

10.4. Future Management of Berrys Bay Foreshore

AUTHOR	Gary Parsons, Director Open Space & Infrastructure
ATTACHMENTS	1. 23/7/2024 - Care Control and Maintenance of Berrys Bay - Formal Letter - NSC and TfNSW [10.4.1 - 4 pages]
CSP LINK	Outcome 4 – A connected LGA where safe, active and sustainable travel is preferred T1. Deliver infrastructure and programs that support healthy and active travel

PURPOSE:

This report seeks the endorsement of Council for Chief Executive Officer to enter into formal discussions with Transport for NSW (TfNSW) in relation to the future care, control, and management of Berry's Bay Foreshore Park.

EXECUTIVE SUMMARY:

- TfNSW has worked with Council, the Berrys Bay Working Group, and other stakeholders to develop a Master Plan for Berrys Bay Reserve, which will link Carradah Park with the Quarantine Boat Depot site.
- Council previously approached the State Government in relation to the transfer of the Berrys Bay foreshore lands to Council. Representatives from TfNSW recently reconfirmed the State Government would not transfer land ownership.
- At its meeting of 25 November 2024, Council resolved to endorse the removal of Woodley's Shed on the condition that TfNSW meets its commitments in relation to the structure, in accordance with the Functional Brief agreed with Council.
- Councillors were briefed in relation to the Place, Design, and Landscape Plan (PDLP) which is on public exhibition until 24 August 2025. The Masterplan, which is based on the PDLP, is generally consistent with Council's and the community's long-term vision for Waverton Peninsula.
- Given the progress in relation to the development of the Masterplan and imminent works onsite, it is necessary for Council enter into discussions with TfNSW in relation to the future management arrangements of Berrys Bay Reserve.

RECOMMENDATION:

- 1. THAT** Council note the contents of this report in relation to the development of the Masterplan for Berrys Bay Reserve.
- 2. THAT** the Council authorise the Chief Executive Officer to enter into formal discussions with Transport for NSW in relation to the future care, control, and management of Berrys Bay Reserve.

3. THAT Council note a further report will be brought back to Council following discussions with Transport for NSW in relation to the future care, control, and management of Berrys Bay Reserve.

Background

In October 2021 Transport for NSW (TfNSW), which owns several lots at Berrys Bay, advised Council that TfNSW was in the process of acquiring other land at Berrys Bay, from the NSW Department of Planning and Environment.

On 21 January 2021, Council acquired freehold title of the former Quarantine Boat Depot site from the State Government. Buying the site was a strategic property purchase to expand community open space and to provide a vital link to Balls Head and to the Berrys Bay foreshore.

In March 2021, as part of the Western Harbour Tunnel project, the State Government established the Berrys Bay Community and Stakeholder Working Group, as part of a commitment from TfNSW to create new public open space alongside the delivery of the Western Harbour Tunnel.

TfNSW has worked with the Berrys Bay Working Group and Council to develop a Master Plan for Berrys Bay. The delivery of the Master Plan will link Carradah Park with the Quarantine Boat Depot site.

On the 13 February 2023, prior to the NSW State Government Election, Council resolved to write to the Premier and the Leader of the Opposition seeking transfer of the Berrys Bay foreshore lands held by the State Government to Council.

An acknowledgment of this correspondence was received, however no commitment in relation to the transfer of the land to Council was made. Council has since received notification that the State Government will not transfer ownership of the land to Council.

On 23 July 2024, TfNSW wrote to Council requesting that the parties progress an Agreement for the Care, Control, and Management (CCM) of Berrys Bay Reserve. A copy of this correspondence is attached to this report.

Discussions on the CCM have been delayed by Council pending the resolution of the future of Woodleys Shed and finalisation of the design for public exhibition, to enable Council to understand the extent of the assets it would receive from TfNSW following the development of the site.

Report

The Place, Design, and Landscape Plan (PDLP) for the Berrys Bay Precinct is on public exhibition until 24 August 2025. The Masterplan, which is the basis of the PDLP, is generally consistent with the community's and Council's long-term vision for the Waverton Peninsula.

Council has also worked with TfNSW on the development of a functional brief, which informed Council's requirements for the community facility that TfNSW is proposing to construct to replace the Woodleys Shed building as part of the redevelopment of Berrys Bay Reserve.

At its meeting of 25 November 2024, Council resolved to endorse the removal of Woodley's Shed on the condition that TfNSW meets its commitment made to the community in relation to the delivery of the adaptive reuse of Woodley's Shed, in accordance with the Functional Brief agreed with Council.

On 14 July 2025, Councillors were briefed in relation to the PDLP to be exhibited by TfNSW. At this briefing, TfNSW advised that the next steps would include discussions in relation to the ongoing management of the land to inform the drafting of a Care, Control, and Management (CCM) agreement for Berry's Bay Reserve. TfNSW representatives reconfirmed the State Government's position in relation to the transfer land ownership of Berrys Bay Reserve to Council at this briefing.

Given the progress in relation to the development of the Masterplan and imminent works onsite, it is necessary for Council to enter into discussions with TfNSW in relation to the future management arrangements for the land, including the consideration of a CCM for the site, notwithstanding Council's long-held position in relation its ownership of the site.

