

11.4 THE BATLOW CIDER RAIL TRAIL - STEERING COMMITTEE - ATTACHMENTS

Attachment Titles:

1. NSW Rail Trails Framework 2022

Attachment 1 - NSW RAIL TRAIL FRAMEWORK 2022

Department of Regional NSW

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NSW Rail Trails Framework

June 2022



Regional NSW

NSW Rail Trails Framework

02

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Introduction

What is a Rail Trail?

Rail Trails are tracks that are mainly used for walking or cycling and are either partly or entirely built on a disused rail corridor. A Rail Trail is preferably developed on –or closely follows– the path of a former railway line for most of its length.

All disused rail land in NSW remains an open transport corridor. Even if a train has not been used on the line for decades, disused lines are generally left in place.

The lead agency for Rail Trails in NSW is the Department of Regional NSW (DRNSW) assisted by Transport for NSW.

Why is a Rail Trails Framework needed?

Around Australia and internationally, disused rail corridors are being repurposed as Rail Trails, which are predominantly used for hiking and cycling through regional areas. An evaluation of two pilot Rail Trail projects in NSW (the 21km Tumbarumba to Rosewood Rail Trail and the Tweed section of the Northern Rivers Rail Trail) found Rail Trails deliver important community benefits before and after construction (noting the Tweed project was yet to commence construction at the time of evaluation). These benefits include strengthening and connecting communities, creating jobs, stimulating business and boosting tourism, providing recreational infrastructure and contributing to environmental preservation and management.

The NSW Government supports the development of Rail Trails where there is demonstrated community support, where environmental impacts have been considered, and where a viable business model is in place. With two pilot projects underway and the potential for future projects across NSW, a detailed and consistent NSW Rail Trails Framework is needed to provide clear guidance on the establishment of NSW Rail Trail projects that leverage identified benefits.

“It will be important that the delivery of future Rail Trails in NSW is well supported and respond to the growing momentum in the State for the creation of a broader network of connected Rail Trails. These types of projects have the potential to link towns and contribute significantly to the social and economic capital of regional towns in NSW.”

Rail Trails for NSW Evaluation, NSF Consulting, 2021

Framework purpose

The NSW Rail Trails Framework (the Framework) will expedite the development of Rail Trails across NSW by clarifying the proposal and approval process, as well as providing guidance for general Rail Trail operation and maintenance.

The Framework aims to provide Rail Trail project proponents with clarity around the NSW Government's expectations at various stages in the establishment of a new Rail Trail, and to clearly outline NSW Government criteria in determining the viability of a Rail Trail.

The Framework aims to:

- provide guidance for Rail Trail proponents seeking to secure NSW Government support for a new Rail Trail
- outline clearly and transparently how the NSW Government determines whether a Rail Trail project is viable
- support the planning and delivery of additional Rail Trails across NSW, with a focus on delivering the best outcomes for communities
- provide a clear and transparent approach for the NSW Government to consider Rail Trail proposals during the funding application assessment, regulations stage, and/or lease intent processes
- identify best practice approaches to the development of Rail Trails, including a recommended approach to community consultation, legislative changes, construction methods and operational models
- support improved timeframes and efficiency of the legislative process required to open a Rail Trail.



Why the NSW Government supports Rail Trails

Rail Trails have multiple benefits for a broad range of the population. The development of Rail Trails strategically aligns with a range of NSW and Commonwealth Government strategies and plans, including promoting community engagement in planning and decision-making and supporting bushfire recovery, community resilience, regional economic growth, healthy ageing, place-based design, and community infrastructure delivery.

Promoting community resilience and social connection

Rail Trails strengthen and connect communities and can help improve social cohesion, including during challenging times.

Rail Trails:

- build community capacity through the formation of community groups that advocate for Rail Trails and participate in the construction and ongoing management of the trails
- build resilience and the ability to respond to challenges, such as recovery from bushfires and other emergencies and disasters
- enhance village and community life by converting rail lines into public spaces for local recreation and socialising
- foster inclusion and community engagement opportunities that promote long-term stewardship and social advocacy
- offer intergenerational experiences for children, young people, and the elderly by appealing to diverse age groups of the community
- reduce social isolation, particularly among older residents. A survey by the Snowy Valleys Council and usage counter data shows that the Tumbarumba to Rosewood Rail Trail appeals to people of all ages. Those over 65 years of age were most likely to return to the region to use the Rail Trail (they returned, on average, 8.8 times over a 12-month period from April 2020). The Rail Trail is used by groups of elderly people, who either walk or use mobility vehicles. According to a local Men's Shed, the Rail Trail brings together older residents who visit in friendship or family groups.

There is also evidence from previous studies that small regional towns experience greater recovery from disaster when significant recovery projects involved community collaboration.¹

¹Evaluation of Arts Victoria's Black Saturday Bushfires Initiatives, 2011



Case study: Tumbarumba Men's Shed

Volunteers from the Tumbarumba Men's Shed worked on the restoration of the Rosewood Station platform. The President of the Tumbarumba Men's Shed said:

"Some of these people feel undervalued by the community and can't contribute. If you give them something to contribute, it turns them around overnight. The Rail Trail did that."

"Our region is in the very early stages of healing and recovery after the recent 2020 Black Summer bushfire disaster, so the completion of the Tumbarumba to Rosewood Rail Trail is a boon for Tumbarumba and Rosewood and a credit to all those who have worked so hard for so long to make it a reality."

Councillor James Hayes, Mayor of Snowy Valleys Council, February 2021

Supporting economic development and tourism

Rail Trails often become nationally significant experiences, drawing visitors from interstate and international markets. Trails such as Murray to the Mountains (Victoria), Riesling Rail Trail (South Australia), Brisbane Valley Rail Trail (Queensland) and Otago Central Rail Trail (New Zealand) have become popular destinations for cycling enthusiasts worldwide.

The evaluation of the Tumbarumba to Rosewood Rail Trail found host towns consider it an important community project and a unique type of recreational land. The pilot Rail Trail has proven very popular, with an estimated 15,000 visits (as of May 2021) since its opening in June 2020. Snowy Valleys Council survey and counter data from 2021 shows for almost half the visitors (48 per cent), this was their first visit to the Rail Trail. Just over half (52 per cent), were on a return visit (return visitors, on average, used the Rail Trail five times). Almost all users (89 per cent) said they were either “very likely” or “quite likely” to visit the region again to use the Rail Trail.

In addition, Rail Trails:

- contribute to the local economy by attracting visitor expenditure and prompting extra spend by locals. The *Rail Trails for NSW Evaluation* found that spend in the Tumbarumba region increased by 20 per cent following the Rail Trail's opening, outperforming the broader Snowy Valleys region and NSW as a whole. In that time, discretionary spending increased by 55 per cent and spending on consumer staples increased by 14 per cent, mostly likely from visitors staying in town
- create training opportunities and jobs via maintenance and building work. Rail Trails also stimulate the local economy by providing a public amenity around which businesses, such as tour operators, event organisers and retailers, can leverage increased visitation. An assessment of the Rail Trail between Launceston and Billycock Hill in Tasmania found the economic impact five years post-construction will amount to \$6.8 million annually and will create 40 new jobs. This benefit increases to \$11.2 million annually after 15 years²
- increase opportunities for public and private sector partnerships that inject further investment into local and regional economies.



Case study: Murwillumbah Cycles

(source: Rail Trails for NSW Evaluation, NSF Consulting, 2021)

Manager and Co-owner of Murwillumbah Cycles, Rachel Dorig, has been busy preparing her business for the impact of the Murwillumbah to Crabbes Creek section of the Northern Rivers Rail Trail.

Originally located in the town centre of Murwillumbah, her bicycle hire shop was going well. But she wanted to prepare for when the Rail Trail was operational and be right amongst it. Eight weeks ago she relocated her business to the very start of the future Rail Trail; right on Murwillumbah station in the former visitors centre. Rachel could see the benefit of being located right at the spot where cyclists would be setting off on the trail. They will hire a bicycle from her and set off.

Moving from the busy town centre location to the currently quiet station platform was a risk. But Rachel is preparing for increased visitation and a positive impact on her business.

² North East Rail Trail – Preliminary Demand and Economic Benefit Assessment, 2014

Protecting environmental, cultural and heritage assets

Rail Trails provide a long, continuous natural recreation corridor, offering improved accessibility for environmental management and maintenance, as well as the rehabilitation of native vegetation.

In addition, Rail Trails:

- are overseen by land managers, maintenance staff and volunteers. Land that might otherwise be neglected is cared for and may be restored to a more natural state
- provide opportunities for cultural immersion and the development of environmental and cultural experiences and custodians
- present unique opportunities for public education. Appropriate on and off-trail interpretation and user information can highlight unique environmental, cultural and historical points of interest linked to the trail and the landscapes it travels through
- deliver broader environmental benefits through increased walking and cycling, reducing motor vehicle usage. Trees planted on Rail Trails assist with carbon capture and may be used as biodiversity offsets
- preserve the rail corridor and heritage infrastructure for future generations
- provide an opportunity for the activation and adaptive reuse of vacant or unused heritage and culturally significant rail assets (via lease agreements), including train stations, platforms, buildings and other railway infrastructure.



Improving health through active transport

Rail Trails are important recreational assets in regional areas and support population growth, health and wellbeing by providing active transport routes for all ages. Communities encouraging physical activity by using Rail Trails may see a significant effect on public health and wellness, including a reduction in the obesity rate and the impact on local health services.

In addition, Rail Trails:

- are inclusive. Built on railway lines, Rail Trails often avoid steep grades by contouring around hills, through cuttings and over bridges. The lack of steep terrain makes them accessible for many in the community
- connect townships and communities. With more people moving to rural areas for work and lifestyle benefits³, having safe, off-road pathways giving access to the townships where people work, shop and socialise has never been more important. There is potential with the adaptive reuse of disused rail corridors to connect Rail Trails and form a continuous network through NSW regions and connect residents to local public transport opportunities
- are a convenient option for commuters. Interviews with Rail Trail managers from New Zealand indicated Rail Trails within a 5km radius of town centres were regularly used by residents to travel to school, shops and other daily activities
- provide a safe corridor for rail trail users. Rail Trails are typically off-road and routed away from busy traffic thoroughfares.



Case study: Intergenerational travel

Older and younger cyclists use the Tumbarumba to Rosewood Rail Trail to travel between local centres, services and home (source: <https://www.instagram.com/tumbarumbarailtrail>)

³ Research from the Regional Movers Index (RAI and Commonwealth Bank) showed that as of 30 September 2021, the overall population flow from capital cities to regional areas increased by 3 percent over the previous 12-month period.

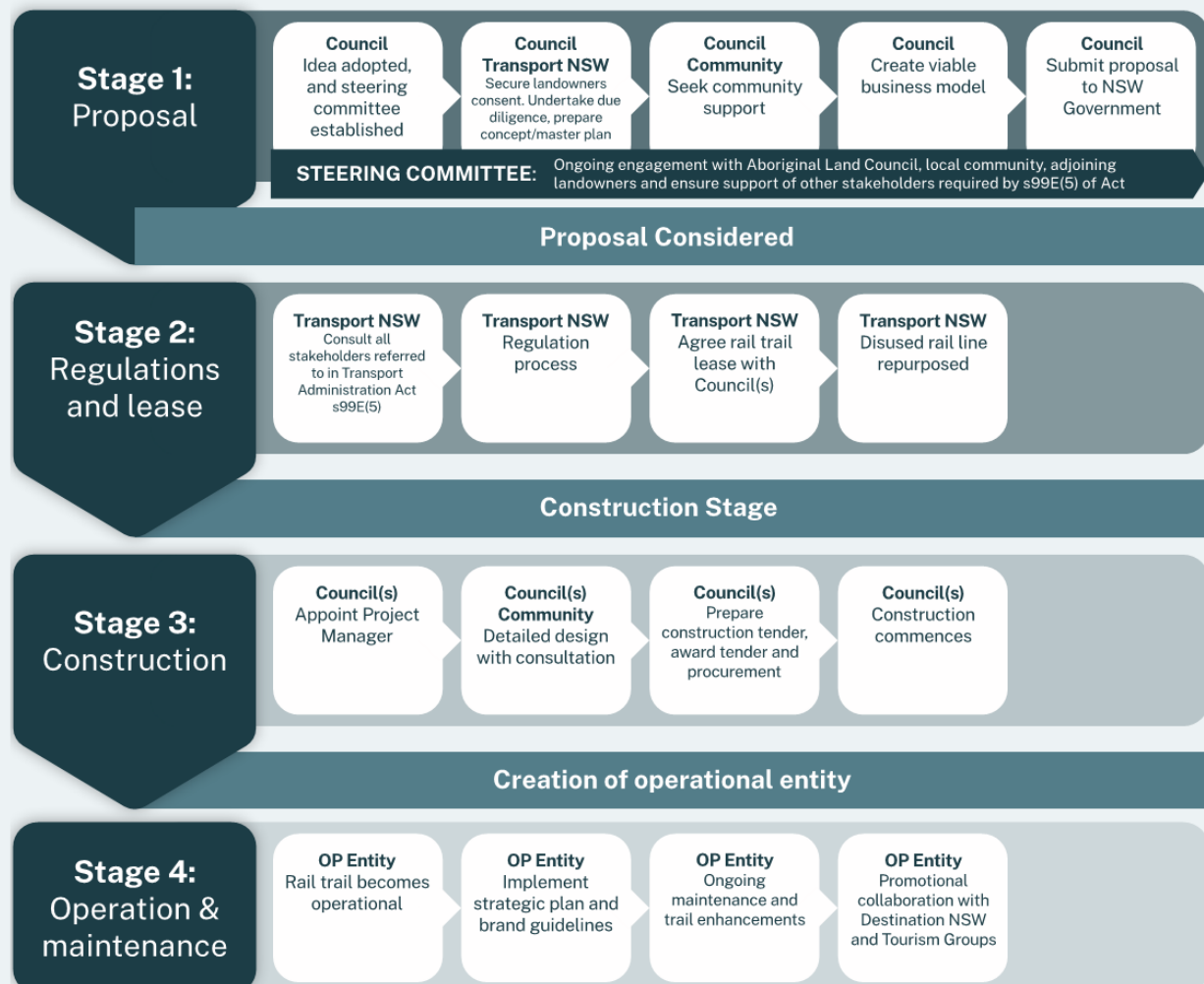
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Process for establishing a Rail Trail

There are four stages to guide the establishment of a Rail Trail, from the initial idea, to approval, regulations and lease, construction and ongoing operations and maintenance.



