

## 14.2. DRAFT AMENDED KOLODONG ESTATE PLANNING AGREEMENT

### REPORT INFORMATION

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Date of Meeting	28 September 2022
Authorising Director	Paul De Szell - Director Liveable Communities

### SUMMARY OF REPORT

This report details the results of the public exhibition of the draft amended Kolodong Estate Planning Agreement and recommends adoption and registration of the document as exhibited.

### RECOMMENDATION

1. That the submissions received during exhibition period as shown in Attachment 1 be noted.
2. That the draft Kolodong Estate Planning Agreement as shown in Attachment 2 be adopted as exhibited and registered on the properties affected.
3. That the General Manager be delegated the function of authorising the Planning Agreement.

### FINANCIAL / RESOURCE IMPLICATIONS

The draft Planning Agreement has a financial implication to Council of up to \$1,350,000 (subject to CPI) to be paid over 5 future payments to the proponent following construction of a roundabout. This can be accommodated within future road grant allocations.

### LEGAL IMPLICATIONS

Planning Agreements are amended and exhibited for 28 days in accordance with the *Environmental Planning and Assessment Act 1979* and associated *Environmental Planning and Assessment Regulation 2021*.

Under section 7.5(3)(b) of the *Environmental Planning and Assessment Act 1979*, Council must provide a copy of an amended planning agreement to the relevant Minister within 14 days of it being made [signed by all parties]. This requirement is now met by lodgement on the NSW Planning Portal.

### RISK IMPLICATIONS

The reason for revising the Planning Agreement is to minimise the risk to the community of the roundabout not being undertaken.

### BACKGROUND

#### Current Planning Agreement

The current Planning Agreement acknowledges that the Kolodong Estate (marketed as “Euca Valley”) will contribute roughly 50% to the peak hour traffic loading experienced at the intersection of Wingham Road and Kolodong Road, with the remaining 50% attributable to traffic generated from existing sources (e.g. MidCoast Christian College) and hence the responsibility of Council.

The Planning Agreement was prepared following an offer from the then landowner to fund 55% of the intersection improvement works up to a total construction cost of \$1.8m, equating to \$990,000 (subject to CPI) to be funded by the landowner for this development. The \$1.8m was based on a concept design for a roundabout prepared by Council in 2019.

The Planning Agreement protects Council's interest if the roundabout is funded and constructed prior to development and would then see 55% of the cost reimbursed in 5 payments over the life of the development.

It is now considered unlikely that Council will be in a position to fund the roundabout prior to this development proceeding.

#### Draft (amended) Planning Agreement

The Kolodong Estate will be conditioned to construct the roundabout as it is required to facilitate traffic from this development to ensure public safety. However, it has already been accepted in the current planning agreement that 45% of the cost of the infrastructure is attributable to other traffic and should be borne by Council.

A formal letter of offer dated 15 February 2022 was received (attached to the 25 May 2022 Ordinary Meeting report) from the Cameron Brae Group to amend the current VPA, to update relevant party and development application details and to account for the scenario whereby the developer constructs the roundabout.

As part of this offer the developer funded an updated concept design of the roundabout, which has been accepted by Council's engineers to proceed to a detailed design. This updated concept design was used as the basis for determining an estimated upper limit (cost cap) that a % payment would be based on for the party not constructing the roundabout to pay the other party.

Council's recent experience in constructing similar roundabouts provided a figure of approximately \$2.5m, which was extended to \$3m to account for unforeseen circumstances such as extended wet periods or significant fuel price rises.

A draft (amended) Kolodong Estate Planning Agreement and Explanatory Note was then prepared.

The main outcomes of the draft Planning Agreement are:

- Either party can construct the roundabout and then the other party reimburses its % of the cost;
- Council's contribution is maintained at 45%;
- The developer's contribution is maintained at 55%;
- A cost cap of \$3m subject to CPI (to work out the % owed) is to be used by the party not constructing the roundabout [the party constructing the roundabout takes on the risk of it exceeding this cap];
- Payments by the party not constructing roundabout are:
  - 20% immediately after 27th residential lot
  - 20% immediately after 50th residential lot
  - 20% immediately after 90th residential lot
  - 20% immediately after 150th residential lot
  - 20% immediately after 200th residential lot;
- Where the developer carries out the works they are to be completed prior to the release of the 27th residential lot [stage 1 in the Development Application]. This can be waived when a significant delay is experienced in construction but the developer provides Council with security for 100% of the value of the outstanding work (clause 10.6).
- Where Council elects to construct the roundabout but the developer then progresses the subdivision to a point where it prevents release of the 27th residential lot then Council can release the subdivision if the developer pays ALL required contributions to Council (clause 6.5).
- The Planning Agreement is terminated if Wingham Road is transferred to the NSW Government prior to construction commencing.

The draft Planning Agreement carries forward the intent of the current Planning Agreement but now accounts for the scenario whereby the developer constructs the roundabout, which is more likely than Council constructing it in the near future. The agreement is seen as fair for both parties and a means to ensure that the community obtains the much-needed intersection upgrade (roundabout).

### Council resolution

Council at its Ordinary Meeting on 25 May 2022 resolved as follows:

#### **187/2022 RESOLUTION**

(Moved Cr P Howard/Seconded Cr T Fowler)

1. That Council note the submissions received during the exhibition of the Draft Kolodong Precinct Development Control Plan as shown in Attachment 5.
2. That Council adopt Draft Part L13 of the Greater Taree Development Control Plan 2010 for the Kolodong Precinct, which has been amended following the exhibition period as shown in Attachment 2.
3. That Draft Part L13 of the Greater Taree Development Control Plan 2010 for the Kolodong Precinct becomes effective upon notification on Council's website.
4. That the draft Kolodong Estate Planning Agreement and Explanatory Note as shown in Attachment 4 be placed on public exhibition for 28 working days.
5. That should no objections be received during the exhibition period of the draft Kolodong Estate Planning Agreement, that it be adopted as exhibited and registered on the properties affected.
6. That the General Manager be delegated the function of authorising the Planning Agreement.
7. That should objections be received during the exhibition period of the draft Planning Agreement, or changes are proposed to the document (other than editorial), that this matter be reported back to Council for its consideration.

FOR VOTE - Cr A Tickle, Cr J Miller, Cr C Pontin, Cr D West, Cr D Smith, Cr K Bell, Cr T Fowler, Cr P Howard

AGAINST VOTE - Nil

ABSENT, DID NOT VOTE - Cr P Epov, Cr K Smith, Cr P Sandilands

As six (6) submissions were received during the exhibition period, some of which can be considered objections, the matter is being reported back to Council in accordance with point 7 of the resolution above.

### **DISCUSSION**

Six (6) submissions were received (see Attachment 1) and all issues raised in each submission have been assessed (see Attachment 3). No changes to the exhibited version of the draft amended Planning Agreement are proposed as a result of submissions.

A snapshot of the submissions is provided below:

Submission	For/Against/Information	Main Issue
1	For	Support amended Planning Agreement to lessen risk to Council.
2	Against	Does not support additional development and traffic.
3	Information	Considers that concept design for roundabout is dangerous for cyclists (see further detail below table).

Submission	For/Against/Information	Main Issue
4	Against	Wants construction of roundabout set at \$1.8m as estimated in current planning agreement (see further detail below table).
5	Against	Does not support residential estate and increase in traffic when driving past school.
6	Against	Believes that the roundabout is for the benefit of an individual transport business and that Council should therefore not have to contribute to cost.

Most submissions did not directly relate to the exhibition, instead referring to other issues such as the proposed development, traffic, incoming population or the school. There are 2 issues that warrant further discussion, being the increase in costs included in the amended Planning Agreement (from those in the current Planning Agreement) and cyclists.

#### Roundabout costs

The current 2019 Planning Agreement was based on a basic concept design prepared by Council which was used to produce a construction estimate of \$1.8m. Under this agreement Council is to construct the roundabout and recoup \$55% of the cost up to \$1.8m subject to CPI (equating to \$990,000 in 2019) from the developer over the life of the subdivision. However, if the construction cost exceeds \$1.8m Council is responsible for any over-run.

Concept designs are difficult to cost as they are not detailed and relevant to the market at the time. Only once a detailed design is prepared and a tender is issued would it be known what it would actually cost to construct the roundabout.

The revised concept design included in the amended planning agreement has not been costed.

Current Council experience is that similar roundabouts are costing in the order of \$2.5m but cost over-runs can be experienced due to wet weather and material and fuel cost increases. An upper limit fee was seen as appropriate to reduce the risk for both parties and negotiated for inclusion in the amended planning agreement. The party constructing the roundabout pays for any cost exceeding \$3m.

#### Cyclists

Submission 3 states that the roundabout must allow for the safety of cyclists using Wingham Road. It states that the new roundabout at Cundletown does not. Advice was sought from engineering on this issue with the following comment provided:

*The roundabout will be designed in accordance with relevant design guide at the time – currently that is Austroads: Guide to Road Design (AGRD) Part 4B: Roundabouts (2021) which includes parameters for cyclists at roundabouts. It should be noted that the current standard has actually reduced provisions for bicycle lanes and the like at roundabouts as the critical factor for the roundabout to operate as a traffic device is speed.*

*Of particular note in the latest AGRD (and a safety review) would be the following:*

- The provision of an on-road bicycle lane at larger single-lane or multilane roundabouts should be removed.*
- The provision of bicycle lanes or wide shoulders at the entrance to a roundabout was found to allow higher motor vehicle speeds at the entry. To achieve the desired entry speed, the entry width needs to be kept as narrow as possible, which requires the bicycle lane or widened shoulder to end prior to the holding line.*

*The only option identified for large roundabouts is to take cyclists “off road” onto bypass cycle lanes and the guide requires these to generally tie in with on road cycle lanes – which do not exist in this location.*

*We would assess this as part of the detailed design stage.*

It is important to note that there are currently 3 roundabouts under construction to the east on Wingham Road and that the same issue for cyclists would apply. As there is no designated cycle lane on this road cyclists have to ride either in the traffic lane or on the verge [Council’s Pedestrian Access and Mobility Plan (PAMP) does not include any future cycleway along Wingham Road].

The current construction requirements revolve around the concept that for the roundabout to work effectively, it needs to narrow to act as a pinch point for traffic and hence needs to be narrow and no lane for cyclists is possible.

The issue of Active Transport (AT) is much wider than a single roundabout on Wingham Road and is one that Council is likely to have to be more involved in, in the future. AT centres around less reliance on the car and getting people around their towns and villages by walking, cycling and more likely in the future by e-mobility (e-bikes and e-scooters). There are significant health benefits and positive climate impacts of doing so.

## **CONSULTATION**

Community consultation (public exhibition) was undertaken from Wednesday 13 July to Friday 19 August 2022.

The following was undertaken as part of the consultation:

- An advertisement in the local newspaper (Manning River Times);
- A media release;
- Providing information about the exhibition on the Have Your Say page on Council’s website;
- A mailout to surrounding/nearby landowners (68) advising of the exhibition.

Six (6) submissions were received as outlined in the Discussion section of this report.

## **COMMUNITY IMPACTS**

It was evident from the exhibition that there is concern over development, traffic congestion, who pays for public infrastructure and cyclist safety.

The draft Planning Agreement will provide certainty for the community in regard to the Wingham/Kolodong Road intersection upgrade (roundabout), however improvements for cyclists are not currently planned for Wingham Road and plans for Active Transport in Taree are currently limited to the river foreshore walk/cycle path currently being completed between Harry Bennett Park and the Taree Recreation Grounds.

## **ALIGNMENT WITH COMMUNITY PLAN/OPERATIONAL PLAN**

The draft amended Kolodong Estate Planning Agreement is aligned to MidCoast 2030: Shared Vision, Shared Responsibility (CSP) in *“it is easy and safe to get around our region”* as it will:

- Plan for, provide and maintain a safe road network that meets current and future needs.

## **TIMEFRAME**

While there is no timeframe for Council’s consideration of a planning agreement following exhibition, there is an expectation from the community and the proponent that this matter be finalised shortly to provide certainty to all over the upgrade of the Kolodong/Wingham Road intersection.

## **LIST OF ATTACHMENTS**

The following attachments are available on the meeting page of Council's website under the 'Attachments to Agenda' heading. The copies of Attachments 1 & 3 on the website have had the personal information redacted to protect the privacy of the members of the public providing submissions.

Attachment 1 Submissions (10 pages)

Attachment 2 Draft Kolodong Estate Planning Agreement, as exhibited (43 pages)

Attachment 3 Submissions assessment (8 pages)