

9.4 Howlong Pool 2022-23 Summer Season Report

101/2023FC RESOLVED on the motion of Councillors Gail Law and David Longley
THAT Council note the report on the Howlong Pool 2022-23 Summer Season.

9.5 Withdrawal of Planning Proposal 2021/1 Federation Local Environmental Plan 2021

102/2023FC RESOLVED on the motion of Councillors David Fahey and Gail Law
1. THAT Planning Proposal 2021/1 Federation Local Environmental Plan not proceed; and
2. THAT Council notify the Minister in accordance with Section 3.35(4) of the Environmental Planning and Assessment Act 1979.

10. DIRECTOR ENGINEERING SERVICES REPORT

10.1 Report on the progress of the Works Program - March 2023

103/2023FC RESOLVED on the motion of Councillors Andrew Kennedy and Shaun Whitechurch
THAT Council note the report on the progress of the Works Program - March 2023.

10.2 Report on the Capital Works Program - March 2023

104/2023FC RESOLVED on the motion of Councillors Sally Hughes and David Fahey
THAT Council note the report on Council's Capital Works program for March 2023.

11. NOTICES OF MOTION / QUESTIONS WITH NOTICE

11.1 Notice of Motion - KPMG Report

105/2023FC RESOLVED on the motion of Councillors David Fahey and Andrew Kennedy
THAT Council apply under the Government Information (Public Access) (GIPA) Act 2009 Sect 12, for the release of the KPMG report pertaining to the proposed savings and efficiencies of the forced merger of Corowa and Urana Shire Councils.

12. REPORTS FROM COMMITTEES

12.1 Corowa Saleyards Consultative Committee Meeting - Minutes 17 March 2023

106/2023FC RESOLVED on the motion of Councillors David Longley and Gail Law
THAT Council note meeting minutes from the Corowa Saleyards Consultative Committee.

13. REPORTS FROM DELEGATES

13.1 Verbal Reports from Delegates

Councillor Law thanked Council for allowing her to take leave to care for her father and he has now passed away and she is back to full Council duties.

Councillor Nicholls reported on his attendance at the Corowa Local Health Advisory Committee Meeting.

107/2023FC RESOLVED on the motion of Councillors Shaun Whitechurch and Andrew Kennedy
THAT Council note the verbal reports from delegates.

Federation Council Ordinary Council Meeting

24 April 2023

- 8.4. 2022/2023 Federation Community Grant Program
- 8.5. Riverina Murray Destination Management Plan (DMP) Release
- 8.6. Budget Variation - Grant Funding
- 9. **DIRECTOR DEVELOPMENT AND ENVIRONMENTAL SERVICES REPORT**
 - 9.1. Building Approvals – Complying and Construction Certificates Approved
 - 9.2. Development Applications Approved Under Delegated (Staff) Authority Since the March 2023 Ordinary Council Meeting
 - 9.3. Regional and State Significant Development Applications Lodged
 - 9.4. Howlong Pool 2022-23 Summer Season Report
 - 9.5. Withdrawal of Planning Proposal 2021/1 Federation Local Environmental Plan 2021
- 10. **DIRECTOR ENGINEERING SERVICES REPORT**
 - 10.1. Report on the progress of the Works Program - March 2023
 - 10.2. Report on the Capital Works Program - March 2023
- 11. **NOTICES OF MOTION / QUESTIONS WITH NOTICE**
 - 11.1. Notice of Motion - KPMG Report
- 12. **REPORTS FROM COMMITTEES**
 - 12.1. Corowa Saleyards Consultative Committee Meeting - Minutes 17 March 2023
- 13. **REPORTS FROM DELEGATES**
 - 13.1. Verbal Reports from Delegates
- 14. **CORRESPONDENCE REQUIRING COUNCIL ACTION/FOR INFORMATION**
 - 14.1. Correspondence Requiring Council Action/For Information
- 15. **CONFIDENTIAL MATTERS**
 - 15.1. No Items
- 16. **CONCLUSION OF MEETING**



9.5. Withdrawal of Planning Proposal 2021/1 Federation Local Environmental Plan 2021

Author: Susan Appleyard, Director Development & Environmental Services

Summary

In July 2021 Council resolved for seek a gateway determination in accordance with Section 3.34 of the Environmental Planning and Assessment Act 1979 for the planning proposal to prepare the Federation Local Environmental Plan.

The planning proposal, in essence is a housekeeping proposal to merge the Corowa and Urana Local Environmental Plans.

Since the Gateway determination was granted there have been a number of landuse and servicing issues that have been identified and it is currently now considered that merging the two Local Environmental Plans is viable.

Recommendation

1. THAT Planning Proposal 2021/1 Federation Local Environmental Plan not proceed; and
2. THAT Council notify the Minister in accordance with Section 3.35(4) of the Environmental Planning and Assessment Act 1979.

Background

May 2016 - The merger road map provided to merged council's identified that all newly merged Councils would be required to prepared new local environmental plans for the newly formed councils.

20 July 2021 Council resolved

261/21FC **RESOLVED** on the motion of Councillors Kennedy and Law that the Planning Proposal for the preparation of Federation Local Environmental Plan be referred to the Minister in accordance with section 3.34 Gateway Determination of the Environmental Planning and Assessment Act 1979.

8 April 2022 The Gateway determination was granted seeking minor amendments to the proposal. Since the Planning Proposal was made there have been 6 significant issues that have been identified with regard to landuses within Federation Council area that impact on the planning proposal.

1. Provision of Services

The State of the Our Council Infrastructure Assets Report 2022 and Strategic Asset Management Plan (SAMP) 2022-2032 identified the significant backlog of infrastructure works to be completed. From the SAMP it is clear that servicing of already urban zoned areas in Howlong, Corowa and Mulwala imparticular is inadequate and that additional works are required to maintain services to existing users and plan for future users, i.e. Upgrades or replacements to treatment plants and trunk infrastructure.

2. Biodiversity

Awesome Corowa Pty Ltd verses Federation Council Class 1 determination to refuse the application from the NSW Land and Environment Court the commissioner concluded:

Conclusion and findings

170 Having regard to the evidence and the submissions made on behalf of the parties, I am not satisfied that the development should be approved. Of particular relevance is the submission made for the Council that the application contains insufficient information for the Court to be satisfied that there will be no adverse impacts arising from the development, particularly in relation to endangered ecological communities.

171 Ms Reid described the hearing as an expensive section 34 conciliation conference. I tend to agree. The application was originally lodged with the Council over 12 months ago and, in preparing the Statement of Facts and Contentions, the Council highlighted the areas which it said there were deficiencies in detail, surveying and investigation. At that time, the issue of the Sloane's Froglet habitat had not been identified, however, it is apparent that the necessary investigations have still not been completed and I am not satisfied from the information provided that there will be no adverse impacts to either the remnant vegetation along Cemetery Road and the Sloane's Froglet.

172 For that reason, I cannot be satisfied that the matters raised in cl 7.4 of the LEP have been satisfactorily address or that the development will not have any adverse impact on the significance of the Sloane's Froglet or on the habitat elements providing connectivity on the land. It has not been demonstrated that appropriate measures can be adopted to minimise or mitigate the impacts of the development. It is unclear whether the works that have been carried out in Albury would be an appropriate means of mitigating adverse impacts to the Froglet. It has not been demonstrated how the vegetation will protected or if it will be removed.

173 The Sloane's Froglet is listed as vulnerable on the NSW Biodiversity Conservation Act 2016 and endangered under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 and accordingly, a higher level of consideration and assessment of the impacts is required. There is no adequate information or a clear pathway that has been prepared that will ensure the development will not have an adverse impact on the species.

The conclusion and findings identify that the biodiversity mapping requires updating that proceeding with the Planning Proposal without updated mapping has the potential to adversely impact on the biodiversity within the Council area and there is a lack of certainty regarding potential impacts.

