

MEMO

TO: Peter Hawkins

FROM: Mark Stables

SUBJECT: Albion Park Rail Bypass – Progress Report on the Biodiversity Offset Package (E12)

OUR REF: PS102529-ECO-MEM-006 RevA

DATE: 7 June 2018

BACKGROUND

The Albion Park Rail Bypass (APRB) received State Significant Infrastructure project approval under Section 115ZB of the *Environmental Planning & Assessment Act 1979* on 30 January 2018, subject to conditions.

This letter provides an update on the delivery of the APRB Biodiversity Offset Package (BOP) and specifically addresses Condition of Approval Part E (E12) which states;

The Proponent must submit a progress report to the Secretary which identifies offsets required and evidence that they are achievable, or alternatively provide details on how the offset requirements will be met using the Biodiversity Conservation Fund. This report must be provided to the Secretary for information prior to any impacts on vegetation communities and the Eastern Flame Pea endangered population, except those within the Croom Regional Sporting Complex.

As part of the project approval requirements as outlined in the approved Biodiversity Offset Strategy (BOS) (ngh environmental, March 2017) and Biodiversity Addendum (ngh environmental, December 2017), biodiversity offset is required as assessed under the Framework for Biodiversity Assessment (FBA) 2014 as outlined in Table 1.

Table 1 Offset requirements

Offset entity	Area impacted / number of individuals impacted	FBA Credits required
PCT 1326 (SR669) Woollybutt – White Stringybark – Forest Red Gum grassy woodland on coastal lowlands, southern Sydney Basin Bioregion and South East Corner Bioregion (Illawarra Lowlands Grassy Woodland EEC)	6.76 ha	338
PCT 838 (SR545) Forest Red Gum – Thin-leaved woodland southern Sydney Basin Bioregion (Illawarra Lowlands Grassy Woodland EEC)	1.12 ha	35
PCT 1245 (SR652) Sydney Blue Gum x Bangalay - Lilly Pilly moist forest in gullies and on sheltered slopes, southern Sydney Basin Bioregion	0.96 ha	19
PCT 1232 (SR649) Swamp Oak floodplain swamp forest, Sydney Basin Bioregion and South East Corner Bioregion (Swamp Oak Floodplain Forest EEC)	0.55 ha	19

Offset entity	Area impacted / number of individuals impacted	FBA Credits required
PCT 781 (SR536) Coastal freshwater lagoons of the Sydney Basin Bioregion and South East Corner Bioregion (Freshwater Wetlands on Coastal Floodplains EEC)	7.20 ha	293
<i>Chorizema parviflorum</i> (Eastern Flame Pea)	110 individuals	1725

BIODIVERSITY OFFSET LEGISLATIVE REQUIREMENTS

The project approval was subject to biodiversity offsets in accordance with FBA 2014. The project approved Biodiversity Offset Strategy (BOS) was also prepared in accordance with the FBA and sets out the pathway forward to securing and managing the final biodiversity offsets subject to trading rules set out under the FBA and the Biodiversity Offsets Policy for Major Projects 2014.

NSW legislative changes that came into effect on 25 August 2017 repealed the *Threatened Species Conservation Act 1995* and enacted the *Biodiversity Conservation Act 2016* (BC Act). This legislative change has led to the removal of both the FBA and BioBanking Assessment Methodology 2014 (BBAM) and replaced these with the Biodiversity Assessment Method 2017 (BAM). In terms of establishing biodiversity offset sites in NSW, the BAM has replaced BioBanking Agreements with Biodiversity Stewardship Agreements and as such all biodiversity credit calculations are now subject to the BAM and associated credit calculator.

Part of the project biodiversity offset delivery will be establishing sites which are proposed to be secured through Biodiversity Stewardship Agreements using the BAM and enforced under the BC Act. Given this will result in using a different method and subsequent credit yield to the project applied FBA and BBAM, the credits for each site have also been calculated using the former assessment methodologies to ensure equivalence of credits being retired for the project.

To ensure the final offsets for the project provide equivalence in respect to these different methods, Roads and Maritime lodged a formal application for reasonable equivalence of biodiversity credits for the projects existing offset obligation on the 5th of June, 2018 to the Office of Environment & Heritage and is currently awaiting response.

OFFSET NEGOTIATIONS WITH LANDHOLDERS

Roads and Maritime has been actively pursuing offset sites with both Shellharbour City Council and NSW Tafe. In regards to the negotiations with Shellharbour City Council, Roads and Maritime has undertaken negotiations on Part A management costs and made an offer of compensation for the Part B component of the offset. On the 22 May 2018 a business paper including a number of offset sites was debated by Shellharbour City Council at an ordinary meeting. The Council resolved to pursue offsetting for Croom Reserve and Dunmore Wetlands (Site 1 and Site 22 of the BOS), this is provided in Appendix A.

Negotiations are progressing well to secure the Yallah Tafe offset site, and on the 15 March 2018 Roads and Maritime received an in principle agreement from NSW Tafe to undertake the offsetting for the Albion Park Rail bypass project (Appendix B). A joint appointed valuer has undertaken a valuation of the Part B costs of the offset and negotiations on Part A are continuing.

ACHIEVABILITY OF BIODIVERSITY OFFSETS

PCT 1326 (SR669) Woollybutt – White Stringybark – Forest Red Gum grassy woodland on coastal lowlands, southern Sydney Basin Bioregion and South East Corner Bioregion

In delivering the biodiversity offset obligation for PCT 1326, detailed field survey was undertaken on sites 1 and 23 of the BOS. These sites will deliver about 335 FBA ecosystem credits for this vegetation type and will be secured

through the establishment of Stewardship Agreements under the BC Act 2016. The equivalent of 335 FBA ecosystem credits will be retired against the project from these stewardship sites. A summary of the credit yield for these sites using FBA/BBAM and BAM is provided in the Table 2.

