

9.3 Mudgee Common Plan of Management - Adoption

REPORT BY THE MANAGER PROPERTY AND REVENUE
TO 15 MARCH 2023 ORDINARY MEETING
GOV400103, COU500102, P2210411

RECOMMENDATION

That Council:

1. **receive the report by the Manager Property and Revenue on the Mudgee Common Plan of Management - Adoption;**
2. **note the changes advocated by Crown in Table 1 of this Report and the submissions received during the exhibition period as cited in Attachment 2 to this Report and accept the recommendations proposed by staff;**
3. **note that further Native Title Manager advice as cited in Attachment 3 to this Report has been considered in relation to the Plan of Management for the Mudgee Common, Crown Reserve 120019, Lot 7304 DP1151583;**
4. **adopt the Mudgee Common Plan of Management as cited in Attachment 4 to this Report, in accordance with Section 40 of the Local Government Act 1993 and in accordance with Section 3.23(6) of the Crown Land Management Act 2016;**
5. **authorise the General Manager to make minor editorial modifications in the finalisation of the Mudgee Common Plan of Management if necessary; and**
6. **forward the adopted Mudgee Common Plan of Management to the NSW Department of Planning and Environment – NSW Crown Lands for information.**

Executive summary

At the Meeting of Council held on 19 May 2021, Council was presented with the Draft Mudgee Common Plan of Management (PoM).

Council resolved via Minute142-21 to refer the draft PoM to the Minister (Crown) administering the Crown Land Management 2016 (CLMA), conduct a public hearing in accordance with s40A Local Government Act 1993 (Act) and receive a further report at the conclusion of the public exhibition period to consider any submissions received.

Following the enactment of these resolutions, this report now seeks Council's consideration of the submissions received and a resolution to finalise and adopt the PoM in accordance with s40 of the Act and s3.23(6) of the CLMA.

Disclosure of Interest

Nil

Detailed report

Council Minute 142-21 of 19 May 2021 is appended to this Report as Attachment 1.

The outcomes of the enactment of the resolutions are as follows –

Referral of the draft PoM to Crown & Crown’s consent

The PoM was referred to Crown seeking landowners consent in accordance with section 39 of the Act on 9 June 2021.

Council received initial feedback from Crown on 18 February 2022 requesting a response to the following 3 queries. Council’s responses were prepared by the Council managers of the Mudgee Common in conjunction with advice from the consultant who was appointed to draft the PoM.

TABLE 1

Crown’s Queries	Council’s Response & Changes made after 21 May 2021 PoM before PoM placed on exhibition
Pg. 4 - the <i>Commons Management Act 1989</i> is still in effect, the sentence reads (to me) as though it has been repealed. Although you are correct that this reserve is not managed under the CM Act.	Sentence corrected.
Pg. 6 - all PoMs require Ministers consent to adopt, since the Reg. amendment of June 2021, not only those that change the category.	Paragraph changed to - “This POM alters the initial categorisation assigned under section 3.23(2) of the CLM Act. Consent of the Minister administering the CLM Act for the adoption of this POM is required under Section 70B of the Crown Land Management Regulation 2018.”
Pg. 20 - is there need to refer to development of another plan for the works listed? They should be covered in this PoM	It is proposed to relocate the carpark to Common Road (outside the Reserve) and not to continue with the lookout, picnic table and viewing platform. All reference to these works have been removed from the PoM, excepting a note that a carpark will be established on adjoining land.

The PoM was amended to reflect these changes. Crown confirmed that the PoM satisfied the requirements under s3.23(6) CLMA and approval given on 23 August 2022 to exhibit the amended draft PoM in accordance with s38 of the Act. Consent was also given for Council to adopt the PoM following public exhibition, provided it was not altered from the exhibited draft PoM.

Public Exhibition in accordance with s38 of the Act

The draft PoM was publically exhibited from 26 August 2022 to 23 September 2022 with submissions accepted until 7 October 2022.

The draft PoM was available for viewing on Council’s website with hard copies available at Council’s Administration Services Centres. A walk-in information session was also conducted on 5 September 2022.

Submissions were received from 3 parties. Attachment 2 to this Report contains a summary of the discussions and issues raised along with Council manager recommendations to address the issues and where considered necessary or plausible, amend the draft PoM.