Proposing a Rail Trail

Idea generation

The idea for a new Rail Trail may be generated by an individual, community group, local council(s) or other government agency. Individuals and community groups who propose a Rail Trail idea must work with their local council(s) as the lead group to progress a new Rail Trail in NSW. The proposed Rail Trail may cover more than one local government area (LGA) and can require collaboration between neighbouring councils and community groups.

While the idea for a new Rail Trail can be generated by anyone, applications submitted to a suitable NSW Government funding program and decisions on repurposing a disused rail corridor will only be considered if the application is led and endorsed by a local council or multiple councils (where a Rail Trail route crosses more than one LGA).

Establishing project governance

Once a Rail Trail idea has support from the local community and the relevant council(s), a working group or committee should be established to progress the proposal. Feedback with Rail Trail operators in NSW (as identified in the *Rail Trail for NSW Evaluation* report, NSF Consulting June 2022) indicated a successful Rail Trail often includes the establishment of a steering committee or working group to progress the Rail Trail proposal and work towards addressing the NSW Government essential criteria detailed below. Setting up a steering committee or working group with key community stakeholders can foster a sense of community ownership of the project and ensure the end design meets the needs of the community and stakeholders.

The relevant council(s) should lead and coordinate a Rail Trail proposal including managing the steering group and acting as a central point of contact for all enquiries from community members and stakeholders.

Landowner consent and land assessment

Before preparing a detailed proposal, Councils should engage with Transport for NSW to seek landowner consent. This allows Transport for NSW (on behalf of TAHE, the landowner) to confirm if a section of line is available for use as a rail trail or required for other purposes.

Transport for NSW will also provide information on matters such as boundaries, how to access the land to undertake site investigations, known contamination and the number and value of existing leases (that will generally be transferred to Council for management as a part of a rail trail lease).

Preparing a proposal to meet the essential criteria

The applicant must prepare a proposal providing evidence of how it responds to three essential criteria. These criteria must be addressed before a proposal is either submitted to a suitable NSW Government funding program or for the proposed repurposing of a rail corridor.

The essential criteria that must be addressed in a Rail Trail proposal are:

1. There must be demonstrated community support for the Rail Trail.
2. There must be evidence of a viable and sustainable business model.
3. Issues relating to environmental impacts including biosecurity must be addressed.

Criteria 1: Demonstrated community support

The proposal must show clear evidence of community support for the Rail Trail project. This can be a council resolution demonstrating evidence of support through community engagement, or through the inclusion of a priority or action as part of the suite of a council(s) Integrated Planning and Reporting (IP&R) documents.

Preparing a Consultation Plan detailing how the community and stakeholders will be consulted throughout the development of the proposal can also contribute to the operating entity's evidence of community support.

Proponents should engage with their local Member of Parliament and may include letters of support as further evidence of community support.

Additional NSW Government consultation

In addition to the community consultation process completed by the applicant to demonstrate community support, the NSW Government may choose to undertake an additional independently facilitated community consultation session. This may be required in instances where the NSW Government considers that further information is required to determine the degree of community support; to explain the role and responsibilities of the NSW Government in a Rail Trail project; and/or to respond to questions from the community and stakeholders about the project.

This community consultation session may help inform a decision (together with an applicants' proposal) on whether the NSW Government will provide support for the proposal.

Once a proposal is deemed as having support, Section 99E(5) of the *Transport Administration Act 1988* requires the NSW Minister for Regional Transport and Roads to undertake consultation before regulations can be made.



Operational guidance: What is a Consultation Plan?

A Consultation Plan can enable a successful community engagement process when seeking community support for a Rail Trail proposal. A Consultation Plan identifies the objective of consultation activities, stakeholder groups to be consulted and the reason for doing so, consultation methods to be used, and a program for consultation events and activities. Investing time into understanding varying stakeholder needs and clearly communicating project information, including what can be negotiated and how decisions are made, can safeguard the process and help build demonstrated support for the proposal.

A Consultation Plan should:

- ✓ identify the purpose of the consultation and include consultation stages, tools and timeframes. It should consider project risks from the outset, including the potential for negative community sentiment and how to manage this through clear and strategic communications and project goals. For example, risks that emerged in the development of the Northern Rivers Rail Trail include local opposition to closing the rail lines, where some community members had hoped operational trains would one day return. For Tumbarumba to Rosewood, there was concern about the potential loss of the tracks' heritage value and the loss of privacy or access rights for owners of adjoining rural land
- ✓ identify stakeholder groups to be consulted and their level of risk and influence. Stakeholder groups will vary according to the location of the Rail Trail but generally include the community in the local government area and those most likely to be impacted, such as neighbouring landowners, NSW Government agencies including Local Land Services, First Nations groups including Aboriginal Land Councils, NSW Farmers Federation, National Parks and Wildlife Service, adjacent Councils, local businesses and services, community organisations and cultural and heritage groups
- ✓ provide a range of ways for groups to provide feedback and assist with decision-making, including surveys, interviews, meetings, and community workshops. This could include a range of online and face-to-face activities
- ✓ identify a clear and consistent decision-making framework, detailed project messaging and Frequently Asked Questions including local benefits, successful case studies, and project aspirations
- ✓ outline communication channels where stakeholders can seek more information or talk to a central point of contact (this would likely be the Project Manager)
- ✓ include visual tools for use in consultation, such as concept plans. This helps the community understand what a Rail Trail is, where it will be located, what it might look like and its uses, as well as guiding discussions with neighbouring landowners and businesses. One of the lessons learned in the development of the Northern Rivers Rail Trail was the value of having a high-level concept masterplan developed ahead of community consultation.

Criteria 2: Evidence of a viable business model

The applicant must prepare a feasibility study demonstrating the Rail Trail project has a viable and sustainable business model.

The feasibility study should include, at a minimum:

- ✓ pre-construction costs and funding, including project management, masterplan and design documentation costs
- ✓ construction costs and funding, including staged delivery
- ✓ post-construction management, operating, marketing, and maintenance costs and funding.