Table 2 Summary of credit availability for PCT 1326

Offset entity	Area impacted (ha)	Offset requirement (FBA/BBAM credits)	Offset availability	Offset area (ha)	FBA/BBAM credits generated	BAM credits generated	Conservation mechanism
PCT 1326 (SR669) Woollybutt – White Stringybark – Forest Red Gum grassy woodland on coastal lowlands, southern Sydney Basin Bioregion and South East Corner Bioregion	6.76	338 ecosystem credits	Shellharbour City Council – Croom Reserve (Site 1 BOS)	27.5	231	84	Biodiversity stewardship agreement ¹
			Yallah TAFE (Site 23 BOS)	11.7	104	48	Biodiversity stewardship agreement ²
Total	6.76	338	-	39.2	335	132	-

Note 1: A Stewardship Agreement under the *Biodiversity Conservation Act 2016* will be established with Shellharbour City Council that will provide in-perpetuity conservation and funding for management actions.

Note 2: A Stewardship Agreement under the *BC Act 2016* will be established at Yallah TAFE that will provide in-perpetuity conservation and funding for management actions.

The shortfall of 3 credits will likely be delivered through payment in to the Biodiversity Conservation Fund for this vegetation type based on the equivalency conversion.

PCT 838 (SR545) Forest Red Gum – Thin-leaved Stringybark grassy woodland southern Sydney Basin Bioregion

In delivering the biodiversity offset obligation for PCT 838, detailed field survey was undertaken on sites 1 and 23 of the BOS. These sites will deliver more than the required 18 credits for this vegetation type and will be secured through the establishment of Stewardship Agreements under the BC Act 2016. The equivalent of 18 FBA ecosystem credits will be retired against the project from these stewardship sites. A summary of the credit yield for these sites using FBA/BBAM and BAM is provided in Table 3.

Table 3 Summary of credit availability for PCT 838

Offset entity	Area impacted (ha)	Offset requirement (FBA/BBAM credits)	Offset availability	Offset area (ha)	FBA/BBAM credits generated	BAM credits generated	Conservation mechanism
PCT 838 (SR545) Forest Red Gum – Thin-leaved Stringybark grassy woodland southern Sydney Basin	0.59	18 ecosystem credits	Shellharbour City Council – Croom Reserve (Site 1 BOS)	2.5	20	11	Biodiversity stewardship agreement ³

Offset entity	Area impacted (ha)	Offset requirement (FBA/BBAM credits)	Offset availability	Offset area (ha)	FBA/BBAM credits generated	BAM credits generated	Conservation mechanism
Bioregion			Yallah TAFE (Site 23 BOS)	3.1	32	13	Biodiversity stewardship agreement ⁴
Total	0.59	18	-	5.6	52	24	-

Note 3: A Stewardship Agreement under the *BC Act 2016* will be established with Shellharbour City Council that will provide in-perpetuity conservation and funding for management actions.

Note 4: A Stewardship Agreement under the *BC Act 2016* will be established at Yallah TAFE that will provide in-perpetuity conservation and funding for management actions.

PCT 1245 (SR652) Sydney Blue Gum x Bangalay - Lilly Pilly moist forest in gullies and on sheltered slopes, southern Sydney Basin Bioregion

Existing BioBanking credits are currently available on the public register for PCT 1245. A total of 350 FBA ecosystem credits established from two BioBank sites are currently listed. Negotiations on the purchase of these credits are ongoing. In the event these credits are unable to be purchased consideration will also be given to a payment in to the Biodiversity Conservation Fund to fulfil this offset obligation. A summary of the credits available on the public register for this vegetation type is provided in *Table 4*.

Table 4 Summary of credit availability for PCT 1245

Offset entity	Area impacted (ha)	Offset requirement (FBA/BBAM credits)	Offset availability ⁵	Offset area (ha)	FBA/BBAM credits listed on public register	BAM credits available	Conservation mechanism
PCT 1245 (SR652) Sydney Blue Gum x Bangalay - Lilly Pilly moist forest in gullies and on sheltered slopes, southern Sydney Basin Bioregion	0.96	19 ecosystem credits	BA 221	-	281	-	Purchase and retire existing BioBanking credits
			BA 272	-	69	-	
Total	0.55	19	-	-	350	-	-

Note 5: BA 221 & BA 272 are existing biobank sites with BBAM credits available on the public register.

PCT 1232 (SR649) Swamp Oak floodplain swamp forest, Sydney Basin Bioregion and South East Corner Bioregion

In delivering the biodiversity offset obligation for PCT 1232, detailed field survey was undertaken on sites 22 and 23 of the BOS. These sites will deliver more than the required 18 FBA ecosystem credits for this vegetation type and will be secured through the establishment of Stewardship Agreements under the *BC Act 2016*. The equivalent of 18 FBA ecosystem credits will be retired against the project from these stewardship sites. A summary of the credit yield for these sites using FBA/BBAM and BAM is provided in *Table 5*.

Table 5 Summary of credit availability for PCT 1232

Offset entity	Area impacted (ha)	Offset requirement (FBA/BBAM credits)	Offset availability	Offset area (ha)	FBA/BBAM credits generated	BAM credits generated	Conservation mechanism
PCT 1232 (SR649) Swamp Oak floodplain swamp forest, Sydney Basin Bioregion and South East Corner Bioregion	0.55	19 ecosystem credits	Shellharbour City Council - Dunmore Wetland (Site 22 BOS)	1.5	14	8	Biodiversity stewardship agreement ⁶
PCT 1232 (SR649) Swamp Oak floodplain swamp forest, Sydney Basin Bioregion and South East Corner Bioregion			Yallah TAFE (Site 23 BOS)	1.9	16	12	Biodiversity stewardship agreement ⁷
Total	0.55	19	-	1.9	30	20	-

Note 6: A Stewardship Agreement under the *BC Act 2016* will be established with Shellharbour City Council that will provide in-perpetuity conservation and funding for management actions.

Note 7: A Stewardship Agreement under the *BC Act 2016* will be established at Yallah TAFE that will provide in-perpetuity conservation and funding for management actions.

PCT 781 (SR536) Coastal freshwater lagoons of the Sydney Basin Bioregion and South East Corner Bioregion

In delivering the biodiversity offset obligation for PCT 781, detailed field survey has been undertaken on site 22 of the BOS. This site will deliver 154 equivalent BBAM credits of the required 293 FBA ecosystem credits through the establishment of Stewardship Agreements under the *BC Act 2016*. A summary of the credit yield for this site using BBAM and BAM is provided in *Table 6*.

The shortfall of 139 FBA ecosystem credits will likely be delivered through payment in to the Biodiversity Conservation Fund for this vegetation type based on the equivalency conversion for the project.

Table 6 Summary of credit availability for PCT 781

Offset entity	Area impacted (ha)	Offset requirement (FBA/BBAM credits)	Offset availability	Offset area (ha)	BBAM credits generated	BAM credits generated	Conservation mechanism
PCT 781 (SR536) Coastal freshwater lagoons of the Sydney Basin Bioregion and South East Corner	7.20	293 ecosystem credits	Shellharbour City Council - Dunmore Wetland (Site 22 BOS)	14.1	154	121	Biodiversity stewardship agreement ⁸

Bioregion							
Total	7.20	293	-	14.1	154	121	-

Note 8: A Stewardship Agreement under the *Biodiversity Conservation Act 2016* will be established with Shellharbour City Council that will provide in-perpetuity conservation and funding for management actions.

***Chorizema parviflorum* (Eastern Flame Pea)**

In relation to species credit availability for *Chorizema parviflorum* (Eastern Flame Pea) targeted surveys were conducted on sites 1 and 23 of the BOS. These surveys were conducted during the 2017 flowering period for this species (November). A total of 1,022 species credits (BBAM) will be generated from these two sites. This will leave a shortfall of about 703 credits.

The short fall in available credits is partly due to the limited distribution of this species in the locality and that the preferred offset site identified in the BOS, site 8 (Transgrid), withdrew interest in establishing an offset site for this species (Appendix C).

Considering this, FBA variation rules and BAM trading rules allow for offsetting a threatened flora species with another threatened flora species that is of the same threat level and in the case of FBA, of the same life form. It has been discussed with OEH that an option for offsetting the Eastern Flame Pea could be through the purchasing and retirement of species credits for the BC listed endangered shrub *Zieria granulata*. Both species are listed as endangered under the BC Act and are classified as shrubs in the Threatened Species Profile Database.

In relation to *Zieria granulata*, Roads and Maritime has applied to establish a BioBanking Agreement (BA 417) for a site in Broughton that is within the Illawarra IBRA subregion. This site is expected to generate about 3,536 FBA/BBAM species credits of the endangered shrub (*Zieria granulata*).

In accordance with species credit variation rules under FBA, it is proposed that of these credits generated for *Zieria granulata* on BA 417, Roads and Maritime will retire credits to fulfil the residual shortfall of the Eastern Flame Pea offset requirements.

Should there be a problem with the sourcing of these credits Roads and Maritime could satisfy the species credit offset obligation through payment in to the Biodiversity Conservation Fund. A summary of the credit yield for these sites using FBA/BBAM and BAM is provided in *Table 7*.

Table 7 Summary of credit availability for *Chorizema parviflorum* (Eastern Flame Pea)

Offset entity	Number of specimens impacted	Offset requirement (FBA/BBAM credits)	Offset availability	Number of specimens recorded	Potential habitat available (ha)	FBA/BBAM credits generated	BAM credits generated	Conservation mechanism
<i>Chorizema parviflorum</i> (Eastern Flame Pea)	115	1725 Species credits	Shellharbour City Council – Croom Reserve (Site 1 BOS)	133	27	944	84	Biodiversity stewardship agreement

Offset entity	Number of specimens impacted	Offset requirement (FBA/BBAM credits)	Offset availability	Number of specimens recorded	Potential habitat available (ha)	FBA/BBAM credits generated	BAM credits generated	Conservation mechanism
			Yallah TAFE (Site 23 BOS)	11	14.8	78	61	Biodiversity stewardship agreement
			BA 417 (Broughton) <i>Zieria granulata</i>	498	0.4	3,536	N/A	Purchase and retire existing BioBanking credits
Total	7.20	1725	-	642	42.2	1,022 (4558 including <i>Zieria granulata</i>)	145	-

CONCLUSION

The delivery of the project BOS is well advanced and generally follows the commitments outlined in the approved BOS. As highlighted above, the offsets will deliver the majority of the obligations as direct offsets through the retirement of a combination of BBAM and BAM credits. Any credit deficiencies will be met through payment into the Biodiversity Conservation Fund, this will be done so based on the outcome of the assessment of reasonable equivalency for the project offset obligations.

Given this approach and considering the recent legislative changes, the delivery of the offsets rely upon determination and issuing of a statement of reasonable equivalence by the Office of Environment & Heritage to enable the purchase of credits in accordance with the BC Act.

The information provided in this memo identifies offsets required and evidence that they are achievable as required under Condition E12 of the approval. Roads and Maritime will continue to progress the project BOS in consultation with relevant government agencies.



