints alleging a breach of the pecuniary interest provisions of the Act,
  - 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 reportable political donations (see section 328B),
  - c) complaints alleging a breach of Part 8 of the code of conduct relating to the maintenance of the integrity of the code, and

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d) complaints the subject of a special complaints management arrangement with the Division under clause 5.40.

- 43 The complaint concerning the conduct of the applicant was referred to a conduct reviewer under cl 6.2; she made a preliminary assessment determining that it should be investigated, pursuant to cl 6.18. The investigation itself was undertaken pursuant to Pt 8 of the Procedures.
- 44 The process of investigation results in a "draft investigation report"; such a report was prepared by the conduct reviewer on 22 March 2015. That report was required to be submitted to the councillor affected for consideration and submissions. Following receipt of those submissions, a "final investigation report" is prepared pursuant to cl 8.32, unless the investigation is discontinued. The final report is required to include findings of fact, a determination as to whether there has been a breach of the Code of Conduct and reasons for that determination: cl 8.34. The final investigation report in the present case was dated 21 April 2015.
- 45 The powers of the conduct reviewer, also referred to as the investigator, and the immediate source of the recommendations in the present case, were to be found in cl 8.35 of the Procedures which read as follows:

"8.35 Where the investigator determines that the conduct investigated constitutes a breach of the code of conduct, the investigator may make one or more of the following recommendations:

- a) that the council revise any of its policies or procedures,
- b) that the subject person undertake any training or other education relevant to the conduct giving rise to the breach,
- c) that the subject person be counselled for their conduct,
- d) that the subject person apologise to any person or organisation affected by the breach in such a time and form specified by the recommendation,
- e) that findings of inappropriate conduct be made public,

...

g) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the Act

h) 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 Act, and
- ii. that the matter be referred to Division for further action under the misconduct provisions of the Act."

- 46 Part 8 then makes specific provision as to the consequences of recommendations under par (a) (cl 8.41), pars (b) or (c) (cl 8.42) and pars (d)-(h) (cl 8.43). With respect to the last category, the following provisions related to consideration of the report by Council:

"8.44 The role of the council in relation to a final investigation report is to impose a sanction where an investigator determines that there has been a breach of the code of conduct and makes a recommendation in their final report under clause 8.35, paragraphs (d) to (h).

...

8.47 Prior to imposing a sanction, the council must provide the subject person with an opportunity to make an oral submission to the council. The subject person is to confine their submission to addressing the investigator's recommendation/s."

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Clause 8.56 provides that “[a] council may by resolution impose one or more of the following sanctions”, which mirror the form of the recommendations under cl 8.35.

Clause 8.57 provides that the council is not obliged to adopt the investigator's recommendations, but where it does not, it must state in a resolution the reasons for its decision.

- 48 There is a power in Pt 9 for a councillor subject to a “sanction imposed under Part 8” to seek review, not of the council's resolution, but of the investigator's determination and recommendation, such review to be carried out by the Division. The grounds of review are limited to the following, pursuant to cl 9.7:

- “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 the council has failed to comply with a requirement under these procedures in imposing a sanction.”

### Consistency of provisions of Codes and the Act

- 49 There can be no objection to a resolution in the terms of pars (a) or (g), nor indeed par (h)(i) and (ii). Whether the referral to the Chief Executive in this case was in part a referral to consider further action with respect to the first order misconduct was unclear. The referral by the Chief Executive to NCAT was in terms directed to the second order misconduct, namely failure to comply with the resolution CW11, as required by cl 8.10.
- 50 Putting to one side the terms of cl 8.35 of the Procedures, it is inconsistent with the structure of the legislation that a council can confer on itself a power to discipline a councillor. No doubt it is true that the steps which the Council required the applicant to undertake were to be found in a “resolution requiring you to take action as a result of a breach of this code”, within the wording of cl 8.10 of the Code. However, the power of the Council to pass such a resolution must be found elsewhere: cl 8.10 must be read as confined to resolutions otherwise within the power of the Council.
- 51 The Procedures do not provide a source of disciplinary powers: cl 8.35 of the Procedures should not be read as conferring a disciplinary power on the Council which is not to be found in the legislation. Some steps, such as the publication of a report, may be reasonably incidental to other powers of the Council, including the power to refer a matter for independent review and the power to censure a councillor as a result of that review. However, the incidental powers do not extend to requiring a councillor to take the steps identified in pars (b), (c) or (d). There are a number of reasons for adopting that construction.
- 52 First, s 440AA permitted the regulations to “prescribe a procedure... for administering the model code”. There were to be procedures “for dealing with alleged contraventions of the model code.” Those purposes should not be read as permitting Procedures which conferred disciplinary powers on a council.

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Secondly, a construction which did permit the Procedures to confer disciplinary powers would be inconsistent with the structure of Ch 14, Pt 1, Div 3, which limits the disciplinary power of a council to that of formal censure for misbehaviour. There is no reason to read s 440AA as providing a power by regulation to go beyond that specific power.

- 54 Thirdly, to allow the combination of cl 8.35 of the Procedures and cl 8.10 of the model code to create a new scheme of misconduct by regulation, and engage the more extensive powers of the Tribunal and the Secretary in imposing penalties for its breach, would require clearer language than that adopted in the Act. The effect is to create a second order of disciplinary actions available to a council where a councillor's initial misconduct has not been effectively dealt with. The Act provides a scheme for second order offending to be dealt with by the Chief Executive.
- 55 Finally, it is by no means clear that cl 8.35 of the Procedures was designed to permit the imposition of mandatory penalties requiring conduct of the councillor under investigation. First, cl 8.35 starts with a recommendation that the council revise any of its policies or procedures; that has nothing to do with disciplinary outcomes. Secondly, formal censure, the only disciplinary sanction conferred by the Act on a council, is the last step in the list of possible recommendations. It may be inferred that the earlier steps are not to be seen as disciplinary penalties. Rather, they are steps which might be taken by a council short of a formal censure. Thus, the second most serious step is to make public findings of inappropriate conduct. That too might be averted by the councillor voluntarily undertaking one or more of the steps contained in the earlier possible recommendations. Thus, an apology or undertaking as to future conduct could be understood as a means of seeking absolution or forbearance to avoid a penalty. So read, cl 8.35 would not be inconsistent with the scheme of the legislation. However, other provisions including cl 8.10 of the Code of Conduct make it difficult to read down cl 8.35 of the Procedures in this way.
- 56 There are circumstances in which apologies may be required by force of law, but more usually, an apology is valued only because it is voluntary. Similarly, there are circumstances where particular professional groups may be required to undertake training or education as a condition of their continuing to operate; nevertheless the imposition of an obligation on someone in public office to undertake compulsory education or training, under pain of disciplinary action for failure to do so, would at least be unusual. It is an imposition which may be accepted voluntarily; however, the power to require it, under pain of suspension or monetary penalty for failure to comply, must find its source in the statute or regulations made in exercise of a statutory power.
- 57 Absent such a statutory source, the power to compel such conduct by a council resolution is beyond the lawful authority of a council. If cl 8.35 goes so far as to purport to confer such a power, it is to that extent ineffective. Resolution CW11 lacked authority to require the applicant to undertake the actions it purported to mandate.

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It follows, in my view, that the failure of the applicant to take the steps required by the Council resolution of 27 July 2014 could not constitute a breach of the code of conduct and could not, therefore, form the basis of a disciplinary order in the terms made by the Tribunal.

### Refusal of relief

- 59 The Secretary submitted that the present proceedings are “an inappropriate vehicle for review of the validity of [Council resolution CW11] and, at least by inference, because the Council was not joined as a defendant.
- 60 A ground challenging the validity of Council resolution CW11 was expressly raised in this Court, although it was not placed at the forefront of the grounds supporting the summons. Ground 13 stated that the resolution was “unauthorised because it erroneously reached outside the limited power of censure which the Council had under ss 440AA and 440G of the Act” and that “[t]he Council transgressed its powers and the resolution was ultra vires.” The result, ground 13 continued, was that “there was no foundation for any subsequent exercise of power by the [Office of Local Government] or NCAT.”
- 61 With respect to the absence of the Council as a party, the Court drew to the parties’ attention the possible relevance of this omission prior to the hearing. However, there are three reasons for concluding that the absence of the Council should not preclude a grant of relief to the applicant on this ground.
- 62 First, it is by no means clear that the ultimate question is one involving the validity of the Council’s resolution. Rather, the question is whether the Acting Chief Executive of the Office of Local Government, being the predecessor to the Secretary, correctly identified the form of misconduct relied upon before the Tribunal. The Council had no power to take the forms of disciplinary action which were available in the Tribunal: it could only refer the matter to the Chief Executive. It did not itself have authority to commence proceedings in the Tribunal; that authority was vested in the Chief Executive. It was the validity of the Chief Executive’s referral to NCAT, as a basis for NCAT’s jurisdiction which was directly in issue. Appropriately, the successor to the Chief Executive is the active respondent in this Court.
- 63 Secondly, if it mattered, the issue was raised before the Tribunal, albeit in a somewhat convoluted form. <sup>[11]</sup>
- 64 Thirdly, the absence of jurisdiction in the Tribunal is not a matter which can be disregarded. <sup>[12]</sup> Jurisdiction cannot be conferred by agreement between the parties, or silence as to its existence. With respect to the Tribunal, absent jurisdiction, its decision is void. The Council was not a party to the proceedings in the Tribunal.
- 65 If there were an issue as to whether the Secretary has had an opportunity to respond with respect to jurisdiction, procedural fairness would demand that that opportunity be accorded. However, the issue was squarely raised in this Court by the grounds of the

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application and the written submissions, as noted above. It was agitated in the course of oral argument. There is no reason to decline to grant relief, on that basis.

### Scope of NCAT hearing

- 66 On the assumption that cl 8.10 of the Code of Conduct was valid, and the referral by the Chief Executive to NCAT for breach of that provision was also valid, there was a second issue as to the scope of the jurisdiction conferred on NCAT. In particular, were the factual matters for determination and assessment limited to the failure of the applicant to comply with Council resolution CW11, or was the applicant entitled to raise with NCAT challenges to the factual findings on which the resolution was based?
- 67 There is no dispute that this issue was squarely raised before NCAT and considered by the Principal Member. He took a limited view of the scope of his powers. The Tribunal's reasoning was as follows:

"[120] Effectively, what the respondent is inviting me to do is to go behind and review the Conduct Reviewer's findings and recommendations. I do not think I should do so. The fundamental reason for this view is that I do not consider it is necessary in this particular application. This is because the conduct of the respondent complained of was his:

- (1) making irrelevant or provocative statements at both Council Meetings;
- (2) refusing to comply with the Mayor's rulings to sit down on both occasions.

[121] The respondent does not dispute that he made the statements as alleged. He says that they were justifiable and understandable in the context of community concern and debate about the development application. However, he strongly disputes the other matters, and provided two affidavits to the Tribunal setting out his version of events, including video surveillance of the meeting on 8 December 2014. In summary, the respondent says, in relation to the meeting on 24 November 2014, he stood to raise a point of order, that without adjudicating on the point of order the Mayor told him to sit down, which he did. After this he was silent. His evidence was set out in great detail in his affidavits, and was not particularly the subject of cross-examination by the applicant. By and large, the applicant appeared to accept, or substantially accepted the respondent's evidence on these matters.

[122] Even accepting, for the sake of the argument, that it was not open to the Conduct Reviewer to make findings about the matters in par 121(2) (being the respondent's response to rulings from the Mayor), it was open to the Conduct Reviewer to make findings as to par 121(1) (being the respondent's irrelevant and provocative statements at both Council Meetings), which are not denied. In those circumstances, it still would have been open to the Conduct Reviewer to make recommendations to Council. As I have stated, it was a matter for Council to make a decision about whether those recommendations or not. It would have been at that point, and on this matter I express no view, that the respondent may have sought administrative or judicial review of that decision. It is not to the point, and it is incorrect for the respondent to submit, that there is no merit review process in place for administrative decisions of a Council based on the two earlier proceedings in which he was the applicant. Those matters were dismissed for lack of jurisdiction as the respondent said he was seeking a review of decisions of the applicant, whereas in fact he was seeking a review of decisions of the Council.

[123] My view is that the Conduct Reviewer's recommendations (based on her findings) should not be re-agitated in the Tribunal. To properly do so would require the calling and cross-examination of the many witnesses from whom Ms Thane received evidence. The Tribunal, and therefore the public, would be entitled to consider the futility and cost of re-litigating an issue determined by the referee where the parties have had ample opportunity to place before her such evidence and submissions as they did.