The NSW or Commonwealth Government may require a cost-benefit analysis as part of the feasibility study to show the direct and indirect short, medium and long-term economic benefits of the Rail Trail through tourism and business growth. In some instances where the proponent has applied for funding through a suitable NSW Government grant program, the NSW Government may undertake this analysis as part of its assessment of the funding application. Where this is the case, this will be documented in the program guidelines of the relevant funding program.

As the project proponent, the local council(s) business model will need to comply with the Capital Expenditure Review process under the *Local Government Act 1993*, Integrated Planning and Reporting requirements and when successful, any general grant agreement provisions. The Rail Trail project should also be included in the long-term financial plan of the council(s).

In their proposal, the applicant should consider all potential costs from idea generation to ongoing operation and maintenance post construction including, but not limited to:

- ✓ pre-construction: Rail Trail Project Manager, feasibility study/cost-benefit analysis, masterplan (high-level concept), strategic plan including a risk assessment, environmental, heritage and other assessments, remediation of potential land contamination sites and community consultation activities and events
- ✓ construction: Rail Trail Project Manager, detailed design documentation, construction tender, labour and procurement, and construction cost per kilometre
- ✓ post-construction: Rail Trail Project Manager, strategic/management plans, annual upkeep and maintenance cost per kilometre, public relations, brand management and marketing, Rail Trail promotional and volunteer events, finance, forecasting and fundraising, and insurance.

Criteria 3: Address potential environmental impacts

The council(s) proposing the new Rail Trail must address any environmental, heritage and cultural impacts that may result from the Rail Trail proposal, such as biosecurity concerns. This includes impacts identified through planning controls, Environment Impact Statement (EIS) findings such as contamination, and issues raised through the Rail Trail community consultation process.

During the community consultation process, owners of land adjacent to a proposed Rail Trail may raise concerns about biosecurity, animal welfare and other environmental impacts. For example, several issues were raised in the consultation process for the Tumbarumba to Rosewood Rail Trail relating to animal welfare, including the risk of sheep being chased by dogs, cows being scared by cyclists and the need for livestock to safely cross the Rail Trail to access water. A council proposing a Rail Trail is encouraged to work in partnership with Local Land Services to establish a system allowing landowners to confidentially discuss any concerns such as security risks, crime or loss of privacy.

Other heritage, social or cultural groups may also raise concerns around environmental impacts. It's also possible Aboriginal middens or an endemic endangered plant species could be found on the proposed Rail Trail. If this is the case, their protection must be planned for and addressed in an Environment Impact Statement. Once concerns have been identified, mitigation measures should be incorporated into the Rail Trail proposal and concept, and detailed designs and communicated with landowners.



Regulations process and Rail Trail lease

Effective August 2022, councils entering into a lease for disused railway lines in non-metropolitan areas no longer require authorisation from an Act of Parliament to remove railway tracks and other works for the purpose of a rail trail.

Following an amendment to the *Transport Administration Act 1988*, once the project has met NSW Government requirements and funding has been secured, authorisation is obtained via the development of a regulation.

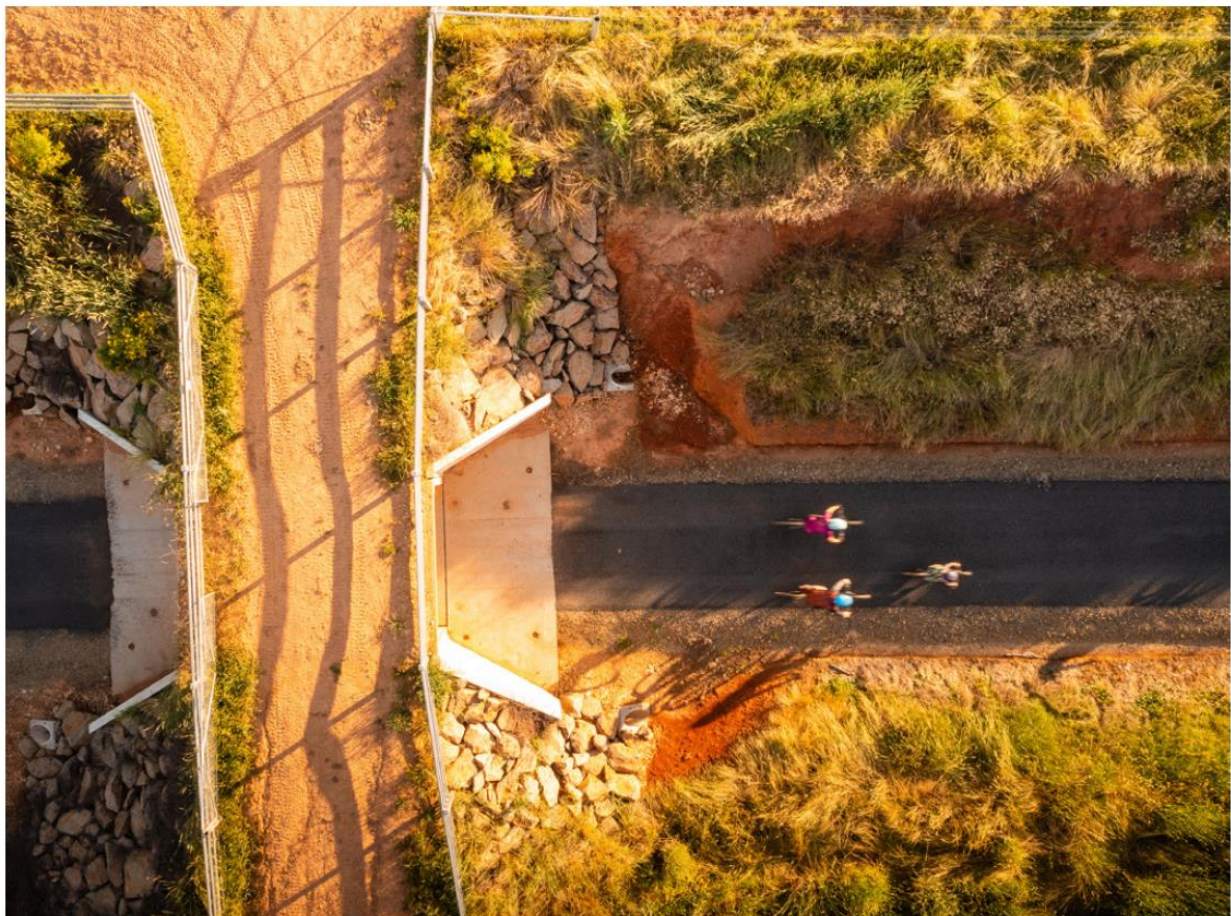
NSW Minister for Regional Transport and Roads consultation

Before a regulation can be considered, s99E(5) of the Act requires that the NSW Minister for Regional Transport and Roads consult with the applicable council(s), Minister for Regional NSW, National Parks and Wildlife Service, the Local Aboriginal Land Council for the subject land, Local Land Services in relation to the mitigation of biosecurity risks and adjacent councils and joint organisations.

If councils have already sought the support of these bodies during their consultation process, then it will reduce the risk of unexpected issues being raised at this stage.