APPENDIX A: SHELLHARBOUR CITY COUNCIL RESOLUTION

**Minutes of the Ordinary Meeting
of Shellharbour City Council
held at the Council Chambers, Council Administration Centre
Shellharbour City Centre
on Tuesday 22 May 2018 commencing at 6.30 pm**

Present

Mayor, Councillor	M Saliba
Deputy Mayor, Councillor	K Marsh
Councillor	N Cattell
Councillor	M Hamilton
Councillor	P Moran
Councillor	J Murray
Councillor	R Petreski

In attendance

General Manager	C McIntyre
Director Council Sustainability	M Youell
Director Community and Customers	M Boxall
Director Amenity and Assets	B Stewart
Executive Manager / Public Officer	F Lepouras
Chief Financial Officer	G Grantham
Group Manager City Development	G Meredith
Group Manager City Planning	G Hoynes
Group Manager Design	M Boenisch
Acting Group Manager Asset Strategy	K Stevens
Group Manager Services	R Crowhurst
Group Manager Organisational Performance	E Woods
Manager Property Services	D Flanagan
Airport Manager	J Barnden
Governance Manager	R Kennedy
Manager Financial Services	P Henderson
Team Leader Environment	T Heather
Team Leader Planning	J Micevski
Senior Development Assessment Officer	B Koop
Media Officer	K Wells
Senior Executive Assistant (Minute Taker)	L Davey
Councillor Support Officer	J Frasca

1. Acknowledgement to Country

Shellharbour City Council acknowledges the Traditional Owners and Custodians of the Land on which we are meeting and pays its respects to Elders past and present.

Webcasting and Emergency Plan Statement

The Mayor read the usual advice regarding the webcasting of the meetings of the Council and the emergency plan for Council Meetings.

2. Apologies

Nil

3. Leave of Absence

Nil

4. Confirmation of Minutes

4.1 Ordinary Meeting 1 May 2018

85 RESOLVED: Murray/Cattell

That the Minutes of the Ordinary Council Meeting held on 1 May 2018 as circulated be taken as read and confirmed as a correct record of proceedings.

CARRIED UNANIMOUSLY

4.2 Committee of the Whole 1 May 2018

Councillor Moran stated that he wished to raise a matter in relation to the minutes as he believed there was an error in the minutes. The Mayor stated that discussion can take place in the Committee of the Whole in Closed Session meeting and asked for a motion to defer consideration of this item until the Open Session following Committee of the Whole in Closed Session.

86 RESOLVED: Murray/Marsh

That the Confirmation of Minutes for Committee of the Whole 1 May 2018 be considered following Committee of the Whole in Closed Session.

CARRIED UNANIMOUSLY

5. Declarations of Interest

Nil

6. Confidential Business (Committee of the Whole in Closed Session)

In accordance with the *Local Government Act 1993*, and the *Local Government (General) Regulation 2005*, in the opinion of the General Manager, the following business is of a kind as referred to in Section 10A(2) of the Act, and should be dealt with in a Confidential Session of the Council meeting closed to the press and public.

Set out below is Section 10A(2) of the Local Government Act 1993, in relation to Confidential Business:

10A(2) Which parts of a meeting can be closed to the public? The matters and information are the following:

- (a) personnel matters concerning particular individuals,
- (b) the personal hardship of any resident or ratepayer,
- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business,
- (d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the council, or
 - (iii) reveal a trade secret,
- (e) information that would, if disclosed, prejudice the maintenance of law,
- (f) matters affecting the security of the council, councillors, council staff or council property,
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege,
- (h) information concerning the nature and location of a place or an item of Aboriginal significance on community land,
- (i) alleged contraventions of any code of conduct requirements applicable under section 440.

CONFIDENTIAL ITEMS

6.1 Tender 2018/10 - Construction of Cell 5B (11040554)

Reason for Confidentiality

This item is classified CONFIDENTIAL under the provisions of Section 10A(2)(d)(i) of the *Local Government Act 1993*, which permits the meeting to be closed to the public for business relating to the following:

(d) commercial information of a confidential nature that would if disclosed:

(i) prejudice the commercial position of the person who supplied it.

The information in this report should remain confidential as it would, if disclosed, prejudice the commercial position of the person who supplied it.

It is not in the public interest to disclose this commercial information as it may impact the ability of Council to attract competitive tenders in the future.

Declassification of this Report

This report will be declassified at the completion of the project in accordance with the Government Information (Public Access) Act 2009.

6.2 Acquisition Private Land - Rivulet Crescent Extension Update (11040885)

Reason for Confidentiality

This item is classified CONFIDENTIAL under the provisions of Section 10A(2)(c) of the *Local Government Act 1993*, which permits the meeting to be closed to the public for business relating to the following:

(c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.

Council may be considering commencing the formal process to acquire land for the proposed extension of Rivulet Crescent, Albion Park Rail. Included within this report is information pertaining to the current market values of land in private ownership. The consideration of this information must be conducted in confidential session, to enable candid debate of commercial details without prejudicing the Council's commercial interest and if discussed in open meeting would be contrary to the public interest.

Declassification of this Report

The report will be declassified once the Road and Maritime Services Network Strategy for Albion Park Rail Highway has been completed and if the acquisitions are still required to be undertaken.

6.3 Regular Passenger Transport (11041067)

Reason for Confidentiality

This item is classified CONFIDENTIAL under the provisions of Section 10A(2)(c) of the *Local Government Act 1993*, which permits the meeting to be closed to the public for business relating to the following:

- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business

The information provided in this report outlines commercial conversations and financial positions that are of a confidential nature and would compromise both current and future negotiated business outcomes.

Declassification of this Report

The report will be declassified once all matters regarding this report have been finalised and will be made public if applicable.

6.4 Confidential Albion Park Rail Bypass - Biodiversity Offset Sites (11040757)

Reason for Confidentiality

This item is classified CONFIDENTIAL under the provisions of Sections 10A(2)(c) and 10A(2)(d)(i) of the *Local Government Act 1993*, which permits the meeting to be closed to the public for business relating to the following:

- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business
- (d) commercial information of a confidential nature that would if disclosed:
 - (i) prejudice the commercial position of the person who supplied it

The information in the report should remain confidential as it discusses business relating to the use of Council land for biodiversity offsetting requirements by the Roads and Maritime Services (RMS) for the Albion Park Rail Bypass. If disclosed it may affect the ability of Council to secure offset sites on Council land and reach a competitive market price for biodiversity credits generated.

Declassification of this Report

The report will be declassified when and if Biodiversity Stewardship Site Agreements for all sites are signed and endorsed by the Biodiversity Conservation Trust.

7. Condolences

The Council acknowledged the following deaths in the Local Government area.

Mrs Annette Boles	of	Albion Park
Mr Charles Hoobin	of	Albion Park
Mr Barry William Templeman	formerly of	Albion Park Rail
Ms Violet Whitfield	of	Albion Park Rail
Mrs Anna Maria Maier	of	Barrack Heights
Mr Morris Eizenberg	of	Barrack Point
Mr Kenneth Hyslop Murphy	formerly	Barrack Point
Mr Giuseppe Di Puglia	of	Blackbutt
Mrs Patricia Flynn	of	Lake Illawarra
Mrs Allison Beryle May	formerly of	Lake Illawarra
Mrs Joan Williams	of	Lake Illawarra
Mrs Dorothy Marle Willett	of	Lake Illawarra
Mrs Helen Margaret Maxwell	of	Mount Warrigal
Mrs Judith Gooley	of	Oak Flats
Mr Stanley O'Toole	of	Oak Flats
Ms Laraine Gail Timbs	of	Oak Flats
Mr Ronald Looney	of	Shell Cove
Mr Robert Meires	of	Warilla
Mrs Marie Therese Murphy	of	Warilla
Mrs Cvetanka Petrovska	of	Warilla
Mrs Heather Toms	of	Warilla
Mrs Stoja Zlojutro	of	Warilla

- 87 A Motion of condolence was passed by all present standing for one minute's silence.

8. Mayoral Statements / Reports / Presentations

The Mayor outlined the events she has attended since the last Council Meeting:

3/5/18	-	LGNSW Board Working Committee Meeting
4/5/18	-	Launch of Kidsfest Shellharbour

SHELLHARBOUR CITY COUNCIL

Ordinary Council Meeting – 22 May 2018

5-6/5/18	-	Wings Over the Illawarra
5/5/18	-	Sunrise Rotary Club Swing Into Wings Dinner
17-18/5/18	-	South East Australian Transport Strategy meeting hosted by Council
19/5/18	-	Australian Local Government Women's Association Executive Meeting
20/5/18	-	Stella Maris School 60 th Anniversary Mass
	-	Cities Service Boston Commemoration
21/5/18	-	Illawarra Shoalhaven Joint Organisation Transition meeting
22/5/18	-	Stella Maris School assembly

9. Mayoral Minutes

Nil

10. Councillors' Statements / Reports

Councillor Marsh congratulated Councillors, the General Manager and staff on the recent announcement of Shellharbour's inclusion in the Regional Growth Fund.

Councillor Petreski outlined his attendance on behalf of the Mayor at the TAFE NSW Illawarra Region's Student Excellence Awards Gala Dinner and the Oak Flats Swimming Club Presentation Night. Councillor Petreski also outlined his attendance on behalf of the Member for Shellharbour at the Illawarra Teachers Association Centenary Dinner.

Councillor Cattell outlined his attendance with Councillor Marsh at the Dunmore Rural Fire Service's 60th Anniversary event. Councillor Cattell also outlined his attendance on behalf of the Mayor at the CREATE Foundation Community Forum where he was guest speaker.

11. Reports

Note: The Addresses to Council Forum was held prior to the Council Meeting from 4.30pm to 5.30pm.

Agenda Item No & Title	Page Ref	Name
<i>Community and Customers Directorate</i>		
11.3.2 Proposed Multi-Dwelling Housing Development Application No. 128/2017, Lot 80 DP 14042 and is known as 4 Addison Avenue, Lake Illawarra	45	Robert Petkovski Angela Roman Mark Borg
11.3.5 Adoption and Gazettal of the Shellharbour Coastal Zone Management Plan	170	Steven Krinks Max Clay

88 RESOLVED: Murray/Marsh

That Standing Orders be suspended in order for Items 11.3.2 and 11.3.5, the subject of Addresses to Council, to be considered here in the agenda.

CARRIED UNANIMOUSLY

11.3 Community and Customers Directorate

11.3.2 Proposed Multi-Dwelling Housing Development Application No. 128/2017, Lot 80 DP 14042 and is known as 4 Addison Avenue, Lake Illawarra (11040546)

89 RESOLVED: Murray/Cattell

That Council grant the consent to Development Application No.0128/2017 for demolition of existing Dwelling and construction of five (5) dwellings with garages at Lot 80 DP 14042, No. 4 Addison Avenue, Lake Illawarra subject to the conditions of consent in Attachment 6 of this report.

CARRIED 6 / 1

FOR VOTE - Cr Cattell, Cr Hamilton, Cr Marsh, Cr Murray, Cr Petreski, Cr Saliba

AGAINST VOTE - Cr Moran

11.3.5 Adoption and Gazettal of the Shellharbour Coastal Zone Management Plan (11040547)

90 RESOLVED: Murray/Hamilton

That Council in accordance with the transition provisions of the Coastal Management Act 2016 and Section 55H of the Coastal Protection Act 1979:

1. Adopt the certified Shellharbour Coastal Zone Management Plan as contained in Attachment 1; and
2. Place a Council Notice in the NSW Government Gazette advising of the certification and adoption of the Shellharbour Coastal Zone Management Plan.

CARRIED UNANIMOUSLY

91 RESOLVED: Murray/Marsh

That Standing Orders be resumed.

CARRIED UNANIMOUSLY

11.1 General Manager

11.1.1 Third Quarter Review of the Operational Plan 2017-2018 (11038321)

92 RESOLVED: Murray/Petreski

That Council adopt the:

1. Quarterly Review of the Operational Plan 2017-2018 – Quarter Three - January to March 2018.
2. March 2018 Quarter Budget Review with all recommended adjustments as contained in this report and attachments.

CARRIED UNANIMOUSLY

11.2 Council Sustainability Directorate

11.2.1 Proposed Purchase of Land - Lot 51 DP 825278 Smith Avenue, Albion Park (11031510)

93 RESOLVED: Marsh/Petreski

1. That Council approve the purchase of Lot 51 DP 825278 Smith Avenue, Albion Park from the Roads and Maritime Services for the amount of \$121,000 GST exclusive.
2. That the Mayor and General Manager, or his nominated delegate, be authorised to sign all documentation associated with the purchase of the Lot 51 DP 825278 Smith Avenue, Albion Park including the affixing of the Seal of Council.

CARRIED UNANIMOUSLY

11.3 Community and Customers Directorate

11.3.1 Albion Park Rail Bypass - Biodiversity Offset sites (11040461)

The Mayor called for a MOTION to defer this item so that it may be considered following Item 19 in the agenda to allow for consideration of confidential Item 6.4 to be dealt with first in the agenda.

94 RESOLVED: Murray/Petreski

That Item 11.3.1 be deferred and considered following Item 19 in the Agenda.

CARRIED 6 / 1

FOR VOTE - Cr Cattell, Cr Hamilton, Cr Marsh, Cr Murray, Cr Petreski, Cr Saliba

AGAINST VOTE - Cr Moran

11.3.2 Proposed Multi-Dwelling Housing Development Application No. 128/2017, Lot 80 DP 14042 and is known as 4 Addison Avenue, Lake Illawarra (11040546)

This item was dealt with earlier in the agenda as it was the subject of Addresses to Council prior to the meeting (refer to Resolution 89).

11.3.3 Draft Planning Agreement - 6 Benson Avenue, Shellharbour City Centre (11040464)

95 RESOLVED: Murray/Marsh

That:

1. Council endorse the draft Planning Agreement for Lot 4212 DP 809265, 6 Benson Avenue, Shellharbour City Centre for public notification purposes.
2. The draft Planning Agreement be publicly notified for a period of at least 28 days in accordance with Section 7.5(1) of the *Environmental Planning and Assessment Act 1979*.
3. Should no changes be required to the scope and timing of the works or the amount to be reimbursed as a result of the public notification process, the General Manager and Mayor be granted delegation to enter into the agreement on Council's behalf.

CARRIED UNANIMOUSLY

11.3.4 Shellharbour Surf Life Saving Club - Planning proposal to reclassify land from community to operational and permit a function centre - Lot 1 DP 211127, part of Lot 5, DP 218551 (11040463)

96 RESOLVED: Murray/Marsh

That Council:

1. Adopt the planning controls for planning proposal 0005/2016 in Attachment 1: Table of Properties and Attachment 3: The Maps to amend Shellharbour Local Environmental Plan 2013.
2. Authorise the General Manager to forward the revised planning proposal to the Minister for Planning and Environment under Section 3.35(2) of the *Environmental Planning & Assessment Act 1979*.
3. Authorise the General Manager to request the Minister for Planning prepare the Draft Local Environmental Plan under section 3.36(1) and make the Plan under section 3.36(2) of the *Environmental Planning & Assessment Act 1979*.
4. Delegate to the General Manager authority to make minor mapping and wording changes if and as required by the Director General of the NSW Department of Planning & Environment or the Parliamentary Counsel's Office.

5. Note the Shellharbour Surf Club/Sea Spray Function Centre Plan of Management will cease to apply once the subject land is reclassified from community to operational.
6. Note the Beverley Whitfield Park/Shellharbour Swamp Plan of Management will cease to apply to the subject land and continue to apply to the broader area outside of the subject land: once the subject land is reclassified from community to operational.

CARRIED UNANIMOUSLY

11.3.5 Adoption and Gazettal of the Shellharbour Coastal Zone Management Plan (11040547)

This item was dealt with earlier in the agenda as it was the subject of Addresses to Council prior to the meeting (refer to Resolution 90).

11.4 Amenity and Assets Directorate

11.4.1 Draft Tree Management Policy (11040899)

97 RESOLVED: Moran/Hamilton

1. That the Draft Tree Management policy be placed on public exhibition for a period of at least 28 days calling for submissions.
2. That if any submissions are received on the Policy, the results be reported back to Council for consideration.
3. That if no submissions are received as a result of the public exhibition, the Council adopts the Tree Management policy and revokes the Solar Panels and Council Trees policy as attached to this report.

CARRIED UNANIMOUSLY

12. Committee Recommendations

12.1 Recommendations from the Traffic Committee Meeting held 2 May 2018 recommended for adoption.

98 RESOLVED: Marsh/Cattell

That the Recommendations from the Traffic Committee Meeting held 2 May 2018 be adopted.

CARRIED UNANIMOUSLY

12.2 Recommendations from the Australia Day Committee Meeting held 18 April 2018 recommended for adoption.

99 RESOLVED: Petreski/Cattell

That the Recommendations from the Australia Day Committee Meeting held 18 April 2018 be adopted.

CARRIED UNANIMOUSLY

13. Items for Information

Nil

14. Notices of Rescission/Alteration Motions

Nil

15. Notices of Motion

15.1 Notice of Motion submitted by Cr Kellie Marsh and Cr Peter Moran: CCTV Cameras

Councillor Marsh asked how many other councils in New South Wales have CCTV in their CBD's. The Mayor requested that this response be extended to suburbs as well. The General Manager took the Question on Notice.

Councillor Marsh asked how many external consultations have been undertaken to date as part of the report that has been requested and if the Lake Illawarra Local Area Command have been consulted with as yet. The General Manager took the Question on Notice.

MOTION: Moran/Marsh

That Council officers prepare an urgent report on the costings to install Closed Circuit Television (CCTV) Cameras in the Albion Park, Oak Flats, Shellharbour & Warilla CBDs and in doing so, consult with NSW Police regarding the operations and monitoring of the CCTV Camera footage.

Councillor Marsh MOVED a POINT of ORDER during the Mayor's address and disputed the comments which the Mayor attributed to her. The Mayor did not accept the POINT of ORDER and continued her address.

Councillor Marsh MOVED a further POINT of ORDER during the Mayor's address that she is not speaking to the issue. The Mayor did not accept the POINT of ORDER and continued with her address.

100 The MOTION on being PUT to the Meeting was LOST 2 / 5

FOR VOTE - Cr Marsh, Cr Moran

AGAINST VOTE - Cr Cattell, Cr Hamilton, Cr Murray, Cr Petreski, Cr Saliba

16. Questions on Notice (must be submitted in writing)

16.1 Question on Notice Submitted by Cr Moran: Parking in Addison Street, Shellharbour

A Question on Notice has been submitted by Cr Moran and is noted for the purposes of this meeting.

16.2 Question on Notice Submitted by Cr Marsh: Civic Centre Cafe

A Question on Notice has been submitted by Cr Marsh and is noted for the purposes of this meeting.

17. Urgent Business

Nil

18. Committee of the Whole in Closed Session (Closed to the Public): Adjournment

The Mayor asked whether anyone in the public gallery wish to speak on the reasons why Items 6.1 Tender 2018/10 – Construction of Cell 5B, 6.2 Acquisition Private Land – Rivulet Crescent Extension Update, 6.3 Regular Passenger Transport and 6.4 Confidential Albion Park Rail Bypass – Biodiversity Offset Sites should not be held in Confidential Session (Closed to the Public). No members of the public expressed an interest in addressing the Council.

101 RESOLVED: Murray/Petreski

1. That Council resolve into Committee of the Whole (in Confidential Session) to consider the above business as listed, together with any late reports tabled at the meeting.

2. That pursuant to Section 10A(1-3) of the *Local Government Act 1993*, the press and public be excluded from the proceedings on the basis that the business to be considered is classified confidential under the provisions of Section 10A(2) 10A(2)(c), 10A(2)(d)(i) of the Act as outlined above.
3. That the correspondence and reports relevant to the subject business be withheld from access to the press and public in accordance with Section 11(2) of the *Local Government Act 1993*.

CARRIED UNANIMOUSLY

Meeting adjourned at 7.51 pm

Meeting resumed at 8.49 pm

Deferred Item: (refer to Resolution 86)

4. Confirmation of Minutes

4.2 Committee of the Whole 1 May 2018

102 RESOLVED: Hamilton/Marsh

That the Minutes of the Committee of the Whole (Confidential) Meeting held on 1 May 2018 as circulated be taken as read and confirmed as a correct record of proceedings.

CARRIED UNANIMOUSLY

19. Committee of the Whole in Closed Session: Consideration of Adoption of Decisions Reached in Closed Session

The following Recommendations to Council from the Committee of the Whole (Confidential) meeting were read to the Meeting by the General Manager.

6.1 Tender 2018/10 – Construction of Cell 5B

COMMITTEE RECOMMENDATION:

That Council:

1. Approve the funding for Cell 5B construction in 2018/19 and adopt the total budget of \$1,995,913 for this project.

2. In accordance with Section 178 of the *Local Government (General) Regulation (2005)*, accept the tender and enter into a contract (Contract 2018/10) with J.B.G Civil Pty Ltd for the amount of \$1,383,618.90 ex GST for a component of the project.
3. Authorise the General Manager or his nominated delegate to sign the Letter of Award and execute the contract and associated documents on behalf of Shellharbour City Council.

6.2 Acquisition Private Land – Rivulet Crescent Extension Update

COMMITTEE RECOMMENDATION:

That Council await the outcome of the Traffic Management Study from the Roads and Maritime Services which will outline the impact the Albion Park Rail Bypass will have on the current Princes Highway before proceeding with the land acquisitions.

6.3 Regular Passenger Transport

COMMITTEE RECOMMENDATION:

That Council endorse the recommendations provided within the confidential report 'Regular Passenger Transport' presented to Council on 22 May 2018.

6.4 Confidential Albion Park Rail Bypass – Biodiversity Offset Sites

COMMITTEE RECOMMENDATION:

That Council receive and note this report.

103 RESOLVED: Murray/Petreski

The Recommendations to Council from the Committee of the Whole held earlier today be adopted.

CARRIED UNANIMOUSLY

11.3 Community and Customers Directorate

11.3.1 Albion Park Rail Bypass - Biodiversity Offset sites (11040461)

Councillor Moran stated that Rosella Grove has been subject to slippage in the past and asked if that road has been stabilised or is it in danger of further slippage. The General Manager took the Question on Notice.

Councillor Moran noted the independent ecological consultant's comments in relation to the likelihood of the extinction of the Illawarra Lowlands Grassy Woodlands and asked for an indication of the extent of that ecological community outside the sites identified in the report. The General Manager took the Question on Notice.

MOTION: Murray/Petreski

That Council:

1. Resolve to progress toward the establishment of a Biodiversity Stewardship Agreement with the Biodiversity Conservation Trust for sites A (Croom Reserve) and E (Dunmore Wetland).
2. Resolve to progress toward the establishment of a Biodiversity Stewardship Agreement with the Biodiversity Conservation Trust for parts of site D (Stony Range Reserve), excluding lands along New Lake Entrance Road to a width of approximately 100m, with further negotiations on this site delegated to the General Manager.
3. Resolve that the signing of the Biodiversity Stewardship Site Application and Biodiversity Stewardship Site Agreement be delegated to the General Manager.
4. Request that the Roads & Maritime Services formally agree to purchase all biodiversity credits Council have available with respect to the project approval when they are released on the market.
5. Resolve to sell all credits it has available, with respect to the project approval, that are required by the Roads & Maritime Services for the Albion Park Rail Bypass offsetting agreement to the Roads & Maritime Services.

Councillor Moran FORESHADOWED a MOTION that should the MOTION be lost, he would move the recommendation as printed in the business paper clearly identifying all five parcels of land identified in the table on page 38 in the business paper as being parcels of land Council would progress towards the establishment of a Biodiversity Stewardship Agreement with the Biodiversity Conservation Trust.

104 The MOTION on being PUT to the Meeting was CARRIED 6 / 1

SHELLHARBOUR CITY COUNCIL

Ordinary Council Meeting – 22 May 2018

FOR VOTE - Cr Cattell, Cr Hamilton, Cr Marsh, Cr Murray, Cr Petreski, Cr Saliba

AGAINST VOTE - Cr Moran

20. Consideration of Motions to Declassify Reports Considered in Closed Session

Nil

Meeting closed 9.10 pm



APPENDIX B: NSW TAFE IN-PRINCIPLE AGREEMENT TO PURCHASE CREDITS



TAFE NSW

PO BOX 707
BROADWAY NSW
2007 AUSTRALIA

Mr Scott Fayers
Project Manager
Roads and Maritime Services (Transport)
20-44 Ennis Road Milsons Point NSW 2061

IN-PRINCIPLE APPROVAL TO AN AGREEMENT TO EXCLUSIVELY PURCHASE BIOBANKING CREDITS

Dear Mr Fayers,

On the 17th of August 2017, you wrote to TAFE NSW seeking our in-principle approval to an agreement to exclusively purchase credits generated from the possible biobanking of a parcel of land on our Yallah Campus. This agreement is subject to an assessment of the site by RMS to ensure that the site generates the number and type of biobanking credits that RMS need to address their requirements in relation to the Albion Park Rail Bypass project.

Having examined the proposal along with supporting information I am prepared to provide in-principle approval to developing that agreement subject to the following criteria.

1. The appointment of any authorised party to conduct the biobanking assessment, make the application, or conduct any related activities (e.g. land valuations) will be subject to our agreement;
2. All documentation including supporting documentation relating to the biobanking assessment, report, application or any other documentation relating to this process will be supplied to TAFE NSW which will have the right to retain the documentation irrespective of the outcome of this process.

As has previously been agreed all costs relating to the developing the biobanking agreement, management plans, developing and submitting applications and any related fees or charges will be paid for entirely by RMS. RMS also agree to address in part any charges that TAFE NSW incur in relation to the review of the biobanking agreement or the agreement with RMS to exclusively purchase credits.

Please note that this in-principle approval should not be considered an undertaking to enter into a contract either expressed or implied. Any agreement including the biobanking agreement or the agreement to provide the RMS with biobanking credits exclusively will be subject to our review and an agreement will only exist when a contract has been executed by both parties.

Please refer all further enquiries to Mr Matt Power, Sustainability and Environmental Specialist via email to [REDACTED] or by phone on [REDACTED]

Yours sincerely,

[REDACTED]

General Manager, Property and Logistics
TAFE NSW

13 March 2018



APPENDIX C: TRANSGRID CORRESPONDENCE

From: [REDACTED]
Sent: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: APR Bypass - Biodiversity information - TRANSGRID

Hello all,

Please see the below advice indicating that the Transgrid land will not form part of Biodiversity offset proposals.

Regards,
Rodger

From: [REDACTED]
Sent: Friday, 19 May 2017 11:35 AM
To: WALL Rodger
Cc: Kenson Ho
Subject: RE: APR Bypass - Biodiversity information

Hi Rodger,

Re: RMS Albion Park Rail Bypass Project – [REDACTED]

Thank you for the additional clarifying advice.

This matter has been considered and TransGrid advises that it does not have any interest in RMS' bio-banking proposal.

Going forward, we look forward to progressing RMS' acquisition of the land in the south east corner of the site in due course. We also reiterate our earlier advice that this should be finalised ahead of any construction works commence on the land.

Please note that in accordance with the 99 year lease granted by the NSW Government, this land forms part of the Leased Network Assets (LNA) that are leased to and controlled by TransGrid but owned by the *Electricity Transmission Ministerial Holding Corporation* (ETMHC). As the need arises, we can provide details as to the corporate structures applicable to the 99 year lease of the NSW high voltage transmission network.

Should you have any queries, please feel free to contact me on [REDACTED]

Kind regards
Tim

From: [REDACTED]
Sent: Friday, 19 May 2017 8:46 AM
To: Timothy Cowdroy
Cc: HEALY William J; ROYAL Brianna C
Subject: APR Bypass - Biodiversity information

Hello Tim,

Sorry I missed your call yesterday. Brianna indicated that you had some questions about the biodiversity matter. I have attached the most recent RMS factsheet.

If Transgrid (and partners) were to proceed the matter would be noted on title in perpetuity and there would be an obligation to carry out (funded) "management actions" in perpetuity. There would be no potential for future development of the land.

I guess that the most pressing matter for RMS is to secure the land required for the Princes Highway and Transgrid's concurrence to proceed with this acquisition as compulsory by agreement (VG determination) would be greatly appreciated. This is our first and essential priority. It is understood that the biodiversity matter is optional for Transgrid and somewhat complicated by the ownerships and lease arrangements together with your consideration as to whether the land may be required for future expansion of the facility.

I will be in the office today if you would like to discuss the acquisition or biodiversity matters.

Best regards,