[124] In my view, it is not the role of this Tribunal, in this application, to conduct a type of merits review of the findings of the Conduct Reviewer, her conclusions in the Investigation Report or her recommendations to Council. As the Local Government Pecuniary Interest Disciplinary Tribunal stated in *Director-General, Department of*

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*Premier and Cabinet; Re Councillor Martin Ticehurst*, LGPIDT 06/2012, 27 June 2013 at [50], where the relevant council had passed a resolution making a finding about a breach of the Code of Conduct:

‘... This hearing is not concerned with an appeal or a redetermination of that finding. Nor is it concerned with an appeal or a reconsideration of the resolution seeking an apology ...’

- 68 The Principal Member also called in aid the reasoning of Deputy President Haylen in the matter of *Phillips v Director General, Department of Premier and Cabinet*.<sup>[13]</sup> In fact, as counsel for the applicant submitted in this Court, the Principal Member may have misconstrued what was said in *Phillips*. However, it is convenient to commence by considering the statutory scheme under which NCAT operated.
- 69 The process in the present case commenced with a letter from the general manager of the Council to the Chief Executive, Office of Local Government, dated 30 October 2015. After setting out the Council's resolution of 27 July 2015, together with a reference to subsequent communications between the Council and Councillor Cornish, the general manager advised that, despite the period of three months having passed, the “sanctions” imposed by the Council had not been complied with. It would appear that that letter constituted a referral by the general manager of a complaint of breach of Pt 8 of the Code, an obligatory step pursuant to cl 5.16 of the Procedures, set out above.
- 70 Failure to comply with an applicable requirement of the Code of Conduct constitutes “misconduct” within the terms of s 440F(1)(b) of the *Local Government Act*. On receipt of a complaint of misconduct, the Chief Executive was empowered to carry out an investigation: s 440H(2)(b). However, the Chief Executive could also arrange for a “departmental report” to be prepared without an investigation being carried out where the matter had been referred by a council and the report could be based on the findings of the investigation conducted by or on behalf of the council: s 440H(5A)(a).
- 71 Following the preparation of a departmental report, the Chief Executive had alternative courses between which to choose. One was to take disciplinary action for misconduct pursuant to s 440I, a precondition to which was the preparation of the departmental report: s 440H(6). The alternative course was to refer the matter to NCAT pursuant to s 440J. (The applicant asserted that because, by the time the matter reached this stage, he had been re-elected to council, he was a “former councillor” and that the relevant power was to be found in s 440N: because s 440N(4) states that s 440J applies to the referral of a matter to NCAT, it was not necessary to resolve this issue.)
- 72 In the present case the Chief Executive adopted the second course, namely referral to NCAT. In June 2017 a document entitled “Report to NCAT under s 440J of the *Local Government Act*” was prepared and provided to NCAT. It annexed the conduct reviewer's report.
- 73 Although the Chief Executive did not take disciplinary action in this case, one aspect of the process relevant to such a step should be noted. The powers of the Chief Executive in taking disciplinary action for misconduct, set out in s 440I(2), have been referred to above; if the Chief Executive takes such action, the councillor against whom it is taken

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has a right of appeal to NCAT. The matter of *Phillips*, referred to above, involved an appeal pursuant to s 440L. If the councillor against whom action is taken by the Chief Executive has a full appeal on the merits, including the right to challenge findings of a conduct reviewer, it would seem anomalous if, where the Chief Executive did not take disciplinary action but referred to the matter to the Tribunal, NCAT could not adopt a similar approach. Of course, if it is correct to say that the function of NCAT in determining an appeal under s 440L is limited to consideration of a failure to comply with the Council resolution, it may be reasonable to conclude that the same regime should apply with respect to the hearing before NCAT on a referral by the Chief Executive.

- 74 Ultimately, the present issue must be resolved by considering what is the “matter” which the Chief Executive may refer to NCAT for “consideration.” Is it in fact limited, as NCAT determined, to a breach of cl 8.10 of the Code of Conduct?
- 75 Pragmatic considerations may, as the Principal Member explained in the passages set out above, militate in favour of the view that there should be a limited role for NCAT. In other words, where the councillor has had ample opportunity to present any evidence and explanation of his conduct to the conduct reviewer, and the conduct reviewer’s recommendations have been accepted by an elected body, namely a council, it is unlikely that the legislature intended that the councillor would have any right of merit review.
- 76 There are, however, powerful factors favouring a broader approach.
- 77 First, while not all complaints of misconduct investigated by the Chief Executive will involve second order breaches, such as a breach of a resolution of council under cl 8.10, it is clear that no such limited form of referral will operate in the other cases, where first order misconduct forms the basis of the referral.
- 78 Secondly, where the Chief Executive is required to obtain a departmental report before exercising disciplinary powers, which themselves extend across a range of levels of severity, it is clear that the Chief Executive will need to understand any specific conduct in its factual setting. Indeed, even with respect to a case of second order misconduct, it may be assumed that the Chief Executive would wish to understand the full context in which the conduct occurred. It is unsurprising that the report to NCAT in the present case contained statements such as the following: “Councillor Cornish has demonstrated an entrenched and unremitting recalcitrance” and that “the breaches giving rise to the complaint and the nature of the ongoing disregard demonstrated by Councillor Cornish to his responsibilities under the Act and the Council’s code bring Penrith City Council into disrepute.” [14]
- 79 Thus, if the Chief Executive can rely upon, or make, such an assessment of the applicant’s conduct in determining a disciplinary action, NCAT must be able to do the same on a referral. It would be perverse to conclude that, faced with such submissions, or findings, the councillor could not challenge any aspect of the reviewer’s conduct with which he or she disagreed.

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- 80 Finally, the language of the referral power is not confined in its terminology. Section 440J refers to referral of a “matter”, not for determination by NCAT, but for “consideration”. Such language is expansive and not constraining. There is no restriction to referral of a complaint of misconduct, or an allegation of misconduct; the term “matter” has no such precise denotation. Indeed, the powers of the Chief Executive to investigate conduct are not limited to circumstances in which there has been a complaint in any formal sense: s 440H(2)(a).
- 81 Finally, although the present assumption is that a second order form of misconduct may validly be created by the Code of Conduct and the Procedures, it is nevertheless relevant that the structure of the Act confers different disciplinary powers on a council, the Chief Executive and NCAT. It would be anomalous if misconduct which could properly be dealt with by a council, with its limited powers of disciplinary action, could engage disciplinary action of far greater severity in a case where the councillor simply declined to accept the findings made against him or her by an investigator in circumstances which permitted no right of factual review. Yet in every other case, the underlying misconduct would itself be open to independent review by NCAT.
- 82 It is true that NCAT has taken a restricted view of its powers in earlier cases. The Tribunal in the present case specifically placed reliance upon its earlier decision in the matter of *Ticehurst*, referred to in the extracted reasons at [124] (set out at [67] above). Mr Ticehurst was a member of Lithgow City Council. The general manager of Lithgow City Council was appointed as general manager of Eurobodalla Shire Council. A press release relating to his appointment stated that he held a Masters of Business Administration qualification. Mr Ticehurst believed that to be untrue and sent emails to both the general manager and to the councillors of Eurobodalla Shire Council. The mayor of Eurobodalla Shire Council objected to the emails and complained to Lithgow City Council which, in due course, passed a resolution requiring Councillor Ticehurst to make a formal apology to the general manager of the Eurobodalla Shire Council. He did not take that step. The matter came before NCAT to determine what action should be taken against him for his refusal to apologise. Mr Ticehurst objected that what he had said in the email was true. The Tribunal (constituted by Adrian Galasso SC) stated:

“[50] It is apparent that the basis for such resistance is the position maintained by Councillor Ticehurst that he was correct in his assertion concerning the general manager’s qualifications. But in many respects that is not to the point. The fact remains that the issue concerning Councillor Ticehurst’s sending of emails concerning the tertiary qualifications of the general manager was the subject of a code of conduct inquiry undertaken by the Lithgow City Council. The inquirer reported to the Council and as a result of that report the Council passed a resolution making a finding about breach of the Code of Conduct. This hearing is not concerned with an appeal or a redetermination of that finding. Nor is it concerned with an appeal against or a reconsideration of the resolution seeking an apology from Councillor Ticehurst to Mr Anderson.

[51] Rather, this Tribunal is concerned with the fact of a resolution by the Council requiring such an apology, and the fact the resistance by Councillor Ticehurst, as far as the Tribunal is aware including up to today, to comply with that resolution. Although it constitutes an omission over a significant period of time the Tribunal is satisfied that that conduct constitutes an incident of misbehaviour (being a continuous one) that is of sufficient serious nature as to warrant the Councillor’s suspension. That is because it is

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not for Councillor Ticehurst to decide whether he should or should not comply with the resolution requiring an apology, rather, as the Code of Conduct requires, he was required to comply with the resolution."

- 83 While it may be open to NCAT to treat a failure to apologise as warranting a severe sanction, fairness would suggest that NCAT should be able to consider the propriety of requiring the apology.
- 84 The other matter relied upon by the Tribunal in the present matter was the reasoning of Deputy President Haylen in *Phillips*. As noted above, that matter involved an appeal under s 440L of the *Local Government Act* from disciplinary action taken by the Director-General (the predecessor to the Chief Executive).
- 85 Councillor Phillips was initially disciplined for disclosing confidential information provided by a developer with respect to a development application. After obtaining a conduct review report, the Marrickville Council upheld the reviewer's recommendation finding misconduct, and required Councillor Phillips to apologise to both the Council and the developer for his actions. [15] Councillor Phillips asserted before NCAT that the information he released to the media was not in fact confidential and therefore the basis of the finding of misconduct was erroneous.
- 86 The appeal under s 440L was in far more constrained terms than that of referral of a "matter" to NCAT for "consideration"; rather, it provided for an appeal "against the decision of the Director-General to take disciplinary action." The Director-General submitted that NCAT was not concerned with the validity of Council's resolution, but only with Councillor Phillips' failure to comply with the resolution. The Director-General relied upon the pragmatic considerations as to the "administrative burden" which will be imposed on the Division if it were necessary to investigate the underlying misconduct. [16]
- 87 The Deputy President was unimpressed by the complaint of "administrative burden" [17] correctly preferring to consider the operation of the statutory scheme as a whole. He noted that in relation to complaints of failure to disclose a pecuniary interest, another statutory authority would be involved in making relevant findings. He also accepted that there would be no direct appeal to NCAT against a council's censure resolution under s 440G. [18] In a passage, part of which was relied upon by the Principal Member in the present case, the following appeared in *Phillips*:

"[39] This brief survey of the Act demonstrates the important investigative role of the Director-General in matters where misconduct is alleged or a breach of pecuniary interest disclosure provisions. When the Director-General decides to take one of the disciplinary measures available under s.440L a counsellor against whom that action is taken may appeal to the Tribunal. Absent clear words in the Act, such an appeal may encompass the underlying conduct that has brought the councillor to disciplinary attention. The legislature would be reasonably expected to specify in clear terms that a counsellor under such circumstances would be required to challenge the underlying finding of misconduct by way of judicial review and could only appeal the consequential finding of misconduct in the Tribunal. The facts of the present case show how unlikely is that course: *here, there is no issue that the required apology has not been given and thus it follows that there has been a breach of the Code of Conduct. The Tribunal would not be permitted to consider the underlying conduct but would be restricted to perhaps dealing only with the appropriate penalty to be imposed for the consequential breach.* It follows from this unlikely conclusion that it is open to Cllr Phillips in this appeal to challenge the finding of misconduct for allegedly disclosing confidential information. In short, the Director-General must be satisfied that there has been misconduct in the entire behaviour of a counsellor justifying a disciplinary response: the Director-General

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may not presume misconduct for disclosing confidential information and deal only with the consequential allegation of misconduct for not complying with the resolution concerning the apology, an matter that itself only arises because there was an initial finding of misconduct."