Consultation requirements

No community consultation is proposed to be undertaken in relation to the recommendations within this report.

Financial/Resource Implications

There are no financial implications for Council in entering into formal discussions in relation to the future care, control, and management of Berrys Bay Reserve, noting that a further report will be brought back to Council following discussions with TfNSW in relation to this matter.

Legislation

- Crown Lands Management Act 2016
- NSW Local Government Act 1993

Transport for NSW



23 July 2024

North Sydney Council
200 Miller St
North Sydney NSW 2060

Attention: **Gary Parsons, Director of Open Space and Infrastructure**

Dear Gary,

**Section 159 Agreement
Care control and management of Berrys Bay Reserve**

I refer to previous discussions held to date between North Sydney Council (**the Council**) and Transport for NSW (**TfNSW**) regarding the future care, control and management of Berrys Bay Reserve.

1. **Purpose of this letter**
 - 1.1 The Council requires additional open space to be delivered as part of its statutory functions under the *Local Government Act 1993 (LGA)* and its ongoing commitment to ratepayers.
 - 1.2 TfNSW owns the land at Lot 21 of DP 1048933, Lots 1, 2, and 3 of DP 181235, Lot 101 and 102 of DP 1162896 (**Land**), and this forms open space delivered to the community by TfNSW as part of the Western Harbour Tunnel in accordance with condition E157 of the planning approval for the Western Harbour Tunnel (**Approval**).
 - 1.3 In light of this, the parties have identified the Land as being suitable for their respective requirements for temporary use for public recreation and open space and have agreed that:
 - (a) TfNSW will publish an order in the Gazette under section 159 of the *Roads Act 1993 (Roads Act)* placing the land in the care control and management of the Council; and
 - (b) the Council will consent to this arrangement.
 - 1.4 The parties intend to enter into an agreement to record the terms on which the Council's consent is envisaged to be granted (**CCM Agreement**).
 - 1.5 The purpose of this letter is to record the broad terms envisaged to form part of the CCM Agreement. An outline of the key principles is set out at Annexure A.
 - 1.6 The parties acknowledge that:
 - (a) in implementing the Approval, TfNSW has consulted extensively with the Council on the proposed design for the open space, as part of the Place, Design and Landscape Plan referred to at condition E177 of the Approval;
 - (b) the Land will provide a significant benefit to the Council, in that it will deliver parkland and recreational areas to the community, without any capital contribution by the Council; and

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(c) part of Balls Head Road may be required by TfNSW in order to deliver the relevant open space.

1.7 The parties do not intend that this letter will give rise to any legal relations between them in relation to the proposed CCM Agreement.

2. Next steps

2.1 I would be grateful if the Council could please sign a copy of this letter below to indicate it is willing to move forward in good faith with a CCM Agreement on the broad terms set out in Annexure A to this letter.

Yours faithfully



Beverly Magpayo
Director Property, Development & Sydney Delivery
Infrastructure and Place
Commercial, Performance and Strategy

Enc.

Signed by an authorised signatory of North Sydney Council

Signature

Date

Name of signatory

Annexure A - Key Principles

The CCM Agreement will be governed by the following general principles:

Key term	Principle
Parties	TfNSW The Council
Licence Fee	Nil
Term	Undefined
Care, control and management of the Land	The Land will be placed in the care, control and management of the Council by publication of an order in the Gazette. Until the order is published, TfNSW grants the Council an interim licence on the terms set out in the CCM Agreement.
Maintenance of the Land and improvements	The Council will be responsible for the maintenance of the Land and any improvements made on the Land as part of the Berrys Bay development.
Status of the Land	The Land will become "community land" under the LGA.
Plan of management	As "community land" under the LGA, a plan of management (POM) will need to be prepared. The POM must be consistent with TfNSW's requirements.
Use of the Land	The Land must only be used for public recreation.
Risk	The Council uses the Land at its own risk.
Third party access	The Council may not grant rights to third parties without the approval of TfNSW. Any such rights may only be granted subject to the CCM agreement, with the third party releasing TfNSW from liability.
TfNSW access	TfNSW may access the Land to exercise its functions. The CCM Agreement will deal with the terms on which this will be required.
Insurance	The Council must maintain required insurances the same way as it does for its other open space.
Council revenue	The Council will be able, subject to approval of TfNSW, and provided it is consistent with the POM, to derive revenue from the Land. TfNSW will not seek to obtain any portion of that revenue.
Council works	The Council must not carry out works on the Land without the prior written consent of TfNSW.
Compliance with laws	The Council will be required to comply with all laws in relation to its care, control and management of the Land including work, health and safety laws.
Contamination	The Council is responsible for contamination arising during the term of the CCM Agreement.

Release and indemnity	The Council will release and indemnify TfNSW in relation to Claims arising during the currency of the CCM Agreement, Council's use of the Land, and the Council's breach of the CCM Agreement.
Termination	<p>TfNSW can terminate the CCM Agreement to take back the Land:</p> <ul style="list-style-type: none"> • in the event of default; or • on 120 days' notice. <p>Termination of the CCM Agreement will not entitle the Council to any compensation.</p>
Compulsory acquisition	Where TfNSW acquires any part of the Land by compulsory process, the parties agree that there will be no compensation.