

## 8.15. Draft MOU - Berrys Bay Consultation Outcomes

**AUTHOR:** Rob Emerson, Director Open Space & Environmental Services

**ENDORSED BY:** Ken Gouldthorp, General Manager

**ATTACHMENTS:** 1. Previous report to Council 25 October 2021 (link); 2. Submissions Summary

### **PURPOSE:**

This report details the stakeholder feedback received in accordance with the Council resolution of 25 October 2021.

### **EXECUTIVE SUMMARY:**

Council at its meeting of 25 October 2021 considered a report (Item 10.3) regarding informing on the progress of land negotiations in response to the NSW Government's Western Harbour Tunnel and Warringah Expressway upgrade project, and seeking Council's support of a proposed framework and principles to advance negotiations on ensuring the amount of public open space was not reduced within the North Sydney local government area as a result of these determined Critical State Significant Infrastructure projects. Council resolved:

- 1. THAT Council refer the terms of the draft MOU to the Waverton Peninsula Working Group and the Combined Precincts Committee for comment and the matter be reported back to Council for further decision.*
- 2. THAT the report be made public.*
- 3. THAT the wider public consultation be undertaken consistent with Council's Community Engagement Protocol.*

The report and draft MOU were made public immediately following the Council meeting. The report and draft MOU were referred to citizen members of the Waverton Peninsula Working Group and to the Combined Precincts Committee.

### **FINANCIAL IMPLICATIONS:**

Lack of availability and high cost of land in North Sydney local government area (LGA) makes it financially unviable for Council to acquire additional public open space; particularly of any significant size. The draft MOU provides a mechanism to maximise long-term retention of harbour front public space within the municipality

### **RECOMMENDATION:**

**1. THAT** Council continues to strongly advocate that the State Government needs to design and engineer the proposed motorway facility buildings within Cammeray Park to be fundamentally constructed fully, or partially, underground.

**2. THAT,** subject the inclusion of the principle included in (1) above, Council enter the MOU with TfNSW to ensure the quantum of open space within the municipality is maintained.

## **LINK TO COMMUNITY STRATEGIC PLAN**

The relationship with the Community Strategic Plan is as follows:

1. Our Living Environment
- 1.3 Quality urban greenspaces
- 1.4 Public open space and recreation facilities and services meet community needs

## **BACKGROUND**

As reported to the Council in October 2021 ([Attachment 1](#)), Council officers had progressed negotiations for Council to acquire key parcels of Sydney Harbour Foreshore land for public purposes. The report provided detail on the status of these negotiations and sought Council's support on the proposed framework and principles to advance the negotiation to acquisition. Council resolved:

- 1. THAT Council refer the terms of the draft MOU to the Waverton Peninsula Working Group and the Combined Precincts Committee for comment and the matter be reported back to Council for further decision.*
- 2. THAT the report be made public.*
- 3. THAT the wider public consultation be undertaken consistent with Council's Community Engagement Protocol.*

## **CONSULTATION REQUIREMENTS**

Community engagement has occurred with regards to the previous Council resolution part 1 and 2. Wider public consultation has not formally occurred, however changing the classification of the report from confidential to a public document resulted in the report being broadly circulated within the community and gaining media interest. The detail of this report provides the outcomes from the engagement for Council to consider prior to adoption.

## **DETAIL**

### **Key Stakeholder Feedback on the Draft MOU**

In accordance with parts 1 and 2 of the above-mentioned resolution, the report and draft MOU were made public immediately following the Council meeting and referred to the citizen members of the Waverton Peninsula Working Group and to the Combined Precincts Committee seeking feedback.

Waverton Peninsula Working Group were invited to provide feedback between 21 December 2021 and 13 February 2022. Four submissions were received, as detailed in the Submissions Summary (Attachment 2).

The matter was discussed at the Combined Precincts Committee (CPC) meeting held 15 February 2022, the first meeting of the CPC to be held following the Council resolution. This meeting was attended by representatives from 11 active Precinct Committees. Attendees expressed, to Council staff in attendance, that the land in Berrys Bay is not suitable a trade-off for the land lost in Cammeray Park due to the Western Harbour Tunnel and Warringa Expressway upgrade project, that community sentiment is that the trade of Berrys Bay is not geographically ideal and that the Cammeray community is not gaining from this; and the community's long held desire to obtain community access to the land parcel at Berrys Bay should be separate to a concession as part of the Western Harbour Tunnel project.

Following discussion of the matter, the CPC resolved:

*ACTION: CPC requests that Council pursue if there is a legal avenue to enforce the condition E157 of the EIS approval.*

*MOTION: That Council seek meetings with the relevant Ministers to discuss the loss of open space as a result of the WHT/BL project in the North Sydney LGA. Specifically, Cammeray Park and promises to transfer all of the open space in Berrys Bay post construction.*

*MOTION: That Council request a copy of the Design Report deliverable assessing the impact on public open space and compliance with the Condition of Consent 157.*

*MOVED BY: MDS (Registry), SECONDED BY: IG (Waverton)*

*CARRIED Unanimous*

### **Status of the Draft MOU**

What has become evidently clear is that the communities desire is to significantly minimise any reduction of public open space within Cammeray Park and principally does not accept that the estimated 15,000m<sup>2</sup> of public open space should be permanently lost from Cammeray Park to facilitate this State Government project or the loss of public open space at Cammeray Park should be offset by additional public open space provided on the foreshores of Berrys Bay, Waverton.

The community and Council staff believe that the loss of public open space could be significantly reduced at Cammeray Park by engineering the proposed motorway facility buildings and infrastructure to be constructed in a way that would allow the park to be reinstated over the top of the structures minimising the loss of public open space. This is the established position of Council that was advocated to TfNSW prior to the project receiving development approval and continues to be advocated, albeit unsuccessfully to date.

It is also clear that the community is seeking harbour front land at Berrys Bay to be permanently integrated into the existing to increase accessible public space. The community has also been seeking this occur as early as possible with parcels progressively transferred rather than awaiting the completion of the final construction. The MOU provides a mechanism to enable early transfer where the land is not required by TfNSW during the construction phase.

A community steering committee has been established by TfNSW under the chairmanship of Greater Sydney Commissioner, Deborah Dearing to establish a Masterplan for Berrys Bay foreshore land. Council is represented on the Committee and the MOU envisages Council involvement in the ultimate assessment, adoption, and implementation of the Masterplan

It is therefore considered that if the proposed MOU is to proceed any reference or inference to a land swap between Cammeray Park and Berrys Bay needs to be considered after the NSW Government agrees to redesign the motorway facility buildings to significantly minimise the amount of public open space lost at Cammeray Park.

## ATTACHMENT 2

**Call for feedback on Draft MOU**  
**Summary of submissions received (21 December 2021 to 13 February 2022)**

No.	Name and Address	Issue/Theme
1	Bruce Donald, Ian Grey, Sid French - Waverton Peninsula Working Group Members	<p>This MOU relates to the public lands in Berrys Bay which the former Premier and local member have previously promised for dedication for community purposes. Council staff had recommended this MOU be entered into. However, Council resolved that both the MOU and the recommendation be made available through the Working Group.</p> <p>Community members need to carefully read the draft MOU attached to the recommendation. The recommendation is just over 5 pages and the MOU is only 3 pages with a map. Following are what we see as the key points on which to focus in deciding whether Council should enter into this MOU</p> <ol style="list-style-type: none"> <li>1. MOU is statement of intent for the future with no legal effect so the NSW government is not bound by it and it confers no rights on Council.</li> <li>2. However MOU does specify basic principles which will apply to continuing negotiations and relations.</li> <li>3. The first basic principle is that Berrys Bay is now part of the compensation package for land taken for the whole WHT Project elsewhere in terms of net loss of or addition to public land as a result of the Project.</li> <li>4. Rest of Waverton Peninsula (ie Balls Head, Coal Loader and Carradah Park, Waverton Park and Oval) are dedicated Reserve Crown Lands under care and control of Council under Crown Lands Management Act 2016 and the Local Government Act 1993. Council has the responsibility and role under that regime for developing Plans of Management and managing the Reserves. TfNSW as a department of Government has no current role with the Reserve Crown Lands except in relation to the adjacent Coal Loader Wharf.</li> <li>5. Under the MOU Berrys Bay western arm will not be part of that regime but is now to become a TfNSW (RMS) precinct. <ul style="list-style-type: none"> <li>• TfNSW to become 'owner' of title to all lands except Quarantine Station buildings (not waterfront parcel) under current transfer agreement and beach already owned by Council. No other land to be transferred to Council.</li> <li>• Council role to be care and control, subject to a continuing access rights to TfNSW and for berthing.</li> <li>• Berrys Bay to be subject to its own Master Plan as a 'separate precinct' rather than incorporated into whole of Peninsula plan. That Master Plan will be 'led by' TfNSW not under control of Council and will be as agreed with TfNSW.</li> </ul> </li> <li>6. Council care and control will only be agreed after end Project, (at least 5-6 years away and possibly 8-9) or if during Project any parcel determined by TfNSW no longer needed. <ul style="list-style-type: none"> <li>• Therefore no immediate transfer or reserve status even of Woodleys Shed to permit Council to prevent its continuing deterioration. This despite comment from TfNSW officer at Waverton Precinct November meeting that Woodley's shed not needed for project.</li> <li>• Also no immediate use of bund wall space for public parking even during project</li> </ul> </li> <li>7. MOU makes no reference to pedestrian access around rear of WHT site.</li> <li>8. MOU makes no reference to the status of the dolphin wharf which is within the control of TfNSW and has long been the subject of discussion within the community seeking its removal.</li> <li>9. MOU makes no reference to the current land claim under the <i>Aboriginal Land Rights Act</i> NSW 1983 for Lot 21 DP1048933 and adjoining land which are the current vacant fended off lands where the main WHT operation will be located.</li> </ol>

No.	Name and Address	Issue/Theme
		<p>Our opinion is that the MOU should not be entered into as it does not meet community wishes and expectations in many respects.</p> <ol style="list-style-type: none"> <li>1. Berrys Bay has never been seen by the community as a trade off against other public land use issues. For over 15 years the community has seen it as an iconic place to be secured for public purposes because of its history and outstanding values. To be used as an excuse for the destruction of other existing public space in the municipality is objectionable</li> <li>2. For over a decade, successive politicians have promised its dedication for community and public interest, including by the former Premier and the current and former local member. Those promises were never conditional on the Bay being part of wider land use compensation.</li> <li>3. Berrys Bay should be included in the Reserve Crown Land regime which governs the other public lands on Waverton peninsula under Council's care and control. It should not be a separate precinct under TfNSW 'ownership'.</li> <li>4. The Woodleys shed should immediately be transferred into the Reserve Crown land regime under Council care and control as it is not essential for the WHT Project if it goes ahead, and is at serious risk of becoming dilapidated and losing its much valued heritage status.</li> <li>5. NSW Government should provide funding for the heritage restoration of the Woodleys Shed having been responsible for the early termination of the Woodleys lease before its continuing use and maintenance was determined.</li> <li>6. The foreshore lands of the Quarantine Station should also be immediately included in the Reserve regime as they are not required for the Project.</li> <li>7. The area behind the bund wall should be immediately made available even on an interim basis for car parking use.</li> <li>8. Any agreement by Council in relation to the Project must establish pedestrian access from Carradah Park to replace the existing foreshore path.</li> <li>9. The dolphin wharf must be resolved in any agreement between Council and the government.</li> </ol>
2	Genia McCaffery	I completely concur with the response to the Berrys Bay MOU
3	Ken Robinson	I concur with the [submission] and its conclusions on the draft MOU prepared by Bruce Donald, Sid French and Ian Grey from the Waverton Peninsula Working Group.
4	Waverton Precinct Committee	<p>Extract from 1 February 2022 minutes:</p> <p>The meeting disapproved of such a document being treated as secret when there was obvious community interest involved, and a long history or commitments by politicians and others relating to the area. It is understood that the new council will revisit this issue with a view to cutting the false nexus between the two sites. Precinct reiterated its previous position that: The lands in question were committed by Bob Carr when Premier to be either used for waterfront industry or returned to the public. With closure of Woodley's, the latter commitment should be honoured, and the lands transferred (including the foreshore lands of the Quarantine Station) in the same manner as the lands of Carradah Park. No State government instrumentality should retain any controlling interest in the future uses of the land beyond access to use the minimum necessary land for WHT construction (followed by remediation).</p> <p>The meeting also reaffirmed the requirement that Carradah Park lower walkway be connected to Balls Head Road via the upper walkway during the WHT works. The urgency of these actions was stressed in light of advancing plans for the WHT.</p> <p>The above comments are to be copied to members of the State government initiated consultative committee to ensure they are aware of the position of the community.</p>