Regulations process

Once the consultation process has been undertaken, the NSW Minister for Regional Transport and Roads will be provided with a recommendation to authorise the re-purposing of a non-operational rail corridor via a regulation. If Parliament does not support a regulation they have the power to disallow it.



Leasing the land to the operational entity

Transport Asset Holding Entity of NSW (TAHE) will continue to own the land on which future Rail Trails are located. TAHE as the landowner will lease the land to the local council for construction, operation ownership and maintenance of the Rail Trail asset for a nominal fee, with a lease length of up to 30 years. TAHE will retain ownership of the land for the following reasons:

- no land title change is required
- Rail Trails continue to be permissible and without development consent (pending the land zones) if undertaken by or on behalf of a council(s), while under NSW Government ownership
- it provides greater certainty for project proponents that decisions relating to the Rail Trail will be prioritised
- it ensures the land is retained for use as a continuous transport corridor if the Rail Trail needs to be decommissioned in the future
- it reduces the potential for time delays with the transfer of ownership to another NSW Government entity, such as Crown Lands
- it ensures minimal constraints on commercial opportunities and place activation along the Rail Trail. If ownership were transferred to Crown Lands, limited commercial activity would be permitted. Rail Trail operators across Australia and internationally have highlighted the importance of fundraising through commercial uses and place activation to support the ongoing operation and maintenance of Rail Trails
- lease discussions will generally be between the applicable Council(s) and Transport for NSW (on behalf of TAHE).

Existing asset ownership

Existing assets, such as buildings along the rail corridor, will either be retained by the NSW Government or transferred to the applicant. This will be determined on a project-by-project basis through the identification of an asset register and agreement on items the NSW Government needs to retain, and those assets along the rail corridor that might be utilised or disposed of. Existing assets retained by the NSW Government but needed for the operation of the Rail Trail may also be the subject of the lease agreement.

New Rail Trail asset ownership

New assets built by the operational entity (as lessee) as part of the Rail Trail project will be owned by the lessee. However, should the lease on the land not be renewed at the end of the period, the lessee would need to 'make good'. Make good provisions would not entail reinstating the rail line but may include removing anything built as part of the project or reaching agreement with the lessor to 'leave as is'.

Rail Trail land use definition

Rail Trails are not defined in the *Standard Instrument (Local Environmental Plans) Order 2006 (Standard Instrument Order)*. However, Rail Trails are permissible under the Standard Instrument as the definition of 'road infrastructure facilities' includes 'road related areas' as defined under the *Roads Transport Act 2013 (NSW)* and a 'road related area' includes 'an area that is not a road and that is open to or used by the public for riding'.

Rail Trail land use zoning

The land a Rail Trail is constructed on is zoned in accordance with its surrounding uses. While some zoning is a natural fit for a Rail Trail, for example RU2 – Rural Landscape, other zones such as B5 – Business Development are not.

Applicable land use zones along a Rail Trail should be identified during the mapping and design phase as the zones have a bearing on a Rail Trail's planning approval pathway.

Pending the land use zone(s) of a Rail Trail, development carried out by or on behalf of a local council(s) for the purposes of the construction and use of a Rail Trail is permissible without development consent under cl. 2.109(1) of the *State Environmental Planning Policy (Transport and Infrastructure) 2021 (T&I SEPP)*.

Where development by the council(s) is permitted without development consent, an EIS will need to be undertaken under Division 5.1 of Part 5 of the *Environmental Planning and Assessment Act 1979 (NSW) (Planning Act)*. The lessor will also be a determining authority and will need to consider any EIS documents.

Rail Trail planning pathways

The planning approval pathway for Rail Trails will need to be assessed on a case-by-case basis, as the correct pathway will depend on the planning instruments and zones that apply, and the different physical and environmental aspects of each Rail Trail corridor.

As a general guide to a council(s) as a starting point for a planning assessment, the planning pathway for Rail Trails may be separated between:

- construction and use of the Rail Trail for pedestrians and others as defined under the Standard Instrument, land use definition, and
- tourism and commercial development within the Rail Trail corridor that will complement the Rail Trail use.

Along a disused rail corridor there will also typically be former stations and rail-related buildings with either local or State heritage significance. Such heritage listings entail additional planning requirements and considerations.

The following flowcharts provide general guidance only. Council(s) will need to consider each development and may need to obtain their own advice on a case-by-case basis.

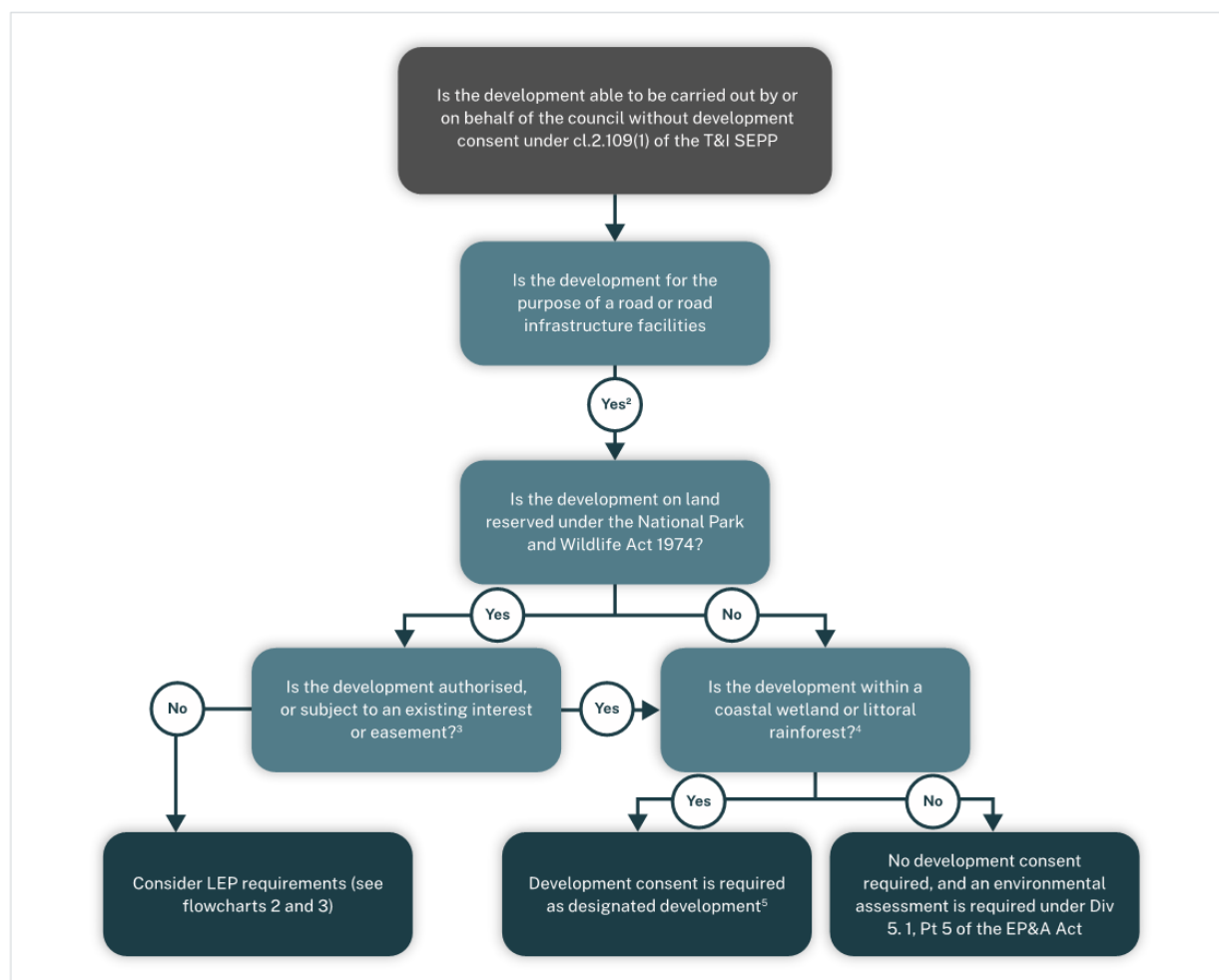
Planning pathway to construct and use a Rail Trail

Figure 1 provides a flowchart of the planning pathway for the construction and use of a Rail Trail. Unless certain exceptions apply, (as identified in the flowchart), the development will be able to be carried out without development consent under cl. 2.109(1) of the *State Environmental Planning Policy (Transport and Infrastructure) 2021 (T&I SEPP)*. This means a council(s) will be able to proceed after complying with the environmental assessment requirements under Division 5.1 of Part 5 of the *Environmental Planning and Assessment Act 1979 (NSW) (EP&A Act)*.



Figure 1

Flowchart of planning pathways for the construction and use of a Rail Trail

**Considerations relating to this pathway include:**

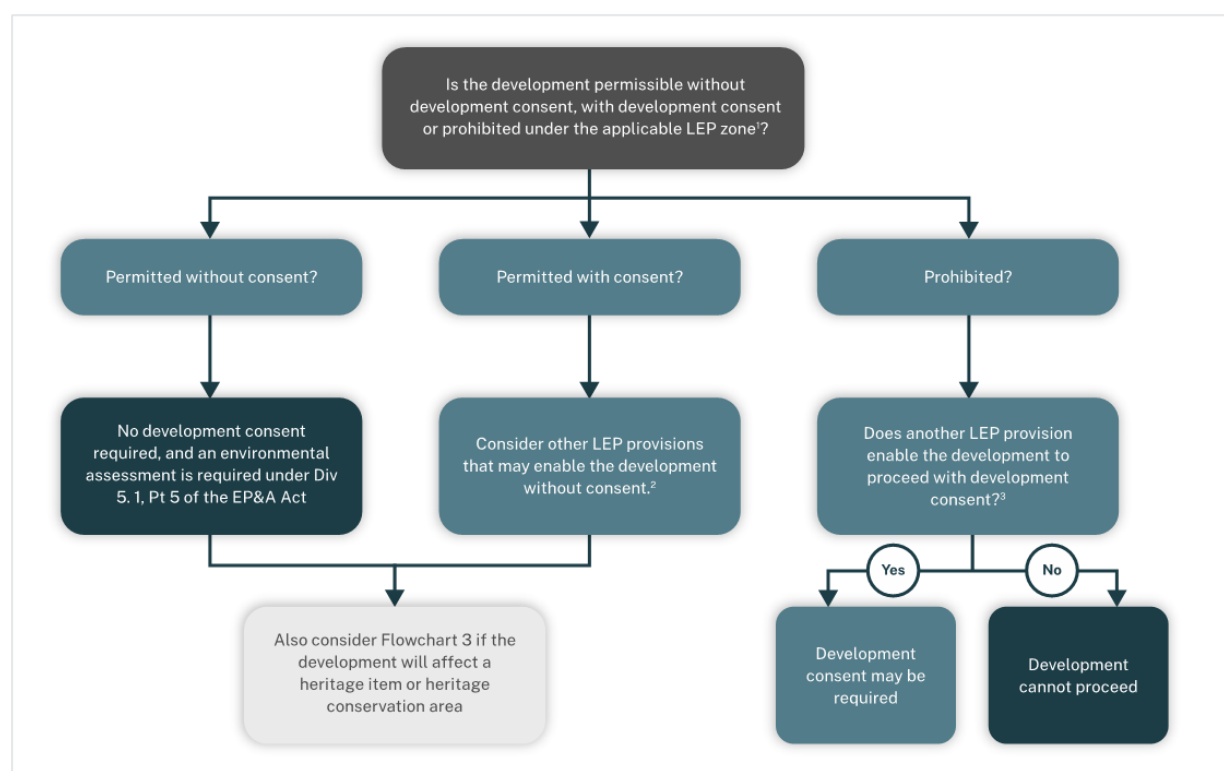
- Under cl2.109(1) of the *State Environmental Planning Policy (Transport and Infrastructure) 2021 (T&I SEPP)* development carried out by or on behalf of a public authority for the purposes of a road or road infrastructure facilities may be carried out by or on behalf of a public authority without consent on any land. A council is a public authority for the purposes of the T&I SEPP.
- The term 'road infrastructure facilities' includes road related areas within the meaning of the Road Transport Act 2013. The development of the Rail Trail for a pedestrian and cycleway falls within that definition.
- Under cl2.109(1) of the T&I SEPP development for the purpose of a road may only be carried out without consent on land reserved under the *National Parks and Wildlife Act 1974 (NPW Act)* if the development is authorised by or under the NPW Act, or is the subject of, an existing interest within the meaning of s39 of the NPW Act, or is on land over which an easement has been granted and is not contrary to the terms or nature of the easement.
- Clause 10 of the *State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP)* prevails over the T&I SEPP to the extent of any inconsistency. This means that despite cl2.109(1) of the T&I SEPP development of land mapped as coastal wetland or littoral rainforest requires development consent as designated development.
- Under Division 4.3 of the EP&A Act including the preparation of an environmental impact assessment and compliance with notification requirements.

Planning pathway to develop Rail Trail tourism and commercial activities

Figure 2 provides a flowchart of the planning pathway to develop Rail Trail tourism and commercial activities. This development may vary, depending on the nature of the development and the relevant planning instruments and land-use zones that apply. Despite this, the following may be used as a general guide to assist council(s) in considering the likely planning requirements.

Figure 2

Flowchart of planning pathways to develop Rail Trail tourism and commercial activities



Considerations relating to this pathway include:

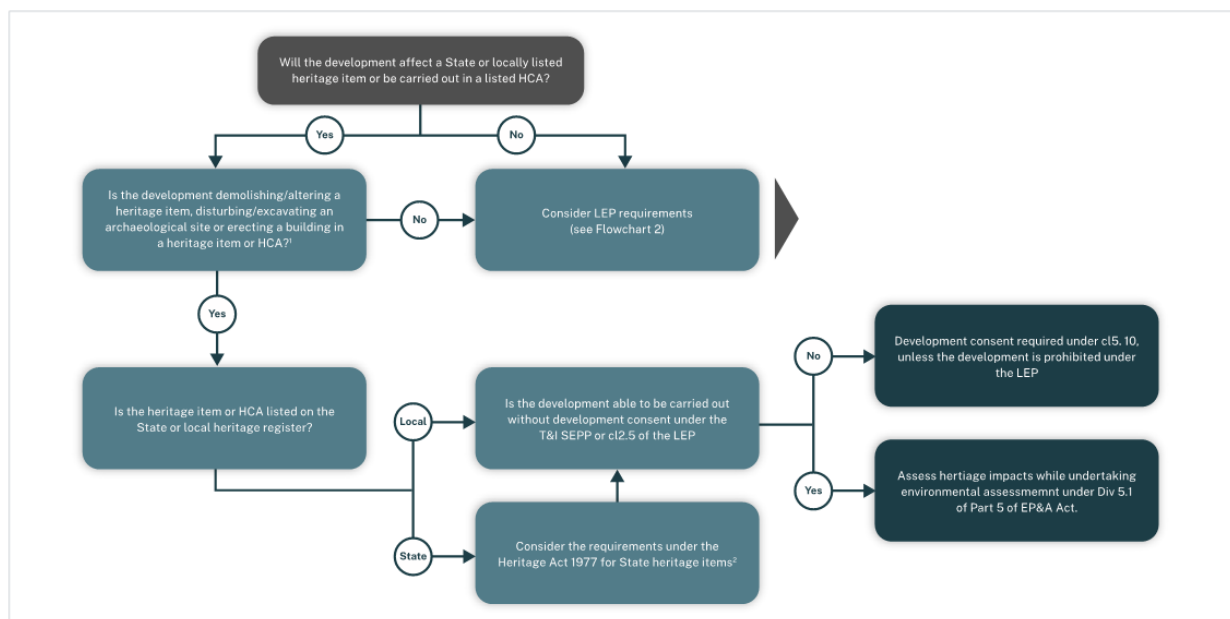
1. Also consider if the development is ancillary to the Rail Trail development, in which case cl2.109(1) of the T&I SEPP could be relied upon. Legal advice may be required in this assessment.
2. For example, see cl2.5 and Schedule 1 of the Standard Instrument – *Principal Local Environmental Plan (Standard Instrument)*, which allows for additional permitted uses 'despite anything to the contrary in the Land Use Table or other provision' of the *Local Environmental Plan (LEP)*.
3. Consider ability to rely on other LEP provisions, for e.g., additional permitted uses in cl2.5 and Schedule 1 of the Standard Instrument; the ability to rely on the neighbouring zone if the development is near a zone boundary (cl5.3, Standard Instrument), the conservation incentive provision under c5.10(10), Standard Instrument.

Planning pathway to develop Rail Trail tourism and commercial activities in heritage items and heritage conservation areas

Figure 3 addresses the additional heritage considerations that may be needed to overlay the general planning considerations in Figure 2. For example, in some circumstances the specific heritage provisions within a local environmental plan will require development consent, even though other provisions of the local environmental plan would allow the particular development to proceed without consent. Figure 3 is not applicable if the development is permissible without development consent under the T&I SEPP, because the T&I SEPP provisions will prevail over the provisions of a local environmental plan to the extent of any inconsistency.

Figure 3

Flowchart of planning pathway to develop Rail Trail tourism and commercial activities in heritage items and heritage conservation areas



Considerations relating to this pathway include:

- Under cl5.10(2) of the Standard Instrument development consent is required for any of the following in relation to a heritage item or Heritage Conservation Areas (HCA), relevantly: demolishing or altering the exterior of any of a heritage item or a building, work, relic or tree within a HCA. Altering includes making changes to its detail, fabric, finish or appearance of a heritage building; altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item; disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed; erecting a building on land on which a heritage item is located or that is within a HCA.
- Under s58 of the *Heritage Act 1997* (the *Heritage Act*), approval is required to carry out anything referred to in s57(1) of the *Heritage Act*. Under s57(1) of the *Heritage Act* a person must not, relevantly, demolish, damage, alter or carry out any development, except with the approval of the NSW Heritage Council. Such development requires: if development consent is required, the lodgement of an integrated development application pursuant to s91 of the EP&A Act where the concurrence from the NSW Heritage Council is required under s60 of the *Heritage Act*, or otherwise, a separate application to Heritage NSW under s60 of the *Heritage Act*.



Rail Trail governance models

Rail Trails will be operated and maintained by an “operational entity” under a preferred governance model. Governance models vary from state to state and even between Rail Trails in the same state. Some best practice Rail Trails are governed by one council, others are governed by multiple councils. Some have management committees with volunteers, others do not. As the *Rail Trails for NSW Evaluation* indicated, there is no single ideal governance model for future Rail Trails.

However, success is greater when the council(s) are the lead group, or “operational entity” and a Project Manager is appointed to coordinate all aspects of the Rail Trail. Appointing a Project Manager ensures the operation and maintenance of each section is consistently coordinated, communication is clear, and maintenance is equitable.

While there are a range of potentially suitable governance models, in NSW it is a requirement that the council(s) leasing the land are the lead operational entity. Table 1 outlines the scalable options for an operating entity, including where the Rail Trail crosses multiple LGAs.

As part of selecting the most appropriate governance/ operating model for the Rail Trail, participating Councils should also give consideration to the associated cost sharing arrangements.

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NSW Rail Trails Framework

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Table 1

| Operational entity | Benefits | Limitations | Uses |
|--|---|---|---|
| <p>Simple</p> <p>a) One local council.</p> <p>b) Multiple local councils under a memorandum of understanding (MOU).</p> <p>Each local council(s) is responsible for its section of the Rail Trail, including construction and ongoing operations and maintenance.</p> | <ul style="list-style-type: none"> Simple to set up. No agreement is required (for a single council). For more than one council, an MOU outlines minimum standards (i.e., budget, operations, maintenance, marketing). Autonomy for each council in the operation and maintenance of the Rail Trail. | <ul style="list-style-type: none"> Limits the growth and scale of the Rail Trail through commercial opportunities. No central source of funding or coordinated approach to operation and maintenance (where there is more than one council, without an MOU). Council(s) with more resources and capacity may have higher standards of maintenance and promotional abilities and the quality of the trail may differ from section to section. | <ul style="list-style-type: none"> Works well when there is only one local government area involved. May not be optimal if the Rail Trail traverses multiple LGAs or if sections are added to the Rail Trail in the future and require NSW Government approval. |
| <p>Public / private arrangements</p> <p>Council(s) (as head lessee) has sublease or other contractual arrangements in place with private operator(s).</p> | <ul style="list-style-type: none"> If available, subleases could be available to any of the governance model options. Shared Rail Trail responsibility and risk. Diversity and enhancement of the Rail Trail experience through commercialisation. Increased responsiveness to visitor and market trends and opportunities. | <ul style="list-style-type: none"> As head lessee, the council(s) retains some level of liability, risk and asset management responsibility. A reduced ability for access to NSW Government funding sources, often targeted to local government. Onerous maintenance responsibilities for a private operator who may have only a portion of a Rail Trail. Retaining (free) public access on a potentially (ticketed) commercialised product. Additional council(s) resources required to establish and manage subleases. | <ul style="list-style-type: none"> Sublease arrangements (whole or in part) may apply (pending the lease terms and conditions) to any governance model option. |

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Table 1 cont.

| Operational entity | Benefits | Limitations | Uses |
|--|---|--|---|
| <p>Advanced or multi-council</p> <p>Comprises representatives from all council(s) that lease the land and includes a central fund and Project Manager.</p> <p>Could also include community volunteers and other stakeholders.</p> | <ul style="list-style-type: none"> • A collaborative approach helps address challenges posed by a multi-council Rail Trail and optimises the user experience. • Can be beneficial for ongoing rail trail maintenance and achieve efficiencies. • Creates independence in decision-making and (pending council(s) delegated functions) may remove the need for separate council approval. • The entity can have a central fund, strategic plan, marketing plan and maintenance schedule. • Can be created using existing organisational structures such as NSW Joint Organisations where there is an agreed common purpose between members. | <ul style="list-style-type: none"> • Requires the creation of an entity. • This option may require a central funding source and Project Manager for operational costs. • To participate in the formation of a corporation or other entity including for commercialised functions, councils must seek Ministerial consent (Section 358 of the <i>Local Government Act 1993</i> and Section 410 <i>Local Government (General) Regulation 2021</i>). | <ul style="list-style-type: none"> • Where there is more than one local council. |

Rail Trail construction and operations

Rail Trail design and construction

The construction of the approved Rail Trail will largely be driven by the Rail Trail operational entity through an appointed Project Manager, who will oversee its design and construction and to prepare, exhibit and consult with the community around detailed Rail Trail designs and plans. Consultation at this stage might include public exhibition of designs, community meetings and interviews.

Just as each Rail Trail varies significantly in design and construction, so too do the costs. An analysis of construction costs attributed to five Rail Trail proposals indicates an average cost of \$450,000 per kilometre. Factors impacting the cost of design and construction, as well as ongoing operations and maintenance include:

- length
- surface material, and
- asset profile, including the number of bridges, toilet blocks and tunnels.



Operational guidance: Considerations for Rail Trail surface design

Rail trail projects should incorporate universal design principles to ensure accessibility for people with disability and the broader community.

Rail Trails with a sealed track are more versatile than other surface types as they are more suitable for prams, walkers, manual push and power wheelchairs. While they are initially more expensive to construct, sealed tracks require less ongoing maintenance than other non-sealed surface options. Sealed tracks provide a practical option for people with disability and those with limited mobility to participate in recreational and exercise activities while being able to connect across their broader community. This also minimises the reliance on accessible transport options and increases independence for people with disability. Increasing community participation is the number one priority under the NSW Disability Inclusion Plan 2021-2025 and consideration should be given to removing barriers to full participation. Gravel tracks are a barrier to equitable and safe participation for

people with disability. Consideration should also be given to ensuring transition points connecting the trails are barrier free and where practical provide a minimum width of 1000mm.

A sealed track also has the added benefit of attracting a broader range of users and increasing community engagement. This supports the business case for investing in sealed infrastructure compared to non-sealed surface options, which have fewer health and community engagement benefits.

Other considerations include the combination of sealed and gravel tracks and the use of sustainable materials. These should be suited to the terrain, conditions, weather, proposed use, traffic volume and width of the Rail Trail. Feedback in the *Rail Trails for NSW Evaluation* suggests sealing the track near towns in the early stages of the trail's development, so children and older people can do small walks, while serious cyclists can continue onto a gravel track. This will help with budgeting, as it may not be necessary to construct an entirely sealed track before opening the Rail Trail (this can be done at a later stage). Also consider the need for a set of design standards and solutions, such as bridges, to enable access over watercourses or flood-prone areas and to prevent farm animals from crossing the Rail Trail.

Operational guidance: Taking a staged approach to Rail Trail design and delivery

A staged approach to project delivery of a Rail Trail can allow more time to build community support and increase opportunities for the community to be involved in the construction. A staged approach also allows time for community conceptualisation and the creation of supporting trail attractions and experiences, such as sculptures, vegetation growth and place-making aesthetics to enhance the trail experience. It also gives the operational entity time to establish the requirements of long-term maintenance and build up resources over time. It gives the project time to get established and if needed, to evolve into something different as it responds to community needs. For example, the Tumbarumba to Rosewood Rail Trail grew to include car parks and toilets many months after construction.

Partnering with volunteer groups for major and minor works can also be cost-effective. The Tumbarumba Men's Shed contributed work to the value of about \$30,000-\$40,000 to the Tumbarumba to Rosewood Rail Trail in the 2020-2021 financial year. The group is currently restoring an old railway carriage that will be converted into a museum and first aid centre.

The use of local contractors and sub-contractors enables an agile approach to construction and helps reduce costs in many ways, including changes in the construction program not resulting in increased costs or fees, and local contractors can be resourceful in procuring equipment. In the construction of the Tumbarumba to Rosewood Rail Trail, local contractors procured equipment from nearby farms and organised a sale of disused train tracks to raise funds for major works.



Rail Trail operations

The Rail Trail operational entity through its Project Manager will be responsible for all aspects of the Rail Trail operations including maintenance and marketing. Successful Rail Trails have overarching strategic plans and/or a plan of management in place. These include brand guidelines to drive operations, manage revenue streams, and deliver marketing and promotional material.

Operational guidance: Rail Trail planning and resourcing

Rail Trail Strategic Plan and/or Plan of Management

The experiences of Australian and international operators shows a Rail Trail Strategic Plan or Plan of Management provides a useful blueprint for developing and operating a Rail Trail. The plan should identify tourism, funding and marketing initiatives that can be used by all members of the operational entity (particularly when a Rail Trail covers multiple local government areas). A Strategic Plan or Plan of Management outlines the roles and responsibilities of all participating stakeholders and can provide a clear and transparent decision-making framework that can be communicated to the community and other stakeholders.

Brand Guidelines

Brand Guidelines provide a consistent brand strategy that can be applied to all sections of the Rail Trail (this is particularly useful when the Rail Trail covers multiple local government areas).

Brand Guidelines can outline the vision for the Rail Trail, the look and feel, and intended visitor experience. This can include guidance on signage and facilities, as well as information materials, marketing assets, public relations, social media and the promotion of community and fundraising events. The Northern Rivers Rail Trail Brand Guidelines provide a good example of this.



Insta frame at Figures St, under Mannus Bridge, Tumbarumba to Rosewood Rail Trail.
Source: <https://www.instagram.com/tumbarumbarailtrail>



Contact

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