- 88 In the present matter, the Principal Member emphasised the words shown above in italics, but did not refer to the following sentences. Nor did he refer to the fact that Deputy President Haylen then proceeded to make his own findings as to the confidentiality of the material disclosed, concluded that it had not been confidential and, on that basis, set aside the suspension imposed by the Director-General.
- 89 For the reasons set out earlier, in my view the approach adopted by Deputy President Haylen in *Phillips* should be accepted with respect to a referral to NCAT under s 440J(2) of second order misconduct, namely failure to comply with a council resolution. Indeed, the basis for that conclusion is stronger in one respect than the reasoning set out from *Phillips*. The "underlying finding" (that is as to the first order misconduct) would only be open to challenge by way of judicial review on the conventional grounds of jurisdictional error or error of law on the face of the record. There would be no opportunity for independent review of the exercise of fact-finding undertaken by the conduct reviewer, unless the council could be persuaded to undertake that task in determining whether to accept the recommendation of the conduct reviewer. Both the council's role as a possible complainant and the inappropriateness of council as a forum for conducting an investigation or inquiry of that kind (which is no doubt the reason for the use of conduct reviewers) make the possibility of any such merit review unrealistic. Such a course would go well beyond the procedure envisaged by cl 8.47 of the Procedures, set out at [46] above.
- 90 However, whether or not the reasoning in *Phillips* is accepted, *Phillips* did not provide support for the approach adopted by the Principal Member in this case. For the reasons set out above, the Tribunal, on being invited by the person brought before it for disciplinary action to consider the basis on which the resolution had been made by Council and his reasons for not complying with it, ought to have conducted an inquiry as to the justification for the recommendations.
- 91 Although it may be said that this conclusion undermines the integrity of the process and the outcome adopted by an elected body of councillors, it must also be recognised that the role of councillors in disciplining their own members is an unusual aspect of the functions of a council. Whilst there is no doubt that the Chair of a meeting must have powers to maintain order and good conduct, it is also true that beyond immediate steps to maintain order, the only statutory power of disciplinary action conferred on a council is that of censure. If there is a concern that NCAT may, by inquiring into first order misconduct, undermine the role of the council, that provides some further support for the view that the council is not able under the statutory scheme to render its members subject to more serious discipline simply by passing a resolution requiring affirmative action from a councillor in a way which is not provided for in the *Local Government Act*.

## Orders

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- 92 In the event that the Court were minded to set aside the decision of NCAT, a question arose as to whether consequential relief should be provided. The order suspending the applicant's rights to payment as a councillor for three months has apparently been carried into effect. Once that order is set aside, the councillor may have some entitlement to recoupment of those payments from the Council. However, the Council is not a party to these proceedings and both the applicant and the Secretary accepted that no relief should be address that issue.
- 93 If the Tribunal had erred in failing to take matters into account which properly lay within its statutory function, the appropriate order, as the applicant accepted, would be to remit the matter to the Tribunal to be determined according to law. On the basis of the primary submission, namely that so much of the Council resolution CW11 as imposed obligations on the applicant was invalid, there was no breach of cl 8.10 of the Code of Conduct and, accordingly, there was no basis for a referral to NCAT. Having succeeded on his primary argument, the applicant is entitled to have the decision of NCAT set aside and the application to NCAT dismissed.

### Orders

- 94 The Court makes the following orders:
- (1) Set aside the order of the Civil and Administrative Tribunal made on 12 July 2018.
  - (2) In lieu thereof, order that the proceedings commenced by the predecessor to the Secretary in the Tribunal be dismissed.
  - (3) Order that the Secretary pay Mr Cornish's costs in this Court.

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### Endnotes

1. Administrative Arrangements (Administrative Changes – Public Service Agencies) Order 2019; the Department adopted its present title pursuant to the Administrative Arrangements (Administrative Changes—Public Service Agencies) Amendment Order 2019, Sch 1, cl 1.
2. Notice of Investigation, 29 December 2014, p 2.
3. That course appears to have been mandated by cl 5.16 of the Procedures.
4. The application was amended on 28 September 2017.
5. Local Government (General) Regulation 2005 (NSW), cll 255-258 (as in force in November 2014).
6. Prior to November 2015, the Act referred to the Director-General, being the predecessor to the Departmental Chief Executive, The officer will be referred to below as the Chief Executive.
7. Section 440H(5A) was introduced by the Local Government Amendment (Councillor Misconduct and Poor Performance) Act 2015 (NSW), commencing in November 2015. While this is after the relevant conduct occurred, it is prior to the Chief Executive's completion of the report.
8. There are exceptions to this requirement which are not presently relevant.
9. From November 2015, a right of appeal has not been available with respect to action limited to counselling and reprimanding.
10. Model Code, par 2.
11. Written submissions on behalf of respondent, filed 13 February 2018, pars 55-57.

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12. Kirk v Industrial Court of New South Wales (2010) 239 CLR 531; [2010] HCA 1 at [75].
13. [2014] NSWCATOD 48.
14. Report to NCAT, June 2017, pars 87 and 88.
15. Phillips at [18].
16. Phillips at [34].
17. Phillips at [35].
18. Phillips at [38].

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