3. Funding

Council is currently waiting on the determination for a special rate variation from IPart for the General Fund to ensure council can meet its obligations under section 8B Principles of sound financial management of the Local Government Act 1993. In addition to the draft 2023/2024 budget forecasts a deficit in the operational areas for water and sewer over the coming 10 years. To remedy this a review is required of user charges and developer contributions. Council must ensure it able to meet its contribution to major works required. In addition, preparation of a number of significant documents including integrated water cycle management plan. Water and Sewer Business Plans, Financial Modelling and Asset Management Plans are required prior to applying for state government funding. Work on these is due to commence in 2023.

4. Timing

Timing for delivering documentation, studies, approvals varies and limited resources are available to deliver the works required.

5. External Pressures

The Riverina Murray Regional Plan 2041 identifies the growth impacts of Albury on the three river towns in Federation Council imparticular Howlong and Mulwala. This increase in demand is currently being modelled.

6. Flooding

The 2022 flood enquiry resulting from the Northern River Flooding recommended standard for flood planning areas be set at the maximum probable flood height. Currently the flood heights are set at 1% or 1 in 100-year event. This recommendation in conjunction with the wide spread flooding impact to the Council area in late 2022 the Howlong, Corowa and Mulwala Flood Study has been delayed to include the modelling of the 2022 event in the study.

The six issues mean that Council is unable to ensure through mapping and provision of services compliance with clauses within the standard LEPs with any level of certainty, therefore it is recommended that the planning proposal be withdrawn and that work on the Growth Strategy and the supporting documents for the growth strategy be the prior for the limited strategic planning resources available and will provide the community and developers with greater certainty surrounding future development within the council area.

Community Engagement

N/A

Attachments

1. Resolution of Council Planning Proposal
2. DRAFT Planning Proposal for report to Council July 2021 - PP-2021-7453

Links to Councils Integrated Planning Framework

Community Strategic Plan 2022 – 2032 'Our Community Our Opportunity'

Theme: Natural Federation

Outcome: *Sustainable landscapes, waterways and open space to support various lifestyle choices, protect the natural environment and adapt to a changing climate.*

Delivery Program 4 year plan: *3.6 Implement consistent and appropriate land use planning strategies.*

Operational Plan Action 2022-2023: *3.6.1 Finalise Federation Council Local Environmental Plan including supporting Growth strategy, studies and plans.*

Planning proposal 2021/1 - Federation Local Environmental Plan 2021 will not provide a plan for the council area that will provide consistent landuse planning outcomes or any strategies for the future growth of the council area. The 6 issues outlined in the background section of this report Council cannot currently provide that certainty to the public or developers.

Financial Implications

Nil for the withdrawal of the planning proposal.

The risks associated with proceeding with the planning proposal are unable to be quantified in monetary terms given the long term and significant potential impacts yet to be defined as outlined in the background section of this report.

Financial Sustainability

Nil from the withdrawal of planning proposal 2021/1 Federation Local Environmental Plan 2021.

Risk Implications

By progressing with the Planning proposal council will increase the uncertainty to developers and the public as there is no strategic documentation to backup the servicing of land, the impacts on biodiversity or the ability for Council to meet future obligations to provide services to the communities to meet increasing demand.

Legal Implications

The Council as the Planning Proposal Authority may request the planning proposal not to proceed.

3.35 Planning proposal authority may vary proposals or not proceed

(cf previous s 58)

(1) The planning proposal authority may, at any time, vary its proposals as a consequence of its consideration of any submission or report during community consultation or for any other reason.

(4) The planning proposal authority may also, at any time, request the Minister to determine that the matter not proceed.

Options

1. Withdraw the planning proposal 2021/1 - Federation Local Environmental Plan - **recommended.**
2. Proceed with planning proposal 2021/1 - Federation Local Environmental Plan - **not recommended.**