S40(2)(b) of the Act states that a council, if it is of the opinion that the amendments are not substantial, can adopt an amended draft plan of management without public exhibition. It is

considered that the proposed amendments to the PoM are not substantial and do not require re-exhibition of the PoM. The Crown also confirmed the minor nature of the proposed amendments and has given approval for Council to proceed with its adoption.

Public Hearing in accordance with s40A the Act

Council was not required to hold a public hearing under s40A of the Act for the change in categorisation of the Mudgee Common from *Park* to *Natural Area – Bushland*. This is due to an exemption under clause 70A of the Crown Land Management Regulation 2018 which came into force on 11/10/2021 (some months after Council's resolution of 19/5/2021).

Native Title Managers' Advice

Plans of management for Crown reserves must be compliant with the statutory requirements of the Commonwealth Native Title Act 1993 (NTA). Council cannot adopt a plan of management until it has obtained written advice from a Native Title Manager that a plan of management complies with the applicable provisions of the NTA legislation.

The Native Title Managers' Advice presented to Council on 19 May 2021 indicated that the draft PoM complied with the applicable provisions of the NTA, in this case being valid future acts under s24JA. Council advised and gave the opportunity to comment to NTSCorp Limited as the representative aboriginal body for New South Wales, under s24JB(6) of the NTA. No comment was received from NTSCorp.

The Native Title Managers' Advice presented to Council on 19 May 2021 has been reviewed in light of the proposed amendments to the PoM. It is considered that the proposed revised PoM still complies with the applicable provisions of the NTA being valid future acts under s24JA. The reviewed advice is appended as Attachment 3 to this Report.

Recommendation

It is recommended that the PoM as appended as Attachment 4 to this Report be adopted by Council.

Community Plan implications

Theme	Good Government
Goal	An effective and efficient organisation
Strategy	Prudently manage risks association with all Council activities

Strategic implications

Council Strategies

The PoM will provide strategic direction for Community classified Crown Land and is consistent with Council's responsibilities under the LGA and the CLMA. The PoM identifies the permissible uses and potential development for the land parcel cited. Council may not undertake any activities, uses or developments which are not provided for in the PoM.

Council Policies

Not Applicable

Legislation

Crown Land Management Act 2016

Division 3.4 – Crown Land managed by Councils

Division 3.6 – Plans of Management and other plans

Section 8.7 – When advice of Native Title Manager is required

Crown Land Management Regulation 2018

Local Government Act 1993

Part 2 Division 2 – Use and Management of Community Land

Local Government (General) Regulation 2005

Part 4 Community land, Division 1 – Guidelines for the categorisation of Community Land

Native Title Act 1993 (Commonwealth)

Section 233 – Future Act

Section 24JA – Reservations, leases etc.

NSW Aboriginal Land Rights Act 1983

Biodiversity Conservation Act 2016

Environment Protection and Biodiversity Conservation Act 1999

Financial implications

The adoption of the PoM will not have an immediate financial impact. Any future works priorities identified as part of the PoM will be considered through the normal operational planning and budget processes. Council received funding from the NSW Government through the *Plans of Management Funding Support Program* to develop compliant plans of management under the LGA for all Council managed Crown reserves. The cost of preparing the PoM has been funded from this resource.

Associated Risks

It is a requirement under the LGA and CLMA for Council to produce compliant plans of management for all Council managed Crown reserves. One of the key aims of a plan of management is to ensure that management of Crown Reserves is conducted in accordance with requirements of the *NSW Aboriginal Land Rights Act 1983* and *Native Title Act 1993*, reducing the potential for Council to be in breach of either piece of legislation. The PoM addresses all requirements and clearly sets out the obligations.

The risk of producing a plan of management which did not align with the community's vision for the reserve was mitigated by public consultation facilitated by the exhibition of the draft PoM, additional community consultation and due consideration of submissions received.

DIANE SAWYERS
MANAGER PROPERTY AND REVENUE

LEONIE JOHNSON
CHIEF FINANCIAL OFFICER

20 January 2023

- Attachments:*
1. Minute 142-21 19 May 2021. (separately attached)
 2. Summary of submissions and recommendations. (separately attached)
 3. Native Title Manager's Advice 28/2/2023. (separately attached)
 4. Mudgee Common PoM. (separately attached)

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER