

Representations in Response to agenda item 8.1 “Bowral Riverfront Greenway - Connecting our paths and cycleways” of the extraordinary meeting of Council – 26 June 2024

These written submissions are an initial response, are without prejudice and the Respondents reserve the right to address the meeting and to submit further and more complete submissions in time.

Council is asked to excuse the brevity of the response however we are sure that council will acknowledge the time pressures caused by affording the Respondents 3 working days to do so. It is expected that those reading this response are well versed with the report of Garima Mendiratta (“the Report”) and so topical introductions and background explanations have been dispensed with.

Terminology:

- **Bicycle Strategy:** The Bicycle Strategy for Mittagong, Bowral and Moss Vale adopted in 2008.
- **Bicycle Path:** The proposed path to be built along the Wingecarribee including over the land of the Respondents. (Fig 2 of the Report)
- **The Flood Report:** A Council commissioned report from 2014.
- **The Project:** The building of the Bicycle Path.
- **The Respondents:**
 - Vallance and Nicole Kennelly – owners of Lot 10 DP 1063603
 - Anne Norris – owner of Lot 1 DP 579578
 - Andrew & Erin Dawson – owners of Lot 2 DP 579578
 - Glen & Carol Corkill – owners Lot 11 DP 1148796
 - JDO Burns – represented by William Burns of Lot 1 DP 667017 & Lot 1 DP 174985
 - Angela and David Dickson – owners of Lot 3 DP 1085065 (Not Notified)
- **The Report:** of Garima Mendiratta labelled “Bowral Riverfront Greenway” and included as agenda item 8.1.

The Respondents raise the following objections to agenda item 8.1, the Report and to the Bicycle Path

A) Objections to Agenda Item 8.1

- a. It is too early to commence negotiations for land acquisitions. The Purpose of the Report is inconsistent with the Officers Recommendation. The former requests authority to commence negotiations while the latter seeks authority “to commence due diligence investigations and potential negotiations for strategic riverfront land acquisitions”. The is a more logical sequence of actions particularly in circumstances where the due diligence investigations may result in a conclusion that the Bicycle Path is not feasible.
- b. The respondents also object to the assertion that the River Path is in line with recommendations contained in the 2008 Bicycle Strategy adopted by Council. It was not recommended although it appears as an “Informal Riverfront Greenway”
- c. It is incomprehensible that no community engagement or external communication has occurred where the potential costs of these developments have been made transparent to the ratepayers before any further steps are taken and the other affected owners of lots (not the Respondents) who currently border on the crown land that is intended to hold the cycle path have not been informed.

The respondents therefore request that the Officers Recommendation in the Report is varied to read as follows:

- i. THAT Council commence due diligence investigations (Including a cost analysis) on the feasibility of constructing a bicycle path that joins Bong Bong common and Cecil Hoskins Nature Reserve to the emerging Bowral South New Living Area along the Wingecarribee riverfront ("the Bicycle path"). Should those due diligence investigations conclude that the Bicycle Path is feasible in all reasonable ways, that Council engage the community and all affected stakeholders prior to making a final decision and thereafter, if appropriate, Council undertake negotiations for required land acquisitions.***

Items that the Respondents wish to be considered by Council During its Due Diligence

A) Addressing s.733 of the Local Government Act

As will be seen hereunder this project would be influenced by flooding. The respondents would like to see that section 733 of the Local Government Act has been considered to address the potential impacts on the property and lives of residents and council's potential liability under the section should a project be funded in the knowledge that harm may occur. Respondents would further expect to see consultations with the SES and Water NSW.

B) The Direct Costs

The Respondents have the following expectations that should be addressed and publicly reported for public comment as part of the due diligence process.

- a. The cost of the Bicycle Path with flooding as a consideration
 - i. The Bicycle Strategy, was adopted in 2008. This was before the effects of global warming were understood and the dangers of flooding in the area were investigated by Council.
 - ii. The Council commissioned Flood Report indicates the potential for massive flooding in the area. <https://www.wsc.nsw.gov.au/files/assets/public/v/1/environment/flood-studies/wingecarribee-flood-study-full-report.pdf>
 - iii. This flooding is now a continuous reality and was experienced again this month with parts of the proposed Bicycle Path being over a metre under water.
 - iv. The Flood report indicates that the Bicycle Path (as indicated by the dotted lines in Figure 2 of the Report) is going to be severely and significantly flooded for the entire (approximately 5km) course. See **Annexure 1**.
 - v. This raises the question of the type of construction that would be required to withstand the flooding and protect the wetlands. The path would likely require a raised steel construction with significant footings to withstand flooding and provide for the clay / peat substrate. The cost of >5km of this type of construction including the cost of numerous bridges over the various tributaries to meet the RMS guidelines for NSW bicycle guidelines in force from 2005 will be immense. See **Annexure 2**. For some of the difficulties and costs of construction.
 - vi. After each flood the structure would have collected significant debris that will require cleaning.

- b. The costs of the strategic land acquisitions;
- i. The lots in question are of extremely high value and their value is intrinsically tied to the access to the river and ownership of the riparian land which was a right afforded by council when council approved the subdivisions giving that access and ownership.
 - ii. The land acquisition would have to take into account not only the market value of the land acquired but significantly more than this would be compensation for the loss in value of the remaining land (severance compensation). The rights to a severance payment are explained in section 58 of the *Land Acquisition (Just Terms Compensation) Act 1991*.
 - iii. Each Respondent also has special value elements that are germane to the compensation calculation. These are explained in section 57 of said Act. Some of these value claim will be:
 - The loss of unfettered access to, use of and clear visibility of the river.
 - The opportunity loss of the right to subdivide, develop and sell for lots whose area now drops to <20 Acres.
 - The loss in increased future value of the properties.
 - Loss of business opportunities and revenue from existing businesses.
 - Loss of existing watering rights, the denial of water to stock, cost of alternative watering systems and the running thereof.
 - Loss of privacy
 - Reduction in safety and security.
 - Nuisance of noise.
 - Disturbance and disadvantage claims by all Respondents.
 - Habitat destruction
 - Fencing costs
 - iv. Councils' legal costs
 - v. Survey costs

It is incomprehensible that the costs of acquiring the land, construction of >5km of flood proof cycle paths and the ongoing maintenance thereof would be favourably viewed by the ratepayers as being in their best interests when compared to the multitude of "unfunded projects" that could better benefit from these funds.

C) Environment Impact.

- a. Although the environmental impact is to be considered this will occur "at a later stage" (p. 12 of the Report).
 - i. Given the required construction over wetlands is likely to be contentious the proposal to begin negotiations for acquisition of land before an environmental impact is obtained is nonsensical.
 - ii. Council is urged to establish the nature of the required construction and then obtain an environmental impact in order to avoid wasting public funds through pointless due diligence activities.

D) Safety, Security, Access & Animals

- a. Council needs to consider in their risk assessment the emergency release possible from the reservoir and that the rate of rise during these releases far outstrips the ability of walkers and children to exit to higher ground, given that there are only two exit points over 5 km.
- b. the properties are working agribusinesses with the need to transport stock, keep bulls separated from their herds and in very close proximity to the proposed track.
- c. There are existing bridges and driveways that would be crossed by the Bicycle Track. This creates a safety issue and could prevent access to properties on the other side of the river.
- d. Lots on the other side of the river have easements for services from Eridge Park Road across the river which would be cut by the proposed path. The easements allows unfettered access for maintenance of these services.
- e. Interactions between cyclists and farm animals

E) The Bicycle Strategy does not give sufficient importance to the Bicycle Path to consider the Project as viable in light of the costs.

- a. Analysis of the Bicycle Strategy referred to in the Report indicates:
 - i. While the River path alternative is indicated on the map, virtually no reference is made to it in the Strategy.
 - ii. The Bicycle Path does not appear to be a recommendation of the Bicycle Strategy
 - iii. The vast majority of the 143 suggestions and comments following its circulation make no ask for or comment on the Bicycle Path.
 - iv. Only three comments (9, 89 and 129) made some reference to the Bicycle Path or access out of it and Council's response was the same in respect of each comment i.e. that priority for the proposed path was reduced.
 - v. It is hard to see where if at all the cost of a river path is included in the estimates that are part of the Bicycle Strategy. They certainly are not included in the estimates of \$11.5 million (2008 dollars) for the Mittagong/Bowral/Moss Vale connection although there is an individual item in the Feeder Routes for Bowral River Trail of \$3.1m for some 7 km. Perhaps this was for a trail like the one that goes from Cecil Hoskins to the look-out position ie a dirt track

F) Aboriginal Heritage

- a. No aboriginal heritage study has been conducted along the proposed route yet the Bicycle Path crosses known meeting grounds and aboriginal middens.
- b. An Aboriginal Cultural Heritage Assessment would be required or existing relevant ones distributed.

G) Alternatives not explored

- a. In light of the significantly changed flooding situation, the current administration and financial means of Council and the extreme dating of the Bicycle Strategy it is appropriate for council to consider alternative strategies or at least alternative routes that achieve the same objectives but without the cost.
 - i. This seemed to be the approach in the Bicycle Strategy noted above where the Bicycle Path barely received a mention.
- b. The proposed cycle path along Eridge Park road (see Bicycle Strategy) could be extended and varied to achieve the same outcomes with minimal additional cost. Specifically on page 14 it mentions a road reserve on the Moss Vale Rd between Bong Bong and Eridge Park Rd.

- c. The do nothing alternative should be considered.
 - i. The Southern Highlands is a wonderful area with a four seasons and a pastoral atmosphere. The country between its distinct villages s being slowly eroded and degraded.
 - ii. The Council is contemplating carrying out works along the river that no landholder would be permitted to do in such a pristine and environmentally valuable area.
 - iii. There are two routes already from Bong Bong Bridge to the Bowral South New Living Area i.e. Bong Bong Common river walk and Moss Vale Rd/Eridge Park Rd. Is the River Path idea really of benefit to the whole community or only to a limited number who will live in the Bowral South New Living Area or indeed, indirectly to the developers?

Summary and Logical Next Steps for Council

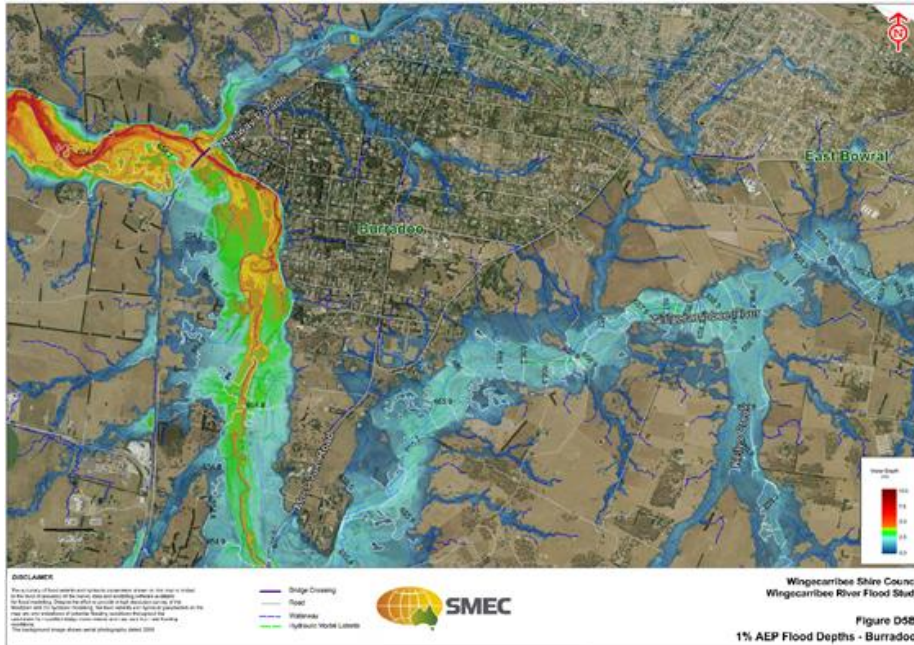
A. Summary

- a. The entire feasibility of the project hinges on an understanding of flooding in the area that is outdated and which has not been re-considered. The entire proposed Bicycle Path is subject to regular and severe flooding.
- b. A high-level evaluation of the type of construction required due to flooding with a matchbox calculation of the extreme cost of that construction over 5 km of riverbank should convince council immediately that this project is not financially feasible in light of its current financial duress.
- c. The costs of expropriation would reinforce that view.
- d. The non-feasibility is reinforced in the glaring light of other significantly more important projects that are required and which have recently been declared unfunded rather than this trivial “nice to have project”.
- e. When the type of construction required is presented for a high-level environmental evaluation this would likely lead to this project being declared environmentally unviable.
- f. The Bicycle Strategy did not give prominence to this project sufficient to justify the expected costs.
- g. An evaluation of the alternatives to the project has not been done.

B. Logical Next steps for Council in the Circumstances

- a. Read your Flood Report to understand the flooding in the area.
- b. Get an opinion on the extent and type of construction required and the costs thereof in light of the flooding (including perhaps a high-level estimation of the costs of expropriation based on the submissions).
- c. Evaluate the financial needs of other more necessary projects and those declared as unfunded in light of your available funds.
- d. Consider the cheaper alternatives to this project and then
- e. Relegate this nice to have project to the box labelled “unfunded” and resurrect something more worthwhile.

Annexure 1 – Extracts from the Wingecarribee River Flood Report of 2014 (indicating extent and depth of flooding) and Figure 2 of the Report indicating that the proposed path will be exposed to significant flooding



Extract from Wingecarribee River Flood Study 2014 showing the subject site and the extent of flooding of the site



Annexure 1A – Picture of the proposed Bicycle Path at Lot 1 DP 579578 on 7 June 2024



Annexure 2 – Showing some of the additional costs and complexities of construction



