

9.6 Plan of Management for Mudgee Common

REPORT BY THE MANAGER PROPERTY AND REVENUE AND ENVIRONMENT OFFICER
TO 19 MAY 2021 ORDINARY MEETING
GOV400088, COU500102, 22104

RECOMMENDATION

That Council:

1. **receive the report by the Manager Property and Revenue and Environment Officer on the Plan of Management for Mudgee Common;**
2. **refer the draft Plan of Management for the Mudgee Common, Reserve 120019 (Lot 7304 DP 1151583) to the Minister administering the Crown Land Management Act 2016 for approval;**
3. **note that Native Title advice has been received for Reserve 120019;**
4. **upon approval from the Minister administering the Crown Land Management Act 2016 Council amends the draft Plan of Management for Reserve 120019 if required, and place it on public exhibition, as per Section 38 of the Local Government Act 1993;**
5. **conduct a public hearing in accordance with S40A Local Government Act 1993 to alter the categorisation of Reserve 120019 to *Natural Area*;**
6. **receive a further report at the conclusion of the public exhibition period and public hearing period to consider any submissions received and if appropriate, adopt the final Plan of Management for Reserve 120019; and**
7. **permit the General Manager to enter into a suitable Licence agreement with the Mudgee Region MTB Incorporated to facilitate the requirements of cl5.7 of the draft Plan of Management for the Mudgee Common.**

Executive summary

Under Section 36 of the Local Government Act 1993 (LGA) all public land in the care and control of Council classified as community land is subject to a Plan of Management (PoM).

The Mudgee Common PoM has been developed to provide the framework and guidelines for which the Mudgee Common will be managed.

The execution version draft of the PoM is appended as attachment 1 to this Report.

Disclosure of Interest

Nil

Detailed report

In July 2018 the Crown Land Management Act 2016 (CLMA) came into force which required all councils to categorise the Crown land under their control into the community land categories specified in the Local Government Act 1993 (LGA) (unless a reserve could be

classified as Operational land). This direction previously had not been required as PoMs were directed to be developed for council managed Crown land under Crown's legislation, not Local Government legislation.

Accordingly, all Crown reserves that are classified as *Community* land must now be categorised and have a PoM developed in accordance with the LGA. *Community* land is required to be used and managed in accordance with the PoM applying to the land and any law permitting the use of the land for a specified purpose, or otherwise regulating the use of the land.

The subject land is identified as Lot 7304 in DP 1151583, described as Reserve 120019, 58 Common Road, Mudgee and is known as the Mudgee Common. The Reserve was dedicated for the purpose of *Public Recreation* in 1987. It has been classified under the LGA as *Community Land* and the Crown has confirmed its categorisation to be that of *Park*.

It is however considered that a more appropriate categorisation for the Reserve would be that of *Natural Area – Bushland*. In concurrence with Crown it is proposed to amend the category from *Park* to *Natural Area – Bushland*.

Under Section 40A of the LGA Council must hold a public hearing if the proposed PoM alters the categorisation of *Community* land under s36(4) LGA to *Natural Area*.

As defined by the Local Government (General) Regulation 2005 (the Regulation) *Natural Area* is land that, whether or not in an undisturbed state, possesses a significant geological feature, geomorphological feature, landform, representative system or other natural feature or attribute that would be sufficient to further categorise the land as bushland, wetland, escarpment, watercourse or foreshore.

The category *Bushland* is assigned to land that contains primarily native vegetation and that vegetation is:

- The natural vegetation or a remainder of the natural vegetation of the land, or
- Although not the natural vegetation of the land, is still representative of the structure or floristics, or structure and floristics, of the natural vegetation in the locality. Such land includes:
 - Bushland that is mostly undisturbed with a good mix of tree ages, and natural regeneration, where the understorey is comprised of native grasses and herbs or native shrubs, and which contains a range of habitats for native fauna (such as logs, shrubs, tree hollows and leaf litter), or
 - Moderately disturbed bushland with some regeneration of trees and shrubs, where there may be a regrowth area with trees of even age, where native shrubs and grasses are present in the understorey even though there may be some weed invitations, or
 - Highly disturbed bushland where the native understorey has been removed, where there may be significant weed invasion and where dead and dying trees are present, where there is no natural regeneration of trees or shrubs, but where the land is still capable of being rehabilitated.

The core objectives for management of community land categorised as Bushland are:

- (a) to ensure the ongoing ecological viability of the land by protecting the ecological biodiversity and habitat values of the land, the flora and fauna (including invertebrates, fungi and micro-organisms) of the land and other ecological values of the land, and
- (b) to protect the aesthetic, heritage, recreational, educational and scientific values of the land, and
- (c) to promote the management of the land in a manner that protects and enhances the values and quality of the land and facilitates public enjoyment of the land, and to implement

- measures directed to minimising or mitigating any disturbance caused by human intrusion, and
- (d) to restore degraded bushland, and
 - (e) to protect existing landforms such as natural drainage lines, watercourses and foreshores, and
 - (f) to retain bushland in parcels of a size and configuration that will enable the existing plant and animal communities to survive in the long term, and
 - (g) to protect bushland as a natural stabiliser of the soil surface.

Mid-Western Regional Council first developed a PoM under the Crown's previous legislation for the development of the Mudgee Common in 2013 in order to legitimise the existing trails designated as a mountain bike track network and develop a plan for the development of further trails.

This plan was approved by the Minister but was revised in 2016 due to the discovery of a large population of *Swainsona recta* (Small Purple Pea) flowers which are listed as Endangered under the Biodiversity Conservation (BC) Act and Environment Protection and Biodiversity Conservation (EPBC) Act.

This most recent revision was prompted by unapproved trail works which produced a very large double black diamond (extreme) bike track, hereby known as the 'Smuggler'.

The objectives of the draft PoM are as follows:

- To identify appropriate recreation uses within the Reserve;
- To set out the rules and obligations for users of the Reserve;
- To identify the obligations of Mid-Western Regional Council as the Crown land manager of the Reserve;
- To ensure the protection of the reserve's environmental characteristics through the formalisation of bike tracks and the closure of unauthorised tracks;
- Protection of the threatened species identified.

The draft PoM aims to set clearer guidelines around stakeholder responsibilities (particularly in relation to the Mountain Bike Club) the as well as acceptable track/reserve usage.

The draft POM states that the maintenance of trails will be subject to a licence to occupy agreement between Council and the Mountain Bike Club, which endorses the club's ability to use the Reserve and outlines conditions in which the Cub may occupy the reserve.

The draft POM outlines how the bike tracks will be maintained as well as how to minimise impact and protect the threatened species. The impact to the Swainsona plants was determined to be minimal if recommendations outlined in the draft PoM are adhered to.

No new tracks are approved to be constructed.

It is recommended that the PoM be reviewed every 4 years.

All PoMs for Crown Reserves must be compliant with the statutory requirements of the Native Title Act 1993 (NTA) prescribed by both the CLM Act and the LGA. The Department of Planning Industry and Environment – Crown Land will not process a draft PoM unless Council attests that it has considered Native Title Manager advice.

Written Native Title advice has been obtained indicating that the PoM complies with applicable provisions of the NTA, being in this case, valid future acts under Section 24JA.

Native Title Manager's advice is appended as attachment 2 to this Report.

Council is required to resolve to refer the draft PoM to the Minister administering the CLM Act for review. On approval of the Minister, the plan will be placed on public exhibition for a period of 28 days, allowing not less than 42 days after the date on which the draft plan is placed on exhibition, to receive submissions.

A public hearing is to be conducted and all submissions received during the exhibition period and the public hearing are to be considered by Council thereafter. Council may then amend the draft PoM, if applicable, or adopt it without amendment.

If significant amendments are made to the draft plan it must be further publicly exhibited. If proposed changes are not substantial the draft PoM may be adopted without further public exhibition.

Community Plan implications

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

Strategic implications

Council Strategies

This PoM will provide strategic direction for Council managed Crown land and is consistent with Council's responsibilities under the LGA and the CLMA. The plan identifies the permissible uses and development for the Mudgee Common.

Council may not undertake any activities, uses or developments which are not provided for in this 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

Local Government Act 1993

Division 2 – Use and Management of Community Land

Section 36(4) Preparation of draft plans of management for community land – natural area

Section 36(5) Preparation of draft plans of management for community land – bushland

Section 36J - Core objectives for management of community land categorised as bushland

Section 38 - Public notice of draft plans of management

Section 40 – Adoption of plans of management

Section 44 - Use of community land pending adoption of plan of management

Local Government (General) Regulations 2005

Reg. 102 Guidelines for categorisation of land as a Natural Area

Reg. 107 Guidelines for categorisation of land as a bushland

Native Title Act 1993 (Commonwealth)

Section 233 – Future Act

Section 24JA – Reservations, leases etc. – this Subdivision applies to a future act.

Biodiversity Conservation Act (BC Act)

Environment Protection and Biodiversity Conservation Act (EPBC Act).

Financial implications

This PoM will not have an immediate financial impact. Any future priorities identified as part of the PoM will be considered through the normal budget process.

The PoM stipulates that although Mid-Western Regional Council is the trustee of the reserve Council's obligations in regard to the maintenance of the reserve are limited to environmental management such as the threatened species conservation, bushfire hazard reduction (RFS), weed and pest management, and maintenance of the access to the site.

For Council to meet its environmental management obligations particularly in relation to ongoing weed management Community Proposal Plans will be submitted in alignment with this plan to be considered in the budget process. Note there is currently no budget for weed management in this reserve.

Council will not be responsible for the maintenance of the mountain bike trails.

Council received funding from the NSW Government through the Plans of Management Funding Support Program of \$94,087 to develop compliant PoMs under the LGA for all Council managed Crown reserves. The costs of preparing the Mudgee Common PoM will be funded from this resource.

Associated Risks

Ongoing maintenance of the trails will not be carried out by Mid-Western Regional Council. Maintenance of trails will be subject to a licence to occupy agreement between Council and the Mountain Bike Club, which endorses the clubs ability to use the Reserve and requires the club to undertake management actions in relation track maintenance (according to the rules outlined in the POM).

For the day-to-day use of the reserve, liability will come under council's public liability insurance.

DIANE SAWYERS
MANAGER PROPERTY AND REVENUE

LEONIE JOHNSON
CHIEF FINANCIAL OFFICER

3 May 2021

Attachments: 1. Mudgee Common Draft PoM. (separately attached)
2. Mudgee Common Native Title Managers' Advice. (separately attached)

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER