



## 12.6 Post Exhibition Report - Proposed Lease of Part Road Reserve, Old South Road, Bowral

Reference:	6500/22; RD1587; RD3652
Report Author:	Property and Project Officer
Authoriser:	Chief Financial Officer
Link to Community Strategic Plan:	Effective financial and asset management ensure Council's long term sustainability

### PURPOSE

The purpose of this report is to present Council with the submissions received following a period of public notice. The public notice was given in respect of an extension of proposed leased area. The additional leased area is part of the unformed road reserve at Old South Road, Bowral.

### RECOMMENDATION

1. **THAT Council approve the proposed short-term lease of part unformed road reserve, known as corner Kangaloon and Old South Road, Bowral to Southern Highlands Botanic Gardens Limited for a maximum period of five (5) years AND THAT rental is \$1.00 per annum, in consideration of the not-for-profit status of the proposed lessee, Southern Highlands Botanic Gardens Limited.**
2. **THAT the persons who made a submission in respect of the proposed revised leased area be notified in writing of Resolution 1 above.**
3. **THAT during the term of the Lease, Council applies to the NSW Department of Industry – Crown Lands for the closure of that part of the road reserve on Old South Road, with the intention that upon closure the land will vest in Council and be consolidated with the title for the Botanic Gardens site.**

### REPORT

#### **BACKGROUND**

Council is the registered proprietor of the property located at 1 Old South Road Bowral, being the site of the Southern Highlands Botanic Gardens. The Council property is leased to the not-for-profit organisation known as Southern Highlands Botanic Gardens Limited. The Council property is classified as Community Land pursuant to Section 26 of the *Local Government Act 1993*.

At its meeting 22 March 2017 Council considered a report to enter into a short-term lease with Southern Highlands Botanic Gardens for a proposed Lease of Council's unformed Road Reserve located at the corner of Kangaloon and Old South Road Bowral, adjoining the Southern Highlands Botanic Gardens. It was resolved as follows: (MN 91/17)

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 13 February 2019

### REPORT DEPUTY GENERAL MANAGER OPERATIONS, FINANCE AND RISK



1. *THAT Council approve in principle a short-term five (5) year lease of part Road Reserve, Corner Kangaloon and Old South Roads, Bowral to the applicant, being the lessee of the Botanic Gardens Site AND THAT the approval of Roads and Maritime Services be sought with Kangaloon Road being a classified road.*
2. *THAT the General Manager and Mayor be delegated authority to execute the lease document referred to in resolution 1 above and to affix the Common Seal of Council if required.*
3. *THAT rental is \$1.00 per annum, in consideration of the not-for-profit status of the proposed lessee, Southern Highlands Botanic Gardens Limited.*
4. *THAT Council give a minimum twenty eight (28) days public notice of its intention to enter into a short term lease of a segment of the unformed road reserve at the corner of Kangaloon and Old South Roads Bowral to Southern Highlands Botanic Gardens Limited AND THAT if any objections are received a further report be forwarded to a future Ordinary Meeting of Council following the period of public notice.*
5. *THAT during the term of the lease Council apply to the NSW Department of Industry – Lands for the closure of that part of the road reserve adjacent to Kangaloon Road, with the intention that upon closure the land will vest in Council and be consolidated with the title for the Botanic Gardens site.*

Following the first public exhibition there was one (1) submission received which was reviewed and responded to by Council staff and reported to Council on 13 June 2018 (MN217/18).

A request was received from Southern Highlands Botanic Gardens Limited to have a further portion of Old South Road, Bowral included in the road reserve Lease. The extension is to align the lease of the road to the Botanic Gardens master plan. At its meeting 10 October 2018 Council considered a report for the extended leased area. It was resolved as follows:

1. *THAT Council endorse the proposed extended leased area of the Lease of part unformed road being part Kangaloon & Old South Road, Bowral as shown in Attachment 1 to this report.*
2. *THAT Council give a minimum twenty eight (28) days public notice of its intention to extend the leased area of the unformed road reserve at Old South Road, Bowral in relation to the Lease to Southern Highlands Botanic Gardens Limited AND THAT if any objections are received a further report be forwarded to a future Ordinary Meeting of Council following the period of public notice.*

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 13 February 2019

### REPORT DEPUTY GENERAL MANAGER OPERATIONS, FINANCE AND RISK



## REPORT

Following the Council resolution made 10 October 2018, public notice was issued of Council's intention to lease the extended unformed road being part Old South Road, Bowral. This was advertised in the Southern Highlands News for four (4) consecutive weeks. It was also advertised on Council's website and copies of the public notice were available at the Civic Centre, Moss Vale Library, Mittagong Library and Bowral Library.

Submissions were received up until Friday 23 November 2018.

A total of three (3) submissions were received in respect of the proposed extension of the unformed road reserve. Concerns raised within the submissions are summarised in the table below.

Date received	Issue raised	Response
10/10/2018	Concerns regarding public access on the shared pathway being restricted.	<p>This report is in relation to a portion of unformed road on Old South Road. Under the Roads Act 1993, the road is still classified as public road and cannot deny public access.</p> <p>The pathway referred to in the submission is in reference to the road reserve and area on the western side of the Botanic Gardens. There will be no restricted access to the pathway currently in place.</p>
30/10/2018 Submission by same person above.	<p>It is not clear whether the area of land includes any area of, or immediately adjacent to the waterway which runs across Old South Road in to the Botanic Garden site. If so, they object on the ground that this is a further detriment to the downstream protected Latham Snipe area.</p> <p>Request to make Lease clear that the public continues to enjoy unfettered access to the pathway and that Southern Highlands Botanic Gardens are prohibited from enclosing it.</p>	<p>The waterway does not impede on the area of road lease proposed. Council manages the waterway which runs through the botanic gardens site. The Lessee has a liability under the main lease of the site to maintain the waterway and surrounds within the area. Attached to the main Lease of the Botanic Gardens site is a Notification of Decision by Department of Sustainability, Environment, Water, Population and Communities made under sections 75 and 77A of the <i>Environment Protection and Biodiversity Act 1999</i> (EPBC Act) to protect and manage the natural habitat for Latham's Snipe (Protection Order.)</p> <p>This lease is for the road reserve portion only. A road reserve is still classified as a public road. Under the Roads Act 1993, a public road cannot be obstructed so that the public cannot use it. The Botanic Gardens cannot restrict access to the shared public pathway; this is covered in the main lease. Council will ensure a clause is in the lease that the Lessee cannot obstruct public access.</p>
8/11/2018	Concerns of denying public access.	The area of road reserve requires public

**AGENDA FOR THE ORDINARY MEETING OF COUNCIL**

Wednesday 13 February 2019

**REPORT DEPUTY GENERAL MANAGER OPERATIONS, FINANCE AND RISK**



	access under the Roads Act 1993 as it is classified as a public road. Members of the public will not be denied access to the shared pathway. This is stated in the main Lease to Southern Highlands Botanic Gardens.
Concerned that purpose is for 'enclosure and maintenance of gardens' and it should not be enclosed.	Council will ensure that the area of road lease will not be enclosed. As the area is public road the Lessee cannot restrict access.

The extended leased area of unformed road is approximately 380m<sup>2</sup>. To enable the Lessee, Southern Highlands Botanic Gardens Limited, to formalise the use of the extended portion of unformed road reserve, it is necessary for Council to approve a short-term lease.

The extended indicative area of the road reserve is shown in **Attachment 2**. The final boundaries are subject to survey. Section 153 of the *Roads Act 1993* restricts the lease to a maximum term of five (5) years. The area of unformed road will be used primarily for access and car parking for the Botanic Gardens.

During the term of the lease of road, Council will pursue an application for closure of the unformed road reserve, as previously reported. Following the closure of the road, the Title to the newly created lot will vest in Council; it can then be subsequently consolidated with the title for the Botanic Gardens site.

It is noted that Council has previously given approval for the execution of the lease of the road, therefore it is not necessary to again resolve to do so.

**IMPACT ON COUNCIL'S FIT FOR THE FUTURE IMPROVEMENT PLAN**

None identified.

**COMMUNICATION AND CONSULTATION**

**Community Engagement**

Public notice of the revised and extended area was publicly exhibited for a minimum 28 days.

**Internal Communication and Consultation**

Not applicable

**External Communication and Consultation**

Southern Highlands Botanic Gardens Limited

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 13 February 2019

### REPORT DEPUTY GENERAL MANAGER OPERATIONS, FINANCE AND RISK



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#### SUSTAINABILITY ASSESSMENT

- **Environment**

There are no environmental issues in relation to this report.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

The conditions of the short term lease of the unformed road comply with the provisions of the *Roads Act 1993*.

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#### COUNCIL BUDGET IMPLICATIONS

There are no budget implications in regards to this report.

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#### RELATED COUNCIL POLICY

None identified.

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#### CONCLUSION

It is recommended that Council approve the short-term lease of the revised area of the unformed road reserve located at Old South Road, Bowral, to the Southern Highlands Botanic Gardens Limited, for a maximum term of five (5) years.

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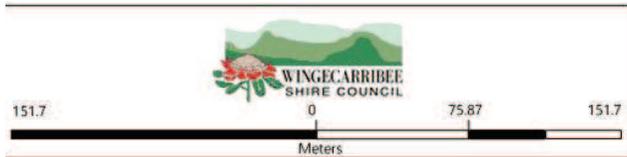
#### ATTACHMENTS

1. Aerial Map - Aerial Map

12.6 Post Exhibition Report - Proposed Lease of Part Road Reserve, Old South Road, Bowral  
ATTACHMENT 1 Aerial Map - Aerial Map



Attachment 1



Wingecarribee Shire Council

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